

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549  
**FORM 10-Q**

(Mark One)

**QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 For the Quarter Ended April 29, 2017**

**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 for the transition period from                    to**

Commission File No. 1-3083

**Genesco Inc.**

(Exact name of registrant as specified in its charter)

**Tennessee**

(State or other jurisdiction of  
incorporation or organization)

**62-0211340**

(I.R.S. Employer  
Identification No.)

**Genesco Park, 1415 Murfreesboro Road  
Nashville, Tennessee**

(Address of principal executive offices)

**37217-2895**

(Zip Code)

**Registrant's telephone number, including area code: (615) 367-7000**

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate website, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232-405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

Indicate by check mark whether the registrant is a large accelerated filer; an accelerated filer; a non-accelerated filer; a smaller reporting company; or an emerging growth company. See definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act:

Large accelerated filer	<input checked="" type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/> (Do not check if smaller reporting company)	Smaller reporting company	<input type="checkbox"/>
Emerging growth company	<input type="checkbox"/>		

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

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act.) Yes  No

As of May 26, 2017, 19,593,781 shares of the registrant's common stock were outstanding.

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**PART I - FINANCIAL INFORMATION**  
**Item 1. Financial Statements (unaudited)**

**Genesco Inc.**  
**and Subsidiaries**  
Condensed Consolidated Balance Sheets  
(In Thousands, except share amounts)

<b>Assets</b>	<b>April 29, 2017</b>	<b>January 28, 2017</b>	<b>April 30, 2016</b>
<i>Current Assets:</i>			
Cash and cash equivalents	\$ 43,371	\$ 48,301	\$ 42,750
Accounts receivable, net of allowances of \$3,764 at Apr. 29, 2017, \$3,073 at Jan. 28, 2017 and \$3,312 at Apr. 30, 2016	54,314	43,525	52,813
Inventories	578,102	563,677	551,282
Prepays and other current assets	63,899	61,470	59,966
<b>Total current assets</b>	<b>739,686</b>	<b>716,973</b>	<b>706,811</b>
<i>Property and equipment:</i>			
Land	7,847	7,773	8,120
Buildings and building equipment	56,032	52,673	51,931
Computer hardware, software and equipment	188,793	179,926	184,875
Furniture and fixtures	208,920	211,833	211,243
Construction in progress	44,835	33,660	22,257
Improvements to leased property	369,265	366,186	361,566
Property and equipment, at cost	875,692	852,051	839,992
Accumulated depreciation	(533,082)	(521,440)	(518,924)
Property and equipment, net	342,610	330,611	321,068
Deferred income taxes	15,289	13,372	31,266
Goodwill	272,880	271,222	286,595
Trademarks, net of accumulated amortization of \$5,563 at Apr. 29, 2017, \$5,574 at Jan. 28, 2017 and \$5,227 at Apr. 30, 2016	84,387	84,327	89,077
Other intangibles, net of accumulated amortization of \$16,448 at Apr. 29, 2017, \$16,200 at Jan. 28, 2017 and \$16,447 at Apr. 30, 2016	2,165	2,392	3,500
Other noncurrent assets	22,359	22,102	42,826
<b>Total Assets</b>	<b>\$ 1,479,376</b>	<b>\$ 1,440,999</b>	<b>\$ 1,481,143</b>

**Genesco Inc.**  
**and Subsidiaries**  
Condensed Consolidated Balance Sheets  
(In Thousands, except share amounts)

<b>Liabilities and Equity</b>	<b>April 29, 2017</b>	<b>January 28, 2017</b>	<b>April 30, 2016</b>
<i>Current Liabilities:</i>			
Accounts payable	\$ 175,588	\$ 170,751	\$ 166,954
Accrued employee compensation	19,761	31,128	18,493
Accrued other taxes	18,400	23,101	17,554
Accrued income taxes	8,746	7,568	11,640
Current portion – long-term debt	1,617	9,175	14,631
Other accrued liabilities	65,424	64,333	70,296
Provision for discontinued operations	3,164	3,330	11,445
<b>Total current liabilities</b>	<b>292,700</b>	<b>309,386</b>	<b>311,013</b>
Long-term debt	136,390	73,730	101,273
Pension liability	6,094	6,265	9,660
Deferred rent and other long-term liabilities	129,617	127,384	149,281
Provision for discontinued operations	1,713	1,713	4,230
<b>Total liabilities</b>	<b>566,514</b>	<b>518,478</b>	<b>575,457</b>
<i>Commitments and contingent liabilities</i>			
<i>Equity:</i>			
Non-redeemable preferred stock	1,059	1,060	1,073
<i>Common equity:</i>			
<i>Common stock, \$1 par value:</i>			
<i>Authorized: 80,000,000 shares</i>			
<i>Issued/Outstanding:</i>			
April 29, 2017 – 20,082,245/19,593,781			
January 28, 2017 – 20,354,272/19,865,808			
April 30, 2016 – 21,226,056/20,737,592	20,082	20,354	21,226
Additional paid-in capital	241,023	237,677	227,372
Retained earnings	716,108	731,111	706,310
Accumulated other comprehensive loss	(48,947)	(51,292)	(33,862)
Treasury shares, at cost (488,464 shares)	(17,857)	(17,857)	(17,857)
<b>Total Genesco equity</b>	<b>911,468</b>	<b>921,053</b>	<b>904,262</b>
Noncontrolling interest – non-redeemable	1,394	1,468	1,424
<b>Total equity</b>	<b>912,862</b>	<b>922,521</b>	<b>905,686</b>
<b>Total Liabilities and Equity</b>	<b>\$ 1,479,376</b>	<b>\$ 1,440,999</b>	<b>\$ 1,481,143</b>

The accompanying Notes are an integral part of these Condensed Consolidated Financial Statements.

**Genesco Inc.**  
**and Subsidiaries**  
Condensed Consolidated Statements of Operations  
(In Thousands, except per share amounts)

	<b>Three Months Ended</b>	
	<b>April 29, 2017</b>	April 30, 2016
Net sales	\$ 643,368	\$ 648,793
Cost of sales	324,455	319,096
Selling and administrative expenses	316,000	308,243
Asset impairments and other, net	119	3,557
Earnings from operations	2,794	17,897
Interest expense, net:		
Interest expense	1,177	1,163
Interest income	—	(26)
Total interest expense, net	1,177	1,137
Earnings from continuing operations before income taxes	1,617	16,760
Income tax expense	620	6,196
Earnings from continuing operations	997	10,564
Provision for discontinued operations, net	(112)	(154)
<b>Net Earnings</b>	<b>\$ 885</b>	<b>\$ 10,410</b>
Basic earnings per common share:		
Continuing operations	\$ 0.05	\$ 0.51
Discontinued operations	0.00	(0.01)
Net earnings	\$ 0.05	\$ 0.50
Diluted earnings per common share:		
Continuing operations	\$ 0.05	\$ 0.50
Discontinued operations	0.00	0.00
Net earnings	\$ 0.05	\$ 0.50

The accompanying Notes are an integral part of these Condensed Consolidated Financial Statements.

**Genesco Inc.  
and Subsidiaries**

Condensed Consolidated Statements of Comprehensive Income

(In Thousands)

	Three Months Ended	
	April 29, 2017	April 30, 2016
Net earnings	\$ 885	\$ 10,410
Other comprehensive income:		
Pension liability adjustments, net of tax of \$0.1 million for the three months ended April 29, 2017 and April 30, 2016	132	138
Postretirement liability adjustments, net of tax of \$0.0 million for three months ended April 29, 2017 and April 30, 2016	23	15
Foreign currency translation adjustments	2,190	8,598
Total other comprehensive income	2,345	8,751
<b>Comprehensive income</b>	<b>\$ 3,230</b>	<b>\$ 19,161</b>

The accompanying Notes are an integral part of these Condensed Consolidated Financial Statements.

**Genesco Inc.**  
**and Subsidiaries**  
Condensed Consolidated Statements of Cash Flows  
(In Thousands)

	<b>Three Months Ended</b>	
	April 29, 2017	April 30, 2016
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>		
Net earnings	\$ 885	\$ 10,410
Adjustments to reconcile net earnings to net cash (used in) provided by operating activities:		
Depreciation and amortization	19,616	18,814
Amortization of deferred note expense and debt discount	206	214
Deferred income taxes	(2,006)	(2,526)
Provision on accounts receivable	151	166
Impairment of long-lived assets	119	3,436
Restricted stock expense	3,348	3,286
Provision for discontinued operations	184	252
Other	(182)	631
Effect on cash from changes in working capital and other assets and liabilities, net of acquisitions:		
Accounts receivable	(12,402)	(5,206)
Inventories	(14,418)	(15,817)
Prepays and other current assets	(2,218)	1,583
Accounts payable	4,699	23,199
Other accrued liabilities	(17,713)	(23,369)
Other assets and liabilities	1,749	3,492
Net cash provided by (used in) operating activities	(17,982)	18,565
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>		
Capital expenditures	(30,326)	(17,357)
Proceeds from asset sales	211	—
Net cash used in investing activities	(30,115)	(17,357)
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>		
Payments of long-term debt	(8,018)	(1,920)
Borrowings under revolving credit facility	191,394	—
Payments on revolving credit facility	(128,413)	(747)
Share repurchases	(16,163)	(76,896)
Change in overdraft balances	2,998	(12,355)
Exercise of stock options	—	60
Other	1,357	(140)
Net cash provided by (used in) financing activities	43,155	(91,998)
Effect of foreign exchange rate fluctuations on cash	12	252
<b>Net Decrease in Cash and Cash Equivalents</b>	<b>(4,930)</b>	<b>(90,538)</b>
Cash and cash equivalents at beginning of period	48,301	133,288
<b>Cash and cash equivalents at end of period</b>	<b>\$ 43,371</b>	<b>\$ 42,750</b>
<b>Supplemental Cash Flow Information:</b>		
Net cash paid for:		
Interest	\$ 993	\$ 798
Income taxes	2,276	13,122

The accompanying Notes are an integral part of these Condensed Consolidated Financial Statements.

**Genesco Inc.**  
**and Subsidiaries**  
Condensed Consolidated Statements of Equity  
(In Thousands)

	Non- Redeemable Preferred Stock	Common Stock	Additional Paid-In Capital	Retained Earnings	Accumulated Other Comprehensive Loss	Treasury Shares	Non Controlling Interest Non-Redeemable	Total Equity
Balance January 30, 2016	\$ 1,077	\$ 22,323	\$ 224,004	\$ 768,222	\$ (42,613)	\$ (17,857)	\$ 1,627	\$ 956,783
Net earnings	—	—	—	97,431	—	—	—	97,431
Other comprehensive loss	—	—	—	—	(8,679)	—	—	(8,679)
Exercise of stock options	—	27	991	—	—	—	—	1,018
Employee and non-employee restricted stock	—	—	13,481	—	—	—	—	13,481
Restricted stock issuance	—	236	(236)	—	—	—	—	—
Restricted shares withheld for taxes	—	(56)	56	(3,435)	—	—	—	(3,435)
Tax benefit of stock options and restricted stock exercised	—	—	(657)	—	—	—	—	(657)
Shares repurchased	—	(2,156)	—	(131,107)	—	—	—	(133,263)
Other	(17)	(20)	38	—	—	—	—	1
Noncontrolling interest – loss	—	—	—	—	—	—	(159)	(159)
Balance January 28, 2017	1,060	20,354	237,677	731,111	(51,292)	(17,857)	1,468	922,521
Net earnings	—	—	—	885	—	—	—	885
Other comprehensive income	—	—	—	—	2,345	—	—	2,345
Employee and non-employee restricted stock	—	—	3,348	—	—	—	—	3,348
Shares repurchased	—	(275)	—	(15,888)	—	—	—	(16,163)
Other	(1)	3	(2)	—	—	—	—	—
Noncontrolling interest – loss	—	—	—	—	—	—	(74)	(74)
Balance April 29, 2017	\$ 1,059	\$ 20,082	\$ 241,023	\$ 716,108	\$ (48,947)	\$ (17,857)	\$ 1,394	\$ 912,862

The accompanying Notes are an integral part of these Condensed Consolidated Financial Statements.



**Genesco Inc.  
and Consolidated Subsidiaries  
Notes to Condensed Consolidated Financial Statements (unaudited)**

**Note 1**

**Summary of Significant Accounting Policies**

***Basis of Presentation***

The Condensed Consolidated Financial Statements and Notes contained in this report are unaudited but reflect all adjustments, consisting of only normal recurring adjustments, necessary for a fair presentation of the results for the interim periods of the fiscal year ending February 3, 2018 ("Fiscal 2018") and of the fiscal year ended January 28, 2017 ("Fiscal 2017"). The results of operations for any interim period are not necessarily indicative of results for the full year. Certain information and footnote disclosures normally included in financial statements prepared in accordance with U.S. GAAP have been condensed or omitted. The Condensed Consolidated Balance Sheet as of January 28, 2017 has been derived from the audited financial statements at that date. These Condensed Consolidated Financial Statements should be read in conjunction with the Company's Consolidated Financial Statements and notes thereto for Fiscal 2017, which are contained in the Company's Annual Report on Form 10-K as filed with the Securities and Exchange Commission ("SEC") on March 29, 2017.

***Nature of Operations***

Genesco Inc. and its subsidiaries (collectively, the "Company") business includes the sourcing and design, marketing and distribution of footwear and accessories through retail stores in the U.S., Puerto Rico and Canada primarily under the Journeys, Journeys Kidz, Shi by Journeys, Little Burgundy and Johnston & Murphy banners and under the Schuh banner in the United Kingdom, the Republic of Ireland and Germany; through e-commerce websites including the following: journeys.com, journeyskidz.com, journeys.ca, shibyjournneys.com, schuh.co.uk, littleburgundyshoes.com, johnstonmurphy.com and trask.com and catalogs, and at wholesale, primarily under the Company's Johnston & Murphy brand, the Trask brand, the licensed Dockers brand and other brands that the Company licenses for footwear. The Company's business also includes Lids Sports Group, which operates headwear and accessory stores in the U.S., Puerto Rico and Canada primarily under the Lids banner; the Lids Locker Room and Lids Clubhouse businesses, consisting of sports-oriented fan shops featuring a broad array of licensed merchandise such as apparel, hats and accessories, sports decor and novelty products, operating under various trade names; licensed team merchandise departments in Macy's department stores operated under the name Locker Room by Lids and on macys.com, under a license agreement with Macy's; certain e-commerce operations including lids.com, lids.ca, lidslockerroom.com, lidsclubhouse.com and neweracap.com. Including both the footwear businesses and the Lids Sports Group business, at April 29, 2017, the Company operated 2,756 retail stores and leased departments in the U.S., Puerto Rico, Canada, the United Kingdom, the Republic of Ireland and Germany.

During the three months ended April 29, 2017 and April 30, 2016, the Company operated five reportable business segments (not including corporate): (i) Journeys Group, comprised of the Journeys, Journeys Kidz, Shi by Journeys and Little Burgundy retail footwear chains, e-commerce and catalog operations; (ii) Schuh Group, comprised of the Schuh retail footwear chain and e-commerce operations; (iii) Lids Sports Group, comprised as described in the preceding paragraph; (iv) Johnston & Murphy Group, comprised of Johnston & Murphy retail operations, e-commerce and catalog operations and wholesale distribution of products under the Johnston & Murphy<sup>®</sup> and H. S. Trask<sup>®</sup> brands; and (v) Licensed Brands, comprised of Dockers<sup>®</sup> Footwear, sourced and marketed under a license from Levi Strauss & Company; SureGrip<sup>®</sup> Footwear, which was sold in

**Genesco Inc.  
and Consolidated Subsidiaries  
Notes to Condensed Consolidated Financial Statements (unaudited)**

**Note 1**  
**Summary of Significant Accounting Policies, Continued**

the fourth quarter of Fiscal 2017; G.H. Bass Footwear operated under a license from G-III Apparel Group, Ltd.; and other brands.

***Principles of Consolidation***

All subsidiaries are consolidated in the Condensed Consolidated Financial Statements. All significant intercompany transactions and accounts have been eliminated.

***Cash and Cash Equivalents***

The Company had total available cash and cash equivalents of \$43.4 million, \$48.3 million and \$42.8 million as of April 29, 2017, January 28, 2017 and April 30, 2016, respectively, of which approximately \$6.8 million, \$22.9 million and \$1.2 million was held by the Company's foreign subsidiaries as of April 29, 2017, January 28, 2017 and April 30, 2016, respectively. The Company's strategic plan does not require the repatriation of foreign cash in order to fund its operations in the U.S., and it is the Company's current intention to indefinitely reinvest its foreign cash and cash equivalents outside of the U.S. If the Company were to repatriate foreign cash to the U.S., it would be required to accrue and pay U.S. taxes in accordance with applicable U.S. tax rules and regulations as a result of the repatriation. There were no cash equivalents included in cash and cash equivalents at April 29, 2017, January 28, 2017 and April 30, 2016. Cash equivalents are highly-liquid financial instruments having an original maturity of three months or less.

At April 29, 2017, substantially all of the Company's domestic cash was invested in deposit accounts at FDIC-insured banks. The majority of payments due from banks for domestic customer credit card transactions process within 24 - 48 hours and are accordingly classified as cash and cash equivalents in the Condensed Consolidated Balance Sheets.

At April 29, 2017, January 28, 2017 and April 30, 2016, outstanding checks drawn on zero-balance accounts at certain domestic banks exceeded book cash balances at those banks by approximately \$39.7 million, \$36.7 million and \$32.7 million, respectively. These amounts are included in accounts payable in the Condensed Consolidated Balance Sheets.

***Concentration of Credit Risk and Allowances on Accounts Receivable***

The Company's footwear wholesale businesses sell primarily to independent retailers and department stores across the United States. Receivables arising from these sales are not collateralized. Customer credit risk is affected by conditions or occurrences within the economy and the retail industry as well as by customer specific factors. In the footwear wholesale businesses, two customers each accounted for 12% and one customer accounted for 7% of the Company's total trade receivables balance, while no other customer accounted for more than 6% of the Company's total trade receivables balance as of April 29, 2017.

***Leases***

The Company occasionally receives reimbursements from landlords to be used towards construction of the store the Company intends to lease. Leasehold improvements are recorded at their gross costs including items reimbursed by landlords. The reimbursements are amortized as a reduction of rent expense over the initial lease term. Tenant allowances of \$25.8 million, \$25.4 million and \$25.5 million at April 29, 2017, January 28, 2017 and April 30, 2016, respectively, and deferred

**Genesco Inc.  
and Consolidated Subsidiaries  
Notes to Condensed Consolidated Financial Statements (unaudited)**

**Note 1**  
**Summary of Significant Accounting Policies, Continued**

rent of \$53.3 million, \$51.9 million and \$49.4 million, each at April 29, 2017, January 28, 2017 and April 30, 2016, respectively, are included in deferred rent and other long-term liabilities on the Condensed Consolidated Balance Sheets.

The Condensed Consolidated Balance Sheets include asset retirement obligations related to leases of \$10.6 million, \$10.3 million and \$11.0 million as of April 29, 2017, January 28, 2017 and April 30, 2016, respectively.

***Fair Value of Financial Instruments***

The carrying amounts and fair values of the Company's financial instruments at April 29, 2017 and January 28, 2017 are as follows:

<b><i>Fair Values</i></b>	<b>April 29, 2017</b>		<b>January 28, 2017</b>	
	<b>In thousands</b>			
	<b>Carrying Amount</b>	<b>Fair Value</b>	<b>Carrying Amount</b>	<b>Fair Value</b>
U.S. Credit Facility Borrowings	\$ 108,973	\$ 109,081	\$ 49,879	\$ 50,396
UK Term Loans	11,643	11,968	19,230	19,541
UK Revolver Borrowings	17,391	17,644	13,796	13,956

Debt fair values were estimated using a discounted cash flow analysis based on current market interest rates for similar types of financial instruments and would be classified in Level 2 as defined in Note 5.

Carrying amounts reported on the Condensed Consolidated Balance Sheets for cash, cash equivalents, receivables and accounts payable approximate fair value due to the short-term maturity of these instruments.

***Selling and Administrative Expenses***

Selling and administrative expenses include all operating costs of the Company excluding (i) those related to the transportation of products from the supplier to the warehouse, (ii) for its retail operations, those related to the transportation of products from the warehouse to the store and (iii)

costs of its distribution facilities which are allocated to its retail operations. Wholesale costs of distribution are included in selling and administrative expenses on the Condensed Consolidated Statements of Operations in the amount of \$1.6 million for each of the first quarters of Fiscal 2018 and Fiscal 2017.

***Gift Cards***

Gift card breakage is recognized in revenues each period for which financial statements are updated. Gift card breakage recognized as revenue was \$0.3 million and \$0.2 million for the first quarters of Fiscal 2018 and Fiscal 2017, respectively. The Condensed Consolidated Balance Sheets include an accrued liability for gift cards of \$16.2 million, \$17.7 million and \$15.8 million at April 29, 2017, January 28, 2017 and April 30, 2016, respectively.

**Note 1**  
**Summary of Significant Accounting Policies, Continued**

***Buying, Merchandising and Occupancy Costs***

The Company records buying, merchandising and occupancy costs in selling and administrative expense on the Condensed Consolidated Statements of Operations. Because the Company does not include these costs in cost of sales, the Company's gross margin may not be comparable to other retailers that include these costs in the calculation of gross margin. Retail store occupancy costs recorded in selling and administrative expense were \$113.3 million and \$111.2 million for the first quarters of Fiscal 2018 and Fiscal 2017, respectively.

***Advertising Costs***

Advertising costs are predominantly expensed as incurred. Advertising costs were \$19.6 million and \$16.7 million for the first quarters of Fiscal 2018 and Fiscal 2017, respectively. Direct response advertising costs for catalogs are capitalized in accordance with the Other Assets and Deferred Costs Topic for Capitalized Advertising Costs of the Codification. Such costs are amortized over the estimated future period as revenues are realized from such advertising, not to exceed six months. The Condensed Consolidated Balance Sheets include prepaid assets for direct response advertising costs of \$1.1 million, \$1.2 million and \$1.6 million at April 29, 2017, January 28, 2017 and April 30, 2016, respectively.

***Cooperative Advertising***

Cooperative advertising costs recognized in selling and administrative expenses on the Condensed Consolidated Statements of Operations were \$1.2 million and \$1.0 million for the first quarters of Fiscal 2018 and Fiscal 2017, respectively. During the first three months of Fiscal 2018 and Fiscal 2017, the Company's cooperative advertising reimbursements paid did not exceed the fair value of the benefits received under those agreements.

***Vendor Allowances***

Vendor reimbursements of cooperative advertising costs recognized as a reduction of selling and administrative expenses were \$2.7 million and \$1.3 million for the first quarters of Fiscal 2018 and Fiscal 2017, respectively. During the first three months of Fiscal 2018 and Fiscal 2017, the Company's cooperative advertising reimbursements received were not in excess of the costs incurred.

***Foreign Currency Translation***

The functional currency of the Company's foreign operations is the applicable local currency. The translation of the applicable foreign currency into U.S. dollars is performed for balance sheet accounts using current exchange rates in effect at the balance sheet date. Income and expense accounts are translated at monthly average exchange rates. The unearned gains and losses resulting from such translation are included as a separate component of accumulated other comprehensive loss within shareholders' equity. Gains and losses from certain foreign currency transactions are reported as an item of income and resulted in a net loss of \$0.3 million for the first quarter Fiscal 2018 and a net gain of \$(1.0) million for the first quarter of Fiscal 2017.

**Genesco Inc.**  
**and Consolidated Subsidiaries**  
**Notes to Condensed Consolidated Financial Statements (unaudited)**

**Note 1**  
**Summary of Significant Accounting Policies, Continued**

***Other Comprehensive Income***

The Comprehensive Income Topic of the Codification requires, among other things, the Company's pension liability adjustment, postretirement liability adjustment and foreign currency translation adjustments to be included in other comprehensive income net of tax. Accumulated other comprehensive loss at April 29, 2017 consisted of \$9.3 million of cumulative pension liability adjustments, net of tax, a cumulative post-retirement liability adjustment of \$1.5 million, net of tax, and a cumulative foreign currency translation adjustment of \$38.1 million.

The following table summarizes the components of accumulated other comprehensive loss for the nine months ended April 29, 2017:

<b>(In thousands)</b>	Foreign Currency Translation	Unrecognized Pension/Postretirement Benefit Costs	Total Accumulated Other Comprehensive Income (Loss)
Balance January 28, 2017	\$ (40,329)	\$ (10,963)	\$ (51,292)
Other comprehensive income (loss) before reclassifications:			
Foreign currency translation adjustment	3,246	—	3,246
Loss on intra-entity foreign currency transactions (long-term investment nature)	(1,056)	—	(1,056)
Amounts reclassified from AOCI:			
Amortization of net actuarial loss (1)	—	254	254
Income tax expense	—	99	99
Current period other comprehensive income, net of tax	2,190	155	2,345
<b>Balance April 29, 2017</b>	<b>\$ (38,139)</b>	<b>\$ (10,808)</b>	<b>\$ (48,947)</b>

(1) Amount is included in net periodic benefit cost, which is recorded in selling and administrative expense on the Condensed Consolidated Statements of Operations.

***New Accounting Pronouncements***

***New Accounting Pronouncements Recently Adopted***

In January 2017, the FASB issued ASU 2017-04, "Intangibles - Goodwill and Other (Topic 350): Simplifying the Test for Goodwill Impairment." ASU 2017-04 simplifies the measurement of goodwill by eliminating the second step from the goodwill impairment test, which requires the comparison of the implied fair value of goodwill with the current carrying amount of goodwill. Instead, under the amendments in this guidance, an entity shall perform a goodwill impairment test by comparing the fair value of each reporting unit with its carrying amount and an impairment charge is to be recorded for the amount, if any, in which the carrying value exceeds the reporting unit's fair value. This guidance should be applied prospectively and is effective for public business

**Note 1**  
**Summary of Significant Accounting Policies, Continued**

entities that are United States Securities and Exchange Commission filers for fiscal years beginning after December 15, 2019, with early adoption permitted for interim or annual goodwill impairment tests performed after January 1, 2017. The Company adopted ASU 2017-04 in the first quarter of Fiscal 2018, and it did not have a material impact on its Consolidated Financial Statements and related disclosures.

In March 2016, the FASB issued ASU 2016-09, "Compensation - Stock Compensation (Topic 718): Improvements to Employee Share-Based Payment Accounting" ("ASU 2016-09"). The update addresses several aspects of the accounting for share-based compensation transactions including: (a) income tax consequences when awards vest or are settled, (b) classification of awards as either equity or liabilities, (c) a policy election to account for forfeitures as they occur rather than on an estimated basis and (d) classification of excess tax impacts on the statement of cash flows. The inclusion of excess tax benefits and deficiencies as a component of the Company's income tax expense will increase volatility within its provision for income taxes as the amount of excess tax benefits or deficiencies from share-based compensation awards is dependent on the Company's stock price at the date the awards are exercised or settled which is primarily in the second quarter of each fiscal year. The Company adopted ASU 2016-09 in the first quarter of Fiscal 2018 and there was no material impact to the Consolidated Financial Statements and related disclosures in the first quarter of Fiscal 2018. However, if the Company had adopted the standard in Fiscal 2017, reported earnings per share would have decreased \$0.03 per share for Fiscal 2017.

In November 2015, the FASB issued ASU 2015-17, "Balance Sheet Classification of Deferred Taxes". ASU 2015-17 requires that all deferred tax assets and liabilities, along with any related valuation allowance, be classified as noncurrent on the balance sheet. The Company adopted ASU 2015-17 in the first quarter of Fiscal 2018 under the retrospective approach and, as such, the Company reclassified \$21.2 million and \$28.6 million of deferred taxes from current to noncurrent on its Consolidated Balance Sheets as of January 28, 2017 and April 30, 2016, respectively.

In July 2015, the FASB issued ASU 2015-11, "Inventory (Topic 330): Simplifying the Measurement of Inventory." ASU 2015-11 requires an entity that determines the cost of inventory by methods other than last-in, first-out and the retail inventory method to measure inventory at the lower of cost and net realizable value. The Company adopted ASU 2015-11 in the first quarter of Fiscal 2018 and it did not have a material impact on its Consolidated Financial Statements and related disclosures.

*New Accounting Pronouncements Not Yet Adopted*

In March 2017, the FASB issued ASU 2017-07, "Compensation - Retirement Benefits (Topic 715)". The standard requires the sponsors of benefit plans to present service cost in the same line item or items as other current employee compensation costs, and present the remaining components of net benefit cost in one or more separate line items outside of income from operations, while also limiting the components of net benefit cost eligible to be capitalized to service cost. The standard is effective for fiscal years beginning after December 15, 2017, including interim periods within those fiscal years. Early adoption is permitted. The Company does not expect the adoption of this standard to have a material impact on its Consolidated Financial Statements and related disclosures. The

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**Note 1**  
**Summary of Significant Accounting Policies, Continued**

standard will require the Company to present the non-service pension costs as a component of expense below operating income.

In February 2016, the FASB issued ASU 2016-02, "Leases". The standard's core principle is to increase transparency and comparability among organizations by recognizing lease assets and liabilities on the balance sheet and disclosing key information. The standard is effective for fiscal years beginning after December 15, 2018, including interim periods within those fiscal years, which would be the beginning of our Fiscal 2020 or February 2019. Early adoption is permitted. The Company is currently assessing the impact the adoption of ASU 2016-02 will have on its Consolidated Financial Statements and related disclosures and is expecting a material impact because the Company is party to a significant number of lease contracts.

In May 2014, the FASB issued ASU 2014-09, "Revenue from Contracts with Customers (Topic 606)". ASU 2014-09 amends the guidance for revenue recognition to replace numerous, industry-specific requirements and merges areas under this topic with those of the International Financial Reporting Standards. The ASU implements a five-step process for customer contract revenue recognition that focuses on transfer of control, as opposed to transfer of risk and rewards. The amendment also requires enhanced disclosures regarding the nature, amount, timing and uncertainty of revenues and cash flows from contracts with customers. ASU 2014-09 was originally effective for fiscal years, and interim periods within those years, beginning after December 15, 2016, however,

in August 2015, the FASB deferred this ASU for one year, which would be the beginning of our Fiscal 2019 or February 2018. The amendment is to be applied either retrospectively to each prior reporting period presented or with the cumulative effect recognized at the date of initial adoption as an adjustment to the opening balance of retained earnings (or other appropriate components of equity or net assets on the balance sheet). Based on an evaluation of the standard as a whole, the Company has identified catalog costs, customer incentives and principal versus agent considerations as the areas that will most likely be affected by the new revenue recognition guidance. The Company continues to evaluate the adoption of this standard, including the transition method, and will provide updates later in Fiscal 2018 related to the expected impact of adopting this standard.

**Note 2**  
**Intangible Assets**

Other intangibles by major classes were as follows:

	Leases		Customer Lists		Other*		Total	
	Apr. 29, 2017	Jan. 28, 2017	Apr. 29, 2017	Jan. 28, 2017	Apr. 29, 2017	Jan. 28, 2017	Apr. 29, 2017	Jan. 28, 2017
(In Thousands)								
Gross other intangibles	\$ 14,612	\$ 14,625	\$ 1,998	\$ 1,958	\$ 2,003	\$ 2,009	\$ 18,613	\$ 18,592
Accumulated amortization	(13,098)	(12,938)	(1,998)	(1,956)	(1,352)	(1,306)	(16,448)	(16,200)
<b>Net Other Intangibles</b>	<b>\$ 1,514</b>	<b>\$ 1,687</b>	<b>\$ —</b>	<b>\$ 2</b>	<b>\$ 651</b>	<b>\$ 703</b>	<b>\$ 2,165</b>	<b>\$ 2,392</b>

\*Includes non-compete agreements, vendor contract and backlog.

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**Note 2**  
**Intangible Assets, Continued**

The amortization of intangibles, including trademarks, was \$0.1 million and \$0.3 million for the first quarters of Fiscal 2018 and 2017, respectively. The amortization of intangibles, including trademarks, is expected to be \$0.2 million, \$0.1 million, \$0.0 million, \$0.0 million and \$0.0 million for Fiscal 2018, 2019, 2020, 2021 and 2022, respectively.

**Note 3**  
**Asset Impairments and Other Charges and Discontinued Operations**

**Asset Impairments and Other Charges**

In accordance with Company policy, assets are determined to be impaired when the revised estimated future cash flows are insufficient to recover the carrying costs. Impairment charges represent the excess of the carrying value over the fair value of those assets.

Asset impairment charges are reflected as a reduction of the net carrying value of property and equipment in the accompanying Condensed Consolidated Balance Sheets, and in asset impairments and other, net in the accompanying Condensed Consolidated Statements of Operations.

The Company recorded pretax charges of \$0.1 million in the first quarter of Fiscal 2018 for retail store asset impairments.

The Company recorded pretax charges of \$3.6 million in the first quarter of Fiscal 2017, including a \$3.4 million charge for retail store asset impairments and a \$0.1 million charge for other legal matters.

**Discontinued Operations**

**Accrued Provision for Discontinued Operations**

<b>In thousands</b>	<b>Facility Shutdown Costs</b>
Balance January 30, 2016	\$ 15,619
Additional provision Fiscal 2017	701
Charges and adjustments, net	(11,277)
Balance January 28, 2017	5,043
Additional provision Fiscal 2018	184
Charges and adjustments, net	(350)
Balance April 29, 2017*	4,877
<b>Current provision for discontinued operations</b>	<b>3,164</b>
<b>Total Noncurrent Provision for Discontinued Operations</b>	<b>\$ 1,713</b>

\*Includes a \$4.2 million environmental provision, including \$3.2 million in current provision for discontinued operations.



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**Note 4  
Inventories**

<b>In thousands</b>	<b>April 29, 2017</b>	<b>January 28, 2017</b>
Raw materials	\$ —	\$ 389
Wholesale finished goods	38,573	61,575
Retail merchandise	539,529	501,713
<b>Total Inventories</b>	<b>\$ 578,102</b>	<b>\$ 563,677</b>

**Note 5  
Fair Value**

The Fair Value Measurements and Disclosures Topic of the Codification defines fair value, establishes a framework for measuring fair value in accordance with U.S. generally accepted accounting principles and expands disclosures about fair value measurements. This Topic defines fair value as the exchange price that would be received for an asset or paid to transfer a liability (i.e., an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. It also establishes a fair value hierarchy which requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. The standard describes three levels of inputs that may be used to measure fair value:

*Level 1* - Quoted prices in active markets for identical assets or liabilities.

*Level 2* - Observable inputs other than Level 1 prices such as quoted prices for similar assets or liabilities; quoted prices in markets that are not active; or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.

*Level 3* - Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities.

A financial asset or liability's classification within the hierarchy is determined based on the lowest level input that is significant to the fair value measurement.

The following table presents the Company's assets and liabilities measured at fair value on a nonrecurring basis as of April 29, 2017 aggregated by the level in the fair value hierarchy within which those measurements fall (in thousands):

	Long-Lived Assets Held and Used	Level 1	Level 2	Level 3	Total Losses
Measured as of April 29, 2017	\$ 14	\$ —	\$ —	\$ 14	\$ 119

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**Note 5  
Fair Value, Continued**

In accordance with the Property, Plant and Equipment Topic of the Codification, the Company recorded \$0.1 million of impairment charges as a result of the fair value measurement of its long-lived assets held and used during the three months ended April 29, 2017. These charges are reflected in asset impairments and other, net on the Condensed Consolidated Statements of Operations.

The Company used a discounted cash flow model to estimate the fair value of these long-lived assets. Discount rate and growth rate assumptions are derived from current economic conditions, expectations of management and projected trends of current operating results. As a result, the Company has determined that the majority of the inputs used to value its long-lived assets held and used are unobservable inputs that fall within Level 3 of the fair value hierarchy.

**Note 6  
Defined Benefit Pension Plans and Other Benefit Plans**

*Components of Net Periodic Benefit Cost*

<b>In thousands</b>	<b>Pension Benefits</b>		<b>Other Benefits</b>	
	<b>Three Months Ended</b>		<b>Three Months Ended</b>	
	<b>April 29, 2017</b>	<b>April 30, 2016</b>	<b>April 29, 2017</b>	<b>April 30, 2016</b>
Service cost	\$ 138	\$ 138	\$ 209	\$ 165
Interest cost	824	1,034	85	66
Expected return on plan assets	(1,130)	(1,412)	—	—
Amortization:				
Losses	215	226	38	25
Net amortization	215	226	38	25
<b>Net Periodic Benefit Cost (Gain)</b>	<b>\$ 47</b>	<b>\$ (14)</b>	<b>\$ 332</b>	<b>\$ 256</b>

There is no cash contribution required for the pension plan in 2017.

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**Note 7**  
**Earnings Per Share**

(In thousands, except per share amounts)	For the Three Months Ended April 29, 2017			For the Three Months Ended April 30, 2016		
	Income (Numerator)	Shares (Denominator)	Per Share Amount	Income (Numerator)	Shares (Denominator)	Per Share Amount
Earnings from continuing operations	\$ 997			\$ 10,564		
<b>Basic EPS from continuing operations</b>						
Income available to common shareholders	997	19,189	<u>\$ 0.05</u>	10,564	20,815	<u>\$ 0.51</u>
<b>Effect of Dilutive Securities from continuing operations</b>						
Dilutive share-based awards		66			137	
Employees' preferred stock <sup>(1)</sup>		38			38	
<b>Diluted EPS from continuing operations</b>						
Income available to common shareholders plus assumed conversions	\$ 997	19,293	\$ 0.05	\$ 10,564	20,990	\$ 0.50

(1) The Company's Employees' Subordinated Convertible Preferred Stock is convertible one for one to the Company's common stock. Because no dividends are paid on this stock, these shares are assumed to be converted in the diluted earnings per share calculations for the first quarters ended April 29, 2017 and April 30, 2016.

The weighted shares outstanding reflects the effect of the Company's Board-approved share repurchase program. The Company repurchased 275,300 shares of common stock during the three months ended April 29, 2017 for \$16.2 million. The Company has \$24.0 million remaining under its current \$100.0 million share repurchase authorization. The Company repurchased 1,099,900 shares of common stock during the three months ended April 30, 2016 for \$73.4 million.

**Note 8**

**Legal Proceedings**

**Environmental Matters**

*New York State Environmental Matters*

In August 1997, the New York State Department of Environmental Conservation ("NYSDEC") and the Company entered into a consent order whereby the Company assumed responsibility for conducting a remedial investigation and feasibility study ("RIFS") and implementing an interim remedial measure ("IRM") with regard to the site of a knitting mill operated by a former subsidiary of the Company from 1965 to 1969. The United States Environmental Protection Agency ("EPA"), which assumed primary regulatory responsibility for the site from NYSDEC, issued a Record of Decision in September 2007. The Record of Decision specified a remedy of a combination of groundwater extraction and treatment and in-situ chemical oxidation.

In September 2015, the EPA adopted an amendment to the Record of Decision eliminating the separate ground-water extraction and treatment systems and the use of in-situ oxidation from the remedy adopted in the Record of Decision. The amendment provides for the continued operation and maintenance of the existing wellhead treatment systems on wells operated by the Village of Garden City, New York (the "Village"). It also requires the Company to perform certain ongoing monitoring, operation and maintenance activities and to reimburse EPA's future oversight cost, involving future costs to the Company estimated at \$1.7 million to \$2.0 million, and to reimburse EPA for approximately \$1.25 million of interim oversight costs. On August 15, 2016, the Court entered a Consent Judgment implementing the remedy provided for by the amendment.

The Village additionally asserted that the Company is liable for the costs associated with enhanced treatment required by the impact of the groundwater plume from the site on two public water supply wells, including historical total costs ranging from approximately \$1.8 million to in excess of \$2.5 million, and future operation and maintenance costs which the Village estimated at \$126,400 annually while the enhanced treatment continues. On December 14, 2007, the Village filed a complaint (the "Village Lawsuit") against the Company and the owner of the property under the Resource Conservation and Recovery Act ("RCRA"), the Safe Drinking Water Act, and the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") as well as a number of state law theories in the U.S. District Court for the Eastern District of New York, seeking an injunction requiring the defendants to remediate contamination from the site and to establish their liability for future costs that may be incurred in connection with it.

In June 2016 the Company and the Village reached an agreement providing for the Village to continue to operate and maintain the well head treatment systems in accordance with the Record of Decision and to release its claims against the Company asserted in the Village Lawsuit in exchange for a lump-sum payment of \$10.0 million by the Company. On August 25, 2016, the Village Lawsuit was dismissed with prejudice. The cost of the settlement with the Village and the estimated costs associated with the Company's compliance with the Consent Judgment were covered by the Company's existing provision for the site. The settlement with the Village did not have, and the Company expects that the Consent Judgment will not have, a material effect on its financial condition or results of operations.

**Genesco Inc.  
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**Note 8**  
**Legal Proceedings, Continued**

In April 2015, the Company received from EPA a Notice of Potential Liability and Demand for Costs pursuant to CERCLA regarding the site in Gloversville, New York of a former leather tannery operated by the Company and by other, unrelated parties. The Notice demanded payment of approximately \$2.2 million of response costs claimed by EPA to have been incurred to conduct assessments and removal activities at the site. In February 2017, the Company and EPA entered into a settlement agreement resolving EPA's claim for past response costs in exchange for a payment by the Company of \$1.5 million which was paid in May 2017. The Company's environmental insurance carrier has agreed to reimburse the Company for 75% of the settlement amount, subject to a \$500,000 self-insured retention. The Company does not expect that the matter will have a material effect on its financial condition or results of operations.

*Whitehall Environmental Matters*

The Company has performed sampling and analysis of soil, sediments, surface water, groundwater and waste management areas at the Company's former Volunteer Leather Company facility in Whitehall, Michigan.

In October 2010, the Company and the Michigan Department of Natural Resources and Environment entered into a Consent Decree providing for implementation of a remedial Work Plan for the facility site designed to bring the site into compliance with applicable regulatory standards. The Work Plan's implementation is substantially complete and the Company expects, based on its present understanding of the condition of the site, that its future obligations with respect to the site will be limited to periodic monitoring and that future costs related to the site should not have a material effect on its financial condition or results of operations.

*Accrual for Environmental Contingencies*

Related to all outstanding environmental contingencies, the Company had accrued \$4.2 million as of April 29, 2017, \$4.4 million as of January 28, 2017 and \$14.5 million as of April 30, 2016. All such provisions reflect the Company's estimates of the most likely cost (undiscounted, including both current and noncurrent portions) of resolving the contingencies, based on facts and circumstances as of the time they were made. The Company paid \$10.0 million of the accrued total at April 30, 2016 in August 2016. There is no assurance that relevant facts and circumstances will not change, necessitating future changes to the provisions. Such contingent liabilities are included in the liability arising from provision for discontinued operations on the accompanying Condensed Consolidated Balance Sheets because it relates to former facilities operated by the Company. The Company has made pretax accruals for certain of these contingencies, including approximately \$0.2 million reflected in the first quarter of Fiscal 2018 and \$0.1 million in the first quarter of Fiscal 2017. These charges are included in provision for discontinued operations, net in the Consolidated Statements of Operations and represent changes in estimates.

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**Note 8**  
**Legal Proceedings, Continued**

**Other Matters**

On February 22, 2017, a former employee of a subsidiary of the Company filed a putative class and collective action, *Shumate v. Genesco, Inc., et al.*, in the U.S. district Court for the Southern District of Ohio, alleging violations of the federal Fair Labor Standards Act ("FLSA") and Ohio wages and hours law including failure to pay minimum wages and overtime to the subsidiary's store managers and seeking back pay, damages, penalties, and declaratory and injunctive relief. On April 21, 2017, a former employee of the same subsidiary filed a putative class and collective action, *Ward v. Hat World, Inc.*, in the Superior Court for the State of Washington, alleging violations of the FLSA and Washington wages and hours laws, including, among others, failure to pay overtime to certain loss prevention investigators, and seeking back pay, damages, attorneys' fees and other relief. The Company has removed the action to U.S. District Court. On May 19, 2017, two former employees of the same subsidiary filed a putative class and collective action, *Chen and Salas v. Genesco Inc., et al.*, in the U.S. District Court for the Northern District of Illinois alleging violations of the FLSA and Illinois and New York wages and hours laws, including, among others, failure to pay overtime to store managers, and also seeking back pay, damages, statutory penalties, and declaratory and injunctive relief. The Company disputes the material allegations in these complaints and intends to defend the matters.

On April 30, 2015, an employee of the same subsidiary filed an action, *Stewart v. Hat World, Inc., et al.*, under the California Labor Code Private Attorneys General Act on behalf of herself, the State of California, and other non-exempt, hourly-paid employees of the subsidiary in California, seeking unspecified damages and penalties for various alleged violations of the California Labor Code, including failure to pay for all hours worked, minimum wage and overtime violations, failure to provide required meal and rest periods, failure to timely pay wages, failure to provide complete and accurate wage statements, and failure to provide full reimbursement of business-related costs and expenses incurred in the course of employment. The Company disputes the material allegations in the complaint and intends to defend the matter.

In addition to the matters specifically described in this Note, the Company is a party to other legal and regulatory proceedings and claims arising in the ordinary course of its business. While management does not believe that the Company's liability with respect to any of these other matters is likely to have a material effect on its financial statements, legal proceedings are subject to inherent uncertainties and unfavorable rulings could have a material adverse impact on the Company's financial statements.

**Note 9**

**Business Segment Information**

During the three months ended April 29, 2017 and April 30, 2016, the Company operated five reportable business segments (not including corporate): (i) Journeys Group, comprised of the Journeys, Journeys Kidz, Shi by Journeys and Little Burgundy retail footwear chains, e-commerce and catalog operations; (ii) Schuh Group, comprised of the Schuh retail footwear chain and e-commerce operations; (iii) Lids Sports Group, comprised primarily of the Lids retail headwear stores, the Lids Locker Room and Lids Clubhouse fan shops (operated under various trade names), licensed team merchandise departments in Macy's department stores operated under the name of Locker Room by Lids under a license agreement with Macy's and certain e-commerce operations; (iv) Johnston & Murphy Group, comprised of Johnston & Murphy retail operations, e-commerce operations, catalog and wholesale distribution of products under the Johnston & Murphy<sup>®</sup> and H. S. Trask<sup>®</sup> brands; and (v) Licensed Brands, comprised of Dockers<sup>®</sup> Footwear, sourced and marketed under a license from Levi Strauss & Company; SureGrip<sup>®</sup> Footwear, which was sold in the fourth quarter of Fiscal 2017; G.H. Bass Footwear operated under a license from G-III Apparel Group, Ltd.; and other brands.

The accounting policies of the segments are the same as those described in the summary of significant accounting policies (see Note 1, under Item 8 in the Company's Annual Report on Form10-K for the fiscal year ended January 28, 2017).

The Company's reportable segments are based on management's organization of the segments in order to make operating decisions and assess performance along types of products sold. Journeys Group, Schuh Group and Lids Sports Group sell primarily branded products from other companies while Johnston & Murphy Group and Licensed Brands sell primarily the Company's owned and licensed brands.

Corporate assets include cash, domestic prepaid rent expense, prepaid income taxes, deferred income taxes, deferred note expense on revolver debt and corporate fixed assets. The Company charges allocated retail costs of distribution to each segment. The Company does not allocate certain costs to each segment in order to make decisions and assess performance. These costs include corporate overhead, interest expense, interest income, asset impairment charges and other, including major litigation and major lease terminations.

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**Note 9**  
**Business Segment Information, Continued**

**Three Months Ended**

**April 29, 2017**

<b>In thousands</b>	<b>Journeys Group</b>	<b>Schuh Group</b>	<b>Lids Sports Group</b>	<b>Johnston &amp; Murphy Group</b>	<b>Licensed Brands</b>	<b>Corporate &amp; Other</b>	<b>Consolidated</b>
Sales	\$ 284,119	\$ 76,456	\$ 176,901	\$ 72,793	\$ 33,011	\$ 89	\$ 643,369
Intercompany Sales	—	—	—	—	(1)	—	(1)
<b>Net sales to external customers</b>	<b>\$ 284,119</b>	<b>\$ 76,456</b>	<b>\$ 176,901</b>	<b>\$ 72,793</b>	<b>\$ 33,010</b>	<b>\$ 89</b>	<b>\$ 643,368</b>
Segment operating income (loss)	\$ 7,472	\$ (687)	\$ (1,786)	\$ 3,820	\$ 2,275	\$ (8,181)	\$ 2,913
Asset Impairments and other*	—	—	—	—	—	(119)	(119)
<b>Earnings (loss) from operations</b>	<b>7,472</b>	<b>(687)</b>	<b>(1,786)</b>	<b>3,820</b>	<b>2,275</b>	<b>(8,300)</b>	<b>2,794</b>
Interest expense	—	—	—	—	—	(1,177)	(1,177)
Interest income	—	—	—	—	—	—	—
<b>Earnings (loss) from continuing operations before income taxes</b>	<b>\$ 7,472</b>	<b>\$ (687)</b>	<b>\$ (1,786)</b>	<b>\$ 3,820</b>	<b>\$ 2,275</b>	<b>\$ (9,477)</b>	<b>\$ 1,617</b>
Total assets**	\$ 424,477	\$ 231,395	\$ 537,901	\$ 120,048	\$ 36,803	\$ 128,752	\$ 1,479,376
Depreciation and amortization***	6,515	3,364	6,937	1,566	167	1,067	19,616
Capital expenditures	19,195	2,758	5,131	1,057	77	2,108	30,326

\*Asset Impairments and other includes a \$0.1 million charge for asset impairments, which relates to Journeys Group and Lids Sports Group equally.

\*\*Total assets for the Lids Sports Group, Schuh Group and Journeys Group include \$181.1 million, \$82.4 million and \$9.4 million of goodwill, respectively. Goodwill for the Lids Sports Group and Journeys Group decreased by \$0.5 million and \$0.4 million, respectively, from January 28, 2017, and Schuh Group goodwill increased by \$2.6 million from January 28, 2017 due to foreign currency translation adjustments. Of the Company's \$342.6 million of property and equipment, \$55.4 million and \$20.7 million relate to property and equipment in the United Kingdom and Canada, respectively.

\*\*\*Includes \$19.6 million in depreciation expense for the three months ended April 29, 2017.



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**Note 9**  
**Business Segment Information, Continued**

**Three Months Ended**

**April 30, 2016**

<b>In thousands</b>	<b>Journeys Group</b>	<b>Schuh Group</b>	<b>Lids Sports Group</b>	<b>Johnston &amp; Murphy Group</b>	<b>Licensed Brands</b>	<b>Corporate &amp; Other</b>	<b>Consolidated</b>
Sales	\$ 294,221	75,670	\$ 179,376	\$ 69,975	\$ 29,644	\$ 85	\$ 648,971
Intercompany Sales	—	—	—	—	(178)	—	(178)
<b>Net sales to external customers</b>	<b>\$ 294,221</b>	<b>\$ 75,670</b>	<b>\$ 179,376</b>	<b>\$ 69,975</b>	<b>\$ 29,466</b>	<b>\$ 85</b>	<b>\$ 648,793</b>
Segment operating income (loss)	\$ 19,620	\$ (2,661)	\$ 6,037	\$ 4,842	\$ 1,853	\$ (8,237)	\$ 21,454
Asset Impairments and other*	—	—	—	—	—	(3,557)	(3,557)
<b>Earnings (loss) from operations</b>	<b>19,620</b>	<b>(2,661)</b>	<b>6,037</b>	<b>4,842</b>	<b>1,853</b>	<b>(11,794)</b>	<b>17,897</b>
Interest expense	—	—	—	—	—	(1,163)	(1,163)
Interest income	—	—	—	—	—	26	26
<b>Earnings (loss) from continuing operations before income taxes</b>	<b>\$ 19,620</b>	<b>\$ (2,661)</b>	<b>\$ 6,037</b>	<b>\$ 4,842</b>	<b>\$ 1,853</b>	<b>\$ (12,931)</b>	<b>\$ 16,760</b>
Total assets**	\$ 363,025	256,903	\$ 530,052	\$ 114,932	\$ 46,206	\$ 170,025	\$ 1,481,143
Depreciation and amortization***	6,062	3,685	6,343	1,464	250	1,010	18,814
Capital expenditures	7,297	2,841	4,878	1,995	152	194	17,357

\*Asset Impairments and other includes a \$3.4 million charge for assets impairments, which relates to the Lids Sports Group, and a \$0.1 million charge for other legal matters.

\*\*Total assets for the Lids Sports Group, Schuh Group, Journeys Group and Licensed Brands include \$182.4 million, \$93.2 million, \$10.2 million and \$0.8 million of goodwill, respectively. Goodwill for Lids Sports Group, Schuh Group and Journeys Group increased by \$1.5 million, \$2.9 million and \$0.8 million, respectively, from January 30, 2016 due to foreign currency translation adjustments. Of the Company's \$321.1 million of property and equipment, \$65.7 million and \$20.8 million relate to property and equipment in the United Kingdom and Canada, respectively.

\*\*\*Includes \$18.5 million in depreciation expense for the three months ended April 30, 2016.

## **Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations**

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### **Forward Looking Statements**

This discussion and the Notes to the Condensed Consolidated Financial Statements include certain forward-looking statements, including those regarding the performance outlook for the Company and its individual businesses and all other statements not addressing solely historical facts or present conditions. Words such as "may," "will," "should," "likely," "anticipate," "expect," "intend," "plan," "project," "believe," "estimate" and similar expressions can be used to identify these forward-looking statements. Actual results, including those regarding the Company's performance outlook for Fiscal 2018 and beyond, could differ materially from those reflected by the forward-looking statements in this discussion, in the Notes to the Condensed Consolidated Financial Statements, and in other disclosures.

A number of factors may adversely affect the outlook reflected in forward looking statements and the Company's future results, liquidity, capital resources and prospects. These factors (some of which are beyond the Company's control) include:

- Fashion trends that affect the sales or product margins of the Company's retail product offerings, and the Company's ability to respond to fashion shifts quickly and effectively.
- The level and timing of promotional activity necessary to maintain inventories at appropriate levels.
- The timing and amount of non-cash asset impairments related to retail store fixed assets or to intangible assets of acquired businesses.
- The effectiveness of the Company's omnichannel initiatives.
- Weakness in shopping mall traffic and challenges to the viability of malls where the Company operates stores, related to planned closings of anchor and department stores other factors, and the extent and pace of growth of online shopping.
- Risks related to the potential for terrorist events, especially in malls and shopping districts.
- Costs associated with changes in minimum wage and overtime requirements.
- The level of chargebacks from credit card issuers for fraudulent purchases or other reasons.
- Weakness in the consumer economy and retail industry.
- Competition in the Company's markets, including online.
- The imposition of tariffs on imported products or the disallowance of tax deductions on imported products.
- Changes in buying patterns by significant wholesale customers.
- Inability of wholesale customers or consumers to obtain credit.
- Bankruptcies or deterioration in the financial condition of significant wholesale customers, limiting their ability to buy or pay for merchandise offered by the Company.
- The Company's ability to obtain from suppliers products that are in-demand on a timely basis and disruptions in product supply or distribution.
- Unfavorable trends in fuel costs, foreign exchange rates, foreign labor and material costs and other factors affecting the cost of products and results of operations.
- The effects of the British decision to exit the European Union, including potential effects on consumer demand, currency exchange rates, and the supply chain.
- The Company's ability to continue to complete and integrate acquisitions, expand its business and diversify its product base.
- Changes in the timing of holidays or in the onset of seasonal weather affecting period-to-period sales comparisons.
- The performance of athletic teams, the participants in major sporting events such as the Super Bowl and World Series, developments with respect to certain individual athletes, and other sports-related

events or changes, including the timing of major sporting events, that may affect period-to-period comparisons in the Company's Lids Sports Group retail businesses.

- The Company's ability to build, open, staff and support additional retail stores and to renew leases in existing stores and control occupancy costs, and to conduct required remodeling or refurbishment on schedule and at expected expense levels.
- Deterioration in the performance of individual businesses or of the Company's market value relative to its book value, resulting in impairments of fixed assets or intangible assets or other adverse financial consequences.
- Unexpected changes to the market for the Company's shares, including but not limited to changes related to general disfavor of the retail sector by investors.
- Variations from expected pension-related charges caused by conditions in the financial markets.
- Disruptions in the Company's information technology systems either by security breaches and incidents or by potential problems associated with the implementation of new or upgraded systems.
- The cost and outcome of litigation, investigations and environmental matters involving the Company, including but not limited to the matters discussed in Note 8 to the Condensed Consolidated Financial Statements.
- Other factors set forth under the heading "Risk Factors" in the Company's Annual Report on Form 10-K for the fiscal year ended January 28, 2017 and other documents the Company files with the SEC.

## Overview

### *Description of Business*

The Company's business includes the sourcing and design, marketing and distribution of footwear and accessories through retail stores, including Journeys<sup>®</sup>, Journeys Kidz<sup>®</sup>, Shi by Journeys<sup>®</sup>, Little Burgundy<sup>®</sup> and Johnston & Murphy<sup>®</sup> in the U.S., Puerto Rico and Canada and through Schuh<sup>®</sup> stores in the United Kingdom, the Republic of Ireland and Germany, and through e-commerce websites and catalogs, and at wholesale, primarily under the Company's Johnston & Murphy<sup>®</sup> brand, the H.S. Trask<sup>®</sup> brand, the licensed Dockers<sup>®</sup> brand, and other brands that the Company licenses for men's footwear. The Company's wholesale footwear brands are distributed to more than 1,300 retail accounts in the United States, including a number of leading department, discount, and specialty stores. The Company's business also includes Lids Sports, which operates (i) headwear and accessory stores under the Lids<sup>®</sup> name and other names in the U.S., Puerto Rico and Canada, (ii) the Lids Locker Room and Lids Clubhouse businesses, consisting of sports-oriented fan shops featuring a broad array of licensed merchandise such as apparel, hats and accessories, sports decor and novelty products, operating under various trade names, (iii) licensed team merchandise departments in Macy's department stores operated under the name Locker Room by Lids and on macys.com under a license agreement with Macy's, and (iv) e-commerce operations. Including both the footwear businesses and the Lids Sports business, at April 29, 2017, the Company operated 2,756 retail stores and leased departments in the U.S., Puerto Rico, Canada, the United Kingdom, the Republic of Ireland and Germany.

During the three months ended April 29, 2017 and April 30, 2016, the Company operated five reportable business segments (not including corporate): (i) Journeys Group, comprised of the Journeys, Journeys Kidz, Shi by Journeys and Little Burgundy retail footwear chains, e-commerce operations and catalog; (ii) Schuh Group, comprised of the Schuh retail footwear chain and e-commerce operations; (iii) Lids Sports Group, comprised as described in the preceding paragraph; (iv) Johnston & Murphy Group, comprised of Johnston & Murphy retail operations, e-commerce operations and catalog and wholesale distribution of products under the Johnston & Murphy<sup>®</sup> and H.S.Trask<sup>®</sup> brands; and (v) Licensed Brands, comprised of Dockers<sup>®</sup> Footwear, sourced and marketed under a license from Levi Strauss & Company; SureGrip<sup>®</sup> Footwear,

which was sold in the fourth quarter of Fiscal 2017; G.H. Bass Footwear operated under a license from G-III Apparel Group, Ltd.; and other brands.

The Journeys retail footwear stores sell footwear and accessories primarily for 13 to 22 year old men and women. The stores average approximately 2,050 square feet. The Journeys Kidz retail footwear stores sell footwear primarily for younger children, ages five to 12. These stores average approximately 1,500 square feet. Shi by Journeys retail footwear stores sell footwear and accessories to fashion-conscious women in their early 20's to mid 30's. These stores average approximately 2,150 square feet. The Journeys Group stores are primarily in malls and factory outlet centers throughout the United States, Puerto Rico and Canada. The Company's Canadian subsidiary acquired the Little Burgundy retail footwear chain in Canada during the fourth quarter of Fiscal 2016. Little Burgundy is being operated under the Journeys Group. Little Burgundy retail footwear stores sell footwear and accessories to fashion-oriented men and women in the 18 to 34 age group ranging from students to young professionals. These stores average approximately 1,900 square feet. With the 36 Little Burgundy stores, Journeys Group now operates 82 stores in Canada. Journeys also sells footwear and accessories through direct-to-consumer catalog and e-commerce operations.

The Schuh retail footwear stores sell a broad range of branded casual and athletic footwear along with a meaningful private label offering primarily for 15 to 30 year old men and women. The stores, which average approximately 4,875 square feet, include both street-level and mall locations in the United Kingdom, the Republic of Ireland and Germany. The Schuh Group also sells footwear through e-commerce operations.

The Lids Sports Group includes stores and kiosks, primarily under the Lids banner, that sell licensed and branded headwear to men and women primarily in the early-teens to mid-20's age group. The Lids store locations average approximately 875 square feet and are primarily in malls, airports, street-level stores and factory outlet centers throughout the United States, Puerto Rico and Canada. The Lids Sports Group also operates Lids Locker Room and Lids Clubhouse stores under a number of trade names, selling licensed sports headwear, apparel and accessories to sports fans of all ages in locations averaging approximately 2,850 square feet in malls and other locations primarily in the United States and Canada. The Lids Sports Group operates 144 stores in Canada. The Lids Sports Group also operates Locker Room by Lids leased departments in Macy's department stores selling headwear, apparel, accessories and novelties from an assortment of college and professional teams specific to particular Macy's department stores' geographic locations. As of April 29, 2017, the Company operated 124 Locker Room by Lids leased departments averaging approximately 650 square feet. The Lids Sports Group also sells headwear and accessories through e-commerce operations.

Johnston & Murphy retail shops sell a broad range of men's footwear, apparel and accessories. Women's footwear and accessories are sold in select Johnston & Murphy retail locations. Johnston & Murphy shops average approximately 1,575 square feet and are located primarily in better malls and in airports throughout the United States. As of April 29, 2017, Johnston & Murphy operated seven stores in Canada. The Company also has license and distribution agreements for wholesale and retail sales of Johnston & Murphy products in various non - U.S. jurisdictions. The Company also sells Johnston & Murphy footwear and accessories in factory stores, averaging approximately 2,400 square feet, located in factory outlet malls, and through a direct-to-consumer catalog and e-commerce operations. In addition, Johnston & Murphy shoes are distributed through the Company's wholesale operations to better department and independent specialty stores. Additionally, the Company sells the Trask brand, with men's and women's footwear and leather accessories distributed to better independent retailers and department stores.

The Licensed Brands segment markets casual and dress casual footwear under the licensed Dockers® brand to men aged 30 to 55 through many of the same national retail chains that carry Dockers slacks and sportswear and in department and specialty stores across the U.S. The Company entered into an exclusive license with Levi Strauss & Co. to market men's footwear in the United States under the Dockers brand name in 1991. Levi Strauss & Co. and the Company have subsequently added additional territories, including Canada and Mexico and certain other Latin American countries. The Dockers license agreement has been renewed for a term expiring on November 30, 2018. The Company sold SureGrip® Footwear, a slip-resistant occupational footwear business operated within the Licensed Brands segment since Fiscal 2011, in the fourth quarter of Fiscal 2017. The Company also sells footwear under other licenses and in March 2015 entered into a License Agreement to source and distribute certain men's and women's footwear under the G.H. Bass trademark and related marks.

### *Strategy*

The Company's long-term strategy has been to seek organic growth by: 1) improving comparable sales, both in stores and digital commerce, 2) increasing the Company's store base, 3) increasing retail square footage, 4) increasing operating margin and 5) enhancing the value of its brands. However, as a result of the degree of penetration of many of our concepts in their current geographic markets and the increasing trend of consumer purchases through e-commerce channels, the Company anticipates opening fewer new stores in the future, concentrating on locations that the Company believes will be most productive, as well as closing certain stores, perhaps reducing the overall square footage and store count from current levels, and has enhanced its investments in technology and infrastructure to support omnichannel retailing.

To supplement its organic growth potential, the Company has made acquisitions, including the acquisition of the Schuh Group in June 2011, Little Burgundy in December 2015 and several smaller acquisitions of businesses in the Lids Sports Group's markets, and expects to consider acquisition opportunities, either to augment its existing businesses or to enter new businesses that it considers compatible with its existing businesses, core expertise and strategic profile. Acquisitions involve a number of risks, including, among others, inaccurate valuation of the acquired business, the assumption of undisclosed liabilities, the failure to integrate the acquired business appropriately, and distraction of management from existing businesses. The Company seeks to mitigate these risks by applying appropriate financial metrics in its valuation analysis and developing and executing plans for due diligence and integration that are appropriate to each acquisition. The Company also seeks appropriate opportunities to extend existing brands and retail concepts. The Company typically tests such extensions on a relatively small scale to determine their viability and to refine their strategies and operations before making significant, long-term commitments.

More generally, the Company attempts to develop strategies to mitigate the risks it views as material, including those discussed under the caption "Forward Looking Statements," above, and those discussed in Part II, Item 1A, Risk Factors. Among the most important of these factors are those related to consumer demand. Conditions in the external economy can affect demand, resulting in changes in sales and, as prices are adjusted to drive sales and manage inventories, in gross margins. Because fashion trends influencing many of the Company's target customers can change rapidly, the Company's ability to react quickly to those changes is critical. Even when the Company succeeds in aligning its merchandise offerings with consumer preferences, those preferences may affect results by, for example, driving sales of products with lower average selling prices or products which are more widely available in the marketplace and thus more subject to competitive pressures than the Company's typical offering. Moreover, economic factors, such as persistent unemployment and any future economic contraction and changes in tax policies, may reduce the consumer's disposable income or his or her willingness to purchase discretionary items, and thus may reduce demand for the Company's merchandise, regardless of the Company's skill in detecting and responding to fashion trends. The Company believes its experience and discipline in merchandising and

the buying power associated with its relative size and importance in the industry segments in which it competes are important to its ability to mitigate risks associated with changing customer preferences and other changes in consumer demand.

#### *Summary of Results of Operations*

The Company's net sales decreased 0.8% during the first quarter of Fiscal 2018 compared to the same quarter of Fiscal 2017. The decrease reflected a 3% decrease in Journeys Group and a 1% decrease in Lids Sports Group, partially offset by a 1% increase in Schuh Group, 4% increase in Johnston & Murphy Group and 12% increase in Licensed Brands. Excluding last year's sales from SureGrip which the Company sold in December 2016, total sales were flat for the first quarter of Fiscal 2018. Gross margin as a percentage of net sales decreased to 49.6% during the first quarter of Fiscal 2018, compared to 50.8% for the same period last year, reflecting decreased gross margin in all of the Company's business segments except Schuh Group. Selling and administrative expenses increased to 49.1% of net sales during the first quarter of Fiscal 2018 from 47.5% for the same quarter of Fiscal 2017, reflecting increases in expenses as a percentage of net sales in Journeys Group, Lids Sports Group and Johnston & Murphy Group, partially offset by decreased expenses in Schuh Group and Licensed Brands, while Corporate expense remained flat. Earnings from operations decreased as a percentage of net sales to 0.4% during the first quarter of Fiscal 2018 compared to 2.8% in the same quarter of Fiscal 2017, reflecting decreased earnings from operations as a percentage of net sales in Journeys Group, Lids Sports Group and Johnston & Murphy Group, partially offset by increased earnings from operations as a percentage of net sales in Licensed Brands and a smaller loss from operations in Schuh Group.

#### **Significant Developments**

##### *Asset Impairment and Other Charges*

The Company recorded pretax charges of \$0.1 million in the first quarter of Fiscal 2018 for retail store asset impairments.

The Company recorded pretax charges of \$3.6 million in the first quarter of Fiscal 2017, including a \$3.4 million charge for retail store asset impairments and a \$0.1 million charge for other legal matters.

#### **Critical Accounting Policies**

The preparation of financial statements in conformity with U.S. generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

The Company has identified the critical accounting policies used in determining estimates and assumptions in the amounts reported in Management's Discussion and Analysis of Financial Condition and Results of Operations in its Annual Report on Form 10-K for the fiscal year ended January 28, 2017. Management believes that there have been no material changes in those critical accounting policies.

## Comparable Sales

For purposes of this report, "comparable sales" are sales from stores open longer than one year, beginning in the fifty-third week of a store's operation (which we refer to in this report as "same store sales"), and sales from websites operated longer than one year and direct mail catalog sales (which we refer to in this report as "comparable direct sales"). Temporarily closed stores are excluded from the comparable sales calculation for every full week of the store closing. Expanded stores are excluded from the comparable sales calculation until the fifty-third week of operation in the expanded format. Current year foreign exchange rates are applied to both current year and prior year comparable sales to achieve a consistent basis for comparison.

## Results of Operations - First Quarter Fiscal 2018 Compared to Fiscal 2017

The Company's net sales in the first quarter ended April 29, 2017 decreased 0.8% to \$643.4 million from \$648.8 million in the first quarter ended April 30, 2016, reflecting decreased net sales in Journeys Group and Lids Sports Group, partially offset by increased net sales in Schuh Group, Johnston & Murphy Group and Licensed Brands. Excluding last year's sales from SureGrip Footwear, which the Company sold in December 2016, total sales were flat for the first quarter of Fiscal 2018. Schuh Group's net sales decreased \$10.2 million during the first quarter due to changes in foreign exchange rates. Comparable sales decreased 1% for the first quarter of Fiscal 2018, which included a decrease of 4% in same store sales and an increase of 28% in comparable direct sales. Gross margin decreased 3.3% to \$318.9 million in the first quarter of Fiscal 2018 from \$329.7 million in the same period last year and decreased as a percentage of net sales from 50.8% to 49.6%, reflecting decreased gross margin as a percentage of net sales in all of the Company's business segments except Schuh Group. Selling and administrative expenses in the first quarter of Fiscal 2018 increased 2.5% and increased as a percentage of net sales from 47.5% to 49.1%, reflecting increased expenses as a percentage of net sales in Journeys Group, Lids Sports Group and Johnston & Murphy Group, partially offset by decreased expenses in Schuh Group and Licensed Brands, while Corporate expense was flat. The increase in selling and administrative expense as a percentage of net sales reflects in part the largely fixed nature of store-level expenses, especially in periods when traffic levels and same store sales decline. The Company records buying and merchandising and occupancy costs in selling and administrative expense. Because the Company does not include these costs in cost of sales, the Company's gross margin may not be comparable to other retailers that include these costs in the calculation of gross margin. Explanations of the changes in results of operations are provided by business segment in discussions following these introductory paragraphs.

Earnings from continuing operations before income taxes ("pretax earnings") for the first quarter ended April 29, 2017 were \$1.6 million compared to \$16.8 million for the first quarter ended April 30, 2016. Pretax earnings for the first quarter ended April 29, 2017 included an asset impairment and other charge of \$0.1 million for retail store asset impairments. Pretax earnings for the first quarter ended April 30, 2016 included an asset impairment and other charge of \$3.6 million, primarily related to retail store asset impairments and other legal matters.

Net earnings for the first quarter ended April 29, 2017 were \$0.9 million (\$0.05 diluted earnings per share) compared to \$10.4 million (\$0.50 diluted earnings per share) for the first quarter ended April 30, 2016. The Company recorded an effective income tax rate of 38.3% in the first quarter of Fiscal 2018 compared to 37.0% in the same period last year. The tax rate for the first quarter of Fiscal 2018 was higher compared to last year, reflecting discrete items that had a more significant impact on the effective tax rate due to lower pretax earnings.

*Journeys Group*

	<b>Three Months Ended</b>		%
	<b>April 29, 2017</b>	April 30, 2016	
	(dollars in thousands)		
Net sales	\$ 284,119	\$ 294,221	(3.4)%
Earnings from operations	\$ 7,472	\$ 19,620	(61.9)%
Operating margin	2.6%	6.7%	

Net sales from Journeys Group decreased 3.4% to \$284.1 million for the first quarter ended April 29, 2017, compared to \$294.2 million for the same period last year. The decrease reflects a 5% decrease in comparable sales, partially offset by a 2% increase in the average number of Journeys Group stores operated (i.e. the sum of the number of stores open on the first day of the fiscal quarter and the last day of each fiscal month during the quarter divided by four). The comparable sales decrease reflected a 10% decrease in footwear unit sales, which the Company believes is attributable in part to a fashion rotation and decreased mall traffic, while the average price per pair of shoes increased 3%. Journeys Group operated 1,250 stores at the end of the first quarter of Fiscal 2018, including 236 Journeys Kidz stores, 37 Shi by Journeys stores, 46 Journeys stores in Canada and 36 Little Burgundy stores in Canada, compared to 1,220 stores at the end of the first quarter last year, including 201 Journeys Kidz stores, 45 Shi by Journeys stores, 40 Journeys stores in Canada and 36 Little Burgundy stores in Canada.

Journeys Group earnings from operations for the first quarter ended April 29, 2017 decreased 61.9% to \$7.5 million compared to \$19.6 million for the first quarter ended April 30, 2016. The decrease was due to (i) decreased net sales, (ii) decreased gross margin as a percentage of net sales, reflecting changes in product mix related to the recent fashion rotation, which favors products with lower initial margins than those that predominated the previous assortment, and higher shipping and warehouse expenses, and (iii) increased expenses as a percentage of net sales, as Journeys Group could not leverage store related expenses, primarily rent, selling salaries and marketing expenses, as a result of the negative comparable sales for the first quarter this year.

*Schuh Group*

	<b>Three Months Ended</b>		%
	<b>April 29, 2017</b>	April 30, 2016	
	(dollars in thousands)		
Net sales	\$ 76,456	\$ 75,670	1.0%
Loss from operations	\$ (687)	\$ (2,661)	74.2%
Operating margin	(0.9)%	(3.5)%	

Net sales from Schuh Group increased 1.0% to \$76.5 million for the first quarter ended April 29, 2017, compared to \$75.7 million for the first quarter ended April 30, 2016. The increase reflects primarily a 10% increase in comparable sales and a 3% increase in the average number of Schuh stores operated, partially offset by a decrease of \$10.2 million in sales due to changes in foreign exchange rates. Schuh Group operated 129 stores at the end of the first quarter of Fiscal 2018, compared to 124 stores at the end of the first quarter of Fiscal 2017.



Schuh Group loss from operations improved to \$(0.7) million for the first quarter ended April 29, 2017 compared to \$(2.7) million for the first quarter ended April 30, 2016. The smaller loss from operations this year reflects an increase in gross margin as a percentage of net sales, primarily due to improved margins from certain product categories partially offset by increased shipping and warehouse expense, and decreased expenses as a percentage of net sales, reflecting decreased store-related expenses, primarily rent expense, selling salaries and depreciation expense, partially offset by increased bonus expenses.

### *Lids Sports Group*

	<b>Three Months Ended</b>		
	<b>April 29, 2017</b>	April 30, 2016	%
	(dollars in thousands)		
Net sales	\$ 176,901	\$ 179,376	(1.4)%
Earnings (loss) from operations	\$ (1,786)	\$ 6,037	NM
Operating margin	(1.0)%	3.4%	

Net sales from Lids Sports Group decreased 1.4% to \$176.9 million for the first quarter ended April 29, 2017, compared to \$179.4 million for the same period last year. The decrease reflects primarily a decrease of 5% in the average number of Lids Sports Group stores operated, excluding leased departments, partially offset by a comparable sales increase of 1% in the first quarter of Fiscal 2018. Comparable sales reflects a 3% increase in comparable store hat units sold, while the average price per hat decreased 3% for the first quarter of Fiscal 2018. Lids Sports Group operated 1,199 stores at the end of the first quarter of Fiscal 2018, including 111 Lids stores in Canada, 202 Lids Locker Room and Clubhouse stores, which includes 33 Locker Room stores in Canada, and 124 Locker Room by Lids leased departments in Macy's, compared to 1,317 stores at the end of the first quarter last year, including 113 Lids stores in Canada, 226 Lids Locker Room and Clubhouse stores, which includes 37 Locker Room stores in Canada, and 176 Locker Room by Lids leased departments in Macy's.

Lids Sports Group had a loss from operations of \$(1.8) million for the first quarter ended April 29, 2017 compared to earnings from operations of \$6.0 million for the first quarter ended April 30, 2016. The decrease was due to decreased gross margin as a percentage of net sales, reflecting increased promotional activity and changes in sales mix, and increased expenses as a percentage of net sales reflecting increased compensation, marketing, benefit and depreciation expenses, partially offset by decreased bonus expense.

### *Johnston & Murphy Group*

	<b>Three Months Ended</b>		
	<b>April 29, 2017</b>	April 30, 2016	%
	(dollars in thousands)		
Net sales	\$ 72,793	\$ 69,975	4.0 %
Earnings from operations	\$ 3,820	\$ 4,842	(21.1)%
Operating margin	5.2%	6.9%	

Johnston & Murphy Group net sales increased 4.0% to \$72.8 million for the first quarter ended April 29, 2017 from \$70.0 million for the first quarter ended April 30, 2016, reflecting primarily a 3% increase in the average number of stores operated for Johnston & Murphy retail operations and a 10% increase in

Johnston & Murphy Group wholesale sales, partially offset by a 3% decrease in comparable sales. Unit sales for the Johnston & Murphy wholesale business increased 12% in the first quarter of Fiscal 2018 while the average price per pair of shoes decreased 2% for the same period. Retail operations accounted for 67.2% of Johnston & Murphy Group's sales in the first quarter of Fiscal 2018, down from 68.9% in the first quarter last year. Comparable sales reflected a 4% decrease in footwear unit comparable sales and the average price per pair of shoes for Johnston & Murphy retail operations decreased 2%. The store count for Johnston & Murphy retail operations at the end of the first quarter of Fiscal 2018 was 178 stores, including seven stores in Canada, compared to 172 stores, including seven stores in Canada, at the end of the first quarter of Fiscal 2017.

Johnston & Murphy Group earnings from operations for the first quarter ended April 29, 2017 decreased 21.1% to \$3.8 million compared to \$4.8 million for the same period last year, primarily due to decreased gross margin as percentage of net sales, reflecting growth in wholesale sales, which carry a lower gross margin, increased shipping and warehouse expenses, and increased expenses as a percentage of net sales, due primarily to store related expenses reflecting the impact of negative leverage from the negative comparable sales across most of the store-related categories.

### *Licensed Brands*

	<b>Three Months Ended</b>		%
	<b>April 29, 2017</b>	April 30, 2016	
	(dollars in thousands)		
Net sales	\$ 33,010	\$ 29,466	12.0%
Earnings from operations	\$ 2,275	\$ 1,853	22.8%
Operating margin	6.9%	6.3%	

Licensed Brands' net sales increased 12.0% to \$33.0 million for the first quarter ended April 29, 2017, from \$29.5 million for the same period last year, reflecting in part customers delaying delivery of fourth quarter product to the first quarter this year, partially offset by the loss of sales for SureGrip Footwear, which was sold in December of 2016. Unit sales for Dockers Footwear increased 35% for the first quarter of Fiscal 2018, while the average price per pair of Dockers shoes decreased 7% compared to the same period last year.

Licensed Brands' earnings from operations increased 22.8%, from \$1.9 million for the first quarter of Fiscal 2017 to \$2.3 million for the first quarter of Fiscal 2018, primarily due to increased net sales and decreased expenses as a percentage of net sales. Expenses as a percentage of net sales decreased due to the sale of SureGrip Footwear which had higher expenses as a percentage of sales than the remaining Licensed Brands Group. In addition, the remaining expenses leveraged in total due to the increased sales.

### *Corporate, Interest Expenses and Other Charges*

Corporate and other expense for the first quarter ended April 29, 2017 was \$8.3 million compared to \$11.8 million for the first quarter ended April 30, 2016. Corporate expense in the first quarter of Fiscal 2018 included \$0.1 million in asset impairment and other charges, which related to retail store asset impairments. Corporate and other expense in the first quarter of Fiscal 2017 included a \$3.6 million charge in asset impairment and other charges, primarily for retail store asset impairments and other legal matters. Corporate expenses were flat, excluding asset impairment and other charges, but reflect decreased bonus expense offset by increases in professional fees, foreign exchange loss and other corporate expenses.

Net interest expense increased 3.5% from \$1.1 million in the first quarter of Fiscal 2017 to \$1.2 million for the first quarter of Fiscal 2018.

### Liquidity and Capital Resources

The following table sets forth certain financial data at the dates indicated.

	April 29, 2017	January 28, 2017	April 30, 2016
	(dollars in millions)		
Cash and cash equivalents	\$ 43.4	\$ 48.3	\$ 42.8
Working capital	\$ 447.0	\$ 407.6	\$ 395.8
Long-term debt (including current portion)	\$ 138.0	\$ 82.9	\$ 115.9

#### Working Capital

The Company's business is seasonal, with the Company's investment in inventory and accounts receivable normally reaching peaks in the spring and fall of each year. Historically, cash flows from operations have been generated principally in the fourth quarter of each fiscal year.

Cash used in operating activities was \$18.0 million in the first three months of Fiscal 2018 compared to cash provided by operating activities of \$18.6 million in the first three months of Fiscal 2017. The \$36.6 million decrease in cash flow from operating activities from last year primarily reflects a decrease in cash flow from changes in accounts payable and accounts receivable of \$18.5 million and \$7.2 million, respectively, and decreased net earnings of \$9.5 million. The \$18.5 million decrease in cash flow from accounts payable primarily reflects changes in buying patterns including an increased level of inventory purchases from vendors with shorter payment terms. The \$7.2 million decrease in cash flow from account receivable reflects increased sales in the Company's wholesale businesses.

The \$14.4 million increase in inventories at April 29, 2017 from January 28, 2017 levels reflected increased retail inventory in all business units, partially offset by seasonal decreases in footwear wholesale inventory.

Accounts receivable at April 29, 2017 increased by \$12.4 million compared to January 28, 2017, due primarily to seasonal sales increases and an overall increase in sales in the Company's wholesale businesses.

#### Sources of Liquidity

The Company has three principal sources of liquidity: cash from operations, cash and cash equivalents on hand and the credit facilities discussed below. The Company believes that cash and cash equivalents on hand, cash flow from operations and availability under its credit facilities will be sufficient to cover its working capital, capital expenditures and stock repurchases for the foreseeable future.

On December 4, 2015, the Company entered into the First Amendment to the Third Amended and Restated Credit Agreement dated as of January 31, 2014 (the "Credit Facility") by and among the Company, certain subsidiaries of the Company party thereto, as other Borrowers, with the lenders party thereto and Bank of America, N.A., as agent, providing for a revolving credit facility in the aggregate principal amount of \$400.0 million, including a \$70.0 million sublimit for the issuance of letters of credit and a domestic swingline subfacility of up to \$40.0 million, a revolving credit subfacility for the benefit of GCO Canada, Inc. in an aggregate amount not to exceed \$70.0 million, which includes a \$5.0 million sublimit for the issuance of letters of credit, and revolving credit subfacility for the benefit of Genesco (UK) Limited in an aggregate amount not to exceed \$50.0 million, which includes a \$10.0 million sublimit for the issuance of letters of credit and a swingline subfacility of up to \$10.0 million. The facility has a five-year term from

January 31, 2014. Any swingline loans and any letters of credit and borrowings under the Canadian and UK subfacilities will reduce the availability under the Credit Facility on a dollar-for-dollar basis.

The Company has the option, from time to time, to increase the availability under the Credit Facility by an aggregate amount of up to \$150.0 million subject to, among other things, the receipt of commitments for the increased amount. In connection with this increased facility, the Canadian revolving credit facility may be increased up to no more than \$85.0 million.

Genesco (UK) Limited has a one-time option to increase the availability of its subfacility under the Credit Facility by an additional amount of up to \$50.0 million.

The aggregate amount of the loans made and letters of credit issued under the Credit Facility shall at no time exceed the lesser of the facility amount (\$400.0 million or, if increased as described above, up to \$550.0 million or \$600.0 million, respectively) or the "Borrowing Base", which generally is based on 90% of eligible inventory plus 85% of eligible wholesale receivables plus 90% of eligible credit card and debit card receivables less applicable reserves (the "Loan Cap"). The relevant assets of Genesco (UK) Limited will be included in the Borrowing Base if the additional \$50.0 million sublimit increase is exercised, provided that amounts borrowed by Genesco (UK) Limited based solely on its own borrowing base will be limited to \$50.0 million and the total outstanding to Genesco (UK) Limited will not exceed 30% of the Loan Cap.

The Credit Facility also provides that a first-in, last-out tranche could be added to the revolving credit facility at the option of the Company subject to, among other things, the receipt of commitments for such tranche.

In May 2015, Schuh Group Limited entered into a Form of Amended and Restated Facilities Agreement and Working Capital Facility Letter ("UK Credit Facilities") which replaced the former A, B and C term loans with a new Facility A of £17.5 million and a Facility B of £11.6 million (which was the former Facility C loan) as well as provided an additional revolving credit facility, Facility C, of £22.5 million and a working capital facility of £2.5 million. In April 2017, Schuh Group Limited entered into an Amendment and Restatement Agreement to split the Facility C of £22.5 million into two revolving credit facilities. The Facility C is now £16.5 million and a new Facility D is available in euros that total €7.2 million. The Facility A loan bears interest at LIBOR plus 1.8% per annum with quarterly payments through April 2017. The Facility A was paid off in April 2017. The Facility B loan bears interest at LIBOR plus 2.5% per annum with quarterly payments through September 2019. Facility C and D loans bear interest at LIBOR plus 2.2% per annum and expire in September 2019.

There were \$11.7 million in UK term loans and \$17.4 million in UK revolver loans outstanding at April 29, 2017. The UK Credit Facilities contain certain covenants at the Schuh level including a minimum interest coverage covenant of 4.50x and thereafter, a maximum leverage covenant initially set at 2.25x declining over time at various rates to 1.75x beginning in April 2017 and a minimum cash flow coverage of 1.00x. The Company was in compliance with all the covenants at April 29, 2017. The UK Credit Facilities are secured by a pledge of all the assets of Schuh and its subsidiaries.

The Company's revolving credit borrowings outstanding averaged \$87.8 million during the three months ended April 29, 2017 and revolver borrowings outstanding averaged \$60.2 million during the three months ended April 30, 2016, as cash on hand, cash generated from operations and revolver borrowings primarily funded seasonal working capital requirements, capital expenditures and stock repurchases for the first three months of each year. The borrowings outstanding during the first three months of Fiscal 2018 reflect increased funds borrowed to fund the decreased cash flow from operations, increased capital expenditures and stock repurchases made in the first quarter of Fiscal 2018.

There were \$11.2 million of letters of credit outstanding and \$109.0 million of revolver borrowings outstanding, including \$20.7 million (£16.0 million) related to Genesco (UK) Limited and \$38.3 million (C\$52.3 million) related to GCO Canada, under the Credit Facility at April 29, 2017. The Company is not required to comply with any financial covenants under the Credit Facility unless Excess Availability (as defined in the Credit Agreement) is less than the greater of \$25.0 million or 10.0% of the Loan Cap. If and during such time as Excess Availability is less than the greater of \$25.0 million or 10.0% of the Loan Cap, the Credit Facility requires the Company to meet a minimum fixed charge coverage ratio of (a) an amount equal to consolidated EBITDA less capital expenditures and taxes paid in cash, in each case for such period, to (b) fixed charges for such period, of not less than 1.0:1.0. Excess Availability was \$261.9 million at April 29, 2017. Because Excess Availability exceeded \$25.0 million or 10.0% of the Loan Cap, the Company was not required to comply with this financial covenant at April 29, 2017.

The Credit Facility contains customary events of default, including, without limitation, payment defaults, breaches of representations and warranties, covenant defaults, cross-defaults to certain other material indebtedness in excess of specified amounts and to agreements which would have a material adverse effect if breached, certain events of bankruptcy and insolvency, certain ERISA events, judgments in excess of specified amounts and change in control.

The Company's Credit Facility prohibits the payment of dividends and other restricted payments unless as of the date of the making of any Restricted Payment (as defined in the Credit Facility) or consummation of any Acquisition (as defined in the Credit Facility), (a) no Default (as defined in the Credit Facility) or Event of Default (as defined in the Credit Facility) exists or would arise after giving effect to such Restricted Payment or Acquisition, and (b) either (i) the Borrowers (as defined in the Credit Facility) have pro forma projected Excess Availability for the following six month period equal to or greater than 25% of the Loan Cap, after giving pro forma effect to such Restricted Payment or Acquisition, or (ii) (A) the Borrowers have pro forma projected Excess Availability for the following six month period of less than 25% of the Loan Cap but equal to or greater than 15% of the Loan Cap, after giving pro forma effect to the Restricted Payment or Acquisition, and (B) the Fixed Charge Coverage Ratio (as defined in the Credit Facility), on a pro-forma basis for the twelve months preceding such Restricted Payment or Acquisition, will be equal to or greater than 1.0:1.0 and (c) after giving effect to such Restricted Payment or Acquisition, the Company and the other Borrowers under the Credit Facility are Solvent (as defined in the Credit Facility). Notwithstanding the foregoing, the Company may make cash dividends on preferred stock up to \$500,000 in any fiscal year absent a continuing Event of Default. The Company's management does not expect availability under the Credit Facility to fall below the requirements listed above during Fiscal 2018.

The Company's contractual obligations at April 29, 2017 increased approximately 10% from January 28, 2017 due primarily to increased purchase obligations, primarily in Journeys Group, and increased long-term debt.

#### *Capital Expenditures*

Total capital expenditures in Fiscal 2018 are expected to be approximately \$135 million to \$145 million. These include retail capital expenditures of approximately \$125 million to \$135 million to open approximately 20 Journeys stores, including five in Canada, 35 Journeys Kidz stores, five Little Burgundy stores, ten Schuh stores, eight Johnston & Murphy shops and factory stores and 24 Lids Sports Group stores, including 23 Lids stores, with six stores in Canada, and one Lids Locker Room store, and to complete approximately 294 major store renovations. In addition, retail capital expenditures include \$33 million for the expansion of the Journeys Group's warehouse. The planned amount of capital expenditures in Fiscal 2018 for wholesale operations and other purposes is approximately \$10 million, including approximately \$4 million for new systems.

### *Future Capital Needs*

The Company expects that cash on hand, cash provided by operations and borrowings under its Credit Facilities will be sufficient to support seasonal working capital, capital expenditure requirements and stock repurchases during Fiscal 2018. The approximately \$3.2 million of costs associated with discontinued operations that are expected to be paid during the next twelve months are expected to be funded from cash on hand, cash generated from operations and borrowings under the Credit Facility.

The Company had total available cash and cash equivalents of \$43.4 million, \$48.3 million and \$42.8 million as of April 29, 2017, January 28, 2017 and April 30, 2016, respectively, of which approximately \$6.8 million, \$22.9 million and \$1.2 million was held by the Company's foreign subsidiaries as of April 29, 2017, January 28, 2017 and April 30, 2016, respectively. The Company's strategic plan does not require the repatriation of foreign cash in order to fund its operations in the U.S., and it is the Company's current intention to indefinitely reinvest its foreign cash and cash equivalents outside of the U.S. If the Company were to repatriate foreign cash to the U.S., it would be required to accrue and pay U.S. taxes in accordance with applicable U.S. tax rules and regulations as a result of the repatriation.

### *Common Stock Repurchases*

The Company repurchased 275,300 shares of common stock during the three months ended April 29, 2017 for \$16.2 million. The Company has \$24.0 million remaining under its current \$100.0 million share repurchase authorization. The Company repurchased 1,099,900 shares of common stock for \$73.4 million during the three months ended April 30, 2016.

### **Environmental and Other Contingencies**

The Company is subject to certain loss contingencies related to environmental proceedings and other legal matters, including those disclosed in Note 8 to the Condensed Consolidated Financial Statements. The Company has made pretax accruals for certain of these contingencies, including approximately \$0.2 million and \$0.1 million for the first quarter of Fiscal 2018 and 2017, respectively. These charges are included in provision for discontinued operations, net in the Condensed Consolidated Statements of Operations because they relate to former facilities operated by the Company. The Company monitors these matters on an ongoing basis and, on a quarterly basis, management reviews the Company's accruals in relation to each of them, adjusting provisions as management deems necessary in view of changes in available information. Changes in estimates of liability are reported in the periods when they occur. Consequently, management believes that its accrued liability in relation to each proceeding is a reasonable estimate of the probable loss connected to the proceeding, or in cases in which no reasonable estimate is possible, the minimum amount in the range of estimated losses, based upon its analysis of the facts and circumstances as of the close of the most recent fiscal quarter. However, because of uncertainties and risks inherent in litigation generally and in environmental proceedings in particular, there can be no assurance that future developments will not require additional provisions, that some or all accruals may not be adequate or that the amounts of any such additional provisions or any such inadequacy will not have a material adverse effect upon the Company's financial condition or results of operations.

## **Financial Market Risk**

The following discusses the Company's exposure to financial market risk related to changes in interest rates.

**Outstanding Debt of the Company** - The Company has \$11.7 million of outstanding U.K. term loans at a weighted average interest rate of 2.83% as of April 29, 2017. A 100 basis point increase in interest rates would increase annual interest expense by \$0.1 million on the \$11.7 million term loans. The Company has \$17.4 million of outstanding U.K. revolver borrowings at a weighted average interest rate of 2.45% as of April 29, 2017. A 100 basis point increase in interest rates would increase annual interest expense by \$0.2 million on the \$17.4 million revolver borrowings. The Company has \$109.0 million of outstanding U.S. revolver borrowings at a weighted average interest rate of 2.29% as of April 29, 2017. A 100 basis point increase in interest rates would increase annual interest expense by \$1.1 million on the \$109.0 million revolver borrowings.

**Cash and Cash Equivalents** - The Company's cash and cash equivalent balances are invested in financial instruments with original maturities of three months or less. The Company did not have significant exposure to changing interest rates on invested cash at April 29, 2017. As a result, the Company considers the interest rate market risk implicit in these investments at April 29, 2017 to be low.

**Accounts Receivable** - The Company's accounts receivable balance at April 29, 2017 is concentrated in two of its footwear wholesale businesses, which sell primarily to department stores and independent retailers across the United States. In its footwear wholesale businesses, two customers each accounted for 12% and one customer accounted for 7%, while no other customer accounted for more than 6% of the Company's total trade receivables balance as of April 29, 2017. The Company monitors the credit quality of its customers and establishes an allowance for doubtful accounts based upon factors surrounding credit risk of specific customers, historical trends and other information, as well as customer specific factors; however, credit risk is affected by conditions or occurrences within the economy and the retail industry, as well as company-specific information.

**Foreign Currency Exchange Risk** - The Company is exposed to translation risk because certain of its foreign operations utilize the local currency as their functional currency and those financial results must be translated into United States dollars. As currency exchange rates fluctuate, translation of the Company's financial statements of foreign businesses into United States dollars affects the comparability of financial results between years. Schuh Group's net sales for the first three months of Fiscal 2018 were negatively impacted by \$10.2 million due to the decline in foreign exchange rates, while Schuh Group's loss from operations was positively impacted by \$0.2 million.

**Summary** - Based on the Company's overall market interest rate exposure at April 29, 2017, the Company believes that the effect, if any, of reasonably possible near-term changes in interest rates on the Company's consolidated financial position, results of operations or cash flows for Fiscal 2018 would not be material.

## **New Accounting Pronouncements**

Descriptions of the recently issued accounting pronouncements, if any, and the accounting pronouncements adopted by the Company during the three months ended April 29, 2017 are included in Note 1 to the Condensed Consolidated Financial statements.

### **Item 3. Quantitative and Qualitative Disclosures about Market Risk**

The Company incorporates by reference the information regarding market risk appearing under the heading “Financial Market Risk” in Part I, Item 2, Management's Discussion and Analysis of Financial Condition and Results of Operations.

### **Item 4. Controls and Procedures**

#### *Evaluation of disclosure controls and procedures.*

The Company has established disclosure controls and procedures designed to ensure that information required to be disclosed by the Company, including its consolidated subsidiaries, in the reports it files or submits under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), is made known to the officers who certify the Company's financial reports and to other members of senior management. Any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving desired objectives.

Based on their evaluation as of April 29, 2017, the principal executive officer and principal financial officer of the Company have concluded that the Company's disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) were effective to ensure that the information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is (i) recorded, processed, summarized and reported within time periods specified in SEC rules and forms and (ii) accumulated and communicated to the Company's management, including the Company's principal executive officer and principal financial officer, to allow timely decisions regarding required disclosure.

#### *Changes in Internal Control Over Financial Reporting.*

There were no changes in the Company's internal control over financial reporting that occurred during the Company's first quarter that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.



**PART II - OTHER INFORMATION****Item 1. Legal Proceedings**

The Company incorporates by reference the information regarding legal proceedings in Note 8 of the Company's Condensed Consolidated Financial Statements.

**Item 1A. Risk Factors**

There have been no material changes to the risk factors previously disclosed in Part I, Item 1A. "Risk Factors" in the Company's Annual Report on Form 10-K for the fiscal year ended January 28, 2017.

**Item 2. Unregistered Sales of Equity Securities and Use of Proceeds**

(c) Repurchases (shown in 000's except share and per share amounts):

**ISSUER PURCHASES OF EQUITY SECURITIES**

Period	(a) Total Number of Shares Purchased	(b) Average Price Paid per Share	(c) Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	(d) Maximum Number (or Approximate Dollar Value) of Shares that May Yet Be Purchased Under the Plans or Programs (in thousands)
February 2017				
1-29-17 to 2-25-17 <sup>(1)</sup>	138,900	\$ 59.49	138,900	\$ 31,896
March 2017				
2-26-17 to 3-25-17 <sup>(1)</sup>	136,400	\$ 57.92	136,400	\$ 23,997
April 2017				
3-26-17 to 4-29-17	—	\$ —	—	\$ —

(1) Share repurchases were made pursuant to the share repurchase program described under Item 2, "Management's Discussion and Analysis of Financial Condition and Results of Operations." The Company expects to implement the balance of the repurchase program through purchases made from time to time either in the open market or through private transactions, in accordance with the regulations of the SEC and other applicable legal requirements.

## Item 6. Exhibits

### Exhibits

(10) a.	Amendment and Restatement Agreement dated April 28, 2017 between Schuh Group Limited as parent and others as Borrowers and Guarantors, Lloyds Bank PLC as Arranger, Agent and Security Trustee.
(31.1)	Certification of the Chief Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
(31.2)	Certification of the Chief Financial Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
(32.1)	Certification of the Chief Executive Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
(32.2)	Certification of the Chief Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS	XBRL Instance Document
101.SCH	XBRL Schema Document
101.CAL	XBRL Calculation Linkbase Document
101.DEF	XBRL Definition Linkbase Document
101.LAB	XBRL Label Linkbase Document
101.PRE	XBRL Presentation Linkbase Document

**SIGNATURE**

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

Genesco Inc.

By: /s/ Mimi E. Vaughn

Mimi E. Vaughn

Senior Vice President - Finance and

Chief Financial Officer

Date: June 8, 2017

**Exhibit (10)a.**

**AMENDMENT AND RESTATEMENT AGREEMENT**

**dated April 28 2017**

**between**

**SCHUH GROUP LIMITED**

**as Parent**

**and others as Borrowers and Guarantors**

**LLOYDS BANK PLC**

**as Arranger**

**LLOYDS BANK PLC**

**as Agent**

**and**

**LLOYDS BANK PLC**

**as Security Trustee**

**THIS AGREEMENT** is dated April 28 2017 and made between:

**SCHUH GROUP LIMITED**, a company incorporated in Scotland with registered number SC379625 and having its registered office at 1 Neilson Square, Deans Industrial Estate, Livingston, West Lothian EH54 8RQ (the "**Parent**");

**THE SUBSIDIARIES** of the Parent listed in Part I of Schedule 1 as borrowers (the "**Borrowers**");

**THE SUBSIDIARIES** of the Parent listed in Part II of Schedule 1 as guarantors (the "**Guarantors**");

**LLOYDS BANK PLC** (in this capacity the "**Arranger**");

**LLOYDS BANK PLC** (in this capacity the "**Original Lender**");

**LLOYDS BANK PLC** as agent of the other Finance Parties (the "**Agent**"); and

**LLOYDS BANK PLC** as security trustee for the Secured Parties (the "**Security Trustee**").

**WHEREAS:**

- (A) The Parent, the Guarantors, the Borrowers, the Agent, the Arranger, the Security Trustee and the Original Lender entered into a senior term facilities agreement dated 10 November 2010 as amended and restated on 23 June 2011, 1 November 2013, 19 June 2014 and on 19 May 2015 and as amended on 29 December 2016 (as amended, restated, novated or varied from time to time the "**Facilities Agreement**") in terms of which certain facilities were made available to the Borrowers (as defined therein);
- (B) the parties wish to amend and restate the Facilities Agreement in accordance with the terms of this Agreement.

**NOW IT IS HEREBY AGREED** as follows:

## **1. DEFINITIONS AND INTERPRETATION**

1.1. In this Agreement:

"**Acceding Obligors**" means (i) Schuh (ROI) Limited, a company incorporated in Ireland with Registered Number 272987 and (ii) Genesco Schuh GmbH, incorporated in Germany and registered at the commercial register (*Handelsregister*) of the local court (*Amtsgericht*) of Cologne under number HRB 80329.

"**Amended and Restated Facilities Agreement**" means the Facilities Agreement as amended and restated in the form set out in Schedule 3 (Form of Amended and Restated Facilities Agreement).

"**Effective Date**" means the date on which the Agent confirms in writing to the Parent that it has received (or has waived the requirement to receive) the documents and/or evidence listed in Schedule 2 (Conditions Precedent), in each case in form and substance satisfactory to the Agent.

1.2. In this Agreement a term defined in the Facilities Agreement has the same meaning when used in this Agreement and Clause 1 (Definitions and Interpretation) of the Facilities Agreement shall apply hereto except that references in such Clause to the Facilities Agreement are to be construed as references to this Agreement.

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

## **2. AMENDMENT OF THE FACILITIES AGREEMENT AND NOVATION**

2.1. With effect from the Effective Date, the Facilities Agreement shall be amended and restated in the form set out as Schedule 3 to this Agreement.

2.2. Subject to the terms of this Agreement, the Facilities Agreement shall remain in full force and effect. With effect from the Effective Date, this Agreement and the Facilities Agreement shall be read and construed as one document and all references in the Facilities Agreement and in each of the Finance Documents to the Facilities Agreement

shall be read and construed as references to the Amended and Restated Facilities Agreement.

2.3. Save to the extent expressly provided in this Agreement, the Finance Documents shall remain in full force and effect.

2.4. If the Effective Date has not occurred by 5pm (UK time) on 28th April 2017, this Agreement shall lapse and shall cease to have any effect other than Clause 4 (Fees and expenses) which shall remain in full force and effect.

### **3. REPRESENTATIONS AND WARRANTIES**

3.1. Each Obligor represents and warrants to each Finance Party on the date of this Agreement and on the Effective Date in terms of the Repeating Representations, in each case as if references to "this Agreement" and "the Finance Documents" in those representations are construed as references to this Agreement and (on the Effective Date) the Amended and Restated Facilities Agreement.

3.2. Each Obligor represents and warrants to the Agent and the other Finance Parties on the date of this Agreement and on the Effective Date that:

the Parent has complied with the terms of Clause 22 (Financial Covenants) of the Facilities Agreement at all times prior to the date hereof; and

on each date within the next 12 months on which any of the financial covenants contained in Clause 22 (Financial Covenants) of the Facilities Agreement falls to be tested, the Parent shall comply with the terms of Clause 22 (Financial Covenants) of the Facilities Agreement.

### **4. FEES AND EXPENSES**

4.1. The Parent shall promptly on demand pay to the Agent and the Security Trustee the amount of all costs and expenses (together with any VAT or similar taxes thereon) reasonably incurred by them or by the Lenders in connection with this Agreement and the documents contemplated by this Agreement (including, without limitation, legal fees).

4.2. The Parent shall pay to the Arranger on the Effective Date an arrangement fee of £15,000.

### **5. PRESERVATION OF GUARANTEES AND SECURITY**

Each Obligor:

confirms its consent to the amendment and restatement of the terms of the Facilities Agreement as contemplated by this Agreement; and

confirms that the Transaction Security Documents granted by it on or prior to the date of this Agreement, the guarantee granted by it pursuant to Clause 19 (Guarantee and Indemnity) of the Facilities Agreement and the security rights constituted or evidenced by the Transaction Security Documents are and remain in full force and effect and apply as from the Effective Date to, inter alia, the Amended and Restated Facilities Agreement and the guarantees granted pursuant to Clause 19 (Guarantee and Indemnity) of the Facilities Agreement will continue to be legal, valid, binding and enforceable in accordance with their respective terms.

### **6. ACCESSION OF ACCEDING OBLIGORS**

6.1. With effect from the Effective Date, each of the Acceding Obligors agrees to become an Additional Borrower and Additional Guarantor and to be bound by the terms of the Facilities Agreement and the other Finance Documents as an Additional Borrower and Additional Guarantor pursuant to Clause 26.2 (Additional Borrowers) and 26.4 (Additional Guarantors) of the Facilities Agreement respectively. Each Acceding Obligor's administrative details are the same as the Parent's may be from time to time.

6.2. The Parent confirms that no Default would occur as a result of either or both Acceding Obligors becoming Additional Borrowers and Additional Guarantors.

### **7. GENERAL**

7.1. The provisions of Clauses 36 (Remedies and Waivers), 35 (Partial Invalidity), 33 (Notices) and 43 (Enforcement) of the Facilities Agreement shall be deemed to be

incorporated in this Agreement (with such conforming amendments as the context requires) as if set out in this Agreement.

- 7.2. Neither the execution of this Agreement nor the making of any amount available under the Facilities Agreement or the Amended and Restated Facilities Agreement amounts to a waiver of any outstanding Event of Default.
- 7.3. This Agreement is designated by the Parent and the Agent as a Finance Document.
- 7.4. Each Obligor hereby confirms that the amendment and restatement of the Facilities Agreement pursuant to this Agreement is an amendment and restatement within the contemplation of the Finance Documents.
- 7.5. The Parent shall, and shall procure that each other Obligor will, at the request of the Agent and at its own expense, do all such acts and things necessary to give effect to the amendments effected or to be effected pursuant to this Agreement.

**8. COUNTERPARTS**

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

**9. GOVERNING LAW**

This Agreement is, and any non-contractual obligations arising out of or in connection with it are, governed by English law.

**This Agreement has been entered into on the date stated at the beginning of this Agreement.**

## SCHEDULE 1

### PART I THE BORROWERS

Schuh Group Limited (Reg. No. SC379625) (Scotland)

Schuh (Holdings) Limited (Reg. No. SC265833) (Scotland)

Schuh Limited (Reg. No. SC125327) (Scotland)

Schuh (ROI) Limited (Reg. No. 272987) (Ireland)

Genesco schuh GmbH Registered at the commercial register (*Handelsregister*) of the local court (*Amtsgericht*) of Cologne under no. HRB 80329) (Germany)

### PART II THE GUARANTORS

Schuh Group Limited (Reg. No. SC379625) (Scotland)

Schuh (Holdings) Limited (Reg. No. SC265833) (Scotland)

Schuh Limited (Reg. No. SC125327) (Scotland)

Schuh (ROI) Limited (Reg. No. 272987) (Ireland)

Genesco schuh GmbH Registered at the commercial register (*Handelsregister*) of the local court (*Amtsgericht*) of Cologne under no. HRB 80329) (Germany)



## SCHEDULE 2

### CONDITIONS PRECEDENT

#### 1. Obligors

A copy of the Constitutional Documents, a copy of the constitutional documents of each Acceding Obligor and a copy of the constitutional documents of each other Obligor, or (for any Obligor other than an Acceding Obligor) a certificate of an authorised signatory of the Parent confirming that there has been no change to such documents since 19 May 2015. In the case of a Genesco Schuh GmbH, this shall include an up-to-date commercial register extract not older than 14 days prior to the Effective Date, up-to-date articles of association and an up-to-date shareholders' list.

A copy of a resolution of the shareholders of each Obligor incorporated in Germany:

approving the terms of, and the transactions contemplated by, this Agreement and the German Share Pledge Agreement (as defined in the Amended and Restated Facilities Agreement) and resolving that it execute, deliver and perform this Agreement and the German Share Pledge Agreement (as defined in the Amended and Restated Facilities Agreement);

authorising each managing director, on its behalf to solely sign (*Einzelvertretungsbefugnis*) and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with this Agreement and the German Share Pledge Agreement (as defined in the Amended and Restated Facilities Agreement).

A copy of a resolution of the board or, if applicable, a committee of the board of directors of each Obligor (other than an Obligor incorporated in Germany):

approving the terms of, and the transactions contemplated by, this Agreement, any Finance Documents and all conditions precedent hereto and resolving that it execute, deliver and perform this Agreement, any Finance Documents and all conditions precedent hereto;

authorising a specified person, on its behalf to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with this Agreement.

Certificates of an authorised signatory of each of the Parent and the Acceding Obligors certifying that each copy document relating to it specified in this Schedule 2 is true and complete and in full force and effect as at a date no earlier than the date of this Agreement.

Evidence satisfactory to the Agent that the summary approval procedure (as defined in Section 202 of the Companies Act 2014 of Ireland) has been properly followed in relation to the entry by Schuh Ireland into the Finance Documents to which it is a party and that the entry into such Finance Documents, which constitutes the provision of financial assistance for the purposes of Section 82 of the Companies Act 2014 of Ireland, has been given in accordance with Section 82(6) including:

a certified copy of a declaration to Section 203 of the Companies Act 2014 of Ireland; and

a certified copy of a special resolution of the members of Schuh Ireland,

approving the entry into the Finance Documents to which it is a party.

A completed Form C1 template in agreed form for the Irish law mortgage debenture listed at paragraph 2(b) below, prepared by the Agent's solicitors in Ireland and verified by Schuh Ireland's solicitors in Ireland.

#### 2. Finance Documents

An Irish law debenture in favour of the Security Trustee granted by Schuh (ROI) Limited, signed by all parties thereto together with all deliverables thereunder.

An Irish law share pledge in favour of the Security Trustee granted by Schuh Limited over the shares in Schuh (ROI) Limited signed by all parties thereto together with all deliverables thereunder.

#### 3. Legal Opinions

Legal opinions of:

- (i) Dickson Minto W.S., legal advisers to the Agent as to Scots law and English law, each addressed to the Finance Parties;

- (ii) Matheson, legal adviser to the Agent as to Irish law, addressed to the Finance Parties; and
- (iii) Noerr LLP, legal adviser to the Agent as to German law, addressed to the Finance Parties.

#### **4. Other documents and evidence**

This Agreement executed by the Obligors.

An updated copy of the Group Structure Chart.

A list of the directors of the Parent as at the Effective Date.

Any information and evidence required by the Finance Parties in respect of any Obligor to comply with its know your customer or anti money laundering procedures.

A copy of any other Authorisation or other document, opinion or assurance which the Agent considers to be necessary or desirable (if it has notified the Parent accordingly) in connection with the entry into and performance of the transactions contemplated by this Agreement or for the validity and enforceability of this Agreement.

An updated business plan and financial projections in form and substance satisfactory to the Agent.

Evidence satisfactory to the Agent that there has been no material and adverse change in the financial condition of any member of the Group since the date of the most recent audited consolidated financial statements which have been delivered to the Agent in accordance with clause 21.1(a) of the Amended and Restated Facilities Agreement.

Evidence satisfactory to the Agent that the Parent is in compliance with clause 23.36 (Guarantors) of the Amended and Restated Facilities Agreement as at the Effective Date.

Confirmation by the Parent to the Agent of all amounts due by it or any of its Subsidiaries to Genesco Inc. or any of its Subsidiaries (other than the Parent and its Subsidiaries) as at the Effective Date.

A copy of the PSC Register of:

each Obligor if Part 21A of the Companies Act 2006 applies to it and its shares are subject to any Security created under any Transaction Security Document; and

each company to which Part 21A of the Companies Act 2006 applies and whose shares are subject to any Security created by an Obligor under any Transaction Security Document,

together with a confirmation that such PSC Register sets out the "required particulars" (within the meaning of section 790K of the Companies Act 2006) and any other information prescribed under Part 21A of the Companies Act 2006 (including section 790M) and/or any associated law, in each case, in relation to all of the relevant legal entities and persons with significant control that are "registrable" (within the meaning of section 790C of the Companies Act 2006) in respect of the company in accordance with Part 21A of the Companies Act 2006.

**SCHEDULE 3**

**FORM OF AMENDED AND  
RESTATED FACILITIES AGREEMENT**

**£26,875,000**

**€7,200,500**

**FACILITIES AGREEMENT**

**for**

**SCHUH GROUP LIMITED  
as Parent**

**arranged by**

**LLOYDS BANK PLC  
as Mandated Lead Arranger**

**with**

**LLOYDS BANK PLC  
acting as Agent**

**and**

**LLOYDS BANK PLC  
acting as Security Trustee**

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**THIS AGREEMENT** is the amended and restated form of a facility agreement originally dated 10 November 2010 and as amended and restated on 1 November 2013, 19 June 2014 and, 19 May 2015 as amended on 29 December 2016 and as amended and restated on April 28 2017 and in its amended and restated form is made between:

**SCHUH GROUP LIMITED** a company incorporated in Scotland with registered number SC379625 and with its registered office at 5th Floor, Quartermile Two, 2 Lister Square, Edinburgh EH3 9GL (the "**Parent**");

**THE SUBSIDIARY** of the Parent listed in Part I of Schedule 1 (The Original Parties) as borrower (together with the Parent being the "**Borrowers**");

**THE SUBSIDIARIES** of the Parent listed in Part I of Schedule 1 (The Original Parties) as guarantors (together with the Parent, the "**Guarantors**");

**LLOYDS BANK PLC** with registered number 00002065 and having its registered office at 25 Gresham Street, London EC2V 7HN as mandated lead arranger (the "**Arranger**");

**THE FINANCIAL INSTITUTIONS** listed in Part II of Schedule 1 (The Original Parties) as lenders (the "**Original Lenders**");

**LLOYDS BANK PLC** with registered number 00002065 and having its registered office at 25 Gresham Street, London EC2V 7HN as agent of the other Finance Parties (the "**Agent**"); and

**LLOYDS BANK PLC** with registered number 00002065 and having its registered office at 25 Gresham Street, London EC2V 7HN as security trustee for the Secured Parties (the "**Security Trustee**").

**IT IS AGREED** as follows:

**SECTION 1**

**INTERPRETATION**



## DEFINITIONS AND INTERPRETATION

### Definitions

In this Agreement:

**"Acceptable Bank"** means:

a bank or financial institution duly authorised under applicable laws to carry on the business of banking (including, without limitation, the business of making deposits) which is approved in writing by the Agent; or

any Finance Party.

**"Accession Letter"** means a document substantially in the form set out in Schedule 7 (Form of Accession Letter).

**"Accounting Period"** means each of the twelve periods in any Financial Year for which the Parent is to prepare monthly management accounts for the purposes of this Agreement.

**"Accounting Principles"** means generally accepted accounting principles in the UK, including IFRS.

**"Accounting Reference Date"** means the accounting reference date for the purposes of section 391 of the Companies Act 2006, being 31 January in the case of each member of the Group, (with their financial year ending not more than 7 days after, or less than 7 days before, such date).

**"Acquisition Agreement"** means the sale and purchase agreement dated on or about the Restatement Date setting out the terms on which the UK Acquisition Company is to acquire the shares in the Parent.

**"Additional Borrower"** means a company which becomes a Borrower in accordance with Clause 26 (Changes to the Obligors).

**"Additional Guarantor"** means a company which becomes a Guarantor in accordance with Clause 26 (Changes to the Obligors).

**"Additional Livingston Property"** means the subjects known as 240 (and formerly known as Plot D, Phase II), J4M8 Distribution Park, Bathgate, EH48 2EA being the subjects (IN THE FIRST PLACE) registered in the Land Register of Scotland under Title Number WLN39760; and (IN THE SECOND PLACE) the subjects at J4M8 Distribution Park lying to the north west of Inchmuir Road, Whitehill Industrial Estate, by Bathgate, shown tinted pink on the plan 2 contained in Schedule 4 and forming part of the subjects registered under Title Number WLN6795.

**"Additional Obligor"** means an Additional Borrower or an Additional Guarantor.

**"Additional Standard Security"** means the standard security by the Company in favour of the Security Trustee in respect of the Additional Livingston Property dated on or around the Second Restatement Date.

**"Affiliate"** means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.

**"Agent's Spot Rate of Exchange"** means the Agent's spot rate of exchange for the purchase of the relevant currency with Sterling in the London foreign exchange market at or about 11.00 a.m. on a particular day.

**"Amendment and Restatement Agreement"** means the amendment and restatement agreement in respect of this Agreement dated on the Restatement Date.

**"Annual Financial Statements"** means the financial statements for a Financial Year delivered pursuant to paragraph (a) of Clause 21.1 (Financial Statements).

**"Anti-Corruption Laws"** means all laws, rules and regulations of any jurisdiction applicable to any Obligor from time to time concerning or relating to bribery, money-laundering or corruption.

**"Assignment Agreement"** means an agreement substantially in the form set out in Schedule 6 (Form of Assignment Agreement) or any other form agreed between the relevant assignor and assignee.

**"Auditors"** means one of PricewaterhouseCoopers, Ernst & Young, KPMG, Deloitte & Touche or such other firm approved in advance by the Majority Lenders (such approval not to be unreasonably withheld or delayed).

**"Authorisation"** means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration.

**"Availability Period"** means, in respect of Facility A and Facility B, the period from and including the date of this Agreement to and including the Fourth Restatement Date, in respect of Facility C, the period from and including the Fourth Restatement Date to the Termination Date in respect of Facility C and, in respect of Facility D, the period from and including the Fifth Restatement Date to the Termination Date in respect of Facility D.

**"Available Commitment"** means, in relation to a Facility, a Lender's Commitment under that Facility minus (subject as set out below):

the amount of its participation in any outstanding Utilisations under that Facility; and

in relation to any proposed Utilisation, the amount of its participation in any other Utilisations that are due to be made under that Facility on or before the proposed Utilisation Date,

other than, in relation to any proposed Utilisation under a Revolving Facility only, that Lender's participation in any Revolving Loans that are due to be repaid or prepaid on or before the proposed Utilisation Date.

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

**"Borrower"** means a Borrower listed in Part I of Schedule 1 (the Original Parties) or an Additional Borrower unless it has ceased to be a Borrower in accordance with Clause 26 (Changes to the Obligors).

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

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

exceeds:

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

**"Budget"** any budget delivered by the Parent to the Agent pursuant to Clause 21.4 (Budget).

**"Business Acquisition"** means the acquisition of a company or any shares or securities or a business or undertaking (or, in each case, any interest in any of them) or the incorporation of a company.

**"Business Day"** means a day (other than a Saturday or Sunday) on which banks are open for general business in London, and (in relation to any date for payment or purchase of Euro) any TARGET Day.

**"Business Plan"** means the business plan prepared by the Parent and delivered to the Agent on or around 23 July 2010 including the agreed form financial projections of the Group.

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

**"Cash"** means, at any time, cash in hand or at bank or amounts on deposit with a Lender (which, for the avoidance of any doubt, includes any cash held by way of cash cover for any reason) which are freely transferable and freely convertible and accessible by a member of the Group within 7 days together with (without double counting) cash in transit and in any such case is not subject to any Security (other than the Transaction Security).

**"Cashflow"** has the meaning given to that term in Clause 22.2 (Financial definitions).

**"Change of Control"** means (A) any person or group of persons acting in concert gains direct or indirect control of Genesco Inc. after the Restatement Date, (B) Genesco Inc. ceases to have legal and beneficial ownership of the entire issued share capital of UK Acquisition Company, (C) UK Acquisition Company ceases to have legal and beneficial ownership of the entire issued share capital of the Parent or (D) any person or group of persons acting in concert gains direct or indirect control of the Parent after the Restatement Date. For the purposes of this definition:

**"control"** of the Parent means:

the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:

cast, or control the casting of, more than 50% of the maximum number of votes that might be cast at a general meeting of the Parent; or

appoint or remove all, or the majority, of the directors or other equivalent officers of the Parent; or

give directions with respect to the operating and financial policies of the Parent with which the directors or other equivalent officers of the Parent are obliged to comply; and/or

the holding beneficially of more than 50% of the issued share capital of the Parent (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital);

**"control"** of Genesco Inc. means:

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 being an "option right") directly or indirectly, of more than 50% of the equity securities of Genesco Inc. entitled to vote for members of the board of directors or equivalent governing body of Genesco Inc. 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); and/or

during any period of 12 consecutive months, a majority of the members of the board of directors or other equivalent body of Genesco Inc. 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 paragraph (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 equivalent governing body was approved by individuals referred to in paragraphs (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body;

**"acting in concert"** means, a group of persons who, pursuant to an agreement or understanding (whether formal or informal), actively co-operate, through the acquisition directly or indirectly of shares in the Parent by any of them, either directly or indirectly, to obtain or consolidate control of the Parent.

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

**"Commitment"** means a Facility A Commitment, a Facility B Commitment, a Facility C Commitment or a Facility D Commitment.

**"Collateral Warranty Assignment"** means the assignment in security granted by the Company in favour of the Security Trustee of the contractor's collateral warranty dated 17 February 2011 between RP IOM GP Limited and RP IOM Nominees Limited and Twintec Limited, as assigned to the Company on or around the Second Restatement Date.

**"Company"** means Schuh Limited, a company incorporated in Scotland with registered number SC125327 and with its registered office at 1 Neilson Square, Deans Industrial Estate, Livingston EH54 8RQ.

**"Compliance Certificate"** means a certificate substantially in the form set out in Schedule 9 (Form of Compliance Certificate).

**"Confidential Information"** means all information relating to the Parent, the Company, any Obligor, the Group, the Finance Documents or a Facility of which a Finance Party becomes aware in its capacity as, for the purpose of becoming, a Finance Party or which is received

by a Finance Party in relation to, or for the purpose of becoming a Finance Party under, the Finance Documents or a Facility from either:

any member of the Group or any of its advisers; or

another Finance Party, if the information was obtained by that Finance Party directly or indirectly from any member of the Group or any of its advisers,

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

is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of Clause 38 (Confidentiality); or

is identified in writing at the time of delivery as non-confidential by any member of the Group or any of its advisers;

is known by that Finance Party before the date the information is disclosed to it in accordance with paragraphs (a) or (b) above or is lawfully obtained by that Finance Party after that date, from a source which is, as far as that Finance Party is aware, unconnected with the Group and which, in either case, as far as that Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

**"Confidentiality Undertaking"** means a confidentiality undertaking substantially in a recommended form of the LMA or in any other form agreed between the Parent and the Agent.

**"Constitutional Documents"** means the certificate of incorporation, the certificate of incorporation on change of name (if any) and the memorandum and articles of association of the Parent.

**"CTA"** means the Corporation Tax Act 2009.

**"Deal Costs"** means all fees, costs and expenses, stamp, registration and other Taxes incurred by the Parent or any other member of the Group in connection with the Transaction Documents.

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

purchases by way of assignment or transfer;

enters into any sub-participation in respect of; or

enters into any other agreement or arrangement having an economic effect substantially similar to a sub-participation in respect of,

any Commitment or amount outstanding under this Agreement.

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

**"Defaulting Lender"** means any Lender:

which has failed to make its participation in a Loan available or has notified the Agent that it will not make its participation in a Loan available by the Utilisation Date of that Loan in accordance with Clause 5.4 (Lenders' participation);

which has rescinded or repudiated a Finance Document; or

with respect to which an Insolvency Event has occurred and is continuing,

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

its failure to pay is caused by:

administrative or technical error; or

a Disruption Event; and

payment is made within 5 Business Days of its due date; or

the Lender is disputing in good faith whether it is contractually obliged to make the payment in question;

it is unlawful in any relevant jurisdiction for the Lender to make that payment (provided that this shall not prejudice the rights of the Borrowers under Clause 7.1 (Illegality));

the failure to make that payment is caused by the negligence or wilful default of a third party beyond its control;

the failure to make that payment is caused by an administrative or technical error experienced by a third party beyond its control; or

the Agent is an Impaired Agent and a Borrower has failed to notify the Lenders by giving not less than 3 Business Days prior notice of alternative arrangements for that payment.

**"Delegate"** means any delegate, agent, attorney or co-trustee appointed by the Security Trustee.

**"Disruption Event"** means either or both of:

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

the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a Party preventing that, or any other Party:

from performing its payment obligations under the Finance Documents; or

from communicating with other Parties in accordance with the terms of the Finance Documents,

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

**"Dormant Subsidiary"** means a member of the Group which does not trade (for itself or as agent for any person) and does not own, legally or beneficially, assets (including, without limitation, indebtedness owed to it) which in aggregate have a value of £5,000 or more or its equivalent in other currencies.

**"Eligible Institution"** means any Lender or other bank, financial institution, trust, fund or other entity selected by the Parent and which, in each case, is not a member of the Group nor an Investor nor an Affiliate of an Investor and which is further acceptable to the Agent (acting reasonably).

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

air (including, without limitation, air within natural or man-made structures, whether above or below ground);

water (including, without limitation, territorial, coastal and inland waters, water under or within land and water in drains and sewers); and

land (including, without limitation, land under water).

**"Environmental Claim"** means any claim, proceeding, notice or investigation by any person in respect of any Environmental Law.

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

the pollution or protection of the Environment;

the conditions of the workplace; or

any emission, generation, handling, storage, disposal, removal, use, release, spillage or discharge of any substance which, alone or in combination with any other, is capable of causing harm to the Environment including, without limitation, any waste.

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

**"Escrow Account"** means an interest-bearing account:

held in Scotland by a Borrower with the Agent or the Security Trustee;

identified in a letter between the Parent and the Agent as the Escrow Account;

subject to Security in favour of the Security Trustee, which Security is in form and substance satisfactory to the Agent and the Security Trustee; and

from which no withdrawals may be made by any members of the Group except as contemplated by this Agreement,

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

**"Escrow Account Certificate"** means, in respect of any Quarter Date, a certificate signed by two directors of the Parent (one of whom must be the chief financial officer of the Group) confirming that as at such Quarter Date:

no Default is continuing;

the Parent has complied with each of the financial covenants set out in Clause 22.2 (Financial condition) on each Quarter Date up to and including the date of the relevant Escrow Account Certificate provided that, in the case of each Quarter Date occurring after the Relevant Quarter Date (as defined in Clause 22.4(a)), no account is taken of any New Shareholder Injection; and

the Parent will comply with each of the financial covenants set out in Clause 22.2 (Financial condition) on each of the two Quarter Dates falling after the Quarter Date as at which the relevant Escrow Account Certificate is given, and attaching such supporting evidence as the Agent may reasonably request in connection with such confirmation provided that in the case of each of such Quarter Dates no account is taken of any New Shareholder Injection.

**"Euro"** and the figure "€" means the single currency of the Participating Member States.

**"EURIBOR"** means, in relation to any Loan in Euro:

the applicable Screen Rate as of 11.00 a.m. (Brussels time) for Euro and for a period equal in length to the Interest Period of that Loan; or as otherwise determined pursuant to Clause 12.1 (Unavailability of Screen Rate),

and if, in either case, that rate is less than zero, EURIBOR shall be deemed to be zero.

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

**"Existing Retail Facilities"** means the retail and merchant service facilities currently provided by Lloyds Cardnet to the Group.

**"Facility"** means Facility A, Facility B, Facility C or Facility D and **"Facilities"** means all or any of them as the context requires.

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

**"Facility A Commitment"** means:

in relation to an Original Lender, the amount set opposite its name under the heading "Facility A Commitment" in Part II of Schedule 1 (The Original Parties) and the amount of any other Facility A Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 (Increase); and

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

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

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

**"Facility A Repayment Date"** means each date set out in paragraph (a) of Clause 6.1 (Repayment of Term Loans).

**"Facility A Repayment Instalment"** means each of the repayment instalments set out in paragraph (a) of Clause 6.1 (Repayment of Term Loans) opposite the relevant Facility A Repayment Date.

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

**"Facility B Commitment"** means:

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

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

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

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

**"Facility B Repayment Date"** means each date set out in paragraph (b) of Clause 6.1 (Repayment of Term Loans).

**"Facility B Repayment Instalment"** means each of the repayment instalments set out in paragraph (b) of Clause 6.1 (Repayment of Term Loans) opposite the relevant Facility B Repayment Date.

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

**"Facility C Commitment"** means:

in relation to an Original Lender, the amount set opposite its name under the heading "Facility C Commitment" in Part II of Schedule 1 (The Original Parties) and the amount of any other Facility C Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 (Increase); and

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

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

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

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

**"Facility D Commitment"** means:

in relation to an Original Lender, the amount set opposite its name under the heading "Facility D Commitment" in Part II of Schedule 1 (The Original Lenders) and the amount of any other Facility D Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 (Increase); and

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

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

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

**"Facility Office"** means:

in respect of a Lender, the office or offices notified by that Lender to the Agent in writing on or before the date it becomes a Lender (or, following that date, by not less than five Business Days' written notice) as the office or offices through which it will perform its obligations under this Agreement; or

in respect of any other Finance Party, the office in the jurisdiction in which it is resident for tax purposes.

**"Fee Letter"** means any letter or letters dated on or about the date of this Agreement between the Arranger and the Parent (or the Agent and the Parent or the Security Trustee and the Parent) setting out any of the fees referred to in Clause 13 (Fees).

**"Fifth Amendment and Restatement Agreement"** means the amendment and restatement agreement in respect of this Agreement dated on or around 26 April 2017.

**"Fifth Restatement Date"** means the Effective Date as defined in the Fifth Amendment and Restatement Agreement.

**"Finance Document"** means this Agreement, any Accession Letter, any Compliance Certificate, any Fee Letter, any Hedging Agreement, any Resignation Letter, any Selection Notice, the Subordination Agreements, any Transaction Security Document, any Utilisation Request, the Working Capital Facility Letter, the Amendment and Restatement Agreement, the Second Amendment and Restatement Agreement, the Third Amendment and Restatement Agreement, the Fourth Amendment and Restatement Agreement, the Fifth Amendment and Restatement Agreement any document entered into in respect of the Lloyds Retail Facilities and any other document designated as a **"Finance Document"** by the Agent and the Parent.

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

**"Finance Party"** means the Agent, the Arranger, the Security Trustee, a Lender, the Working Capital Lender and Lloyds Bank plc (or any other member of the LBG Group) as provider of the Lloyds Retail Facilities.

**"Financial Due Diligence Report"** means the report by KPMG dated on or around the date of this Agreement relating to the Parent and its subsidiaries and addressed to, and/or capable of being relied upon by, Lloyds Bank plc as original lender.

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

moneys borrowed and debit balances at banks or other financial institutions;

any acceptance under any acceptance credit or bill discounting facility (or dematerialised equivalent);

any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

the amount of any liability in respect of Finance Leases;

receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis and meet any requirement for de-recognition under the Accounting Principles);

any Treasury Transaction (and, when calculating the value of that Treasury Transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that Treasury Transaction, that amount) shall be taken into account);

any counter-indemnity obligation in respect of a guarantee, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution;

any amount raised by the issue of redeemable shares which are redeemable (other than at the option of the issuer) before 30 September 2019 or are otherwise classified as borrowings under the Accounting Principles;

any amount of any liability under an advance or deferred purchase agreement if (i) one of the primary reasons behind entering into the agreement is to raise finance or to finance the acquisition or construction of the asset or service in question or (ii) the agreement is in respect of the supply of assets or services and payment is due more than 90 days after the date of supply;

any amount raised under any other transaction (including any forward sale or purchase, sale and sale back or sale and leaseback agreement) having the commercial effect of a borrowing or otherwise classified as borrowings under the Accounting Principles; and

the amount of any liability in respect of any guarantee for any of the items referred to in paragraphs (a) to (j) above.

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

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

**"Flotation"** means:



a successful application being made for the admission of any part of the share capital of any member of the Group to the Official List maintained by the Financial Conduct Authority and the admission of any part of the share capital of any member of the Group to trading on the London Stock Exchange plc; or

the grant of permission to deal with any part of the issued share capital of any member of the Group on the Alternative Investment Market or the Main Board or Growth Board of the ICAP Securities & Derivatives Exchange Limited (ISDX) or on any recognised investment exchange (as that term is used in the Financial Services and Markets Act 2000) or in or on any exchange or market replacing the same or any other exchange or market in any country.

**"Fourth Amendment and Restatement Agreement"** means the amendment and restatement agreement in respect of this Agreement dated on or around 19 May 2015.

**"Fourth Restatement Date"** means the Effective Date as defined in the Fourth Amendment and Restatement Agreement.

**"Funding Rate"** means any individual rate notified by a Lender to the Agent pursuant to paragraph (a)(ii) of Clause 12.4 (Cost of funds).

**"Funds Flow"** means the funds flow delivered by the Parent to the Agent on or around the date of this Agreement in connection with the facilities being made available to the Group by the Finance Parties.

**"Genesco Closing Schedule"** means the schedule in the agreed form setting out the dates to which the Group will prepare Monthly Financial Statements after the Restatement Date.

**"German Obligor"** means an Obligor incorporated under the laws of Germany.

**"German Share Pledge Agreement"** means a notarised German law share pledge in favour of the Security Trustee granted by Schuh Limited over the shares in Genesco schuh GmbH.

**"Group"** means the Parent and each of its Subsidiaries for the time being.

**"Group Structure Chart"** means the group structure chart in the agreed form.

**"Guarantor"** means a Guarantor listed in Part I of Schedule 1 (the Original Parties) as a Guarantor or an Additional Guarantor, unless it has ceased to be a Guarantor in accordance with Clause 26 (Changes to the Obligors).

**"Hedging Agreement"** means any master agreement, confirmation, schedule or other agreement in agreed form entered into or to be entered into by the Parent and a Lender for the purpose of hedging interest rate liabilities in relation to the Term Facilities in accordance with any Hedging Policy Letter.

**"Hedging Policy Letter"** means any letter entered into at any time by the Parent to the Agent setting out the proposed policy of the Group in relation to the hedging of its exposure to floating rates of interest.

**"Holding Account"** means an account:

held in Scotland by a member of the Group with the Agent or Security Trustee;

identified in a letter between the Parent and the Agent as a Holding Account; and

subject to Security in favour of the Security Trustee which Security is in form and substance satisfactory to the Security Trustee,

(as the same may be redesignated, substituted or replaced from time to time).

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

**"Holdings"** means Schuh Holdings Limited (Registered No. SC265833).

**"Investor"** means the UK Acquisition Company.

**"IFRS"** means international accounting standards within the meaning of IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements.

**"Impaired Agent"** means the Agent at any time when:

(if the Agent is also a Lender) it is a Defaulting Lender under paragraph (a) or (b) of the definition of "Defaulting Lender";  
an Insolvency Event has occurred and is continuing with respect to the Agent; or  
the Agent rescinds or repudiates a Finance Document.

**"Increase Confirmation"** means a confirmation substantially in the form set out in Schedule 10 (Form of Increase Confirmation).

**"Information Package"** means the Reports, the Business Plan and the Funds Flow.

**"Insolvency Event"** in relation to a Finance Party means:

a Finance Party being dissolved (other than pursuant to a consolidation, amalgamation or merger);

a Finance Party admits in writing its inability generally to pay its debts as they become due; or

the appointment of a liquidator, receiver, administrator, compulsory manager or similar officer in respect of that Finance Party or all or any material part of that Finance Party's assets or any analogous procedure or any formal step being taken in respect of any such appointment or procedure other than the presentation of a petition for any such appointment or procedure which is dismissed, stayed or discharged within 30 days.

**"Insurance Adequacy Letter"** means the letter from Aon addressed to the Finance Parties dated on or around the date of this Agreement in respect of the insurance provision of the Group.

**"Intellectual Property"** means:

any patents, trade marks, service marks, designs, business names, copyrights, database rights, design rights, domain names, moral rights, inventions, confidential information, know how and other intellectual property rights and interests (which may now or in the future subsist), whether registered or unregistered; and

the benefit of all applications and rights to use such assets of each member of the Group (which may now or in the future subsist).

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

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

the applicable Screen Rate for the longest period (for which that Screen Rate is available) which is less than the Interest Period of that Loan; and

the applicable Screen Rate for the shortest period (for which that Screen Rate is available) which exceeds the Interest Period of that Loan,

each as of 11.00 a.m. on the Quotation Day for the currency of that Loan.

**"Irish Law Mortgage Debenture"** means, an Irish law mortgage debenture entered into on or about the Fifth Restatement Date and entered into between (1) Schuh Ireland and (2) the Security Trustee.

**"ITA"** means the Income Tax Act 2007.

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

**"LBG Group"** means Lloyds Banking Group plc and its Subsidiaries from time to time.

**"Legal Reservations"** means:

the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors;

the time barring of claims under the Limitation Acts, the possibility that an undertaking to assume liability for or indemnify a person against non-payment of UK stamp duty may be void and defences of set-off or counterclaim;

the principle that any additional interest imposed under any relevant agreement may be held to be unenforceable on the grounds that it is a penalty and thus void;

the principle that an English court may not give effect to an indemnity for legal costs incurred by an unsuccessful litigant;

the principle that in certain circumstances security granted by way of fixed charge may be characterised as a floating charge or that security purported to be constituted by way of an assignment may be recharacterised as a charge;

similar principles, rights and defences under the laws of any Relevant Jurisdiction; and

any other matters which are set out as qualifications or reservations as to matters of law (but not of fact) expressed in any legal opinion required to be given by this Agreement.

**"Lender"** means:

any Original Lender; and

any bank, financial institution, trust, fund or other entity which has become a Party as a Lender in accordance with Clause 25 (Changes to the Lenders),

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

**"LIBOR"** means, in relation to any Loan:

the applicable Screen Rate as of 11.00 a.m. on the Quotation Day for sterling and for a period equal in length to the Interest Period of that Loan; or

as otherwise determined pursuant to Clause 12.1 (Unavailability of Screen Rate),

and if, in either case, that rate is less than zero, LIBOR shall be deemed to be zero.

**"Limitation Acts"** means the Limitation Act 1980, the Foreign Limitation Periods Act 1984, the Prescription and Limitation (Scotland) Act 1973, the Prescription and Limitation (Scotland) Act 1984 and any other enactment (whenever passed) relating to the prescription and/or limitation of actions and/or claims in any part of the United Kingdom.

**"Livingston Property"** means the heritable property situated at 1 Neilson Square, Deans Industrial Estate, Livingston EH54 8EQ (Title Number WLN1738).

**"Lloyds Retail Facilities"** means the retail and merchant services facilities (if any) provided to the Group by a member of the LBG Group from time to time.

**"LMA"** means the Loan Market Association.

**"Loan"** means a Term Loan or a Revolving Loan.

**"Majority Lenders"** means a Lender or Lenders whose Commitments aggregate more than  $66\frac{2}{3}$  per cent. of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than  $66\frac{2}{3}$  per cent. of the Total Commitments immediately prior to that reduction), calculated by notionally converting any Commitments denominated in Euros into Sterling at the Agent's Spot Rate of Exchange on the relevant date.

**"Mandatory Prepayment Account"** means an interest-bearing account:

held in Scotland by a Borrower with the Agent or Security Trustee;

identified in a letter between the Parent and the Agent as a Mandatory Prepayment Account;

subject to Security in favour of the Security Trustee which Security is in form and substance satisfactory to the Agent and Security Trustee; and

from which no withdrawals may be made by any members of the Group except as contemplated by this Agreement,

(as the same may be redesignated, substituted or replaced from time to time).

**"Margin"** means:

in relation to any Facility A Loan, one point eight per cent. (1.8%) per annum;

in relation to any Facility B Loan, two point five per cent. (2.5%) per annum;

in relation to any Facility C Loan, two point two per cent. (2.2%) per annum;

in relation to any Facility D Loan, two point two per cent. (2.2%) per annum;

in relation to any Unpaid Sum relating or referable to a Facility, the rate per annum specified above for that Facility;

in relation to any other Unpaid Sum, the highest rate specified above; and

if at any time a breach of the terms of Clause 22 (Financial Covenants) is continuing each of the rates referred to in (a) to (f) (inclusive) above will increase to two times the Margin which would otherwise be applicable to such amount for so long as such breach continues unwaived.

**"Material Adverse Effect"** means any event or circumstance which is in the opinion of the Majority Lenders (acting reasonably) materially adverse to:

the business, operations, property, condition (financial or otherwise) or prospects of the Group taken as a whole; or

the ability of an Obligor to perform its payment obligations under any of the Finance Documents and/or its obligations under Clause 22.2 (Financial condition) of this Agreement; or

the validity or enforceability of, or the effectiveness or ranking of any Security granted or purporting to be granted pursuant to any of, the Finance Documents or the rights or remedies of any Finance Party under any of the Finance Documents.

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

(subject to paragraph (c) below) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day;

if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month; and

if an Interest Period begins on the last Business Day of a calendar month, that Interest Period shall end on the last Business Day in the calendar month in which that Interest Period is to end.

The above rules will only apply to the last Month of any period. **"Monthly"** shall be construed accordingly.

**"Monthly Financial Statements"** means the financial statements delivered pursuant to paragraph (b) of Clause 21.1 (Financial Statements).

**"Non-Consenting Lender"** has the meaning given to that term in Clause 37.4 (Replacement of Lender).

**"Obligor"** means a Borrower or a Guarantor.

**"Obligors' Agent"** means the Parent, appointed to act on behalf of each Obligor in relation to the Finance Documents pursuant to Clause 2.4 (Obligors' Agent).

**"Original Financial Statements"** means:

in relation to the Parent, the audited consolidated financial statements of the Group for its financial year ended 31 January 2015 and the unaudited management accounts for the Accounting Period which ended on 2 May 2015; and

in relation to any other Obligor, its audited financial statements delivered to the Agent as required by Clause 26 (Changes to the Obligors).

**"Participating Member State"** means any member state of the European Communities that adopts or has adopted the Euro as its lawful currency in accordance with legislation of the European Community relating to Economic and Monetary Union.

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

**"PSC Register"** means "PSC register" within the meaning of section 790C(10) of the Companies Act 2006.

**"Perfection Requirements"** means the making or the procuring of the appropriate registrations, filings, endorsements, notarisations, stampings and/or notifications of the Transaction Security Documents and/or the Transaction Security created thereunder.

**"Permitted Acquisition"** means:

an acquisition permitted in terms of Clause 23.30 (Capital Expenditure);

an acquisition by a member of the Group of an asset sold, leased, transferred or otherwise disposed of by another member of the Group in circumstances constituting a Permitted Disposal;

an acquisition of shares or securities pursuant to a Permitted Share Issue;

an acquisition approved in writing by the Majority Lenders.

**"Permitted Bank Accounts"** means each of the accounts held by Schuh Ireland with Ulster Bank (or such other bank notified by the Parent to the Agent from time to time) and the accounts held by Schuh Germany with Commerzbank (or such other bank notified by the Parent to the Agent from time to time).

**"Permitted Disposal"** means any sale, lease, licence, transfer or other disposal which is on arms' length terms:

of trading stock or cash made by any member of the Group in the ordinary course of trading of the disposing entity;

of any asset by a member of the Group (the "Disposing Company") to another member of the Group (the "**Acquiring Company**"), but if:

the Disposing Company is an Obligor, the Acquiring Company must also be an Obligor;

the Disposing Company had given Security over the asset, the Acquiring Company must give equivalent Security over that asset; and

the Disposing Company is a Guarantor, the Acquiring Company must be a Guarantor guaranteeing at all times an amount no less than that guaranteed by the Disposing Company;

of assets (other than shares, businesses, any Properties or any Intellectual Property) in exchange for other assets comparable or superior as to type, value or quality (other than an exchange of a non-cash asset for cash);

of obsolete or redundant vehicles, plant and equipment for cash;

arising as a result of any Permitted Security; and

of assets (other than shares, businesses, any Properties or any Intellectual Property) for cash where the higher of the market value and net consideration receivable (when aggregated with the higher of the market value and net consideration receivable for any other sale, lease, licence, transfer or other disposal not allowed under the preceding paragraphs) does not exceed £200,000 (or its equivalent) in any Financial Year of the Parent.

**"Permitted Financial Indebtedness"** means Financial Indebtedness:

arising under a foreign exchange transaction for spot or forward delivery entered into in connection with protection against fluctuation in currency rates where that foreign exchange exposure arises in the ordinary course of trade, but not a foreign exchange transaction for investment or speculative purposes;

arising under a Permitted Loan or a Permitted Guarantee or as permitted by Clause 23.31 (Treasury Transactions);

of any person acquired by a member of the Group after the date of this Agreement which is incurred under arrangements in existence at the date of acquisition, but not incurred or increased or its maturity date extended in contemplation of, or since, that acquisition, and outstanding only for a period of three months following the date of acquisition;

under finance or capital leases of vehicles, plant, equipment or computers, provided that the aggregate capital value of all such items so leased under outstanding leases by members of the Group does not exceed £100,000 (or its equivalent in other currencies) at any time;

arising under the Working Capital Facility Letter;

arising in respect of the Retail Facilities;

arising under a loan made by the UK Acquisition Company to any Obligor which is subordinated to the Facilities in accordance with the Subordination Agreements;

arising by way of a New Shareholder Injection;

arising under or pursuant to a promissory note originally issued by the Company to Genesco Inc. dated March 2015 (otherwise undated) in respect of the sum of £5,500,000 which was assigned on 28 May 2015 to be owed to the UK Acquisition Company plus accrued interest thereon; and

not permitted by the preceding paragraphs or as a Permitted Transaction and the outstanding principal amount of which does not exceed £100,000 (or its equivalent) in aggregate for the Group at any time.

**"Permitted Guarantee"** means:

the endorsement of negotiable instruments in the ordinary course of trade;

any performance or similar bond guaranteeing performance by a member of the Group under any contract entered into in the ordinary course of trade;

any guarantee permitted under Clause 23.19 (Financial Indebtedness); or

any guarantee given in respect of the netting or set-off arrangements permitted pursuant to paragraph (b) of the definition of Permitted Security.

**"Permitted Joint Venture"** means any investment in any Joint Venture where the Parent has obtained the prior written consent (not to be unreasonably withheld or delayed) of the Majority Lenders for the investment in that Joint Venture.

**"Permitted Loan"** means:

any trade credit extended by any member of the Group to its customers on normal commercial terms and in the ordinary course of its trading activities;

Financial Indebtedness which is referred to in the definition of, or otherwise constitutes, Permitted Financial Indebtedness (except under paragraph (c) of that definition);

a loan made by an Obligor to another Obligor or made by a member of the Group which is not an Obligor to another member of the Group;

a loan made by a member of the Group to an employee or director of any member of the Group if the amount of that loan when aggregated with the amount of all loans to employees and directors by members of the Group does not exceed £100,000 (or its equivalent) at any time;

a loan made by the Parent or any of its wholly owned subsidiaries to the UK Acquisition Company in compliance with the terms of paragraph (b) of the definition of Permitted Payment; and

any other loan so long as the aggregate amount of the Financial Indebtedness under any such loans does not exceed £100,000 (or its equivalent) at any time.

**"Permitted Merger"** means:

an amalgamation, demerger, merger, consolidation or corporate reconstruction on a solvent basis of an Obligor where:

all of the business and assets of that Obligor are retained by one or more other Obligors;

the surviving entity of that amalgamation, demerger, merger, consolidation or corporate reconstruction is liable for the obligations of the Obligor it has merged with and is incorporated in the same jurisdiction as that Obligor; and

the Agent and the Security Trustee are given thirty Business Days' notice by the Parent of that proposed amalgamation, demerger, merger, consolidation or corporate reconstruction and the Security Trustee, acting reasonably, is satisfied that the Finance Parties will enjoy the same or equivalent Security over the same assets and over that Obligor and the shares in it (or the shares of the surviving entity); or

an amalgamation, demerger, merger, consolidation or corporate reconstruction on a solvent basis of a member of the Group which is not an Obligor where all of the business and assets of that member remain within the Group; or

an amalgamation or merger between an Obligor and another entity in connection with a Permitted Acquisition where such Obligor is the surviving entity.

**"Permitted Payment"** means:

the payment of a dividend to the Parent or any of its wholly-owned Subsidiaries;

the payment of a dividend, the making of a loan or the repayment of a loan (other than in respect of the debt obligation referred to in paragraph (c) below) in each case by the Parent to the UK Acquisition Company provided that:

no Event of Default would occur as a result of that loan, loan repayment and/or dividend;

the Parent provides to the Agent such information as the Agent may reasonably require so as to demonstrate to the Agent that:

such loan and/or dividend and/or repayment would not cause a breach of the financial covenants under Clause 22 (Financial Covenants) of this Agreement in the period of 12 months following the making/repaying of such loan and/or payment of such dividend; and

Leverage shall not exceed the ratio of 1:1 as at the end of each Relevant Period in the period of 12 months following the making/repaying of such loan and/or payment of such dividend;

the repayment by the Company to the UK Acquisition Company of the amounts outstanding under the promissory note originally issued in March 2015 by Schuh Limited to Genesco Inc. (which was assigned on 28 May 2015 to be owned to UK Acquisition Company); or

the payment of any other dividend agreed between the Parent and the Lenders.

**"Permitted Security"** means:

any lien arising by operation of law and in the ordinary course of trading and not as a result of any default or omission by any member of the Group;

any netting or set-off arrangement entered into by any member of the Group with Lloyds Bank plc in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances of members of the Group but only so long as (i) such arrangement does not permit credit balances of Obligors to be netted or set off against debit balances of members of the Group which are not Obligors and (ii) such arrangement does not give rise to other Security over the assets of Obligors in support of liabilities of members of the Group which are not Obligors;

any Security or Quasi-Security over or affecting any asset acquired by a member of the Group after the date of this Agreement, if:

the Security or Quasi-Security was not created in contemplation of the acquisition of that asset by a member of the Group;

the principal amount secured has not been increased in contemplation of or since the acquisition of that asset by a member of the Group; and

the Security or Quasi-Security is removed or discharged within three months of the date of acquisition of such asset;

any Security or Quasi-Security over or affecting any asset of any company which becomes a member of the Group after the date of this Agreement, where the Security or Quasi-Security is created prior to the date on which that company becomes a member of the Group, if:

the Security or Quasi-Security was not created in contemplation of the acquisition of that company;

the principal amount secured has not increased in contemplation of or since the acquisition of that company; and

the Security or Quasi-Security is removed or discharged within three months of that company becoming a member of the Group;

any Security arising under any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied to a member of the Group in the ordinary course of trading and on the supplier's standard or usual terms and not arising as a result of any default or omission by any member of the Group;

any Security or Quasi-Security arising as a consequence of any finance or capital lease permitted pursuant to paragraph (e) of the definition of "Permitted Financial Indebtedness";

any Security in favour of Bank of Scotland plc or any other member of the LBG Group by any member of the Group; or

any Security securing indebtedness the outstanding principal amount of which (when aggregated with the outstanding principal amount of any other indebtedness which has the benefit of Security given by any member of the Group other than any permitted under paragraphs (a) to (g) above) does not exceed £100,000 (or its equivalent in other currencies).

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

ordinary shares by the Parent to employees, paid for in full in cash upon issue and which by their terms are not redeemable and where such issue does not lead to a Change of Control of the Parent;

shares by a member of the Group which is a Subsidiary to its immediate Holding Company where (if the existing shares of the Subsidiary are the subject of the Transaction Security) the newly-issued shares also become subject to the Transaction Security on the same terms.

**"Permitted Transaction"** means:

any disposal required, Financial Indebtedness incurred, guarantee, indemnity or Security or Quasi-Security given, or other transaction arising, under the Finance Documents;

the solvent liquidation or reorganisation of any member of the Group which is not an Obligor so long as any payments or assets distributed as a result of such liquidation or reorganisation are distributed to an Obligor; or

transactions (other than (i) any sale, lease, license, transfer or other disposal and (ii) the granting or creation of Security or the incurring or permitting to subsist of Financial Indebtedness) conducted in the ordinary course of trading on arms' length terms.

**"Properties"** means the heritable or freehold properties owned by the Group at the date of this Agreement and any other freehold property acquired by a member of the Group after the date of this Agreement. A reference to **"Property"** is a reference to any of the Properties.

**"Qualifying Lender"** has the meaning given to that term in Clause 14 (Tax gross-up and indemnities).

**"Quarter Date"** has the meaning given to that term in Clause 22.1 (Financial Definitions).

**"Quasi-Security"** has the meaning given to that term in Clause 23.13 (Negative pledge).

**"Quotation Day"** means, in relation to any period for which an interest rate is to be determined:

(if the currency is Sterling) the first day of that period; and

(if the currency is Euro) two TARGET Days before the first day of that period.

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

**"Reference Bank Quotation"** means any quotation supplied to the Agent by a Reference Bank.

**"Reference Bank Rate"** means the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Agent at its request by the Reference Banks:

in relation to LIBOR as either:

if:

the Reference Bank is a contributor to the applicable Screen Rate; and

it consists of a single figure,

as the rate (applied to the relevant Reference Bank and the relevant currency and period) which contributors to the applicable Screen Rate are asked to submit to the relevant administrator; or

in any other case, the rate at which the relevant Reference Bank would fund itself in the relevant currency for the relevant period with reference to the unsecured wholesale funding market.

in relation to EURIBOR:



(other than where paragraph (B) below applies) as the rate at which the relevant a Reference Bank believes one prime bank is quoting to another prime bank for interbank term deposits in Euro within the Participating Member States for the relevant period; or

if different, as the rate (if any and applied to the relevant Reference Bank and the relevant period) which contributors to the applicable Screen Rate are asked to submit to the relevant administrator.

**"Reference Banks"** means the principal London offices of Barclays Bank PLC, Bank of Scotland plc and The Royal Bank of Scotland plc or such other banks as may be appointed by the Agent in consultation with the Parent.

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

**"Relevant Jurisdiction"** means, in relation to an Obligor:

its jurisdiction of incorporation;

any jurisdiction where any asset subject to or intended to be subject to the Transaction Security to be created by it is situated;

any jurisdiction where it conducts its business; and

the jurisdiction whose laws govern the perfection of any of the Transaction Security Documents entered into by it.

**"Relevant Period"** has the meaning given to that term in Clause 22.2 (Financial definitions).

**"Repayment Date"** means a Facility A Repayment Date or a Facility B Repayment Date.

**"Repeating Representations"** means each of the representations set out in Clause 20.2 (Status) to Clause 20.7 (Governing law and enforcement) (inclusive), Clause 20.11 (No default), paragraphs (f) and (g) of Clause 20.13 (Original Financial Statements), Clause 20.19 (Ranking) to Clause 20.21 (Legal and beneficial ownership) (inclusive), Clause 20.28 (Centre of main interests and establishments) and Clause 20.30 (Sanctions and Anti Corruption Law) and Clause 20.31 (PSC Register).

**"Reports"** means the Financial Due Diligence Report and the Tax Letter.

**"Resignation Letter"** means a letter substantially in the form set out in Schedule 8 (Form of Resignation Letter).

**"Restatement Date"** means 22 June 2011.

**"Retail Facilities"** means the retail and merchant services facilities used by the Group from time to time (including, without limitation, the Existing Retail Facilities and the Lloyds Retail Facilities).

**"Revolving Facilities"** means Facility C and Facility D and **"Revolving Facility"** means any of them as the context requires.

**"Revolving Loan"** means a Facility C Loan or a Facility D Loan.

**"Rollover Loan"** means one or more Revolving Loans:

made or to be made on the same day that a maturing Revolving Loan is due to be repaid;

the aggregate amount of which is equal to or less than the amount of the maturing Revolving Loan; and

made or to be made to the same Borrower for the purpose of refinancing that maturing Revolving Loan.

**"Sanctioned Country"** means, at any time, a country or territory which is itself the subject of comprehensive country-wide or territory-wide Sanctions (including, but not limited to, at the date of the Fifth Amendment and Restatement Agreement, Cuba, Iran, North Korea, Sudan and Syria) and, for the avoidance of doubt, excluding a country or territory where Sanctions only target specific activities.

**"Sanctioned Person"** means, at any time, (i) any person listed in any Sanctions List or related list of designated persons maintained by the Office of Foreign Assets Control of the U.S.

Department of the Treasury or the U.S. Department of State, or by the United Nations Security Council, the United Kingdom Government, the European Union (or any of its member states) or any other country to the extent recognised and implemented by any of the foregoing, (ii) any person operating, organised or resident in a Sanctioned Country or (iii) any person owned or controlled by any such person or persons.

**"Sanctions"** means the economic or trade sanctions laws, regulations, embargoes or restrictive measures administered, enacted or enforced by: (i) the United Kingdom Government; (ii) the United States Government; (iii) the United Nations; (iv) the European Union (or any of its member states); and (v) any other economic or trade sanctions laws, regulations, embargoes or restrictive measures imposed, administered, enacted or enforced by any other relevant sanctions authority, as recognised and implemented by any of the foregoing; and with regard to (i)-(v) above, the respective governmental institutions and agencies of any of the foregoing, including, without limitation, the Office of Foreign Assets Control of the US Department of Treasury ("**OFAC**"), the United States Department of State, and Her Majesty's Treasury ("**HMT**"), (together the "**Sanctions Authorities**").

**"Sanctions List"** means the "Specially Designated Nationals and Blocked Persons" list maintained by OFAC, the "Consolidated List of Financial Sanctions Targets" maintained by HMT, or any similar list maintained by any of the Sanctions Authorities.

**"Schuh Germany"** means Genesco Schuh GmbH, incorporated in Germany and registered in the commercial register (*Handelsregister*) of the local court (*Amtsgericht*) of Cologne under number HRB80329.

**"Schuh Ireland"** means Schuh (ROI) Limited, incorporated in Ireland with registered number 272987.

**"Screen Rate"** means:

in relation to LIBOR, the London interbank offered rate administered by ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for the relevant period displayed (or any correction, recalculation or republication by the administrator if and only if such correct, recalculated or republished rate is lower) on pages LIBOR01 or LIBOR02 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate); and

in relation to EURIBOR, the Euro interbank offered rate administered by the European Money Markets Institute (or any other person which takes over the administration of that rate) for the relevant period displayed (or any correction, recalculation or republication by the administrator if and only if such corrected, recalculated or republished rate is lower) on page EURIBOR01 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate),

in each case, if the agreed page is replaced or service ceases to be available, the Agent may specify another page or service displaying the appropriate rate after consultation with the Parent and the Lenders.

**"Second Amendment and Restatement Agreement"** means the amendment and restatement agreement in respect of this Agreement dated on the Second Restatement Date.

**"Second Restatement Date"** means 1 November 2013.

**"Secured Obligations"** means all present and future obligations and liabilities (whether actual or contingent, whether owed jointly, severally or in any other capacity whatsoever and whether originally incurred by an Obligor or by some other person) of each Obligor to the Finance Parties (or any of them) under each of the Finance Documents except for any obligation or liability which, if it were so included, would cause that obligation or liability or any of the Security in respect thereof, to be unlawful or prohibited by any applicable law.

**"Secured Parties"** means each Finance Party from time to time and any Receiver or Delegate.

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

**"Selection Notice"** means a notice substantially in the form set out in Part II of Schedule 3 (Requests) given in accordance with Clause 11 (Interest Periods) in relation to a Term Facility.

**"Senior Management"** means each and all of Colin Temple, David Gillan Reid, Kenneth Ball and David Spencer.

**"Senior Management Event"** means Colin Temple and David Gillan Reid cease (in the period of 24 months following the Fifth Restatement Date) to be employed by the Parent (as chief executive officer and chief financial officer of the Group respectively) (the date on which both of such individuals cease to be so employed being for these purposes the "**Trigger Date**")

and, following the presentation to the Lenders of the Group's alternative arrangements for the senior management of the Group (including, without limitation, the identity of the proposed new chief executive officer and chief financial officer of the Group) within 120 days of the Trigger Date, the Agent (acting on the instructions of the Majority Lenders, acting reasonably) does not provide a written consent to such cessation within 180 days of the Trigger Date. This definition shall also apply to any replacement person approved by the Agent in accordance with the terms of this definition as if references in this Clause to Colin Temple or to David Gillan Reid were references to that replacement person.

"**Standard Security**" means the standard security by the Company in favour of the Security Trustee in respect of the Livingston Property dated on or around the date of this Agreement.

"**Sterling**" and the figure "£" means the lawful currency of the UK.

"**Subordination Agreements**" means the subordination agreement between the Borrower, UK Acquisition Company and the Security Trustee as security trustee for the Finance Parties dated 22 June, 23 June and 7 November 2011 and the subordination agreement between the Obligors, the UK Acquisition Company and the Security Trustee as security trustee for the Finance Parties dated on or around 28 May 2015.

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

which is controlled, directly or indirectly, by the holding company; or

more than half the issued share capital of which is beneficially owned, directly or indirectly, by the holding company; or

which is a subsidiary of another subsidiary of the holding company,

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

"**TARGET2**" means the Trans-European Automated Real-time Gross Settlement Express Transfer payment system which utilises a single shared platform and which was launched on 19 November 2007.

"**TARGET Day**" means any day on which TARGET2 is open for the settlement of payments in euro.

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

"**Tax Letter**" means the letter dated on or around the date of this Agreement from KPMG to the Finance Parties in respect of the tax position of the Group.

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

"**Term Facilities**" means Facility A and Facility B and "**Term Facility**" means any of them as the context may require.

"**Termination Date**" means:

in relation to Facility A, 29 April 2017;

in relation to Facility B, 30 September 2019; and

in relation to Facility C, 30 September 2019; and

in relation to Facility D, 30 September 2019.

"**Term Loan**" means a Facility A Loan or a Facility B Loan.

"**Third Amendment and Restatement Agreement**" means the amendment and restatement agreement in respect of this Agreement dated on the Third Restatement Date.

"**Third Restatement Date**" means 19 June 2014.

"**Total Commitments**" means the aggregate of the Total Facility A Commitments, the Total Facility B Commitments and the Total Facility C Commitments and the Total Facility D Commitments being £26,875,000 and €7,200,000 at the Fifth Restatement Date.

**"Total Facility A Commitments"** means the aggregate of the Facility A Commitments, being £1,000,000 at the Fifth Restatement Date.

**"Total Facility B Commitments"** means the aggregate of the Facility B Commitments, being £9,375,000 at the Fifth Restatement Date.

**"Total Facility C Commitments"** means the aggregate of the Facility C Commitments, being £16,500,000 at the Fifth Restatement Date.

**"Total Facility D Commitments"** means the aggregate of the Facility D Commitments, being €7,200,000 at the Fifth Restatement Date.

**"Trade Sale"** means a disposal (whether in a single transaction or a series of related transactions) of all or substantially all of the business and assets of the Group.

**"Transaction Documents"** means the Acquisition Agreement, the Constitutional Documents and the Finance Documents.

**"Transaction Security"** means the Security created or expressed to be created in favour of the Security Trustee pursuant to the Transaction Security Documents.

**"Transaction Security Documents"** means each of floating charges in favour of the Security Trustee granted by the Parent, Holdings and the Company, each dated 10 November 2010, the share pledge in favour of the Security Trustee by Group over the shares in Holdings dated 10 November 2010, the share pledge in favour of the Security Trustee by Holdings over the shares in the Company dated 10 November 2010, the Standard Security, the Additional Standard Security, the Collateral Warranty Assignment, the Irish law share pledge by the Company in favour of the Security Trustee over its shares in Schuh Ireland dated on or around the Fifth Restatement Date, the Irish Law Mortgage Debenture, the German Share Pledge Agreement and any document required to be delivered to the Agent under paragraph 13 of Part II of Schedule 2 (Conditions Precedent) together with any other any document entered into by any Obligor creating or expressed to create any Security over all or any part of its assets in respect of the obligations of any of the Obligors under any of the Finance Documents.

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

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

the proposed Transfer Date specified in the relevant Assignment Agreement or Transfer Certificate; and

the date on which the Agent executes the relevant Assignment Agreement or Transfer Certificate.

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

**"UK Acquisition Company"** means Genesco (UK) Limited (Reg. No. 7667223).

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

**"Utilisation"** means a Loan.

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

**"Utilisation Request"** means a notice substantially in the form set out in Part 1 of Schedule 3 (Requests).

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

**"Working Capital Facility"** means the working capital facilities provided by the Working Capital Lender to various members of the Group pursuant to the terms of the Working Capital Facility Letter.

**"Working Capital Facility Letter"** means the working capital facility letter between each of the Parent, Holdings and the Company and Lloyds Bank plc dated on or around the Fourth Restatement Date or any other facility letter entered into from time to time between members of the Group and the Working Capital Lender setting out the terms on which working capital facilities (including any overdraft facility) are available to the Group.

**"Working Capital Lender"** means Lloyds Bank plc (or another member of the LBG Group) as provider of the Working Capital Facility.

## **Construction**

Unless a contrary indication appears, a reference in this Agreement to:

the **"Agent"**, the **"Arranger"**, any **"Finance Party"**, any **"Lender"**, any **"Obligor"**, any **"Party"**, any **"Secured Party"**, the **"Security Trustee"** or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Finance Documents and, in the case of the Security Trustee, any person for the time being appointed as Security Trustee or Security Trustees in accordance with the Finance Documents;

a document in **"agreed form"** is a document which is previously agreed in writing by or on behalf of the Parent and the Agent or, if not so agreed, is in the form specified by the Agent;

**"assets"** includes present and future properties, revenues and rights of every description;

a **"Finance Document"** or a **"Transaction Document"** or any other agreement or instrument is a reference to that Finance Document or Transaction Document or other agreement or instrument as amended or novated (however fundamentally) and includes (without limiting the generality of the foregoing) any variation, increase, extension or addition of or to any facility or amount made available under any such document or any variation of the purposes for which such facility or amount may be available from time to time;

**"guarantee"** means (other than in Clause 19 (Guarantee and Indemnity) any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;

**"indebtedness"** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;

a **"person"** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);

a **"regulation"** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but, if not having the force of law, being one with which it is customary to comply) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;

a provision of law is a reference to that provision as amended or re-enacted;

a time of day is a reference to London time; and

the **"date of this Agreement"** shall be a reference to 10 November 2010.

Section, Clause and Schedule headings are for ease of reference only.

Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.

A Default (other than an Event of Default) is "continuing" if it has not been remedied or waived and an Event of Default is "continuing" if it has not been remedied or waived.

## **Third party rights**

Unless expressly provided to the contrary in a Finance Document, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Agreement.

Notwithstanding any term of any Finance Document, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.

## SECTION 2

### THE FACILITIES

#### THE FACILITIES

##### The Facilities

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

- a Sterling term loan facility in an aggregate amount equal to the Total Facility A Commitments which will be made available to the Parent; and
- a Sterling term loan facility in an aggregate amount equal to the Total Facility B Commitments which shall be made available to the Company;
- a Sterling revolving loan facility in an aggregate amount equal to the Total Facility C Commitments which shall be made available to the Company; and
- a Euro revolving loan facility in an aggregate amount equal to the Total Facility D Commitments which shall be made available to Schuh Ireland and Schuh Germany.

##### Increase

The Parent may by giving prior notice to the Agent by no later than the date falling 5 Business Days after the effective date of a cancellation of:

the Available Commitments of a Defaulting Lender in accordance with Clause 7.5 (Right of cancellation in relation to a Defaulting Lender); or  
the Commitments of a Lender in accordance with Clause 7.1 (Illegality),

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

the increased Commitments will be assumed by one or more Eligible Institutions (each an "**Increase Lender**") and each of which confirms its willingness to assume and does assume all the obligations of a Lender corresponding to that part of the increased Commitments which it is to assume, as if it had been an Original Lender;

each of the Obligors and any Increase Lender shall assume obligations towards one another and/or acquire rights against one another as the Obligors and the Increase Lender would have assumed and/or acquired had the Increase Lender been an Original Lender;

each Increase Lender shall become a Party as a "Lender" and any Increase Lender and each of the other Finance Parties shall assume obligations towards one another and acquire rights against one another as that Increase Lender and those Finance Parties would have assumed and/or acquired had the Increase Lender been an Original Lender;

the Commitments of the other Lenders shall continue in full force and effect; and

any increase in the Commitments relating to a Facility shall take effect on the date specified by the Parent in the notice referred to above or any later date on which the conditions set out in paragraph (b) below are satisfied.

An increase in the Commitments relating to a Facility will only be effective on:

the execution by the Agent of an Increase Confirmation from the relevant Increase Lender promptly on receipt on such Increase Confirmation; and

in relation to an Increase Lender which is not a Lender immediately prior to the relevant increase:

the Increase Lender entering into any intercreditor documentation required by the Agent and the Lenders (acting reasonably); and

the performance by the Agent of all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the assumption of the increased Commitments by that

Increase Lender, the completion of which the Agent shall promptly notify to the Parent and the Increase Lender.

Each Increase Lender, by executing the Increase Confirmation, confirms (for the avoidance of doubt) that the Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the increase becomes effective.

Unless the Agent otherwise agrees or the increased Commitment is assumed by an existing Lender, the Parent shall, on the date upon which the increase takes effect, pay to the Agent (for its own account) a fee of £5,000 and the Parent shall promptly on demand pay the Agent and the Security Trustee the amount of all costs and expenses (including legal fees) reasonably incurred by either of them and, in the case of the Security Trustee, by any Receiver or Delegate in connection with any increase in Commitments under this Clause 2.2.

The Parent may pay to the Increase Lender a fee in the amount and at the times agreed between the Parent and the Increase Lender in a Fee Letter.

Clause 25.4 (Limitation of responsibility of Existing Lenders) shall apply mutatis mutandis in this Clause 2.2 in relation to an Increase Lender as if references in that Clause to:

an "**Existing Lender**" were references to all the Lenders immediately prior to the relevant increase;

the "**New Lender**" were references to that "Increase Lender"; and

a "**re-transfer**" and "**re-assignment**" were references to respectively a "**transfer**" and "**assignment**".

### **Finance Parties' rights and obligations**

The obligations of each Finance Party under the Finance Documents are several. Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.

The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from an Obligor shall be a separate and independent debt in respect of which a Finance Party shall be entitled to enforce its rights in accordance with paragraph (c) below. The rights of each Finance Party include any debt owing to that Finance Party under the Finance Documents and, for the avoidance of doubt, any part of a Loan or any other amount owed by an Obligor which relates to a Finance Party's participation in a Facility or its role under a Finance Document (including any such amount payable to the Agent on its behalf) is a debt owing to that Finance Party by that Obligor.

A Finance Party may, except as specifically provided in the Finance Documents, separately enforce its rights under or in connection with the Finance Documents.

### **Obligors' Agent**

Each Obligor (other than the Parent) by its execution of this Agreement or an Accession Letter irrevocably appoints the Parent (acting through one or more authorised signatories) to act on its behalf as its agent in relation to the Finance Documents and irrevocably authorises:

the Parent on its behalf to supply all information concerning itself contemplated by this Agreement to the Finance Parties and to give all notices and instructions (including, in the case of a Borrower, Utilisation Requests), to execute on its behalf any Accession Letter, to make such agreements and to effect the relevant amendments, supplements and variations capable of being given, made or effected by any Obligor notwithstanding that they may affect the Obligor, without further reference to or the consent of that Obligor; and

each Finance Party to give any notice, demand or other communication to that Obligor pursuant to the Finance Documents to the Parent,

and in each case the Obligor shall be bound as though the Obligor itself had given the notices and instructions (including, without limitation, any Utilisation Requests)

or executed or made the agreements or effected the amendments, supplements or variations, or received the relevant notice, demand or other communication.

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

Each German Obligor hereby authorises (*bevollmächtigt*) the Obligors' Agent to act on its behalf as its attorney (*Stellvertreter*). Each German Obligor hereby releases the Obligors' Agent from the restrictions pursuant to section 181 of the German Civil Code (*Bürgerliches Gesetzbuch*) for the purpose of acting on its behalf as attorney (*Stellvertreter*) in relation to the Finance Documents and to perform all actions provided for in paragraphs (a) and (b) above.

## **PURPOSE**

### **Purpose**

The Parent shall apply all amounts borrowed by it (either directly or which has been novated to be due by it) under Facility A towards the payment of certain sums due pursuant to or in connection with the Acquisition Agreement (including, without limitation, any amounts payable under any management incentive plan agreed thereunder), towards the refinance of certain facilities previously made available to it and certain of its Subsidiaries by any member of LBG Group and repay indebtedness due by the UK Acquisition Company to various of its former shareholders.

The Company shall apply all amounts borrowed by it under Facility B toward the financing of the acquisition of the Additional Livingston Property, a new sorter, restructuring costs and the conversion of existing warehouse premises to offices.

The Company shall apply all amounts borrowed by it under Facility C towards amounts payable under any management incentive plan agreed in respect of the Acquisition Agreement and for the general corporate purposes of that Borrower (excluding any Business Acquisition).

Each of Schuh Ireland and Schuh Germany shall apply all amounts borrowed by it under Facility D for the general corporate purpose of that Borrower (excluding any Business Acquisition).

### **Monitoring**

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

## **CONDITIONS OF UTILISATION**

### **Initial conditions precedent**

The Lenders will only be obliged to comply with Clause 5.4 (Lenders' participation) in relation to any Utilisation if on or before the Utilisation Date for that Utilisation, the Agent has received all of the documents and other evidence listed in Part I of Schedule 2 (Conditions precedent) in form and substance satisfactory to the Agent. The Agent shall notify the Parent and the Lenders promptly upon being so satisfied.

### **Further conditions precedent**

Subject to Clause 4.1 (Initial conditions precedent), the Lenders will only be obliged to comply with Clause 5.4 (Lenders' participation), if on the date of the Utilisation Request and on the proposed Utilisation Date:

in the case of a Rollover Loan, no Event of Default is continuing or would result from the proposed Loan and, in the case of any other Loan, no Default is continuing or would result from the proposed Utilisation; and

in relation to any Utilisation on the date of this Agreement, all the representations and warranties in Clause 20 (Representations) or, in relation to any other Utilisation, the Repeating Representations, to be made by each Obligor are true.

### **Maximum number of Utilisations**



A Borrower (or the Parent) may not deliver a Utilisation Request if as a result of the proposed Utilisation seven or more Term Loans would be outstanding, four or more Facility C Loans would be outstanding or seven or more Facility D Loans would be outstanding.

A Borrower (or the Parent) may not request that a Facility A Loan be divided if, as a result of the proposed division, three or more Facility A Loans would be outstanding.

The Company (or the Parent) may not request that a Facility B Loan be divided.

## SECTION 3

### UTILISATION

#### UTILISATION – LOANS

##### Delivery of a Utilisation Request

A Borrower (or the Parent on its behalf) may utilise a Facility by delivery to the Agent of a duly completed Utilisation Request not later than 10.00 a.m. one Business Day prior to the proposed Utilisation Date.

##### Completion of a Utilisation Request for Loans

Each Utilisation Request for a Loan is irrevocable and will not be regarded as having been duly completed unless:

it identifies the Facility to be utilised;

the proposed Utilisation Date is a Business Day within the Availability Period applicable to that Facility;

the currency and amount of the Utilisation comply with Clause 5.3 (Currency and amount); and

the proposed Interest Period complies with Clause 11 (Interest Periods).

Multiple Utilisations may be requested in a Utilisation Request where the proposed Utilisation Date is the date of this Agreement. Only one Utilisation may be requested in each subsequent Utilisation Request.

##### Currency and amount

The currency specified in a Utilisation Request must be Sterling in respect of a Term Loan or Facility C or Euro in respect of Facility D.

The amount of the proposed Utilisation must be:

[Not restated];

[Not restated];

[Not restated];

a minimum amount of £500,000 (or, if less, the Available Facility) during the Availability Period in respect of Facility C; or

a minimum amount of €500,000 (or, if less, the Available Facility) during the Availability Period in respect of Facility D.

##### Lenders' participation

If the conditions set out in this Agreement have been met and subject to clause 6.2 (Repayment of Facility C Loans) and clause 6.3 (Repayment of Facility D Loans), each Lender shall make its participation in each Loan available by the Utilisation Date through its Facility Office.

The amount of each Lender's participation in each Loan will be equal to the proportion borne by its Available Commitment to the Available Facility immediately prior to making the Loan.

The Agent shall notify each Lender of the amount of each Loan, the amount of its participation in that Loan and, in the case of a Revolving Loan and if different, the amount of that participation to be made available in accordance with Clause 31.1 (Payments to the Agent), in each case by not later than 12.00 pm one Business Day prior to the proposed Utilisation Date.

##### Limitations on Utilisations

A Term Facility or a Revolving Facility may only be utilised in accordance with the terms of this Agreement.

##### Cancellation of Commitment

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

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

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

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

#### **Clean down**

The Parent shall ensure that:

the amount outstanding under the Revolving Facilities in excess of £17,500,000 (calculated by notionally converting any amounts drawn under Facility D into Sterling at the Agent's Spot Rate of Exchange on the relevant date and net of any cancellation of the Available Facility in respect of Facility C); PLUS

the amount outstanding under the Working Capital Facility Letter; LESS

any amount of cash (other than cash held in a Holding Account or Mandatory Prepayment Account) held by wholly-owned members of the Group,

(as confirmed in a certificate signed by a director of the Parent provided to the Agent within 15 Business Days after the end of each Financial Year) shall not exceed zero for a period of not less than 10 successive days in each of its Financial Years. Not less than 9 months shall elapse between two such periods.

## SECTION 4

### REPAYMENT, PREPAYMENT AND CANCELLATION

#### REPAYMENT

##### Repayment of Term Loans

The Borrowers shall repay the Facility A Loans in instalments by repaying on each Facility A Repayment Date the amount set out opposite that Facility A Repayment Date below:

Facility A Repayment Date	Repayment Instalment (£)
29 April 2017	1,000,000

The Borrowers shall repay the Facility B Loans in instalments by repaying on each Facility B Repayment Date the amount set out opposite that Facility B Repayment Date below:

Facility B Repayment Date	Repayment Instalment (£)
29 April 2017	312,500
29 July 2017	312,500
29 October 2017	312,500
29 January 2018	312,500
29 April 2018	312,500
29 July 2018	312,500
29 October 2018	312,500
29 January 2019	312,500
29 April 2019	312,500
29 July 2019	312,500
29 September 2019	6,250,000

The Borrowers may not reborrow any part of a Term Facility which is repaid.

##### Repayment of Facility C Loans

Each Borrower which has drawn a Facility C Loan shall repay that Loan on the last day of its Interest Period.

Without prejudice to each Borrower's obligation under paragraph (a) above, if:

one or more Facility C Loans are to be made available to a Borrower:

on the same day that a maturing Facility C Loan is due to be repaid by that Borrower; and

in whole or in part for the purpose of refinancing the maturing Facility C Loan; and

the proportion borne by each Lender's participation in the maturing Facility C Loan to the amount of that maturing Facility C Loan is the same as the proportion borne by that Lender's participation in the new Facility C Loans to the aggregate amount of those new Facility C Loans,



the aggregate amount of the new Facility C Loans shall, unless the Parent notifies the Agent to the contrary in the relevant Utilisation Request, be treated as if applied in or towards repayment of the maturing Facility C Loan so that:

if the amount of the maturing Facility C Loan exceeds the aggregate amount of the new Facility C Loans;

the relevant Borrower will only be required to make a payment under Clause 31.1 (Payments to the Agent) in an amount in the relevant currency equal to that excess; and

each Lender's participation in the new Facility C Loans shall be treated as having been made available and applied by the Borrower in or towards repayment of that Lender's participation in the maturing Facility C Loan and that Lender will not be required to make a payment under Clause 31.1 (Payments to the Agent) in respect of its participation in the new Facility C Loans; and

if the amount of the maturing Facility C Loan is equal to or less than the aggregate amount of the new Facility C Loans:

the relevant Borrower will not be required to make a payment under Clause 31.1 (Payments to the Agent); and

each Lender will be required to make a payment under Clause 31.1 (Payments to the Agent) in respect of its participation in the new Facility C Loans only to the extent that its participation in the new Facility C Loans exceeds that Lender's participation in the maturing Facility C Loan and the remainder of that Lender's participation in the new Facility C Loans shall be treated as having been made available and applied by the Borrower in or towards repayment of that Lender's participation in the maturing Facility C Loan.

### **Repayment of Facility D Loans**

Each Borrower which has drawn a Facility D Loan shall repay that Loan on the last day of its Interest Period.

Without prejudice to each Borrower's obligation under paragraph (a) above, if:

one or more Facility D Loans are to be made available to a Borrower:

on the same day that a maturing Facility D Loan is due to be repaid by that Borrower; and

in whole or in part for the purpose of refinancing the maturing Facility D Loan; and

the proportion borne by each Lender's participation in the maturing Facility D Loan to the amount of that maturing Facility D Loan is the same as the proportion borne by that Lender's participation in the new Facility D Loans to the aggregate amount of those new Facility D Loans,

the aggregate amount of the new Facility D Loans shall, unless the Parent notifies the Agent to the contrary in the relevant Utilisation Request, be treated as if applied in or towards repayment of the maturing Facility D Loan so that:

if the amount of the maturing Facility D Loan exceeds the aggregate amount of the new Facility D Loans;

the relevant Borrower will only be required to make a payment under Clause 31.1 (Payments to the Agent) in an amount in the relevant currency equal to that excess; and

each Lender's participation in the new Facility D Loans shall be treated as having been made available and applied by the Borrower in or towards repayment of that Lender's participation in the maturing Facility D Loan and that Lender will not be required to make a payment under Clause 31.1 (Payments to the Agent) in respect of its participation in the new Facility D Loans; and

if the amount of the maturing Facility D Loan is equal to or less than the aggregate amount of the new Facility D Loans:

the relevant Borrower will not be required to make a payment under Clause 31.1 (Payments to the Agent); and

each Lender will be required to make a payment under Clause 31.1 (Payments to the Agent) in respect of its participation in the new Facility D Loans only to the extent that its participation in the new Facility D Loans exceeds that Lender's participation in the maturing Facility D Loan and the remainder of that Lender's participation in the new Facility D Loans shall be treated as having been made available and

applied by the Borrower in or towards repayment of that Lender's participation in the maturing Facility D Loan.

#### **Effect of cancellation and prepayment on scheduled repayments and reductions of Term Loans**

If the Parent cancels the whole or any part of the Facility A Commitments in accordance with Clause 7.5 (Right of cancellation and repayment in relation to a single Lender) or if the Facility A Commitment of any Lender is reduced under Clause 7.1 (Illegality) then the amount of the Facility A Repayment Instalment for each Facility A Repayment Date falling after that cancellation will reduce pro rata by the amount cancelled.

If any of the Facility A Loans are prepaid in accordance with Clause 7.5 (Right of cancellation and repayment in relation to a single Lender) or Clause 7.1 (Illegality) then the amount of the Facility A Repayment Instalment for each Facility A Repayment Date falling after that prepayment will reduce pro rata by the amount of the Facility A Loan.

If any of the Facility A Loans are prepaid in accordance with Clause 7.3 (Voluntary prepayment of Term Loans) or Clause 8.3 (Application of mandatory prepayments) then the amount of the Facility A Repayment Instalment for each Facility A Repayment Date falling after that prepayment will reduce in inverse order of maturity by the amount of the Facility A Loan prepaid.

If the Parent cancels the whole or any part of the Facility B Commitments in accordance with Clause 7.5 (Right of cancellation and repayment in relation to a single Lender) or if the Facility B Commitment of any Lender is reduced under Clause 7.1 (Illegality) then the amount of the Facility B Repayment Instalment for each Facility B Repayment Date falling after that cancellation will reduce pro rata by the amount cancelled.

If any of the Facility B Loans are prepaid in accordance with Clause 7.5 (Right of cancellation and repayment in relation to a single Lender) or Clause 7.1 (Illegality) then the amount of the Facility B Repayment Instalment for each Facility B Repayment Date falling after that prepayment will reduce pro rata by the amount of the Facility B Loan.

Subject to the terms of paragraph (d) below, if any of the Facility B Loans are prepaid in accordance with Clause 7.3 (Voluntary prepayment of Term Loans) or Clause 8.3 (Application of mandatory prepayments) then the amount of the Facility B Repayment Instalment for each Facility B Repayment Date falling after that prepayment will reduce in inverse order of maturity by the amount of the Facility B Loan prepaid.

If any of the Facility B Loans are prepaid pursuant to the terms of Clause 7.3(a), Clause 8.2(b) or Clause 8.3(c)(ii) then the amount prepaid will be applied against the Facility B Repayment Instalments falling after that prepayment in inverse order of maturity.

#### **ILLEGALITY, VOLUNTARY PREPAYMENT AND CANCELLATION**

##### **Illegality**

If in any applicable jurisdiction, it becomes unlawful for a Lender to perform any of its obligations as contemplated by this Agreement or to fund, issue or maintain its participation in any Utilisation:

that Lender shall promptly notify the Agent upon becoming aware of that event;

upon the Agent notifying the Parent, each Available Commitment of that Lender will be immediately cancelled; and

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

##### **Voluntary cancellation**

Subject to paragraph (b) below, the Parent may, if it gives the Agent not less than 5 Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, cancel the whole or any part (being a minimum amount of £250,000 and an integral multiple of £250,000) of an Available Facility denominated in Sterling, and cancel the whole or any part (being a minimal amount of €200,000 and an integral multiple of €200,000) of the Available Facility in respect of Facility D. Any cancellation under this Clause 7.2 shall reduce the Commitments of the Lenders rateably under that Facility.

The Parent shall not cancel any part of the Available Commitment with respect to Facility B unless there is no Available Commitment with respect to Facility A. The Parent shall not cancel any part of the Available Commitment with respect to a Revolving Facility unless there is no Available Commitment with respect to Facility A or Facility B.

### **Voluntary prepayment of Term Loans**

Subject to paragraph (b) below, a Borrower to which a Term Loan has been made may, if it gives the Agent not less than 5 Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, prepay the whole or any part of that Term Loan (but, if in part, being an amount that reduces the amount of that Term Loan by a minimum amount of £250,000 and an integral multiple of £50,000).

A Term Loan may only be prepaid after the last day of the Availability Period for the applicable Facility (or, if earlier, the day on which the applicable Available Facility is zero).

A Facility B Loan may only be prepaid if the whole of the Facility A Loans have been prepaid or will be prepaid at the same time. A prepayment of the Facility A Loans shall be applied to reduce the Facility A Repayment Instalments in inverse order of maturity and a prepayment of the Facility B Loans shall be applied to reduce the Facility B Repayment Instalments in inverse order of maturity.

### **Voluntary Prepayment of Revolving Loans**

The Borrower to which a Revolving Loan has been made may, if it gives the Agent not less than 5 Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, prepay the whole or any part of a Revolving Loan (but if in part being an amount that reduces the amount of a Facility C Loan by a minimum amount of £250,000 or a Facility D Loan by a minimum amount of £200,000).

### **Right of cancellation and repayment in relation to a single Lender**

If:

any sum payable to any Lender by an Obligor is required to be increased under paragraph (i) of Clause 14.2 (Tax gross-up); or

any Lender claims indemnification from the Parent or an Obligor under Clause 14.3 (Tax indemnity) or Clause 15.1 (Increased costs),

the Parent may, whilst the circumstance giving rise to the requirement for indemnification continues, give the Agent notice of cancellation of the Commitment of that Lender and its intention to procure the repayment of that Lender's participation in the Utilisations.

On receipt of a notice referred to in paragraph (a) above in relation to a Lender, the Commitment of that Lender shall immediately be reduced to zero.

On the last day of each Interest Period which ends after the Parent has given notice under paragraph (a) above in relation to a Lender (or, if earlier, the date specified by the Parent in that notice), each Borrower to which a Utilisation is outstanding shall repay that Lender's participation in that Utilisation together with all interest and other amounts accrued under the Finance Documents.

### **Right of cancellation in relation to a Defaulting Lender**

If any Lender becomes a Defaulting Lender, the Parent may, at any time whilst the Lender continues to be a Defaulting Lender, give the Agent 5 Business Days' notice of cancellation of each Available Commitment of that Lender.

On the notice referred to in paragraph (a) above becoming effective, each Available Commitment of the Defaulting Lender shall immediately be reduced to zero.

The Agent shall as soon as practicable after receipt of a notice referred to in paragraph (a) above, notify all the Lenders.

### **MANDATORY PREPAYMENT**

#### **Exit**

Upon the occurrence of:

any Flotation;

a Change of Control;

a Trade Sale; or

a Senior Management Event,



the Facilities will be cancelled and all outstanding Utilisations, together with accrued interest, and all other amounts accrued under the Finance Documents, shall become immediately due and payable.

### **Disposal and Insurance Proceeds**

For the purposes of this Clause 8.2, Clause 8.3 (Application of mandatory prepayments) and Clause 8.4 (Mandatory Prepayment Accounts and Holding Accounts):

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

**"Disposal Proceeds"** means the consideration receivable by any member of the Group (including any amount receivable in repayment of intercompany debt) for any Disposal made by any member of the Group except for Excluded Disposal Proceeds and after deducting:

any reasonable expenses which are incurred by any member of the Group with respect to that Disposal to persons who are not members of the Group; and

any Tax incurred and required to be paid by the seller in connection with that Disposal (as reasonably determined by the seller, on the basis of existing rates and taking account of any available credit, deduction or allowance).

**"Excluded Disposal Proceeds"** means any Disposal Proceeds which:

are applied in replacement of the assets in respect of which the relevant Disposal was made as soon as possible (but in any event within 90 days or, in the case of a disposal of land or buildings, within 12 months or, in any case, such longer period as the Majority Lenders may agree) after receipt; or

do not exceed £1,000,000 (or its equivalent in other currency or currencies).

**"Excluded Insurance Proceeds"** means any proceeds of an insurance claim which the Parent notifies the Agent are, or are to be, applied:

to meet a third party claim;

to compensate for a loss to be covered under any business interruption insurance policies; or

to the replacement, reinstatement and/or repair of the assets or otherwise in amelioration of the loss in respect of which the relevant insurance claim was made,

as soon as possible (but in any event within 120 days or, in the case of proceeds in relation to any land or buildings, within 12 months or, in any case, such longer period as the Majority Lenders may agree) after receipt and provided that the amount of such proceeds will cease to fall within this definition if they are not so applied within such period.

**"Insurance Proceeds"** means the proceeds of any insurance claim received by any member of the Group except for Excluded Insurance Proceeds and after deducting any reasonable expenses in relation to that claim which are incurred by any member of the Group to persons who are not members of the Group.

The Parent shall ensure that the Borrowers prepay Utilisations in the following amounts at the times and in the order of application contemplated by Clause 8.3 (Application of mandatory prepayments):

the amount of Disposal Proceeds; and

the amount of Insurance Proceeds.

## **Application of mandatory prepayments**

A prepayment made under Clause 8.2 (Disposal and Insurance Proceeds) shall be applied in prepayment of Loans as contemplated in paragraphs (b) to (e) inclusive below.

Unless the Parent makes an election under paragraph (d) below, the Borrowers shall prepay Loans promptly upon receipt of the relevant amount of Disposal Proceeds or Insurance Proceeds.

A prepayment under Clause 8.2 (Disposal and Insurance) shall prepay the Loans as follows:

firstly, in reducing the Facility A Repayment Instalment for each Facility A Repayment Date falling after the date of prepayment in the manner contemplated by paragraph (d) of Clause 6.44 (Effect of cancellation and prepayment on scheduled repayment and reductions of Term Loans);

secondly, once Facility A has been repaid in full, in reducing the Facility B Repayment Instalment for each Facility B Repayment Date falling after the date of prepayment in the manner contemplated by paragraph (e) of Clause 6.4 (Effect of cancellation and prepayment on scheduled repayments and reductions of Term Loans);

thirdly, once all Term Facilities have been repaid in full, in pro rata prepayment of any Facility D Loans; and

fourthly, once Facility D has been repaid in full, in pro rata prepayment of any Facility C Loans.

Subject to paragraph (e) below, the Parent may elect that any prepayment under Clause 8.2 (Disposal and Insurance Proceeds) be applied in prepayment of a Loan on the last day of the Interest Period relating to that Loan. If the Parent makes that election then a proportion of the Loan equal to the amount of the relevant prepayment will be due and payable on the last day of its Interest Period.

If the Parent has made an election under paragraph (d) above but a Default has occurred and is continuing, that election shall no longer apply and a proportion of the Loan in respect of which the election was made equal to the amount of the relevant prepayment shall be immediately due and payable (unless the Majority Lenders otherwise agree in writing).

## **Mandatory Prepayment Accounts and Holding Accounts**

The Parent shall ensure that:

Disposal Proceeds and Insurance Proceeds in respect of which the Parent has made an election under paragraph (d) of Clause 8.3 (Application of mandatory prepayments) are paid into a Mandatory Prepayment Account as soon as reasonably practicable after receipt by a member of the Group; and

any amounts which represent Excluded Insurance Proceeds and/or Excluded Disposal Proceeds which are to be applied for the specific purpose with the specific periods (as set out in the definitions of Excluded Insurance Proceeds and/or Excluded Disposal Proceeds) are paid into a Holding Account as soon as reasonably practicable after receipt by a member of the Group.

The Parent and each Borrower irrevocably authorise the Agent to apply:

amounts credited to the Mandatory Prepayment Account; and

amounts credited to the Holding Account which have not been applied within any applicable periods detailed in the definitions of Excluded Insurance Proceeds and/or Excluded Disposal Proceeds,

to pay amounts due and payable under Clause 8.3 (Application of mandatory prepayments) and otherwise under the Finance Documents. The Parent and each Borrower further irrevocably authorise the Agent to so apply amounts credited to the Holding Account whether or not the periods detailed in the definitions of Excluded Insurance Proceeds and/or Excluded Disposal Proceeds have elapsed since receipt of those proceeds if a Default has occurred and is continuing. The Parent and each Borrower also irrevocably authorise the Agent to transfer any amounts credited to the Holding Account referred to in this paragraph (b) to the Mandatory Prepayment Account pending payment of amounts due and payable under the Finance Documents (but if all such amounts have been paid any such amounts remaining credited to the Mandatory Prepayment Account may (unless a Default has occurred) be transferred back to the Holding Account.

Each Finance Party with which a Mandatory Prepayment Account or Holding Account is held acknowledges and agrees that (i) interest shall accrue at normal commercial rates on amounts credited to those accounts and that the account holder shall be entitled to receive such interest (which shall be paid in accordance with the mandate relating to such account) unless a Default is continuing and (ii) each such account is subject to the Transaction Security.

#### **Excluded proceeds**

Where Excluded Disposal Proceeds and Excluded Insurance Proceeds include amounts which are intended to be used for a specific purpose within a specified period (as set out in the relevant definition of Excluded Disposal Proceeds or Excluded Insurance Proceeds), the Parent shall ensure that those amounts are used for that purpose and, if requested to do so by the Agent, shall promptly deliver a certificate to the Agent at the time of such application and at the end of such period confirming the amount (if any) which has been so applied within the requisite time periods provided for in the relevant definition.

#### **RESTRICTIONS**

##### **Notices of Cancellation or Prepayment**

Any notice of cancellation, prepayment, authorisation or other election given by any Party under Clause 7 (Illegality, voluntary prepayment and cancellation), paragraph (d) of Clause 8.3 (Application of mandatory prepayments) or Clause 8.4 (Mandatory prepayment Accounts and Holding Accounts) shall (subject to the terms of those Clauses) be irrevocable and, unless a contrary indication appears in this Agreement, any such notice shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.

##### **Interest and other amounts**

Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and Break Costs.

##### **No reborrowing of Term Facilities**

No Borrower may reborrow any part of a Term Facility which is prepaid.

##### **Re-borrowing of Revolving Facilities**

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

##### **Prepayment in accordance with Agreement**

No Borrower shall repay or prepay all or any part of the Utilisations or cancel all or any part of the Commitments except at the times and in the manner expressly provided for in this Agreement.

##### **No reinstatement of Commitments**

No amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.

##### **Agent's receipt of Notices**

If the Agent receives a notice under Clause 7 (Illegality, voluntary prepayment and cancellation) or an election under paragraph (d) of Clause 8.3 (Application of mandatory prepayments) it shall promptly forward a copy of that notice or election to either the Parent or the affected Lender, as appropriate.

##### **Prepayment elections**

The Agent shall notify the Lenders as soon as possible of any proposed prepayment of any Loan under Clause 7.3 (Voluntary prepayment of Term Loans), Clause 7.4 (Voluntary Prepayment of Revolving Loans) or Clause 8.2 (Disposal and Insurance Proceeds).

## SECTION 5

### COSTS OF UTILISATION

#### INTEREST

##### Calculation of interest

The rate of interest on each Loan for each Interest Period is the percentage rate per annum which is the aggregate of the applicable: Margin; and  
(in the case of a Term Loan or a Facility C Loan) LIBOR or (in the case of a Facility D Loan) EURIBOR.

##### Payment of interest

The Borrower to which a Loan has been made shall pay accrued interest on that Loan on the last day of each Interest Period (and, if the Interest Period is longer than three Months, on the dates falling at three Monthly intervals after the first day of the Interest Period).

##### Default interest

If an Obligor fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to paragraph (b) below, is two times the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a Loan in the currency of the overdue amount for successive Interest Periods, each of a duration selected by the Agent (acting reasonably). Any interest accruing under this Clause 10.3 shall be immediately payable by the Obligor on demand by the Agent.

If any overdue amount consists of all or part of a Loan which became due on a day which was not the last day of an Interest Period relating to that Loan:

the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period relating to that Loan; and

the rate of interest applying to the overdue amount during that first Interest Period shall be two times the rate which would have applied if the overdue amount had not become due.

Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.

##### Notification of rates of interest

The Agent shall promptly notify the Lenders and the relevant Borrower (or the Parent) of the determination of a rate of interest under this Agreement.

The Agent shall promptly notify the relevant Borrower (or the Parent) of each Funding Rate relating to a Loan.

#### INTEREST PERIODS

##### Selection of Interest Periods

A Borrower (or the Parent on behalf of a Borrower) may select an Interest Period for a Loan in the Utilisation Request for that Loan or (if the Loan is a Term Loan and has already been borrowed) in a Selection Notice.

Each Selection Notice for a Term Loan is irrevocable and must be delivered to the Agent by the Borrower (or the Parent on behalf of the Borrower) to which that Term Loan was made not later than 10.00 a.m. on the Business Day prior to the last day of the then current Interest Period.

If a Borrower (or the Parent) fails to deliver a Selection Notice to the Agent in accordance with paragraph (b) above, the relevant Interest Period will, subject to Clause 11.2 (Changes to Interest Periods), be three Months.

Subject to this Clause 11, a Borrower (or the Parent) may select an Interest Period of three or six Months or any other period agreed between the Parent and the Agent (acting on the instructions of all the Lenders). In addition, a Borrower (or the Parent on its behalf) may select an Interest Period of (in relation to Facility A or Facility B) a period of less than three Months, if necessary to ensure that:

there are Facility A Loans (with an aggregate amount equal to or greater than a Facility A Repayment Instalment) which have an Interest Period ending on a Facility A Repayment Date for the Borrowers to make the relevant Facility A Repayment Instalment due on that date; or

there are Facility B Loans (with an aggregate amount equal to or greater than a Facility B Repayment Instalment) which have an Interest Period ending on a Facility B Repayment Date for the Borrowers to make the relevant Facility B Repayment Instalment due on that date.

An Interest Period for a Loan shall not extend beyond the Termination Date applicable to its Facility.

Each Interest Period for a Loan shall start on the Utilisation Date or (if already made) on the last day of its preceding Interest Period.

A Revolving Loan has one Interest Period only.

### **Changes to Interest Periods**

Prior to determining the interest rate for a Facility A Loan or a Facility B Loan, the Agent may shorten an Interest Period for any Facility A Loan or Facility B Loan (as applicable) to ensure there are sufficient Facility A Loans (with an aggregate amount equal to or greater than the relevant Facility A Repayment Instalment) or Facility B Loans (with an aggregate amount equal to or greater than the relevant Facility B Repayment Instalment) (as applicable) which have an Interest Period ending on a Facility A Repayment Date or Facility B Repayment Date (as applicable) for the Borrowers to make the relevant Facility A Repayment Instalment or Facility B Repayment Instalment due on that date.

If the Agent makes any of the changes to an Interest Period referred to in this Clause 11.2, it shall promptly notify the Parent and the Lenders.

### **Non-Business Days**

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

### **Consolidation and division of Facility A Loans**

Subject to paragraph (b) below, if two or more Interest Periods:

relate to Facility A Loans;

end on the same date; and

are made to the same Borrower,

those Facility A Loans will, unless the Parent specifies to the contrary in the Selection Notice for the next Interest Period, be consolidated into, and treated as, a single Facility A Loan on the last day of the Interest Period.

Subject to Clause 4.3 (Maximum number of Utilisations) and Clause 5.3 (Currency and amount), if the Parent requests in a Selection Notice that a Facility A Loan be divided into two or more Facility A Loans, that Facility A Loan will, on the last day of its Interest Period, be so divided with amounts specified in that Selection Notice, having an aggregate amount equal to the amount of the Facility A Loan immediately before its division.

### **CHANGES TO THE CALCULATION OF INTEREST**

#### **Unavailability of Screen Rate**

*Interpolated Screen Rate:* If no Screen Rate is available for LIBOR or, if applicable, EURIBOR for the Interest Period of a Loan, the applicable LIBOR or EURIBOR shall be the Interpolated Screen Rate for a period equal in length to the Interest Period of that Loan.

*Reference Bank Rate:* If no Screen Rate is available for LIBOR or, if applicable, EURIBOR for:

the relevant currency of a Loan; or

the Interest Period of a Loan and it is not possible to calculate the Interpolated Screen Rate,

the applicable LIBOR or, if applicable, EURIBOR shall be the Reference Bank Rate as of 11.00 a.m. on the Quotation Date for the relevant currency of a Loan and for a period equal in length to the Interest Period of that Loan.

*Cost of funds:* If paragraph (b) above applies but no Reference Bank Rate is available for the relevant currency of a Loan or the relevant Interest Period there shall be no LIBOR or, if applicable, EURIBOR for that Loan and Clause 12.4 (Cost of funds) shall apply to that Loan for that Interest Period.

#### **Calculation of Reference Bank Rate**

Subject to paragraph (b) below, if LIBOR or, if applicable, EURIBOR is to be determined on the basis of a Reference Bank Rate but a Reference Bank does not supply a quotation by 11.00 a.m. on the Quotation Date, the Reference Bank Rate shall be calculated on the basis of the quotations of the remaining Reference Banks.

If at or about noon on the Quotation Day, none or only one of the Reference Banks supplies a quotation, there shall be no Reference Bank Rate for the relevant Interest Period.

#### **Market disruption**

If before close of business in London on the Quotation Day for the relevant Interest Period the Agent receives notifications from a Lender or Lenders (whose participations in a Loan exceed 25% per cent. of that Loan) that the cost to it of funding its participation in that Loan from whatever source it may reasonably select would be in excess of LIBOR or EURIBOR then Clause 12.4 (Cost of funds) shall apply to that Loan for the relevant Interest Period.

#### **Cost of funds**

If this Clause 12.4 applies, the rate of interest on the relevant Loan for the relevant Interest Period shall be the percentage rate per annum which is the sum of:

the Margin; and

the rate notified to the Agent by that Lender as soon as practicable and in any event within 1 Business Day of the first day of that Interest Period (or, if earlier, on the date falling 1 Business Day before the date on which interest is due to be paid in respect of that Interest Period), to be that which expresses as a percentage rate per annum the cost to the relevant Lender of funding its participation in that Loan from whatever source it may reasonably select.

If this Clause 12.4 applies and the Agent or the Parent so requires, the Agent and the Parent shall enter into negotiations (for a period of not more than thirty days) with a view to agreeing a substitute basis for determining the rate of interest.

Any alternative basis agreed pursuant to paragraph (b) above shall, with the prior consent of all the Lenders and the Parent, be binding on all Parties.

If this Clause 12.4 applies but any Lender does not supply a quotation by the time specified in paragraph (a)(ii) above the rate of interest shall be calculated on the basis of the quotations of the remaining Lenders.

#### **Break Costs**

Each Borrower shall, within three Business Days of demand by a Finance Party, pay to that Finance Party its Break Costs attributable to all or any part of a Loan or Unpaid Sum being paid by that Borrower on a day other than the last day of an Interest Period for that Loan or Unpaid Sum.

Each Lender shall, as soon as reasonably practicable after a demand by the Agent, provide a certificate confirming the amount of its Break Costs for any Interest Period in which they accrue.

#### **FEES**

##### **Arrangement fee**

The Parent shall pay to the Arranger an arrangement fee in the amount and at the times agreed in the Fee Letter.

##### **Agency fee**

The Parent shall pay to the Agent (for its own account) an agency fee in the amount and at the times agreed in the Fee Letter.

##### **Commitment fee**

The Parent shall pay to the Agent (for the account of each Lender) a fee computed at the rate of 40 per cent. per annum of the Margin of that Lender's Available Commitment under each Revolving Facility for the Availability Period applicable to such Revolving Facility.

The accrued commitment fee is payable on the last day of each successive period of three months which ends during the relevant Availability Period, on the last day of the Availability Period and, if cancelled in full, on the cancelled amount of the relevant Lender's Commitment at the time the cancellation is effective.

## SECTION 6

### ADDITIONAL PAYMENT OBLIGATIONS

#### TAX GROSS UP AND INDEMNITIES

##### Definitions

In this Agreement:

**"Irish Qualifying Lender"** means a Lender which is beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document and is:

- (a) a bank within the meaning of section 246 of the Irish Taxes Act which is carrying on a bona fide banking business in Ireland for the purposes of section 246(3)(a) of the Irish Taxes Act and whose Facility Office is located in Ireland; or
- (b)
  - (i) a body corporate that is resident for the purposes of tax in a member state of the European Communities (other than Ireland) or in a territory with which Ireland has an Irish Treaty that is in effect by virtue of section 826(1) of the Irish Taxes Act or in a territory with which Ireland has signed an Irish Treaty which will come into effect, once all the ratification procedures set out in section 826(1) of the Irish Taxes Act have been completed (residence for these purposes to be determined in accordance with the law of the territory of which the Lender claims to be resident) where that member state or territory imposes a tax that generally applies to interest receivable, in that member state or territory by companies from sources outside that member state or territory; or
  - (ii) a body corporate where interest payable in respect of an advance;
    - is exempted from the charge to income tax under a double taxation agreement having force of law under the procedures set out in section 826(1) of the Irish Taxes Act; or
    - would be exempted from the charge to Irish income tax under an Irish Treaty entered into on or before the payment date of that interest if that Irish Treaty had the force of law under the provisions set out in section 826(1) of the Irish Taxes Act at that date;
  - (iii) a United States of America ("**U.S.**") company, provided the U.S. company is incorporated in the U.S. and subject to U.S. tax on its worldwide income; or
  - (iv) a U.S. Limited Liability Company ("**LLC**"), provided the ultimate recipients of the interest would, if they were themselves lenders, be Irish Qualifying Lenders within paragraph (b)(i), (b)(ii) or (b)(iii) of this definition and the business conducted through the LLC is so structured for market reasons and not for tax avoidance purposes;provided in each case at (i), (ii), (iii) or (iv) the Lender is not carrying on a trade or business in Ireland through an agency or branch with which the interest payment is connected; or
- (c) an Irish Treaty Lender; or
- (d) a body corporate:
  - (i) which advances money in the ordinary course of a trade which includes the lending of money;



- (ii) in whose hands any interest payable in respect of monies so advanced is taken into account in computing the trading income of that company;
  - (iii) which has complied with all the provisions of section 246(5)(a) of the Irish Taxes Act, including making the appropriate notifications thereunder; and
  - (iv) whose Facility Office is located in Ireland; or
- (e) a qualifying company within the meaning of section 110 of the Irish Taxes Act and whose Facility Office is located in Ireland; or
- (f) an investment undertaking within the meaning of section 739B of the Irish Taxes Act and whose Facility Office is located in Ireland.

**"Irish Taxes Act"** means the Taxes Consolidation Act 1997, of Ireland.

**"Irish Treaty Lender"** means, subject to the completion of procedural formalities, a Lender which is treated as a resident of an Irish Treaty State for the purposes of a double taxation agreement and does not carry on a business in Ireland through a permanent establishment with which that Lender's participation in this Agreement is effectively connected.

**"Irish Treaty State"** means a jurisdiction which has a double taxation agreement with Ireland (an "Irish Treaty") which is in effect and makes provision for full exemption from tax imposed by Ireland on interest.

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

**"Qualifying Lender"** means an Irish Qualifying Lender or a UK Qualifying Lender, as the case may be.

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

a company resident in the United Kingdom for United Kingdom tax purposes;

a partnership each member of which is:

a company so resident in the United Kingdom; or

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

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

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

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

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

**"Treaty Lender"** means an Irish Treaty Lender or a UK Treaty Lender, as the case may be.

**"UK Qualifying Lender"** means:

a Lender (other than a Lender within sub-paragraph (ii) below) which is beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document and is:

a Lender:

which is a bank (as defined for the purpose of Section 879 of the ITA) making an advance under a Finance Document and is within the charge to United Kingdom corporation tax as respects any payment of interest made in respect of that advance or would be within such charge as respects such payment apart from Section 18A of the CTA; or

in respect of an advance made under a Finance Document by a person that was a bank (as defined for the purpose of Section 879 of the ITA) at the time that that advance was made and which is within the charge to United Kingdom corporation tax as respects any payments of interest made in respect of that advance; or

a Lender which is:

a company resident in the United Kingdom for United Kingdom tax purposes;

a partnership each member of which is:

a company so resident in the United Kingdom; or

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

a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of Section 19 of the CTA) of that company; or

a UK Treaty Lender; or

a Lender which is a building society (as defined for the purposes of section 880 of the ITA) making an advance under a Finance Document.

**"UK Treaty Lender"** means a Lender which:

is treated as a resident of a UK Treaty State for the purposes of the UK Treaty;

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

fulfils any other conditions which must be fulfilled under the double taxation agreement by residents of that UK Treaty State for such residents to obtain exemptions from United Kingdom taxation on interest, subject to the completion of procedural formalities.

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

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

#### **Tax gross-up**

Each Obligor shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.

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

If a Tax Deduction is required by law to be made by an Obligor, the amount of the payment due from that Obligor shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.

A payment shall not be increased under paragraph (c) above by reason of a Tax Deduction on account of Tax imposed by the United Kingdom, if on the date on which the payment falls due:

the payment could have been made to the relevant Lender without a Tax Deduction if the Lender had been a UK Qualifying Lender, but on that date that Lender is not or has ceased to be a UK Qualifying Lender other than as a result of any change after the date it became a Lender under this Agreement in (or in the interpretation, administration, or application of) any law or Treaty, or any published practice or published concession of any relevant taxing authority; or

the relevant Lender is a UK Qualifying Lender solely by virtue of paragraph (i)(B) of the definition of UK Qualifying Lender;

an officer of H.M. Revenue & Customs has given (and not revoked) a direction (a "Direction") under section 931 of the ITA (as that provision has effect on the date on which the relevant Lender became a Party) which relates to the payment and that Lender has received from that Obligor or the Parent a certified copy of that Direction; and

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

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

the relevant Lender has not given a Tax Confirmation to the Parent; and

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

the relevant Lender is a UK Treaty Lender and the Obligor making the payment is able to demonstrate that the payment could have been made to the Lender without the Tax Deduction had that Lender complied with its obligations under paragraph (h) below.

A payment shall not be increased under paragraph (c) above by reason of a Tax Deduction on account of Tax imposed by Ireland, if:

on the date on which the payment falls due, the payment could have been made to the relevant Lender without a Tax Deduction if the Lender had been an Irish Qualifying Lender, but on that date that Lender is not or has ceased to be an Irish Qualifying Lender other than as a result of any change after the date it became a Lender under this Agreement in (or in the interpretation, administration, or application of) any law or Irish Treaty or any published practice or published concession of any relevant taxing authority; or

the relevant Lender is an Irish Qualifying Lender solely by reason of being an Irish Treaty Lender and the Obligor making the payment is able to demonstrate that the payment could have been made to the Lender without the Tax Deduction had that Lender complied with its obligations under paragraph (h) below.

If an Obligor is required to make a Tax Deduction, that Obligor shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.

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

- (i) Subject to paragraph (ii) below, a Treaty Lender and each Obligor which makes a payment to which that Treaty Lender is entitled shall co-operate in completing

any procedural formalities necessary for that Obligor to obtain authorisation to make that payment without a Tax Deduction.

(ii) Nothing in paragraph (i) above shall require a Treaty Lender to:

register under the HMRC DT Treaty Passport scheme;

apply the HMRC DT Treaty Passport scheme to any Utilisation if it has so registered; or

file Treaty forms if it has included an indication to the effect that it wishes the HMRC DT Treaty Passport scheme to apply to this Agreement in accordance with paragraph (h) below or paragraph (a) of Clause 14.6 (HMRC DT Treaty Passport scheme confirmation),

and the Obligor making that payment has not complied with its obligations under paragraph (i) below or paragraph (b) of Clause 14.6 (HMRC DT Treaty Passport scheme confirmation).

### **Tax indemnity**

The Parent shall (within three Business Days of demand by the Agent) pay to a Protected Party an amount equal to the loss, liability or cost which that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Finance Document.

Paragraph (a) above shall not apply:

with respect to any Tax assessed on a Finance Party:

under the law of the jurisdiction in which that Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Finance Party is treated as resident for tax purposes; or

under the law of the jurisdiction in which that Finance Party's Facility Office is located in respect of amounts received or receivable in that jurisdiction,

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

to the extent a loss, liability or cost:

is compensated for by an increased payment under Clause 14.2 (Tax gross-up); or

would have been compensated for by an increased payment under Clause 14.2 (Tax gross-up) but was not so compensated solely because one of the exclusions in paragraph (d) or (e) of Clause 14.2 (Tax gross-up) applied.

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

A Protected Party shall, on receiving a payment from an Obligor under this Clause 14.3, notify the Agent.

### **Tax Credit**

If an Obligor makes a Tax Payment and the relevant Finance Party determines that:

a Tax Credit is attributable either to an increased payment of which that Tax Payment forms part or to that Tax Payment; and

that Finance Party has obtained, utilised and retained that Tax Credit,

the Finance Party shall pay an amount to the Obligor which that Finance Party determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been required to be made by the Obligor. Notwithstanding anything to the contrary, in no event shall any Finance Party be required to pay any amount to the Borrowers the payment of which would place such Finance Party in a less favourable net after tax position than such Finance Party would have been in if the Tax giving rise to the indemnity payments had never been paid.

## **Lender Status Confirmation**

Each Lender which becomes a Party to this Agreement after the date of this Agreement shall indicate, in the documentation which it executes on becoming a Party, and for the benefit of the Agent and without liability to any Obligor, which of the following categories it falls in:

not a UK Qualifying Lender;

a UK Qualifying Lender (other than a UK Treaty Lender); or

a UK Treaty Lender;

not an Irish Qualifying Lender;

an Irish Qualifying Lender (other than solely by reason of being an Irish Treaty Lender); or

an Irish Treaty Lender.

If such a Lender fails to indicate its status in accordance with this Clause 14.5 then that Lender shall be treated for the purposes of this Agreement as if it is not a Qualifying Lender until such time as it notifies the Agent which category applies (and the Agent, upon receipt of such notification, shall inform the Parent). For the avoidance of doubt, the documentation which a Lender executes on becoming a Party shall not be invalidated by any failure of a Lender to comply with this Clause 14.5.

Each Lender, upon request from a Borrower from time to time, shall as soon as reasonably practicable provide such information as may be required to enable the Borrower to comply with the provisions of sections 891A, 891E, 891F and 891G of the Irish Taxes Act (and any regulations made thereunder).

## **HMRC DT Treaty Passport scheme confirmation**

A New Lender or an Increase Lender that is a UK Treaty Lender that holds a passport under the HMRC DT Treaty Passport scheme, and which then wishes that scheme to apply to this Agreement, shall include an indication to that effect (for the benefit of the Agent and without liability to any Obligor) in the Transfer Certificate, Assignment Agreement or Increase Confirmation which it executes by including its scheme reference number and its jurisdiction of tax residence in that Transfer Certificate, Assignment Agreement or Increase Confirmation.

Where a New Lender or an Increase Lender includes the indication described in paragraph (a) above in the relevant Transfer Certificate, Assignment Agreement or Increase Confirmation:

each Borrower which is a Party as a Borrower as at the relevant Transfer Date or the date on which the increase in Total Commitments described in the relevant Increase Confirmation takes effect shall, and to the extent that that New Lender or Increase Lender becomes a Lender under a Facility which is made available to that Borrower pursuant to Clause 2 (The Facilities), file a duly completed form DTTP2 in respect of such Lender with HM Revenue & Customs within 30 days of that Transfer Date or that date on which the increase in Total Commitments takes effect and shall promptly provide the Lender with a copy of that filing; and

each Additional Borrower which becomes an Additional Borrower after the relevant Transfer Date or the date on which the increase in Total Commitments described in the relevant Increase Confirmation takes effect shall, to the extent that that New Lender or Increase Lender is a Lender under a Facility which is made available to that Additional Borrower pursuant to Clause 2 (The Facilities), file a duly completed form DTTP2 in respect of such Lender with HM Revenue & Customs within 30 days of becoming an Additional Borrower and shall promptly provide the Lender with a copy of that filing.

## **Stamp taxes**

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

## **Notification to Parent and Agent**

Each Lender will notify the Parent and the Agent if it is not or ceases to be a Qualifying Lender.

## Value added tax

All consideration expressed to be payable under a Finance Document by any Party to a Finance Party which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is charged on that supply, and accordingly, subject to paragraph (b) below, if VAT is or becomes chargeable on any supply made by any Finance Party to any Party under a Finance Document and such Finance Party is required to account to the relevant tax authority for the VAT, that Party must pay to such Finance Party (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of the VAT.

If VAT is or becomes chargeable on any supply made by any Finance Party (the "Supplier") to any other Finance Party (the "Recipient") under a Finance Document, and any Party other than the Recipient (the "Relevant Party") is required by the terms of any Finance Document to pay an amount equal to the consideration for that supply to the Supplier (rather than being required to reimburse or indemnify the Recipient in respect of that consideration):

(where the Supplier is the person required to account to the relevant tax authority for the VAT) the Relevant Party must also pay to the Supplier (at the same time as paying that amount) an additional amount equal to the amount of the VAT. The Recipient must (where this paragraph (i) applies) promptly pay to the Relevant Party an amount equal to any credit or repayment the Recipient receives from the relevant tax authority which the Recipient reasonably determines relates to the VAT chargeable on that supply; and

(where the Recipient is the person required to account to the relevant tax authority for the VAT) the Relevant Party must promptly, following demand from the Recipient, pay to the Recipient an amount equal to the VAT chargeable on that supply but only to the extent that the Recipient reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of that VAT.

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

Any reference in this Clause 14.9 to any Party shall, at any time when such Party is treated as a member of a group for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference to the representative member of such group at such time (the term "representative member" to have the same meaning as in the Value-Added Tax Act 1994 or in the case of Ireland, the group member notified by the Revenue Commissioners in accordance with section 15(1)(a) of the Value Added Tax Consolidation Act 2010 of Ireland as being the member responsible for complying with the provisions of that act in respect of the group).

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

## INCREASED COSTS

### Increased costs

Subject to Clause 15.3 (Exceptions) the Parent shall, within three Business Days of a demand by the Agent, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation or (ii) compliance with any law or regulation made after the date of this Agreement.

In this Agreement "Increased Costs" means:

a reduction in the rate of return from a Facility or on a Finance Party's (or its Affiliate's) overall capital;

an additional or increased cost; or

a reduction of any amount due and payable under any Finance Document,

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

## Increased cost claims

A Finance Party intending to make a claim pursuant to Clause 15.1 (Increased Costs) shall notify the Agent of the event giving rise to the claim, following which the Agent shall promptly notify the Parent.

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

## Exceptions

Clause 15.1 (Increased Costs) does not apply to the extent any Increased Cost is:

attributable to a Tax Deduction required by law to be made by an Obligor;

compensated for by Clause 14.3 (Tax indemnity) (or would have been compensated for under Clause 14.3 (Tax indemnity) but was not so compensated solely because any of the exclusions in paragraph (b) of Clause 14.3 (Tax indemnity) applied); or

attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation.

In this Clause 15.3 reference to a "**Tax Deduction**" has the same meaning given to the term in Clause 14.1 (Definitions).

## OTHER INDEMNITIES

### Currency indemnity

If any sum due from an Obligor under the Finance Documents (a "**Sum**"), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the "**First Currency**") in which that Sum is payable into another currency (the "**Second Currency**") for the purpose of:

making or filing a claim or proof against that Obligor; or

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

that Obligor shall as an independent obligation, within three Business Days of demand, indemnify the Arranger and each other Secured Party to whom that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

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

### Other indemnities

The Parent shall (or shall procure that an Obligor will), within three Business Days of demand, indemnify the Arranger and each other Secured Party against any cost, loss or liability incurred by it as a result of:

the occurrence of any Event of Default;

a failure by an Obligor to pay any amount due under a Finance Document on its due date, including without limitation, any cost, loss or liability arising as a result of Clause 30 (Sharing among the Finance Parties);

funding, or making arrangements to fund, its participation in a Utilisation requested by a Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by that Finance Party alone);

a Utilisation (or part of a Utilisation) not being prepaid in accordance with a notice of prepayment given by a Borrower or the Parent.

The Parent shall promptly indemnify each Finance Party, each Affiliate of a Finance Party and each officer or employee of a Finance Party or its Affiliate, against any cost, loss or liability incurred by that Finance Party or its Affiliate (or officer or

employee of that Finance Party or Affiliate) in connection with or arising out of the Acquisition or the funding of the Acquisition (including but not limited to those incurred in connection with any litigation, arbitration or administrative proceedings or regulatory enquiry concerning the Acquisition), unless such loss or liability is caused by the gross negligence or wilful misconduct of that Finance Party or its Affiliate (or employee or officer of that Finance Party or Affiliate). Any Affiliate or any officer or employee of a Finance Party or its Affiliate may rely on this Clause 16.2.

### **Indemnity to the Agent**

The Parent shall promptly indemnify the Agent against:

any cost, loss or liability incurred by the Agent (acting reasonably) as a result of:

investigating any event which it reasonably believes is a Default;

entering into or performing any foreign exchange contract for the purposes of paragraph (b) of Clause 31.10 (Change of currency);

acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised; or

instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under this Agreement; and

any cost, loss or liability incurred by the Agent (otherwise than by reason of the Agent's gross negligence or wilful misconduct) in acting as Agent under the Finance Documents.

### **Indemnity to the Security Trustee**

Each Obligor shall promptly indemnify the Security Trustee and every Receiver and Delegate against any cost, loss or liability incurred by any of them as a result of:

any failure by the Parent to comply with its obligations under Clause 18 (Costs and Expenses);

acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;

the taking, holding, protection or enforcement of the Transaction Security,

the exercise of any of the rights, powers, discretions and remedies vested in the Security Trustee and each Receiver and Delegate by the Finance Documents or by law;

any default by any Obligor in the performance of any of the obligations expressed to be assumed by it in the Finance Documents; or

acting as Security Trustee, Receiver or Delegate under the Finance Documents or which otherwise relates to any of the Charged Property (otherwise, in each case, than by reason of the relevant Security Trustee's, Receiver's or Delegate's gross negligence or wilful misconduct);

The Security Trustee may, in priority to any payment to the Secured Parties, indemnify itself out of the Charged Property in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this Clause 16.4 and shall have a lien on the Transaction Security and the proceeds of the enforcement of the Transaction Security for all monies payable to it.

### **MITIGATION BY THE LENDERS**

#### **Mitigation**

Each Finance Party shall, in consultation with the Parent, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 7.1 (Illegality), Clause 14 (Tax gross-up and indemnities) or Clause 15 (Increased Costs) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.

Paragraph (a) above does not in any way limit the obligations of any Obligor under the Finance Documents.



### **Limitation of liability**

The Parent shall indemnify each Finance Party for all costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under Clause 17.1 (Mitigation).

A Finance Party is not obliged to take any steps under Clause 17.1 (Mitigation) if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

### **COSTS AND EXPENSES**

#### **Transaction expenses**

The Parent shall within three Business Days of demand pay the Agent, the Arranger and the Security Trustee the amount of all costs and expenses (including legal fees) reasonably incurred by any of them (and, in the case of the Security Trustee, by any Receiver or Delegate) in connection with the negotiation, preparation, printing, execution, syndication and perfection of:

    this Agreement and any other documents referred to in this Agreement and the Transaction Security;

    any other Finance Documents executed after the date of this Agreement.

#### **Amendment costs**

If (a) an Obligor requests an amendment, waiver or consent or (b) an amendment is required pursuant to Clause 31.10 (Change of currency), the Parent shall, within three Business Days of demand, reimburse each of the Agent and the Security Trustee for the amount of all costs and expenses (including legal fees) reasonably incurred by the Agent and the Security Trustee (and, in the case of the Security Trustee, by any Receiver or Delegate) in responding to, evaluating, negotiating or complying with that request or requirement.

#### **Security Trustee's ongoing costs**

In the event of (i) a Default or (ii) the Security Trustee considering it necessary or expedient or (iii) the Security Trustee being requested by an Obligor or the Majority Lenders to undertake duties which the Security Trustee and the Parent agree to be of an exceptional nature and/or outside the scope of the normal duties of the Security Trustee under the Finance Documents, the Parent shall pay to the Security Trustee any additional remuneration that may be agreed between them.

If the Security Trustee and the Parent fail to agree upon the nature of the duties or upon any additional remuneration, that dispute shall be determined by an investment bank (acting as an expert and not as an arbitrator) selected by the Security Trustee and approved by the Parent or, failing approval, nominated (on the application of the Security Trustee) by the President for the time being of the Law Society of England and Wales (the costs of the nomination and of the investment bank being payable by the Parent) and the determination of any investment bank shall be final and binding upon the parties to this Agreement.

#### **Enforcement and preservation costs**

The Parent shall, within three Business Days of demand, pay to the Arranger and each other Secured Party the amount of all costs and expenses (including legal fees) incurred by it in connection with the enforcement of or the preservation of any rights under any Finance Document and the Transaction Security and any proceedings instituted by or against the Security Trustee as a consequence of taking or holding the Transaction Security or enforcing these rights.

## SECTION 7

### GUARANTEE

#### GUARANTEE AND INDEMNITY

##### Guarantee and indemnity

Each Guarantor irrevocably and unconditionally jointly and severally:

guarantees to each Finance Party punctual performance by each other Obligor of all that Obligor's obligations under the Finance Documents;

undertakes with each Finance Party that whenever another Obligor does not pay any amount when due under or in connection with any Finance Document, that Guarantor shall immediately on demand pay that amount as if it was the principal obligor; and

agrees with each Finance Party that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify that Finance Party immediately on demand against any cost, loss or liability it incurs as a result of an Obligor not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Finance Document on the date when it would have been due. The amount payable by a Guarantor under this indemnity will not exceed the amount it would have had to pay under this Clause 19 if the amount claimed had been recoverable on this basis of a guarantee.

##### Continuing Guarantee

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

##### Reinstatement

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

##### Waiver of defences

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

any time, waiver or consent granted to, or composition with, any Obligor or other person;

the release of any other Obligor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;

the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Obligor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;

any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor or any other person;

any amendment, novation, supplement, extension (whether of maturity or otherwise) or restatement (in each case, however fundamental and of whatsoever nature, whether or not more onerous) or replacement of a Finance Document or any other document or security including, without limitation, any change in the purpose of, any extension of or increase in any facility or the addition of any new facility under and Finance Document or other document or security;

any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or

any insolvency or similar proceedings.

### **Guarantor Intent**

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

### **Immediate recourse**

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

### **Appropriations**

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

refrain from applying or enforcing any other moneys, security or rights held or received by that Finance Party (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Guarantor shall be entitled to the benefit of the same; and

hold in an interest-bearing suspense account any moneys received from any Guarantor or on account of any Guarantor's liability under this Clause 19.

### **Deferral of Guarantors' rights**

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full and unless the Agent otherwise directs, no Guarantor will exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under this Clause 19:

to be indemnified by an Obligor;

to claim any contribution from any other guarantor of any Obligor's obligations under the Finance Documents;

to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Finance Parties under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by any Finance Party;

to bring legal or other proceedings for an order requiring any Obligor to make any payment, or perform any obligation, in respect of which any Guarantor has given a guarantee, undertaking or indemnity under Clause 19.1 (Guarantee and Indemnity);

to exercise any right of set off against any Obligor; and/or

to claim or prove as a creditor of any Obligor in competition with any Finance Party.

If a Guarantor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Finance Parties by the Obligors under or in connection with the Finance Documents to be repaid in full on trust for the Finance Parties and shall promptly pay or transfer the same to the Agent or as the Agent may direct for application in accordance with Clause 31 (Payment mechanics) of this Agreement.

## Release of Guarantors' right of contribution

If any Guarantor (a "**Retiring Guarantor**") ceases to be a Guarantor in accordance with the terms of the Finance Documents for the purpose of any sale or other disposal of that Retiring Guarantor then on the date such Retiring Guarantor ceases to be a Guarantor:

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

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

## Additional security

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

## Guarantee Limitations - General

This guarantee does not apply to any liability to the extent that it would result in this guarantee constituting unlawful financial assistance within the meaning of Section 678 or 679 of the Companies Act 2006 or, as applicable, section 82 of the Companies Act 2014 of Ireland and, with respect to any Additional Guarantor, is subject to any limitations set out in the Accession Letter applicable to such Additional Guarantor. In particular, but without limiting the generality of the foregoing provisions, it is agreed that any guarantee and indemnity by Schuh Ireland in terms of this Clause 19 shall not include the payment of any arrangement fee payable under this Agreement (or any agreement amending or varying the terms of this Agreement) or the payment of any fees, costs or expenses payable by any member of the Group in connection with the Acquisition Agreement or with this Agreement (or any agreement amending or varying the terms of this Agreement).

## Guarantee limitation – Germany

The Finance Parties, acting through the Security Trustee, agree not to demand payment from a Guarantor incorporated in Germany and constituted in the form of a GmbH (a "**German GmbH Guarantor**") or GmbH & Co. KG with a GmbH as general partner ((a "**German GmbH & Co. KG Guarantor**"), and together with any German GmbH Guarantor hereinafter referred to as a "**German Guarantor**") under the guarantee and indemnity contained in this Clause 19 if and to the extent that:

- (A) such guarantee or indemnity secure obligations of (x) its direct or indirect shareholders or (y) an affiliated company (*verbundenes Unternehmen*) of such German Guarantor within the meaning of Section 15 of the German Stock Corporation Act (*Aktengesetz*) (other than any of the German Guarantor's subsidiaries) if and to the extent that the relevant payment obligation arising out of the guarantee and indemnity contained in this Clause 19 does not result from borrowings drawn by or on-lent, or otherwise passed on to the relevant German Guarantor or any of its subsidiaries; and
- (B) a payment under the guarantee or indemnity would cause the German Guarantor's Net Assets (*Reinvermögen*) or, in the case of a German GmbH & Co. KG Guarantor, its general partner's (*persönlich haftender Gesellschafter*) Net Assets as defined below, to be less than its registered share capital (*Stammkapital*) as required by section 30 of the German Act on Limited Liability Companies (GmbHG) or, if the amount of its Net Assets is already less than the amount of its registered share capital (*Stammkapital*) to cause a further increase of such short-fall (*Vertiefung einer Unterbilanz*).

For the purposes of this Clause 19.12, "**Net Assets**" shall mean the relevant company's assets pursuant to section 266(2)(A), (B), (C) and (D) of the German Commercial Code (*Handelsgesetzbuch*) less the sum of its liabilities pursuant to section 266(3) (B), (C), (D) and (E) of the German Commercial Code (*Handelsgesetzbuch*). The value of the Net Assets shall be determined in accordance with general accepted accounting principles (*Grundsätze ordnungsgemäßer Buchführung*) under the German Commercial Code (HGB) consistently applied by the Affected German Guarantor in preparing its unconsolidated balance sheets (*Jahresabschluss*) according to Section 42 German Limited Liability Companies Act (GmbHG). Sections 242, 264 German Commercial Code (HGB) in the previous years,

provided that for the purposes of calculating the amount not to be enforced (if any) the following balance sheet items shall be adjusted as follows:

the amount of any increase of registered share capital (*Stammkapital*) of the relevant German Guarantor or, in the case of a German GmbH & Co. KG Guarantor, of its general partner that has been effected after the date hereof (or, if applicable, the date on which that German Guarantor became a party to this Agreement) out of retained earnings (*Kapitalerhöhung aus Gesellschaftsmitteln*) without the prior written consent of the Agent shall be deducted from the registered share capital (*Stammkapital*);

in case the registered share capital of the relevant German Guarantor or, in case of a German GmbH & Co. KG Guarantor, its general partner, is not fully paid up (*nicht voll eingezahlt*), the amount which has not been paid up and for which a demand has not been made (*nicht eingeforderte Beträge*) shall be deducted from the relevant registered share capital;

loans provided to the relevant German Guarantor by a member of the Group shall be disregarded if such loans are subordinated pursuant to section 39 of the German Insolvency Act (*Insolvenzordnung*); and

any loans and other contractual liabilities incurred by the relevant German Guarantor in violation of the provisions of any of the Finance Documents shall be disregarded.

Upon delivery of an Enforcement Notice (as defined below) and upon request of the Agent each German Guarantor shall realise, in a situation where (a) the Net Assets are less than the amount of its respective registered share capital (*Stammkapital*) or (b) after enforcement of the Guarantee the German Guarantor would not have Net Assets in excess of its respective share capital (*Stammkapital*), by way of sale or auction any asset that is shown in the balance sheet with a book value (*Buchwert*) that is significantly lower than the market value of such asset, which is not necessary for the German Guarantor's business (*betriebsnotwendig*) and that can be realised (to the extent legally possible and if such realisation is not unreasonable in respect of the German Guarantor's business).

The limitations set out in paragraph (a) above shall not apply

if and as long as a domination agreement (*Beherrschungsvertrag*) or a profit transfer agreement (*Gewinnabführungsvertrag*) (each as defined in Section 291 of the Stock Corporation Act (*Aktiengesetz*) between the relevant German Guarantor and the affiliate whose obligations are guaranteed under this Clause 19, either directly or through an unbroken chain of domination and/or profit transfer agreements, is legally binding and effective provided that the compensation claim of the relevant German Guarantor towards the dominating affiliate is valuable (*werthaltig*), whereas this requirement does not apply if such a valuable compensation claim is not necessary to avoid any liability of the management and this has been confirmed by a decision of the Federal Court of Justice (*Bundesgerichtshof*); and

to the extent that the German Guarantor has a (legally and commercially) fully valuable recourse claim (*vollwertiger Rückgriffsanspruch*) within the meaning of sentence 2 of paragraph 1 of section 30 of the German Act on Limited Liability of Companies (*GmbH-Gesetz*) against the affiliate whose obligations are guaranteed under this Clause 19.

The limitations set out in paragraph (a) above only apply if and to the extent that:

within 15 Business Days following the notification by the Finance Parties (acting through the Agent) of their intention to enforce that demand payment under the guarantee or indemnity (the "**Enforcement Notice**"), the managing director(s) on behalf of the relevant German Guarantor has/have confirmed in writing to the Agent to what extent the relevant Secured Obligation does not result from borrowings drawn by or on-lent, or otherwise passed on to the relevant German Guarantor or any of its subsidiaries and that the guarantee or indemnity cannot be enforced as it would cause the net assets of such German Guarantor or, in the case of a German GmbH & Co. KG Guarantor, its general partner to fall below its registered share capital (*Stammkapital*) in violation of section 30 of the German Act on Limited Liability Companies (GmbHG) (taking into account the adjustments set out in paragraphs (i) to (iii) of paragraph (b) above) and such confirmation is supported by evidence reasonably satisfactory to the Finance Parties (acting through the Agent) (the "**Management Determination**") and the Finance Parties (acting through the Agent) have not contested this and argued that no or a lower amount would be necessary to maintain its registered share capital (*Stammkapital*); or

within 40 Business Days from the date the Agent has contested the Management Determination the Agent receives a determination by auditors of international standing and reputation appointed by the relevant German Guarantor and selected jointly by the Agent and such German Guarantor of the amount that would have been necessary on the date the Enforcement Notice is given to maintain its registered share capital (*Stammkapital*) or, in the case of a German GmbH & Co. KG Guarantor, the registered share capital (*Stammkapital*) of its general partner without violation of section 30 of the German Act on Limited Liability Companies (GmbHG) (the "**Auditor's Determination**"). If the Agent and the relevant German Guarantor do not agree on the selection of an auditor within 5 Business Days of the date the Agent has contested the Management Determination the Agent is entitled to ask the Institut der Wirtschaftsprüfer in Deutschland e.V. (IDW), Düsseldorf to appoint an auditor of international

standing and reputation. The amount determined in the Auditor's Determination shall be (except for manifest error) binding for each German Guarantor. The costs of the Auditor's Determination shall be borne by the relevant German Guarantor.

If the Agent disagrees with the Auditor's Determination, the Finance Parties (acting through the Agent) shall be entitled to enforce the guarantee or indemnity up to the amount which is undisputed between themselves and the relevant German Guarantor. In relation to the amount which is disputed, the Finance Parties (acting through the Agent) shall be entitled to further pursue their claims (if any) and that German Guarantor shall be entitled to prove that this amount is necessary for maintaining its registered share capital (*Stammkapital*) or, in the case of a German GmbH & Co. KG Guarantor, the registered share capital (*Stammkapital*) of its general partner, without violation of section 30 of the German Act on Limited Liability Companies (GmbHG) (calculated as of the date that the Enforcement Notice was given).

If the guarantee or indemnity was enforced without limitation because the Management Determination and/or the Auditor's Determination (as the case may be) was not delivered within the relevant time, the Finance Parties shall promptly upon demand by the relevant German Guarantor repay to such German Guarantor any amount which is necessary pursuant to section 30 of the German Act on Limited Liability Companies (GmbHG) to maintain the registered share capital (*Stammkapital*) of that German Guarantor or, in the case of a German GmbH & Co. KG Guarantor, the registered share capital (*Stammkapital*) of its general partner, calculated as of the date that the Enforcement Notice was given provided such demand is made within eighteen months (*Ausschlußfrist*) after the date the guarantee or indemnity was enforced without regard to the limitations set out above.

The limitation set out in this Clause 19.12 (Guarantee limitation - Germany) shall not apply when, at the time of the enforcement of the payment obligation arising out of the guarantee and indemnity contained in this Clause 19, the limitation set out in this Clause 19.12 (Guarantee limitation - Germany) is (as a result of any changes of legislation or the interpretation of applicable law) not or no longer required to avoid a violation of section 30 of the German Act on Limited Liability Companies (GmbHG) and/or to protect the managing directors of any German Guarantor (or in case of the German GmbH & Co. KG Guarantor the managing directors of its general partner) from the risk of personal liability.

## SECTION 8

### REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT

#### REPRESENTATIONS

##### General

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

##### Status

It and each of its Subsidiaries is a limited liability corporation, duly incorporated and validly existing under the law of its jurisdiction of incorporation.

It and each of its Subsidiaries has the power to own its assets and carry on its business as it is being conducted.

##### Binding obligations

Subject to the Legal Reservations and to any of the matters specified in paragraphs (a) to (e) inclusive of Clause 20.9:

the obligations expressed to be assumed by it in each Transaction Document to which it is a party are legal, valid, binding and enforceable obligations; and

(without limiting the generality of paragraph (a) above), each Transaction Security Document to which it is a party creates the security interests which that Transaction Security Document purports to create and those security interests are valid and effective.

##### Non-conflict with other obligations

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

any law or regulation applicable to it;

the constitutional documents of any member of the Group; or

any agreement or instrument binding upon it or any member of the Group or any of its or any member of the Group's assets or constitute a default or termination event (however described) under any such agreement or instrument.

##### Power and authority

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

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

##### Validity and admissibility in evidence

All Authorisations required or desirable:

to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Transaction Documents to which it is a party; and

to make the Transaction Documents to which it is a party admissible in evidence in its Relevant Jurisdictions,

have been obtained or effected and are in full force and effect.

All Authorisations necessary for the conduct of the business, trade and ordinary activities of members of the Group have been obtained or effected and are in full force and effect to the extent that failure to obtain or effect those Authorisations has or would reasonably be expected to have a Material Adverse Effect.

## **Governing law and enforcement**

Subject to the Legal Reservations, the choice of governing law of the Finance Documents will be recognised and enforced in its Relevant Jurisdictions.

Subject to the Legal Reservations, any judgment obtained in relation to a Finance Document in the jurisdiction of the governing law of that Finance Document will be recognised and enforced in its Relevant Jurisdictions.

## **Insolvency**

No:

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

has been taken or, to the knowledge of the Parent, threatened in relation to a member of the Group and none of the circumstances described in Clause 24.6 (Insolvency) applies to a member of the Group.

## **No filing or stamp taxes**

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

registration of particulars of the Transaction Security Documents at Companies House in Scotland under Section 859A of the Companies Act 2006 and the Companies Registration Office of Ireland and payment of associated fees;

registration of particulars of the Irish Law Mortgage Debenture at the Companies Registration Office in Ireland under section 409 of the Companies Act 2014 of Ireland;

filing of the declaration or declarations (as the case may be) by directors (and, in the case of an Obligor incorporated in Ireland, section 82 of the Companies Act 2014 of Ireland) copies of which are delivered to the Agent in respect of the Fifth Amendment and Restatement Agreement at the Companies Registration Office in Ireland;

registration of the Standard Security at the Land Register of Scotland and payment of associated fees,

which registrations, filings, taxes and fees will be made and paid promptly after the date of the relevant Finance Document.

## **Deduction of Tax**

It is not required to make any deduction for or on account of Tax from any payment it may make under any Finance Document to a Lender which is a Qualifying Lender.

## **No default**

No Event of Default and, on the date of this Agreement, no Default is continuing or is reasonably likely to result from the making of any Utilisation or the entry into, the performance of, or any transaction contemplated by, any Transaction Document.

No other event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination or any combination of any of the foregoing, would constitute) a default or termination event (however described) under any other agreement or instrument which is binding on it or any of its Subsidiaries or to which its (or any of its Subsidiaries') assets are subject which has or is reasonably likely to have a Material Adverse Effect.

## **No misleading information**

Save as disclosed in writing to the Agent prior to the date of this Agreement:

to the best of its knowledge and belief (having made due and diligent enquiry), any factual information contained in the Information Package was true and accurate in all material respects as at the date of the relevant report or document containing the information or (as the case may be) as at the date the information is expressed to be given;

the Business Plan has been prepared in accordance with the Accounting Principles as applied to the Original Financial Statements, and the financial projections contained in the Business Plan have been



prepared on the basis of recent historical information, are fair and based on reasonable assumptions and have been approved by the board of directors of the Parent;

any financial projection or forecast contained in the Information Package has been prepared on the basis of recent historical information and on the basis of reasonable assumptions and was fair (as at the date of the relevant report or document containing the projection or forecast) and arrived at after careful consideration;

the expressions of opinion or intention provided by or on behalf of an Obligor for the purposes of the Information Package were made after careful consideration and (as at the date of the relevant report or document containing the expression of opinion or intention) were fair and based on reasonable grounds;

to the best of its knowledge and belief (having made due and diligent enquiry), no event or circumstance has occurred or arisen and no information has been omitted from the Information Package and no information has been given or withheld that results in the information, opinions, intentions, forecasts or projections contained in the Information Package being untrue or misleading in any material respect;

to the best of its knowledge and belief (having made due and diligent enquiry), all material information provided to a Finance Party by or on behalf of the Parent or the Company on or before the date of this Agreement and not superseded before that date (whether or not contained in the Information Package) is accurate and not misleading in any material respect and all projections provided to any Finance Party on or before the date of this Agreement have been prepared in good faith on the basis of assumptions which were reasonable at the time at which they were prepared and supplied; and

to the best of its knowledge and belief (having made due and diligent enquiry), all other written information provided by any member of the Group (including its advisers) to a Finance Party or the provider of any Report was true, complete and accurate in all material respects as at the date it was provided and is not misleading in any respect.

### **Financial Statements**

Its Original Financial Statements were prepared in accordance with the Accounting Principles consistently applied.

Its unaudited Original Financial Statements fairly present its financial condition and results of operations for the relevant month or financial quarter unless expressly disclosed to the Agent in writing to the contrary prior to the date of this Agreement.

Its audited Original Financial Statements give a true and fair view of its financial condition and results of operations during the relevant financial year unless expressly disclosed to the Agent in writing to the contrary prior to the date of this Agreement.

To the best of its knowledge and belief (having made due and diligent enquiry), there has been no material adverse change in its assets, business or financial condition (or the assets, business or consolidated financial condition of the Group, in the case of the Parent) since the date of the Original Financial Statements.

The Original Financial Statements of the Company and the Parent do not consolidate the results, assets or liabilities of any person or business which does not form part of the Company Shares.

Its most recent financial statements delivered pursuant to Clause 21.1 (Financial Statements):

have been prepared in accordance with the Accounting Principles as applied to the Original Financial Statements and the Business Plan; and give a true and fair view of (if audited) or fairly present (if unaudited) its consolidated financial condition as at the end of, and consolidated results of operations for, the period to which they relate.

The budgets and forecasts supplied under this Agreement were arrived at after careful consideration and have been prepared in good faith on the basis of recent historical information and on the basis of assumptions which were reasonable as at the date they were prepared and supplied.

Since the date of the most recent financial statements delivered pursuant to Clause 21.1 (Financial Statements) there has been no material adverse change in the assets, business or financial condition of the Group.

### **No proceedings pending or threatened**

Other than as disclosed to the Agent prior to the date of this Agreement, no litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral body or agency which, if adversely determined, are reasonably likely to have a Material Adverse Effect have

(to the best of its knowledge and belief (having made due and careful enquiry)) been started or threatened against it or any of its Subsidiaries.

#### **No breach of laws**

It has not (and none of its Subsidiaries has) breached any law or regulation which breach has or is reasonably likely to have a Material Adverse Effect.

No labour disputes are current or, to the best of its knowledge and belief (having made due and careful enquiry), threatened against any member of the Group which have or are reasonably likely to have a Material Adverse Effect.

#### **Environmental laws**

Each member of the Group is in compliance with Clause 23.3 (Environmental compliance) and to the best of its knowledge and belief (having made due and careful enquiry) no circumstances have occurred which would prevent such compliance in a manner or to an extent which has or is reasonably likely to have a Material Adverse Effect.

No Environmental Claim has been commenced or (to the best of its knowledge and belief (having made due and careful enquiry)) is threatened against any member of the Group where that claim has or is reasonably likely, if determined against that member of the Group, to have a Material Adverse Effect.

#### **Taxation**

It is not (and none of its Subsidiaries is) materially overdue in the filing of any Tax returns and it is not (and none of its Subsidiaries is) overdue in the payment of any amount in respect of Tax of £100,000 (or its equivalent in any other currency) or more.

No claims or investigations are being, or are reasonably likely to be, made or conducted against it (or any of its Subsidiaries) with respect to Taxes such that a liability of, or claim against, any member of the Group of £100,000 (or its equivalent in any other currency) or more is reasonably likely to arise.

It is resident for Tax purposes only in the jurisdiction of its incorporation.

#### **Security and Financial Indebtedness**

No Security or Quasi-Security exists over all or any of the present or future assets of any member of the Group other than as permitted by this Agreement.

No member of the Group has any Financial Indebtedness outstanding other than as permitted by this Agreement.

#### **Ranking**

The Transaction Security has or will have first ranking priority and it is not subject to any prior ranking or pari passu ranking Security.

#### **Good title to assets**

It and each of its Subsidiaries has a good, valid and marketable title to, or valid leases or licences of, and all appropriate Authorisations to use, the assets necessary to carry on its business as presently conducted.

#### **Legal and beneficial ownership**

It and each of its Subsidiaries is the sole legal and beneficial owner of the respective assets over which it purports to grant Security.

#### **Shares**

The shares of any member of the Group which are subject to the Transaction Security are fully paid and not subject to any option to purchase or similar rights. The constitutional documents of companies whose shares are subject to the Transaction Security do not and could not restrict or inhibit any transfer of those shares on creation or enforcement of the Transaction Security. Other than in relation to share options granted or to be granted to employees in terms of any share option schemes operated by the Group, there are no agreements in force which provide for the issue or allotment of, or grant any person the right to call for the issue or allotment of, any share or loan capital of any member of the Group (including any option or right of pre-emption or conversion).

## Intellectual Property

It and each of its Subsidiaries:

is the sole legal and beneficial owner of or has licensed to it on normal commercial terms all the Intellectual Property which is material in the context of its business and which is required by it in order to carry on its business as it is being conducted and as contemplated in the Business Plan;

does not (nor does any of its Subsidiaries), in carrying on its businesses, infringe any Intellectual Property of any third party in any respect which has or is reasonably likely to have a Material Adverse Effect; and

has taken all formal or procedural actions (including payment of fees) required to maintain any material Intellectual Property owned by it.

## Group Structure Chart

The Group Structure Chart delivered to the Agent pursuant to Part I of Schedule 2 (Conditions Precedent) is true, complete and accurate in all material respects.

## Obligors

The Parent has no Subsidiaries other than the Obligors where to do so would breach Clause 23.36 (Guarantors).

## Accounting reference date

The Accounting Reference Date of each member of the Group is 31 January.

## Equity Documents

Not restated.

## Centre of main interests and establishments

For the purposes of The Council of the European Union Regulation No. 1346/2000 on Insolvency Proceedings (the "**Regulation**"), its centre of main interest (as that term is used in Article 3(1) of the Regulation) is situated in its jurisdiction of incorporation and it has no "**establishment**" (as that term is used in Article 2(h) of the Regulations) in any other jurisdiction.

## Pensions

Neither it nor any of its Subsidiaries is or has at any time been an employer (for the purposes of Sections 38 to 51 of the Pensions Act 2004) of an occupational pension scheme which is not a money purchase scheme (both terms as defined in the Pensions Schemes Act 1993).

Neither it nor any of its Subsidiaries is or has at any time been "connected" with or an "associate" of (as those terms are used in Sections 39 and 43 of the Pensions Act 2004) such an employer.

## Sanctions and anti corruption law

Each Obligor and each of their respective directors, officers and employees are in compliance with Anti-Corruption Laws and Sanctions applicable to it in all material respects.

Neither any Obligor nor any of their respective directors, officers and employees, is a Sanctioned Person or has received notice of any claim, action, suit, proceeding or investigation against it with respect to Sanctions by any Sanctions Authority.

No Utilisation, use of proceeds or other transaction contemplated by this Agreement will violate:

Anti-Corruption Laws; or

applicable Sanctions.

The representations given under paragraphs (a) to (c) above apply to any Obligor only if and to the extent that making of or compliance with such representation does not result in a violation or conflict with (i) section 7 of the German Foreign Trade Regulation (*Außenwirtschaftsverordnung*) (in conjunction with section 4 paragraph 1 a no 3 German Foreign Trade Law (*Außenwirtschaftsgesetz*)) (ii) any provision of the Council Regulation (EC) No. 2271/96 of 22 November 1996 protection against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom and/or (iii) any other applicable anti-boycott laws or regulations.

The representations given under paragraphs (a) to (c) above shall only apply for the benefit of a Lender that is incorporated in Germany (*Inländer*) to the extent it would not result in any violation of, conflict with or liability under (i) section 7 of the German Foreign Trade Regulation (*Außenwirtschaftsverordnung*) (in conjunction with section 4 paragraph 1 a no 3 German Foreign Trade Law (*Außenwirtschaftsgesetz*), (ii) any provision of the Council Regulation (EC) No 2271/96 of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom and/or (iii) any other applicable anti-boycott laws or regulations.

### **PSC Register**

No company whose shares constitute Charged Property has issued any warning notice or restrictions notice under Schedule 1B of the Companies Act 2006 and no circumstances exist which entitle any such company to issue any such notice.

### **Times when representations made**

All the representations and warranties in this Clause 20 are made by each Obligor on the date of this Agreement.

The Repeating Representations are deemed to be made by each Obligor on the date of each Utilisation Request, on each Utilisation Date and on the first day of each Interest Period (except that those contained in paragraphs (a) – © of Clause 20.13 (Original Financial Statements) will cease to be so made once subsequent financial statements have been delivered under this Agreement).

All the representations and warranties in this Clause 20 except Clause 20.12 (No misleading information) and Clause 20.24 (Group Structure Chart) are deemed to be made by each Additional Obligor on the day on which it becomes (or it is proposed that it becomes) an Additional Obligor.

Each representation or warranty deemed to be made after the date of this Agreement shall be deemed to be made by reference to the facts and circumstances existing at the date the representation or warranty is deemed to be made.

### **INFORMATION UNDERTAKINGS**

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

### **Financial statements**

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

as soon as they are available, but in any event within 120 days after the end of each of its Financial Years:

its audited consolidated financial statements for that Financial Year;

the audited financial statements (consolidated if appropriate) of each Obligor for that Financial Year; and

the audited financial statements of any other Subsidiary for that Financial Year if requested by the Agent;

at any time when (by reference to the level of EBITDA and Cashflow disclosed in any financial statements provided to the Agent in terms of this Agreement) the financial performance of the Group is below that anticipated in the Budget for the relevant period by more than 15%, as soon as they are available, but in any event within 30 days after the end of each Accounting Period, its financial statements on a consolidated basis for that Accounting Period (to include cumulative management accounts for the Financial Year to date); and

as soon as they are available, but in any event within 30 days after the last date of each month its Monthly Financial Statements on a consolidated basis for that month (to include cumulative management accounts for the Financial Year to date).

### **Provision and contents of Compliance Certificate**

The Parent shall supply a Compliance Certificate to the Agent with each set of its audited consolidated Annual Financial Statements and each set of its Monthly Financial Statements in respect of each Quarter Dates.

The Compliance Certificate shall, amongst other things, set out (in reasonable detail) computations as to compliance with Clause 22 (Financial Covenants).

Each Compliance Certificate shall be signed by one director of the Parent.

## Requirements as to financial statements

The Parent shall procure that each set of Annual Financial Statements, and Monthly Financial Statements includes a balance sheet, profit and loss account and cashflow statement. In addition the Parent shall procure that:

each set of Annual Financial Statements shall be audited by the Auditors;

each set of Monthly Financial Statements is accompanied by a narrative by the finance director of the Parent commenting on the performance of the Group for the Accounting Period to which the financial statements relate and the Financial Year to date and any material developments or proposals affecting the Group or its business.

Each set of financial statements delivered pursuant to Clause 21.1 (Financial statements):

shall be certified by a director of the relevant company as giving a true and fair view of (in the case of Annual Financial Statements for any Financial Year), or fairly representing (in other cases), its financial condition and operations as at the date as at which those financial statements were drawn up;

in the case of consolidated financial statements of the Group, shall be accompanied by a narrative comparing actual performance for the period to which the financial statements relate to the projected performance for that period set out in the Budget; and

shall be prepared using the Accounting Principles, accounting practices and financial reference periods consistent with those applied in the preparation of the Original Financial Statements for that Obligor unless, in relation to any set of financial statements, the Parent notifies the Agent that there has been a change in the Accounting Principles or the accounting practices and its Auditors (or, if appropriate, the Auditors of the Obligor) deliver to the Agent:

a description of any change necessary for those financial statements to reflect the Accounting Principles or accounting practices upon which the relevant Obligor's Original Financial Statements were prepared; and

sufficient information, in form and substance as may be reasonably required by the Agent, to enable the Lenders to determine whether Clause 22 (Financial covenants) has been complied with and to make an accurate comparison between the financial position indicated in those financial statements and the relevant Obligor's Original Financial Statements.

Any reference in this Agreement to any financial statements shall be construed as a reference to those financial statements as adjusted to reflect the basis upon which the Original Financial Statements were prepared.

If the Agent wishes to discuss the financial position of any member of the Group with the Auditors, the Agent may notify the Parent, stating the questions or issues which the Agent wishes to discuss with the Auditors. In this event, the Parent must ensure that the Auditors are authorised (at the expense of the Parent):

to discuss the financial position of each member of the Group with the Agent on request from the Agent; and

to disclose to the Agent for the Finance Parties any information which the Agent may reasonably request.

## Budget

The Parent shall supply to the Agent, in sufficient copies for all the Lenders, as soon as the same become available but in any event within 60 days after the start of each of its Financial Years, an annual Budget for that financial year.

The Parent shall ensure that each Budget for a financial year:

is in a form reasonably acceptable to the Agent and includes a projected consolidated profit and loss, balance sheet and cashflow statement for the Group, projected financial covenant calculations and projected Capital Expenditure (including, without limitation, any such Capital Expenditure incurred using funds provided for the purpose by the UK Acquisition Company) for that financial year and each Financial Quarter of that financial year;

is prepared in accordance with the Accounting Principles and the accounting practices and financial reference periods applied to financial statements under Clause 21.1 (Financial statements); and

has been approved by the board of directors of the Parent.

If the Parent updates or changes the Budget, it shall within not more than five days of the update or change being made deliver to the Agent, in sufficient copies for each of the Lenders, such updated or changed Budget together with a written explanation of the main changes in that Budget.

### **Presentations**

Once in every financial year, or more frequently if requested to do so by the Agent if the Agent reasonably suspects a Default is continuing or may have occurred or may occur, at least two directors of the Parent (one of whom shall be the finance director) must give a presentation to the Finance Parties about:

the on-going business and financial performance of the Group; and

any other matter which a Finance Party may reasonably request.

### **Year-end**

The Parent shall, as soon as reasonably practicable after the Restatement Date, change its Accounting Reference Date (and the Accounting Reference Date of each other member of the Group) to 31 January but shall not otherwise change its Accounting Reference Date and shall procure that (other than to 31 January) no member of the Group changes its Accounting Reference Date.

The Parent shall procure that each Accounting Period ends on an accounting date for the purposes of the preparation of the financial statements of the Group.

### **Information: miscellaneous**

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

at the same time as they are dispatched, copies of all documents dispatched by the Parent to its shareholders generally (or any class of them) or dispatched by the Parent or any Obligors to its creditors generally (or any class of them);

promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against any member of the Group, and which, if adversely determined, are reasonably likely to have a Material Adverse Effect or which would involve a liability, or a potential or alleged liability, exceeding £100,000 (or its equivalent in other currencies);

promptly upon becoming aware of them, the details of any judgment or order of a court, arbitral tribunal or other tribunal or any order or sanction of any governmental or other regulatory body which is made against any member of the Group and which is reasonably likely to have a Material Adverse Effect or which would involve a liability, or a potential or alleged liability, exceeding £100,000 (or its equivalent in other currencies);

promptly upon becoming aware of the relevant disposal or claim, details of any disposal or insurance claim which will require a prepayment under Clause 8.2 (Disposal and Insurance Proceeds);

at the same time as each board pack in relation to any proposed new store opening is distributed to the board of directors of the Parent or any other member of the Group, a copy of that board pack;

promptly, such information as the Security Trustee may reasonably require about the Charged Property and compliance of the Obligors with the terms of any Transaction Security Documents; and

promptly on request, such further information regarding the financial condition, assets and operations of the Group and/or any member of the Group (including any requested amplification or explanation of any item in the financial statements, budgets or other material provided by any Obligor under this Agreement, any changes to Senior Management and an up to date copy of its shareholders' register (or equivalent in its jurisdiction of incorporation)) as any Finance Party through the Agent may reasonably request.

### **Notification of default**

Each Obligor shall notify the Agent of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence (unless that Obligor is aware that a notification has already been provided by another Obligor).

Promptly upon a request by the Agent, the Parent shall supply to the Agent a certificate signed by one of its directors or senior officers on its behalf certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

### **"Know your customer" checks**

If:

the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;

any change in the status of an Obligor (or a Holding Company of an Obligor) or the composition of the shareholders of an Obligor (or a Holding Company of an Obligor) after the date of this Agreement; or

a proposed assignment or transfer by a Lender of any of its rights and/or obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer,

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

Each Lender shall promptly upon the request of the Agent supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself) in order for the Agent to carry out and be satisfied it has complied with all necessary "know your customer" or similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

The Parent shall, by not less than 10 Business Days' prior written notice to the Agent, notify the Agent (which shall promptly notify the Lenders) of its intention to request that one of its Subsidiaries becomes an Additional Obligor pursuant to Clause 26 (Changes to the Obligors).

Following the giving of any notice pursuant to paragraph (c) above, if the accession of such Additional Obligor obliges the Agent or any Lender to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, the Parent shall promptly upon the request of the Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or any Lender (for itself or on behalf of any prospective new Lender) in order for the Agent or such Lender or any prospective new Lender to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the accession of such Subsidiary to this Agreement as an Additional Obligor.

## **FINANCIAL COVENANTS**

### **Financial definitions**

In this Agreement:

**"Cashflow"** means, in respect of any Relevant Period, EBITDA for that Relevant Period after:

adding the amount of any decrease (and deducting the amount of any increase) in Working Capital for that Relevant Period;

adding the amount of any cash receipts (and deducting the amount of any cash payments) during that Relevant Period in respect of any Exceptional Items not already taken account of in calculating EBITDA for any Relevant Period (other than, in the case of cash receipts, Relevant Proceeds);

adding the amount of any cash receipts during that Relevant Period in respect of any Tax rebates or credits and deducting the amount actually paid or due and payable in respect of Taxes during that Relevant Period by any member of the Group;

adding the amount of any increase in provisions, other non-cash debits and other non-cash charges (which are not Current Assets or Current Liabilities) and deducting the amount of any non-cash credits (which are not Current Assets or Current Liabilities) in each case to the extent taken into account in establishing EBITDA;

deducting the amount of any Capital Expenditure actually made during that Relevant Period by any member of the Group (other than any amounts contributed for such purpose by the UK Acquisition Company in accordance with the terms of Clause 23.30(a)) less, to the extent not already taken into account in determining EBITDA, any landlords' inducements actually received in cash;

adding the amount of any New Shareholder Injections permitted to be included in Cashflow pursuant to Clause 22.4 (Equity Cure),

and so that no amount shall be added (or deducted) more than once and there shall be excluded the effect of all cash movements associated with the Deal Costs.

**"Cashflow Cover"** means the ratio of Cashflow to Debt Service in respect of any Relevant Period.

**"Current Assets"** means the aggregate (on a consolidated basis) of all inventory, work in progress, trade and other receivables of each member of the Group including prepayments in relation to operating items and sundry debtors (but excluding Cash) maturing within twelve months from the date of computation but **excluding** amounts in respect of:

receivables in relation to Tax;

Exceptional Items and other non-operating items;

any interest owing to any member of the Group; and

prepaid Deal Costs.

**"Current Liabilities"** means the aggregate (on a consolidated basis) of all liabilities (including trade creditors, accruals and provisions) of each member of the Group falling due within twelve months from the date of computation but **excluding** amounts in respect of:

liabilities for Financial Indebtedness and Finance Charges;

liabilities for Tax;

Exceptional Items and other non-operating items; and

liabilities in relation to dividends declared but not paid by the Parent or by a member of the Group in favour of a person which is not a member of the Group.

**"Debt Service"** means, in respect of any Relevant Period, the aggregate of:

Finance Charges for that Relevant Period;

the aggregate of all scheduled repayments of Financial Indebtedness falling due during that Relevant Period but excluding:

any amounts falling due under the Working Capital Facility Letter, Facility C, Facility D or any other overdraft or revolving facility and which were available for simultaneous redrawing according to the terms of that facility; and

any such obligations owed to any member of the Group;

all payments made in that Relevant Period falling within the definition of "Permitted Payment", other than under paragraph (a) of that definition; and

the amount of the capital element of any payments in respect of that Relevant Period payable under any Finance Lease entered into by any member of the Group,

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

**"EBIT"** means, in respect of any Relevant Period, the consolidated operating profit of the Group before taxation:

**before deducting** any Finance Charges;

**not including** any accrued interest owing to any member of the Group;

**before taking into account** any Exceptional Items;

**before deducting** any Deal Costs;

**excluding** the amount of any profit of any member of the Group which is attributable to minority interests;



**before taking into account** any unrealised gains or losses on any financial instrument (other than any derivative instrument which is accounted for on a hedge accounting basis);

**before taking into account** any gain or loss arising from an upward or downward revaluation of any other asset;

**before deducting** any amount that in accordance with the Accounting Principles is required to be deducted from the operating profits of the Group but which is in fact attributable to payments to be made by the UK Acquisition Company to either of Colin Temple or Mark Crutchley in accordance with the terms of the Acquisition Agreement;

in each case, to the extent added, deducted or taken into account, as the case may be, for the purposes of determining operating profits of the Group before taxation.

"**EBITDA**" means, in respect of any Relevant Period, EBIT for that Relevant Period **after adding back** any amount attributable to the amortisation, depreciation or impairment of assets of members of the Group.

"**Exceptional Items**" means any material items of an unusual or non-recurring nature which represent gains or losses including those arising on:

the restructuring of the activities of an entity and reversals of any provisions for the cost of restructuring;

disposals, revaluations or impairment of non-current assets;

disposals of assets associated with discontinued operations; and

the termination of any Treasury Transaction.

"**Finance Charges**" means, for any Relevant Period, the aggregate amount of the accrued interest, commission, fees, discounts, prepayment fees, premiums or charges and other finance payments in respect of Financial Indebtedness whether paid or payable by any member of the Group (calculated on a consolidated basis) in respect of that Relevant Period:

**including** the interest (but not the capital) element of payments in respect of Finance Leases;

**including** any commission, fees, discounts and other finance payments payable by (and deducting any such amounts payable to) any member of the Group under any interest rate hedging arrangement;

**excluding** any Deal Costs,

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

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

"**Financial Year**" means the annual accounting period of the Group ending on or about 31 January.

"**Interest Cover**" means the ratio of EBITDA to Finance Charges in respect of any Relevant Period.

"**Leverage**" means, in respect of any Relevant Period, the ratio of Total Net Debt on the last day of that Relevant Period to EBITDA in respect of that Relevant Period.

"**New Shareholder Injection**" means the aggregate amount of cash subscribed for by any Holding Company of the Parent for ordinary shares in the Parent or for subordinated loan notes (or other subordinated debt instruments) in the Parent, such subordination to be on the terms set out in the Subordination Agreements or otherwise acceptable to the Lenders.

"**Quarter Date**" means 31 January, 30 April, 31 July and 31 October (or such other date as represents the last trading Saturday in the relevant month or the next month as set out in the Genesco Closing Schedule) in each year.

"**Relevant Period**" means the period of 12 months ending on a Quarter Date.

"**Relevant Proceeds**" means Disposal Proceeds or Insurance Proceeds (each as defined in Clause 8.2 (Disposal, Insurance Proceeds)).

"**Total Net Debt**" means, at any time, the aggregate amount of all obligations of members of the Group for or in respect of Financial Indebtedness at that time but:

**excluding** any such obligations to any other member of the Group;

**including**, in the case of Finance Leases only, their capitalised value;

**excluding** any amount falling within paragraph (f) (Treasury Transactions) of the definition of Financial Indebtedness; and

**deducting** the aggregate amount of Cash held by any member of the Group at that time,

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

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

#### **Financial condition**

The Parent shall ensure that:

*Cashflow Cover:* Cashflow Cover in respect of any Relevant Period up to and including the Relevant Period ending on or around 29 April 2017 shall not be less than 1:1. For the avoidance of doubt, Cashflow Cover will not be tested after the test in respect of the Relevant Period ending on or around 29 April 2017.

*Interest Cover:* Interest Cover in respect of any Relevant Period shall be not less than 4.5:1.

*Leverage:* Leverage in respect of any Relevant Period ending on the Quarter Date specified in column 1 below shall not exceed the ratio set out in column 2 below opposite that Quarter Date:

<b>Column 1 Quarter Date</b>	<b>Column 2 Ratio</b>
29 April 2017	1.75:1
29 July 2017	1.75:1
28 October 2017	1.75:1
3 February 2018	1.75:1
28 April 2018	1.75:1
28 July 2018	1.75:1
27 October 2018	1.75:1
2 February 2019	1.75:1
4 May 2019	1.75:1
3 August 2019	1.75:1

#### **Financial testing**

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

#### **Equity Cure**

In the event of any breach of any of the financial covenants in Clause 22.2 (Financial condition) (each a "Financial Covenant") for any Relevant Period ending on a Quarter Date (the "Relevant Quarter Date"), the Parent may, not later than 15 Business Days (the "Reference Date") after the last date for delivery of the Compliance Certificate for that Relevant Period, inject into the Group the cash proceeds of any New Shareholder Injection (the "Cure Amount") to remedy non-compliance with a Financial Covenant.

The effect of the Cure Amount shall (subject to the provisions of this Clause) be that each Financial Covenant is recalculated to give effect to the following adjustments:

for the purpose of calculating Cashflow Cover, the Cure Amount shall either (at the option of the Parent):

be included in the calculation of Cashflow for that Relevant Period and (unless and until it is released to the Parent in terms of paragraph (e) below) the next three Relevant Periods; or

reduce Total Net Debt as at the start of the Relevant Period in which the non-compliance occurred and (unless and until it is released to the Parent in terms of paragraph (e) below) the next three Relevant Periods, and Debt Service shall be recalculated for such Relevant Periods on a pro forma basis as if the Total Net Debt has been so reduced (and applied against Facility A, Facility B, Facility C and Facility D in accordance with the terms of Clause 8.3(c));

for the purpose of calculating Leverage, the Cure Amount shall reduce Total Net Debt as at the end of that Relevant Period; and

for the purpose of calculating Interest Cover, the Cure Amount shall be deemed to have been applied in prepayment of the Facilities at the beginning of that Relevant Period and at the beginning of the next three Relevant Periods and Finance Charges for that Relevant Period and (unless and until it is released to the Parent in terms of paragraph (e) below) the next three Relevant Periods shall be recalculated on a pro forma basis as if the Facilities had been so reduced.

If the re-testing of the Financial Covenants after giving effect to paragraphs (a) and (b) above demonstrates no breach has occurred in respect of the Relevant Period, then the relevant breach shall be deemed to have been remedied.

A Cure Amount may be injected up to four times over the duration of the Facilities and may not be injected in consecutive Financial Quarters.

The Parent shall procure that each Cure Amount is credited to the Escrow Account and shall be retained in the Escrow Account until the date of the Quarter Date falling 6 Months after the Relevant Quarter Date at which time it will be released to the Parent if the Parent delivers an Escrow Account Certificate to the Agent within 5 Business Days of such date. In the event that any Default occurs while any amount is held in the Escrow Account or the Parent fails to deliver an Escrow Account Certificate to the Agent within 5 Business Days of the date falling 6 Months after the Relevant Quarter Date, the balance of the Escrow Account may (at the discretion of the Agent, acting on the instructions of the Majority Lenders) be applied immediately in or towards permanent prepayment of Loans with such amount being applied against the Loans in the same manner as voluntary prepayments under Clause 7.3 (Voluntary Prepayment of Term Loans) or Clause 7.4 (Voluntary Prepayment of Revolving Loans).

Any recalculation made under this Clause 22.4 will be solely for the purpose of curing a Financial Covenant breach and not for any other purpose such as calculation of Margin.

## **GENERAL UNDERTAKINGS**

The undertakings in this Clause 23 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

### **Authorisations**

Each Obligor shall promptly:

obtain, comply with and do all that is necessary to maintain in full force and effect; and

supply certified copies to the Agent of, any Authorisation required under any law or regulation of a Relevant Jurisdiction to:

enable it to perform its obligations under the Finance Documents;

ensure the legality, validity, enforceability or admissibility in evidence of any Finance Document; and

carry on its business where failure to do so has or is reasonably likely to have a Material Adverse Effect.

### **Compliance with laws**

Each Obligor shall (and the Parent shall ensure that each member of the Group will) comply in all respects with all laws to which it may be subject, if failure so to comply has or is reasonably likely to have a Material Adverse Effect.

**Environmental compliance**

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

- comply with all Environmental Law;
- obtain, maintain and ensure compliance with all requisite Environmental Permits;
- implement procedures to monitor compliance with and to prevent liability under any Environmental Law,

where failure to do so has or is reasonably likely to have a Material Adverse Effect.

**Environmental claims**

Each Obligor shall (through the Parent), promptly upon becoming aware of the same, inform the Agent in writing of:

- any Environmental Claim against any member of the Group which is current, pending or threatened; and
- any facts or circumstances which are reasonably likely to result in any Environmental Claim being commenced or threatened against any member of the Group,

where the claim, if determined against that member of the Group, has or is reasonably likely to have a Material Adverse Effect.

**Taxation**

Each Obligor shall (and the Parent shall ensure that each member of the Group will) pay and discharge all Taxes imposed upon it or its assets within the time period allowed without incurring penalties unless and only to the extent that:

such payment is being contested in good faith;

adequate reserves are being maintained for those Taxes and the costs required to contest them which have been disclosed in its latest financial statements delivered to the Agent under Clause 21.1 (Financial statements); and

such payment can be lawfully withheld and failure to pay those Taxes does not have or is not reasonably likely to have a Material Adverse Effect.

No member of the Group may change its residence for Tax purposes.

**Merger**

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

**Change of business**

The Parent shall procure that no substantial change is made to the general nature of the business of the Group from that carried on by the Group at the date of this Agreement without the prior written consent of the Majority Lenders.

**Acquisitions**

Except as permitted under either Clause 23.30 (Capital Expenditure) or paragraph (b) below, no Obligor shall (and the Parent shall ensure that no other member of the Group will):

acquire a company or any shares or securities or a business or undertaking (or, in each case, any interest in any of them) or any assets; or

incorporate a company.

Paragraph (a) above does not apply to an acquisition of a company, of shares, securities or a business or undertaking or any assets (or, in each case, any interest in any of them) or the incorporation of a company which is:

a Permitted Acquisition; or

a Permitted Transaction.

## Joint ventures

Except as permitted under paragraph (b) below, no Obligor shall (and the Parent shall ensure that no member of the Group will):

enter into, invest in or acquire (or agree to acquire) any shares, stocks, securities or other interest in any Joint Venture; or

transfer any assets or lend to or guarantee or give an indemnity for or give Security for the obligations of a Joint Venture or maintain the solvency of or provide working capital to any Joint Venture (or agree to do any of the foregoing).

Paragraph (a) above does not apply to any acquisition (or agreement to acquire) any interest in a Joint Venture or transfer of assets (or agreement to transfer assets) to a Joint Venture or loan made to or guarantee given in respect of the obligations of a Joint Venture if such transaction is a Permitted Joint Venture.

## Dormant subsidiaries

Not restated.

## Preservation of assets

Each Obligor shall (and the Parent shall ensure that each member of the Group will) maintain in good working order and condition (ordinary wear and tear excepted) all of its assets necessary or desirable in the conduct of its business.

## Pari passu ranking

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

## Negative pledge

In this Clause 23.13, "**Quasi-Security**" means a transaction described in paragraph (b) below.

Except as permitted under paragraph (c) below:

No Obligor shall (and the Parent shall ensure that no other member of the Group will) create or permit to subsist any Security over any of its assets.

No Obligor shall (and the Parent shall ensure that no other member of the Group will):

sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by an Obligor or any other member of the Group;

sell, transfer or otherwise dispose of any of its receivables on recourse terms;

enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or

enter into any other preferential arrangement having a similar effect,

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

Paragraphs (a) and (b) above do not apply to any Security or (as the case may be) Quasi-Security, which is:

a Permitted Security; or

a Permitted Transaction.

## Disposals

Except as permitted under paragraph (b) below, no Obligor shall (and the Parent shall ensure that no member of the Group will) enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any asset.

Paragraph (a) above does not apply to any sale, lease, transfer or other disposal which is:

a Permitted Disposal; or

a Permitted Transaction.

#### **Arms' length basis**

Except as permitted by paragraph (b) below, no Obligor shall (and the Parent shall ensure no member of the Group will) enter into any transaction with any person except on arms' length terms and for full market value.

The following transactions shall not be a breach of this Clause 23.15:

intra-Group loans permitted under Clause 23.16 (Loans or credit);

fees, costs and expenses payable under the Transaction Documents in the amounts set out in the Transaction Documents delivered to the Agent under Clause 4.1 (Initial conditions precedent) or agreed by the Agent; and

any Permitted Transactions.

#### **Loans or credit**

Except as permitted under paragraph (b) below, no Obligor shall (and the Parent shall ensure that no member of the Group will) be a creditor in respect of any Financial Indebtedness.

Paragraph (a) above does not apply to:

a Permitted Loan; or

a Permitted Transaction.

#### **No Guarantees or indemnities**

Except as permitted under paragraph (b) below, no Obligor shall (and the Parent shall ensure that no member of the Group will) incur or allow to remain outstanding any guarantee in respect of any obligation of any person.

Paragraph (a) does not apply to a guarantee which is:

a Permitted Guarantee; or

a Permitted Transaction.

#### **Corporate fees, dividends and share redemptions**

Except as permitted under paragraph (b) below, the Parent shall not (and will ensure that no other member of the Group will):

declare, make or pay any dividend, charge, fee or other distribution (or interest on any unpaid dividend, charge, fee or other distribution) (whether in cash or in kind) on or in respect of its share capital (or any class of its share capital);

repay or distribute any dividend or share premium reserve;

pay or allow any member of the Group to pay any management charges or fees or any advisory or other fees to (or to the order of) any of the shareholders of the Parent (or to any Holding Company of any such shareholders);

redeem, repurchase, defease, retire or repay any of its share capital or resolve to do so; or

repay any loans advanced by the UK Acquisition Company or its Holding Company other than by way of a Permitted Payment.

Paragraph (a) above does not apply to:

a Permitted Payment;

a Permitted Transaction (other than one referred to in paragraph (c) of the definition of that term); or

management charges or fees or other advisory or other fees payable by members of the Group to the UK Acquisition Company not exceeding £500,000 (or its equivalent in other currencies) in aggregate in any Financial Year.

## **Financial Indebtedness**

Except as permitted under paragraph (b) below, no Obligor shall (and the Parent shall ensure that no member of the Group will) incur or allow to remain outstanding any Financial Indebtedness.

Paragraph (a) above does not apply to Financial Indebtedness which is:

Permitted Financial Indebtedness; or

a Permitted Transaction.

## **Share capital**

No Obligor shall (and the Parent shall ensure no member of the Group will) issue any shares except pursuant to:

a Permitted Share Issue; or

a Permitted Transaction.

## **Insurance**

Each Obligor shall (and the Parent shall ensure that each member of the Group will) maintain insurances on and in relation to its business and assets against those risks and to the extent as is usual for companies carrying on the same or substantially similar business.

All insurances must be with reputable independent insurance companies or underwriters.

Not restated.

Within 30 days of the date of this Agreement, the Parent shall provide to the Agent written evidence that the insurance policy(ies) relating to the Charged Property contain (in form and substance reasonably satisfactory to the Security Trustee) an endorsement naming the Security Trustee as sole loss payee.

## **Pensions**

The Parent shall ensure that no member of the Group is or has been at any time an employer (for the purposes of Sections 38 to 51 of the Pensions Act 2004) of an occupational pension scheme which is not a money purchase scheme (both terms as defined in the Pension Schemes Act 1993) or "connected" with or an "associate" of (as those terms are under in Sections 38 or 43 of the Pensions Act 2004) such an employer.

## **People with Significant Control regime**

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

within the relevant timeframe, comply with any notice it receives pursuant to Part 21A of the Companies Act 2006 from any company incorporated in the United Kingdom whose shares are the subject of the Transaction Security; and

promptly provide the Security Agent with a copy of that notice.

## **Access**

If a Default is continuing or the Agent reasonably suspects a Default is continuing or may occur, each Obligor shall, and the Parent shall ensure that each Obligor will, (not more than once in every Financial Year unless the Agent reasonably suspects a Default is continuing or may occur) permit the Agent and/or the Security Trustee and/or accountants or other professional advisers and contractors of the Agent or Security Trustee free access at all reasonable times and on reasonable notice at the risk and cost of the Obligors to (a) the premises, assets, books, accounts and records of each Obligor and (b) meet and discuss matters with Senior Management.

## **Management**

The Parent must ensure that there is in place in respect of each Obligor qualified management with appropriate skills.

If any of the Senior Management ceases (whether by reason of death, retirement at normal retiring age or through ill health or otherwise) to perform his or her duties, the Parent must as soon as reasonably practicable thereafter:

notify the Agent; and

after consultation with the Agent as to the identity of such replacement person, find and appoint an adequately qualified replacement for him or her as promptly as practicable.

### **Intellectual Property**

Each Obligor shall and the Parent shall procure that each member of the Group will:

preserve and maintain the subsistence and validity of the Intellectual Property necessary for the business of the relevant member of the Group;

use reasonable endeavours to prevent any infringement in any material respect of the Intellectual Property;

make registrations and pay all registration fees and taxes necessary to maintain the Intellectual Property in full force and effect and record its interest in that Intellectual Property;

not use or permit the Intellectual Property to be used in a way or take any step or omit to take any step in respect of that Intellectual Property which may materially and adversely affect the existence or value of the Intellectual Property or imperil the right of any member of the Group to use such property; and

not discontinue the use of the Intellectual Property,

where failure to do so, in the case of paragraphs (a) and (b) above, or, in the case of paragraphs (d) and (e) above, such use, permission to use, omission or discontinuation, is reasonably likely to have a Material Adverse Effect.

### **Amendments**

No Obligor shall (and the Parent shall ensure that no member of the Group will) amend, vary, novate, supplement, supersede, waive or terminate any term of a Transaction Document or any other document delivered to the Agent pursuant to Clauses 4.1 (Initial conditions precedent) or Clause 26 (Changes to the Obligors) or enter into any agreement with any shareholders of the Parent or any of their Affiliates which is not a member of the Group except in writing:

in accordance with the provisions of Clause 37 (Amendments and Waivers); or

after the date of this Agreement, in a way which could not be reasonably expected materially and adversely to affect the interests of the Lenders.

The Parent shall promptly supply to the Agent a copy of any document relating to any of the matters referred to in paragraphs (a) and (b) above.

### **Financial assistance**

Each Obligor shall (and the Parent shall procure each member of the Group will) comply in all respects with Section 82 of the Companies Act 2014 in Ireland and any equivalent legislation in other jurisdictions including in relation to the execution of the Transaction Security Documents and payment of amounts due under this Agreement, in each case where relevant.

### **Group bank accounts**

The Parent shall ensure that all bank accounts of the Group (other than the Permitted Bank Accounts but including the Holding Account, the Mandatory Prepayment Account and the Escrow Account) shall be opened and maintained with a Finance Party or an Affiliate of a Finance Party and are subject to valid Security under the Transaction Security Documents.

### **Capital Expenditure**

Subject to paragraph (b) below, the aggregate Capital Expenditure of the Group in respect of any Financial Year shall not exceed 115% of the amount approved by the Agent in the Budget (or in any updated or changed Budget) for that Financial Year.

Capital Expenditure of the Group in excess of the limit specified in paragraph (a) above (or any other limit agreed between the Parent and the Majority Lenders) may be incurred using funds provided for the purpose by the UK Acquisition Company, and made available by subscription for ordinary shares in the Parent or by way of loan complying with the terms of paragraph (g) of Permitted Financial Indebtedness.

### **Treasury Transactions**

No Obligor shall (and the Parent will procure that no members of the Group will) enter into any Treasury Transaction, other than (with a member of the LBG Group provided that its terms are broadly competitive):



the hedging transactions documented by the Hedging Agreements;

spot and forward delivery foreign exchange contracts entered into in the ordinary course of business and not for speculative purposes; and

any Treasury Transaction entered into for the hedging of actual or projected real exposures arising in the ordinary course of trading activities of a member of the Group for a period of not more than 12 months and not for speculative purposes.

Not restated.

#### **Further assurance**

Each Obligor shall (and the Parent shall procure that each member of the Group will) promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Security Trustee may reasonably specify (and in such form as the Security Trustee may reasonably require in favour of the Security Trustee or its nominee(s)):

to perfect the Security created or intended to be created under or evidenced by the Transaction Security Documents (which may include the execution of a mortgage, charge, assignment or other Security over all or any of the assets which are, or are intended to be, the subject of the Transaction Security) or for the exercise of any rights, powers and remedies of the Security Trustee or the Finance Parties provided by or pursuant to the Finance Documents or by law;

to confer on the Security Trustee or confer on the Finance Parties Security over any property and assets of that Obligor located in any jurisdiction equivalent or similar to the Security intended to be conferred by or pursuant to the Transaction Security Documents; and/or

to facilitate the realisation of the assets which are, or are intended to be, the subject of the Transaction Security.

Each Obligor shall (and the Parent shall procure that each member of the Group shall) take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Security Trustee or the Finance Parties by or pursuant to the Finance Documents.

#### **Payment of Loan Notes**

Not restated.

#### **Acquisition Agreement**

The Parent will not agree to amend or waive or permit the amendment or waiver of any of the material terms of the Acquisition Agreement, without the consent of the Agent, which consent will not be unreasonably withheld or delayed.

#### **Sanctions and anti-corruption law**

No Borrower may request any Loan, and no Borrower shall use, and each Borrower shall procure that its Subsidiaries and its or their respective directors, officers and employees shall not use, the proceeds of any Loan:

in furtherance of an offer, payment, promise to pay, or authorisation of the payment or giving of money, or anything else of value, to any Sanctioned Person or in violation of any Anti-Corruption Laws;

for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country; or

in any manner that would result in the violation of any Sanctions applicable to any party hereto.

The undertakings given under paragraph (a) above apply to any Obligor only if and to the extent that making of or compliance with such representation does not result in a violation or conflict with (i) section 7 of the German Foreign Trade Regulation (*Außenwirtschaftsverordnung*) (in conjunction with section 4 paragraph 1 a no 3 German Foreign Trade Law (*Außenwirtschaftsgesetz*)) (ii) any provision of the Council Regulation (EC) No. 2271/96 of 22 November 1996 protection against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom and/or (iii) any other applicable anti-boycott laws or regulations.

The undertaking given under paragraph (a) above shall only apply for the benefit of a Lender that is incorporated in Germany (*Inländer*) to the extent that it would not result in any violation of, conflict with or liability under (i) section 7 of the German Foreign Trade Regulation (*Außenwirtschaftsverordnung*) (in conjunction with section 4 paragraph 1 a no 3 German Foreign Trade Law (*Außenwirtschaftsgesetz*)), (ii) any provision of the Council Regulation (EC) No 2271/96 of 22 November 1996 protecting against

the effects of the extra-territorial application of legislation adopted by a third country and actions based thereon or resulting from and/or (iii) any other applicable anti-boycott laws or regulations.

### **Guarantors**

The Parent shall ensure that, at all times after the Fourth Restatement Date, the aggregate gross assets, aggregate operating profit and aggregate turnover (net of VAT) of the Guarantors (in each case calculated on an unconsolidated basis and excluding all intra-group items and investments in Subsidiaries of any member of the Group) represents not less than ninety (90) per cent of consolidated gross assets, operating profit and turnover (net of VAT) of the Group.

### **Condition Subsequent**

The Company shall deliver the duly notarised German Law Share Pledge, together with all deliverables thereto, to the Security Agent within 5 Business Days of such notarisation and by no later than 31 May 2017.

### **EVENTS OF DEFAULT**

Each of the events or circumstances set out in this Clause 24 is an Event of Default (save for Clause 24.21 (Acceleration)).

#### **Non-payment**

An Obligor does not pay on the due date any amount payable pursuant to a Finance Document (other than amounts due and payable under the Working Capital Facility Letter) at the place at and in the currency in which it is expressed to be payable unless:

its failure to pay is caused by:

administrative or technical error; or

a Disruption Event; and

payment is made within three Business Days of its due date.

#### **Financial covenants and other obligations**

Any requirement of Clause 22 (Financial covenants) is not satisfied or an Obligor does not comply with the provisions of any of Clauses 21.1 (Financial Statements), 21.2 (Provision and contents of Compliance Certificate), 23.13 (Negative Pledge), 23.14 (Disposals), 23.16 (Loans or credit), 23.17 (No Guarantees or indemnities), 23.18 (Corporate Fees, Dividends and share redemption), 23.19 (Financial Indebtedness), 23.27 (Amendments) and 23.37 (Conditions Subsequent).

An Obligor does not comply with any provision of any Transaction Security Document.

#### **Other obligations**

An Obligor does not comply with any provision of the Finance Documents (other than those referred to in Clause 24.1 (Non-payment) and Clause 24.2 (Financial covenants and other obligations)).

No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within 15 Business Days (or such other period (if any) as the Agent may agree) of the earlier of (i) the Agent giving notice to the Parent or relevant Obligor or (ii) the Parent or an Obligor becoming aware of the failure to comply.

#### **Misrepresentation**

Any representation or statement made or deemed to be made by an Obligor in the Finance Documents or any other document delivered by or on behalf of any Obligor under or in connection with any Finance Document is or proves to have been incorrect or misleading in any material respect when made or deemed to be made.

No Event of Default under paragraph (a) will occur if the matter giving rise to the breach is capable of remedy and is remedied within 15 Business Days (or such other period (if any) as the Agent may agree) of the earlier of (i) the Agent giving notice to the Parent or relevant Obligor or (ii) the Parent or an Obligor becoming aware of the breach.

#### **Cross default**

Any Financial Indebtedness of any member of the Group is not paid when due nor within any originally applicable grace period.

Any Financial Indebtedness of any member of the Group is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).

Any commitment for any Financial Indebtedness of any member of the Group is cancelled or suspended by a creditor of any member of the Group as a result of an event of default (however described).

Any creditor of any member of the Group becomes entitled to declare any Financial Indebtedness of any member of the Group due and payable prior to its specified maturity as a result of an event of default (however described).

No Event of Default will occur under this Clause 24.5 if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (a) to (d) above is less than £100,000 (or its equivalent in any other currency or currencies) or (for a period of 15 Business Days) if the Financial Indebtedness relates to the Working Capital Facility.

### **Insolvency**

A member of the Group is unable or admits inability to pay its debts as they fall due or is deemed to or declared to be unable to pay its debts under applicable law, suspends or threatens to suspend making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness.

The value of the assets of any member of the Group is less than its liabilities (taking into account contingent and prospective liabilities).

A moratorium is declared in respect of any indebtedness of any member of the Group. If a moratorium occurs, the ending of the moratorium will not remedy any Event of Default caused by that moratorium.

A German Obligor:

is deemed or declared or admits to be unable to pay its debts as they fall due (*Zahlungsunfähigkeit*) within the meaning of Section 17 of the German Insolvency Code (*Insolvenzordnung*); suspends or threatens to suspend making payments on all or part of its debts or announces an intention to do so or an insolvency event within the meaning of section 18 German Insolvency Code (*Insolvenzordnung*) has occurred; or

is deemed or declared to be over-indebted (*Überschuldung*) within the meaning of Section 19 of the German Insolvency Code (*Insolvenzordnung*).

### **Insolvency proceedings**

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

the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration, examination or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any member of the Group;

a composition, compromise, assignment or arrangement with any creditor of any member of the Group;

the appointment of a liquidator, receiver, administrator, administrative receiver, examiner, compulsory manager or other similar officer in respect of any member of the Group or any of its assets;

in relation to a German Obligor:

the filing by that entity of a petition for insolvency proceedings in respect of its assets (*Eigenantrag*);

the filing by another person of a petition for insolvency proceedings, in respect of the assets of the entity unless such filing is frivolous or vexatious or has been dismissed by the competent court within thirty (30) Business Days after filing;

the taking of actions pursuant to section 21 of the German Insolvency Code (*Insolvenzordnung*) by a competent court or the competent court institutes or rejects (for reason of insufficiency of its funds to implement such proceedings) the institution of insolvency proceedings against its assets; or

the commencement of main insolvency proceeds; or

enforcement of any Security over any assets of any member of the Group, or

or any analogous procedure or step is taken in any jurisdiction.

Paragraph (a) shall not apply to:

any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 14 days of commencement or, if earlier, the date on which it is advertised; or

any step or procedure contemplated by paragraph (b) of the definition of Permitted Transaction.

#### **Creditors' process**

Any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of Obligor having an aggregate value of £250,000 (or its equivalent in other currencies) or more (after taking into account the anticipated level of insurance proceeds (if any) which the Obligor will be entitled to receive and which in the opinion of the Agent (acting reasonably) is not being contested) and is not discharged within 10 Business Days.

#### **Unlawfulness and invalidity**

It is or becomes unlawful for an Obligor to perform any of its obligations under the Finance Documents or any Transaction Security created or expressed to be created or evidenced by the Transaction Security Documents ceases to be effective.

Any obligation or obligations of any Obligor under any Finance Documents are not (subject to the Legal Reservations) or cease to be legal, valid, binding or enforceable and the cessation individually or cumulatively materially and adversely affects the interests of the Lenders under the Finance Documents.

Any Finance Document ceases to be in full force and effect or any Transaction Security ceases to be legal, valid, binding, enforceable or effective or is alleged by a party to it (other than a Finance Party) to be ineffective.

#### **Cessation of business**

Any member of the Group suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business except as a result of a Permitted Disposal or a Permitted Transaction.

#### **Change of ownership**

After the date of this Agreement, an Obligor (other than the Parent) ceases to be a wholly-owned Subsidiary of the Parent; or

an Obligor ceases to own at least the same percentage of shares in a Material Company as at the date of this Agreement,

except, in either case, as a result of a disposal which is a Permitted Disposal or a Permitted Transaction.

#### **Constitutional Documents**

The Parent amends, varies, supplements, supersedes, waives or terminates its Constitutional Documents in any way that has a material and adverse impact on the Lenders without the prior written consent of the Majority Lenders.

#### **Change of management**

Not restated.

#### **Change of Key Personnel**

Not restated.

#### **Audit qualification**

The Auditors of the Group qualify the audited annual consolidated financial statements of the Parent in a manner which the Majority Lenders (acting reasonably) consider material in the context of the Finance Documents.

#### **Expropriation**

The authority or ability of any member of the Group to conduct its business is limited or wholly or substantially curtailed by any seizure, expropriation, nationalisation, intervention, restriction or other action by or on behalf of any governmental, regulatory or other authority or other person in relation to any member of the Group or any of its assets.

**Repudiation and rescission of agreements**

An Obligor (or any other relevant party) rescinds or purports to rescind or repudiates or purports to repudiate a Finance Document or any of the Transaction Security or evidences an intention to rescind or repudiate a Finance Document or any Transaction Security.

**Litigation**

Any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes are commenced or threatened or any judgment or order of a court, arbitral tribunal or other tribunal or any order or sanction of any governmental or other regulatory body is made in relation to the Transaction Documents or the transactions contemplated in the Transaction Documents or against any member of the Group or its assets which have, or has, or is, reasonably likely to have a Material Adverse Effect.

**Material adverse change**

Any event or circumstance occurs which is reasonably likely to have a Material Adverse Effect.

**Employee Benefit Trust**

Not restated.

**Acceleration**

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

cancel the Total Commitments at which time they shall immediately be cancelled;

declare that all or part of the Utilisations, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, at which time they shall become immediately due and payable;

declare that all or part of the Utilisations be payable on demand, at which time they shall immediately become payable on demand by the Agent on the instructions of the Majority Lenders; and/or

exercise or direct the Security Trustee to exercise any or all of its rights, remedies, powers or discretions under the Finance Documents.

## SECTION 9

### CHANGES TO PARTIES

#### CHANGES TO THE LENDERS

##### Assignments and transfers by the Lenders

Subject to this Clause 25 a Lender (the "**Existing Lender**") may:

assign any of its rights; or

transfer by novation any of its rights and obligations,

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

##### Conditions of assignment or transfer

An Existing Lender must consult with the Parent for no more than 10 days before it may make an assignment or transfer in accordance with Clause 25.1 (Assignments and transfers by the Lenders) unless the assignment or transfer is:

to another Lender or an Affiliate of any Lender;

if the Existing Lender is a fund, to a fund which is a Related Fund of that Existing Lender; or

made at a time when an Event of Default is continuing.

An assignment will only be effective on:

receipt by the Agent (whether in the Assignment Agreement or otherwise) of written confirmation from the New Lender (in form and substance satisfactory to the Agent) that the New Lender will assume the same obligations to the other Finance Parties and the other Secured Parties as it would have been under if it was an Original Lender;

the New Lender entering into the documentation required for it to accede as a party to the Intercreditor Agreement; and

the performance by the Agent of all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to such assignment to a New Lender, the completion of which the Agent shall promptly notify to the Lender and the New Lender.

A transfer will only be effective if the New Lender enters into the documentation required for it to accede as a party to the Intercreditor Agreement and if the procedure set out in Clause 25.5 (Procedure for transfer) is complied with.

If:

a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office; and

as a result of circumstances existing at the date the assignment, transfer or change occurs, an Obligor would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause 14 (Tax gross-up and indemnities) or Clause 15 (Increased Costs),

then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under those Clauses to the same extent as the Existing Lender or Lender acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred.

Each New Lender, by executing the relevant Transfer Certificate or Assignment Agreement, confirms, for the avoidance of doubt, that the Agent has the authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the transfer or assignment becomes effective in accordance with this Agreement and that it is bound by that decision to the same extent as the Existing Lender would have been had it remained a Lender.

### Assignment or transfer fee

Unless the Agent otherwise agrees and excluding an assignment or transfer (i) to an Affiliate of a Lender, or (ii) to a Related Fund or (iii) made in connection with primary syndication of the Facilities, the New Lender shall, on the date upon which an assignment or transfer takes effect, pay to the Agent (for its own account) a fee of £1,500.

### Limitation of responsibility of Existing Lenders

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

- the legality, validity, effectiveness, adequacy or enforceability of the Transaction Documents, the Transaction Security or any other documents;
- the financial condition of any Obligor;
- the performance and observance by any Obligor or any other member of the Group of its obligations under the Transaction Documents or any other documents; or
- the accuracy of any statements (whether written or oral) made in or in connection with any Transaction Document or any other document, and any representations or warranties implied by law are excluded.

Each New Lender confirms to the Existing Lender, the other Finance Parties and the Secured Parties that it:

has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Obligor and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender or any other Finance Party in connection with any Transaction Document or the Transaction Security; and

will continue to make its own independent appraisal of the creditworthiness of each Obligor and its related entities whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.

Nothing in any Finance Document obliges an Existing Lender to:

- accept a re-transfer or re-assignment from a New Lender of any of the rights and obligations assigned or transferred under this Clause 25; or
- support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by any Obligor of its obligations under the Transaction Documents or otherwise.

### Procedure for transfer

Subject to the conditions set out in Clause 25.2 (Conditions of assignment or transfer) a transfer is effected in accordance with paragraph (c) below when the Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Transfer Certificate.

The Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary "know your customer" or similar checks under all applicable laws and regulations in relation to the transfer to such New Lender.

On the Transfer Date:

to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by novation its rights and obligations under the Finance Documents and in respect of the Transaction Security each of the Obligors and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and in respect of the Transaction Security and their respective rights against one another under the Finance Documents and in respect of the Transaction Security shall be cancelled (being the "**Discharged Rights and Obligations**");

each of the Obligors and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as that Obligor or other member of the Group and the New Lender have assumed and/or acquired the same in place of that Obligor and the Existing Lender;

the Agent, the Arranger, the Security Trustee, the New Lender and the other Lenders shall acquire the same rights and assume the same obligations between themselves and in respect of the Transaction Security as they would have acquired and assumed had the New Lender been an Original Lender with the rights, and/or obligations acquired or assumed by it as a result of the transfer and to that extent the Agent, the Arranger and the Security Trustee and the Existing Lender shall each be released from further obligations to each other under the Finance Documents; and

the New Lender shall become a Party as a "**Lender**".

#### **Procedure for assignment**

Subject to the conditions set out in Clause 25.2 (Conditions of assignment or transfer) an assignment may be effected in accordance with paragraph (c) below when the Agent executes an otherwise duly completed Assignment Agreement delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Assignment Agreement appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Assignment Agreement.

The Agent shall only be obliged to execute an Assignment Agreement delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary "know your customer" or similar checks under all applicable laws and regulations in relation to the assignment to such New Lender.

On the Transfer Date:

the Existing Lender will assign absolutely to the New Lender its rights under the Finance Documents and in respect of the Transaction Security expressed to be the subject of the assignment in the Assignment Agreement;

the Existing Lender will be released from the obligations (the "**Relevant Obligations**") expressed to be the subject of the release in the Assignment Agreement (and any corresponding obligations by which it is bound in respect of the Transaction Security); and

the New Lender shall become a Party as a "Lender" and will be bound by obligations equivalent to the Relevant Obligations.

Lenders may utilise procedures other than those set out in this Clause 25.6 to assign their rights under the Finance Documents **provided that** they comply with the conditions set out in Clause 25.2 (Conditions of assignment or transfer).

#### **Copy of Transfer Certificate or Assignment Agreement to Parent**

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

#### **Disclosure of information**

Any Lender may disclose to any of its Affiliates and any other person:

to (or through) whom that Lender assigns or transfers (or may potentially assign or transfer) all or any of its rights and obligations under the Finance Documents;

with (or through) whom that Lender enters into (or may potentially enter into) any sub-participation in relation to, or any other transaction under which payments are to be made by reference to, the Finance Documents or any Obligor; or

to whom, and to the extent that, information is required to be disclosed by any applicable law or regulation; or

for whose benefit that Lender charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 25.9 (Security over Lenders' rights); and

any Finance Party may disclose to a rating agency or its professional advisers, or (with the consent of the Parent) any other person,

any information about any Obligor, the Group and the Finance Documents as that Lender or other Finance Party shall consider appropriate if in relation to paragraphs (a)(i) and (ii) above, the person to whom the information is to be given has entered into a Confidentiality Undertaking.



Any Confidentiality Undertaking signed by a Finance Party pursuant to this Clause 25.8 shall supersede any prior confidentiality undertaking signed by such Finance Party for the benefit of any member of the Group.

### **Security over Lenders' rights**

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

any charge, assignment or other Security to secure obligations to a federal reserve or central bank; and

in the case of any Lender which is a fund, any charge, assignment or other Security granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by that Lender as security for those obligations or securities,

except that no such charge, assignment or Security shall:

release a Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant charge, assignment or Security for the Lender as a party to any of the Finance Documents; or

require any payments to be made by an Obligor or grant to any person any more extensive rights than those required to be made or granted to the relevant Lender under the Finance Documents.

### **Pro rata interest settlement**

If the Agent has notified the Lenders that it is able to distribute interest payments on a "pro rata basis" to Existing Lenders and New Lenders then (in respect of any transfer pursuant to Clause 25.5 (Procedure for transfer) or any assignment pursuant to Clause 25.6 (Procedure for assignment) the Transfer Date of which, in each case, is after the date of such notification and is not on the last day of an Interest Period):

any interest or fees in respect of the relevant participation which are expressed to accrue by reference to the lapse of time shall continue to accrue in favour of the Existing Lender up to but excluding the Transfer Date ("Accrued Amounts") and shall become due and payable to the Existing Lender (without further interest accruing on them) on the last day of the current Interest Period (or, if the Interest Period is longer than six Months, on the next of the dates which falls at six Monthly intervals after the first day of that Interest Period); and

the rights assigned or transferred by the Existing Lender will not include the right to the Accrued Amounts so that, for the avoidance of doubt:

when the Accrued Amounts become payable, those Accrued Amounts will be payable for the account of the Existing Lender; and

the amount payable to the New Lender on that date will be the amount which would, but for the application of this Clause 25.10, have been payable to it on that date, but after deduction of the Accrued Amounts.

In this Clause 25.10 references to "Interest Period" shall be construed to include a reference to any other period for accrual of fees.

An Existing Lender which retains the right to the Accrued Amounts pursuant to this Clause 25.10 but which does not have a Commitment shall be deemed not to be a Lender for the purposes of ascertaining whether the agreement of any, specified group of Lenders has been obtained to approve any request for a consent waiver, amendment or other vote of Lenders under the Finance Documents.

### **Debt Purchase Transactions**

The Parent shall not, and shall procure that each other member of the Group shall not (i) enter into any Debt Purchase Transaction or (ii) beneficially own all or any part of the share capital of a company

that is a Lender or a party to a Debt Purchase Transaction of the type referred to in paragraphs (ii) or (iii) of the definition of Debt Purchase Transaction.

For so long as any shareholder in the Parent (i) beneficially owns a Commitment or (ii) has entered into a sub-participation agreement relating to a Commitment or other agreement or arrangement having a substantially similar economic effect and such agreement has not been terminated:

in ascertaining the Majority Lenders or whether any given percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments has been obtained to approve any request for a consent, waiver, amendment or other vote under the Finance Documents such Commitment shall be deemed to be zero; and

for the purposes of Clause 37.2 (Exceptions), such shareholder in the Parent or the person with whom it has entered into such sub-participation, other agreement or arrangement shall be deemed not to be a Lender.

Each Lender shall, unless such Debt Purchase Transaction is an assignment or transfer, promptly notify the Agent in writing if it knowingly enters into a Debt Purchase Transaction with a shareholder in the Parent (a "**Notifiable Debt Purchase Transaction**").

A Lender shall promptly notify the Agent if a Notifiable Debt Purchase Transaction to which it is a party:

is terminated; or

ceases to be with a shareholder in the Parent.

Each shareholder in the Parent that is a Lender agrees that:

in relation to any meeting or conference call to which all the Lenders are invited to attend or participate, it shall not attend or participate in the same if so requested by the Agent or, unless the Agent otherwise agrees, be entitled to receive the agenda or any minutes of the same; and

in its capacity as Lender, unless the Agent otherwise agrees, it shall not be entitled to receive any report or other document prepared at the behest of, or on the instructions of, the Agent or one or more of the Lenders.

## **CHANGES TO THE OBLIGORS**

### **Assignment and transfers by Obligors**

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

### **Additional Borrowers**

Subject to compliance with the provisions of paragraphs (c) and (d) of Clause 21.9 ("Know your customer" checks), the Parent may request that any of its wholly owned Subsidiaries which is not a Dormant Subsidiary becomes a Borrower. That Subsidiary shall become a Borrower if:

it is incorporated in the same jurisdiction as an existing Borrower and the Majority Lenders approve the addition of that Subsidiary or otherwise if all the Lenders approve the addition of that Subsidiary;

the Parent and that Subsidiary deliver to the Agent a duly completed and executed Accession Letter;

the Subsidiary is (or becomes) a Guarantor prior to becoming a Borrower;

the Parent confirms that no Default is continuing or would occur as a result of that Subsidiary becoming an Additional Borrower; and

the Agent has received all of the documents and other evidence listed in Part II of Schedule 2 (Conditions precedent) in relation to that Additional Borrower, each in form and substance satisfactory to the Agent.

The Agent shall notify the Parent and the Lenders promptly upon being satisfied that it has received (in form and substance satisfactory to it) all the documents and other evidence listed in Part II of Schedule 2 (Conditions precedent).

Other than to the extent that the Majority Lenders notify the Agent in writing to the contrary before the Agent gives the notification described in paragraph (b) above, the Lenders authorise (but do not require) the Agent to give that notification. The Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.

Upon becoming an Additional Borrower that Subsidiary shall make any filings (and provide copies of such filings) as required by paragraph (g) of Clause 14.2 (Tax gross-up) and paragraph (b) of Clause 14.6 (HMRC DT Treaty Passport scheme confirmation) in accordance with those paragraphs.

### **Resignation of a Borrower**

In this Clause 26.3, Clause 26.5 (Resignation of a Guarantor) and Clause 26.7 (Resignation and release of Security on disposal), "Third Party Disposal" means the disposal of an Obligor to a person which is not a member of the Group where that disposal is permitted under Clause 23.14 (Disposals) or made with the approval of the Majority Lenders (and the Parent has confirmed this is the case).

With the prior consent of all the Lenders, the Parent may request that a Borrower ceases to be a Borrower by delivering to the Agent a Resignation Letter. If a Borrower is the subject of a Third Party Disposal, the Parent may request that such Borrower (other than the Parent, Holdings or the Company) ceases to be a Borrower by delivering to the Agent a Resignation Letter.

The Agent shall accept a Resignation Letter and notify the Parent and the other Finance Parties of its acceptance if:

the Parent has confirmed that no Default is continuing or would result from the acceptance of the Resignation Letter;

the Borrower is under no actual or contingent obligations as a Borrower under any Finance Documents;

where the Borrower is also a Guarantor (unless its resignation has been accepted in accordance with Clause 26.5 (Resignation of a Guarantor)), its obligations in its capacity as Guarantor continue to be legal, valid, binding and enforceable and in full force and effect (subject to the Legal Reservations) and the amount guaranteed by it as a Guarantor is not decreased (and the Parent has confirmed this is the case); and

the Parent has confirmed that it shall ensure that any relevant Disposal Proceeds will be applied in accordance with Clause 8.3 (Application of mandatory prepayments).

Upon notification by the Agent to the Parent of its acceptance of the resignation of a Borrower, that company shall cease to be a Borrower and shall have no further rights or obligations under the Finance Documents as a Borrower except that the resignation shall not take effect (and the Borrower will continue to have rights and obligations under the Finance Documents) until the date on which the Third Party Disposal takes effect.

### **Additional Guarantors**

Subject to compliance with the provisions of paragraphs (b) and (c) of Clause 21.9 ("Know your customer" checks), the Parent may request that any of its wholly owned Subsidiaries become a Guarantor.

The Parent shall procure that any other member of the Group which is required to comply with Clause 23.36 (Guarantors), shall become an Additional Guarantor and grant Security as the Agent may require.

A member of the Group shall become an Additional Guarantor if:

the Parent and the proposed Additional Guarantor deliver to the Agent a duly completed and executed Accession Letter; and

the Agent has received all of the documents and other evidence listed in Part II of Schedule 2 (Conditions Precedent) in relation to that Additional Guarantor, each in form and substance satisfactory to the Agent.

The Agent shall notify the Parent and the Lenders promptly upon being satisfied that it has received (in form and substance satisfactory to it) all the documents and other evidence listed in Part II of Schedule 2 (Conditions precedent).

Other than to the extent that the Majority Lenders notify the Agent in writing to the contrary before the Agent gives the notification described in paragraph (c) above, the Lenders authorise (but do not require) the Agent to give that notification. The Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.

### **Resignation of a Guarantor**

The Parent may request that a Guarantor (other than the Parent or the Company) ceases to be a Guarantor by delivering to the Agent a Resignation Letter if:

that Guarantor is being disposed of by way of a Third Party Disposal (as defined in Clause 26.3 (Resignation of a Borrower)) and the Parent has confirmed this is the case; or

all the Lenders have consented to the resignation of that Guarantor.

The Agent shall accept a Resignation Letter and notify the Parent and the Lenders of its acceptance if:

the Parent has confirmed that no Default is continuing or would result from the acceptance of the Resignation Letter;

no payment is due from the Guarantor under Clause 19.1 (Guarantee and indemnity);

where the Guarantor is also a Borrower, it is under no actual or contingent obligations as a Borrower and has resigned and ceased to be a Borrower under Clause 26.3 (Resignation of a Borrower); and

the Parent has confirmed that it shall ensure that the Disposal Proceeds will be applied, in accordance with Clause 8.3 (Application of mandatory prepayments).

The resignation of that Guarantor shall not be effective until the date of the relevant Third Party Disposal at which time that company shall cease to be a Guarantor and shall have no further rights or obligations under the Finance Documents as a Guarantor.

### **Repetition of Representations**

Delivery of an Accession Letter constitutes confirmation by the relevant Subsidiary that the representations and warranties referred to in paragraph (c) of Clause 20.31 (Times when representations made) are true and correct in relation to it as at the date of delivery as if made by reference to the facts and circumstances then existing.

### **Resignation and release of security on disposal**

If a Borrower or Guarantor is or is proposed to be the subject of a Third Party Disposal then:

where that Borrower or Guarantor created Transaction Security over any of its assets or business in favour of the Security Trustee, or Transaction Security in favour of the Security Trustee was created over the shares (or equivalent) of that Borrower or Guarantor, the Security Trustee may, at the cost and request of the Parent, release those assets, business or shares (or equivalent) and issue certificates of non-crystallisation;

the resignation of that Borrower or Guarantor and related release of Transaction Security referred to in paragraph (a) above shall not become effective until the date of that disposal; and

if the disposal of that Borrower or Guarantor is not made, the Resignation Letter of that Borrower or Guarantor and the related release of Transaction Security referred to in paragraph (a) above shall have no effect and the obligations of the Borrower or Guarantor and the Transaction Security created or intended to be created by or over that Borrower or Guarantor shall continue in full force and effect.

## SECTION 10

### THE FINANCE PARTIES

#### ROLE OF THE AGENT, THE ARRANGER AND OTHERS

##### Appointment of the Agent

Each of the Arranger and the Lenders appoints the Agent to act as its agent under and in connection with the Finance Documents.

Each of the Arranger and the Lenders authorises the Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Agent under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.

##### Instructions

The Agent shall:

unless a contrary indication appears in a Finance Document, exercise or refrain from exercising any right, power, authority or discretion vested in it as Agent in accordance with any instructions given to it by:

all Lenders if the relevant Finance Document stipulates the matter is an all Lender decision; and

in all other cases, the Majority Lenders; and

not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with paragraph (i) above.

The Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Lenders (or, if the relevant Finance Document stipulates the matter is a decision for any other Lender or group of Lenders, from that Lender or group of Lenders) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Agent may refrain from acting unless and until it receives those instructions or that clarification.

Save in the case of decisions stipulated to be a matter for any other Lender or group of Lenders under the relevant Finance Document and unless a contrary indication appears in a Finance Document, any instructions given to the Agent by the Majority Lenders shall override any conflicting instructions given by any other Parties and will be binding on all Finance Parties save for the Security Trustee.

The Agent may refrain from acting in accordance with any instructions of any Lender or group of Lenders until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Finance Documents and which may include payment in advance) for any cost, loss or liability which it may incur in complying with those instructions.

In the absence of instructions, the Agent may act (or refrain from acting) as it considers to be in the best interest of the Lenders.

The Agent is not authorised to act on behalf of a Lender (without first obtaining that Lender's consent) in any legal or arbitration proceedings relating to any Finance Document. This paragraph (f) shall not apply to any legal or arbitration proceeding relating to the perfection, preservation or protection of rights under the Transaction Security Documents or enforcement of the Transaction Security or Transaction Security Documents.

##### Duties of the Agent

The Agent's duties under the Finance Documents are solely mechanical and administrative in nature.

The Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Agent for that Party by any other Party.

Except where a Finance Document specifically provides otherwise, the Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.

If the Agent receives notice from a Party referring to this Agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties.

If the Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Finance Party (other than the Agent, the Arranger or the Security Trustee) under this Agreement it shall promptly notify the other Finance Parties.

The Agent shall only have the duties, obligations and responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no others shall be implied).

### **Role of the Arranger**

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

### **No fiduciary duties**

Nothing in this Agreement constitutes the Agent and/or the Arranger as a trustee or fiduciary of any other person.

None of the Agent, the Security Trustee or the Arranger shall be bound to account to any Lender for any sum or the profit element of any sum received by it for its own account.

### **Business with the Group**

The Agent, the Security Trustee and the Arranger may accept deposits from, lend money to and generally engage in any kind of banking or other business with any member of the Group.

### **Rights and discretions**

The Agent may:

rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised; and

assume that:

any instructions received by it from the Majority Lenders, and Lenders or any group of Lenders are duly given in accordance with the terms of the Finance Documents; and

unless it has received notice of revocation, that those instructions have not been revoked; and

rely on a certificate from any person:

as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or

to the effect that such person approves of any particular dealing, transaction, step, action or thing,

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

rely on any statement made by a director, authorised signatory or employee of any person regarding any matters which may reasonably be assumed to be within his knowledge or within his power to verify.

The Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Lenders) that:

no Default has occurred (unless it has actual knowledge of a Default arising under Clause 24.1 (Non-payment));

any right, power, authority or discretion vested in any Party or the Majority Lenders has not been exercised; and

any notice or request made by the Parent (other than a Utilisation Request or Selection Notice) is made on behalf of and with the consent and knowledge of all the Obligors.

The Agent may engage, pay for and rely on the advice or services of any lawyers, accountants, surveyors or other experts (whether obtained by the Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.

Without prejudice to the generality of paragraph (c) above, the Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Agent (and so separate from any lawyers instructed by the Lenders) if the Agent in its reasonable opinion deems this desirable.

The Agent may act in relation to the Finance Documents through its officers, employees and agents and shall not:  
be liable for any error of judgement made by any such person; or

be bound to supervise, or be in any way responsible for any loss incurred by reason of misconduct, omission or default on the part of any such person, unless such error or such loss was directly caused by the Agent's gross negligence or wilful misconduct.

The Agent may disclose to any other Party any information it reasonably believes it has received as agent under this Agreement.

Notwithstanding any other provision of any Finance Document to the contrary, neither the Agent nor the Arranger is obliged to do or omit to do anything if it would or might in its reasonable opinion constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.

The Agent is not obliged to disclose to any Finance Party any details of the rate notified to the Agent by any Lender for the purpose of paragraph (a)(ii) or Clause 12.2 (Market Disruption).

Notwithstanding any provision of any Finance Document to the contrary, the Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

### **Majority Lenders' instructions**

Unless a contrary indication appears in a Finance Document, the Agent shall (i) exercise any right, power, authority or discretion vested in it as Agent in accordance with any instructions given to it by the Majority Lenders (or, if so instructed by the Majority Lenders, refrain from exercising any right, power, authority or discretion vested in it as Agent) and (ii) not be liable for any act (or omission) if it acts (or refrains from taking any action) in accordance with an instruction of the Majority Lenders.

Unless a contrary indication appears in a Finance Document, any instructions given by the Majority Lenders will be binding on all the Finance Parties other than the Security Trustee.

The Agent may refrain from acting in accordance with the instructions of the Majority Lenders (or, if appropriate, the Lenders) until it has received such security as it may require for any cost, loss or liability (together with any associated VAT) which it may incur in complying with the instructions.

In the absence of instructions from the Majority Lenders, (or, if appropriate, the Lenders) the Agent may act (or refrain from taking action) as it considers to be in the best interest of the Lenders.

The Agent is not authorised to act on behalf of a Lender (without first obtaining that Lender's consent) in any legal or arbitration proceedings relating to any Finance Document. This paragraph (e) shall not apply to any legal or arbitration proceeding relating to the perfection, preservation or protection of rights under the Transaction Security Documents or enforcement of the Transaction Security or Transaction Security Documents.

### **Responsibility for documentation**

Neither of the Agent or the Arranger:

is responsible or liable for the adequacy, accuracy and/or completeness of any information (whether oral or written) supplied by the Agent, the Arranger, an Obligor or any other person given in or in connection with any Finance Document or the Reports or the transactions contemplated in the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;

is responsible or liable for the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or the Transaction Security or any other agreement, arrangement or document entered into,

made or executed in anticipation of or in connection with any Finance Document or the Transaction Security; or

is responsible or liable for any determination as to whether any information provided or to be provided to any Finance Party is non public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.

#### **No duty to monitor**

The Agent shall not be bound to enquire:

whether or not any Default has occurred;

as to the performance, default or any breach by any Party of its obligations under any Finance Document; or

whether any other event specified in any Finance Document has occurred.

#### **Exclusion of liability**

Without limiting paragraph (b) below (and without prejudice to any other provision of any Finance Document excluding or limiting the liability of the Agent), the Agent will not be liable for:

any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Finance Document or the Transaction Security, unless directly caused by its gross negligence or wilful misconduct;

exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Finance Document, the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Finance Document or the Transaction Security; or

without prejudice to the generality of paragraphs (i) and (ii) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of:

any act, event or circumstance not reasonably within its control; or

the general risks of investment in, or the holding of assets in, any jurisdiction,

including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets (including any Disruption Event); breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.

No Party (other than the Agent) may take any proceedings against any officer, employee or agent of the Agent, in respect of any claim it might have against the Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document or any Transaction Document and any officer, employee or agent of the Agent may rely on this Clause subject to Clause 1.3 (Third party rights) and the provisions of the Third Parties Act.

The Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Agent if the Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Agent for that purpose.

Nothing in this Agreement shall oblige the Agent or the Arranger to carry out:

any "know your customer" or other checks in relation to any person; or

any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Lender,

on behalf of any Lender and each Lender confirms to the Agent and the Arranger that it is solely responsible for any such checks it is required to carry out and that



it may not rely on any statement in relation to such checks made by the Agent or the Arranger.

Without prejudice to any provision of any Finance Document excluding or limiting the Agent's liability, any liability of the Agent arising under or in connection with any Finance Document or the Transaction Security shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered (as determined by reference to the date of default of the Agent or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Agent at any time which increase the amount of that loss. In no event shall the Agent be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Agent has been advised of the possibility of such loss or damages.

#### **Lenders' indemnity to the Agent**

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

#### **Resignation of the Agent**

The Agent may resign and appoint one of its Affiliates acting through an office in the United Kingdom as successor by giving notice to the Lenders and the Parent.

Alternatively the Agent may resign by giving notice to the Lenders and the Parent, in which case the Majority Lenders (after consultation with the Parent) may appoint a successor Agent.

If the Majority Lenders have not appointed a successor Agent in accordance with paragraph (b) above within 30 days after notice of resignation was given, the Agent (after consultation with the Parent) may appoint a successor Agent (acting through an office in the United Kingdom).

If the Agent wishes to resign because (acting reasonably) it has concluded that it is no longer appropriate for it to remain as agent and the Agent is entitled to appoint a successor Agent under paragraph (c) above, the Agent may (if it concludes (acting reasonably) that it is necessary to do so in order to persuade the proposed successor Agent to become a party to this Agreement as Agent) agree with the proposed successor Agent amendments to this Clause 27 and any other term of this Agreement dealing with the rights or obligations of the Agent consistent with then current market practice for the appointment and protection of corporate trustees together with any reasonable amendments to the agency fee payable under this Agreement which are consistent with the successor Agent's normal fee rates and those amendments will bind the Parties.

The retiring Agent shall, at its own cost, make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.

The Agent's resignation notice shall only take effect upon the appointment of a successor.

Upon the appointment of a successor, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of this Clause 27. Its successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.

After consultation with the Parent, the Majority Lenders may, by notice to the Agent, require it to resign in accordance with paragraph (b) above. In this event, the Agent shall resign in accordance with paragraph (b) above.

#### **Replacement of the Agent**

After consultation with the Parent, the Majority Lenders may, by giving 30 days' notice to the Agent (or, at any time the Agent is an Impaired Agent, by giving any shorter notice determined by the Majority Lenders) replace the Agent by appointing a successor Agent (acting through an office in the United Kingdom).

The retiring Agent shall (at its own cost if it is an Impaired Agent and otherwise at the expense of the Lenders) make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.

The appointment of the successor Agent shall take effect on the date specified in the notice from the Majority Lenders to the retiring Agent. As from this date, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of this Clause 27.14 (and any agency fees for the account of the retiring Agent shall cease to accrue from (and shall be payable on) that date).

Any successor Agent and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.

### **Confidentiality**

In acting as agent for the Finance Parties, the Agent shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments.

If information is received by another division or department of the Agent, it may be treated as confidential to that division or department and the Agent shall not be deemed to have notice of it.

Notwithstanding any other provision of any Finance Document to the contrary, neither the Agent nor the Arranger are obliged to disclose to any other person (i) any confidential information or (ii) any other information if the disclosure would or might in its reasonable opinion constitute a breach of any law or a breach of a fiduciary duty.

### **Relationship with the Lenders**

The Agent may treat the person shown in its records as Lender at the opening of business (in the place of the Agent's principal office as notified to the Finance Parties from time to time) as the Lender acting through its Facility Office:

entitled to or liable for any payment due under and Finance Document on that day; and

entitled to receive and act upon any notice, request, document or communication or make any decision or determination under any Finance Document made or delivered on that day, unless it has received not less than five Business Days' prior notice from that Lender to the contrary in accordance with the terms of this Agreement.

Any Lender may by notice to the Agent appoint a person to receive on its behalf all notices, communications, information and documents to be made or despatched to that Lender under the Finance Documents. Such notice shall contain the address, fax number and (where communication by electronic mail or other electronic means is permitted under Clause 33.6 (Electronic communication)) electronic mail address and/or any other information required to enable the sending and receipt of information by that means (and, in each case, the department or officer, if any, for whose attention communication is to be made) and be treated as a notification of a substitute address, fax number, electronic mail address, department and officer by that Lender for the purposes of Clause 33.2 (Addresses) and paragraph (a)(ii) of Clause 33.6 (Electronic communication) and the Agent shall be entitled to treat such person as the person entitled to receive all such notices, communications, information and documents as though that person were that Lender.

Each Lender shall supply the Agent with any information that the Security Trustee may reasonably specify (through the Agent) as being necessary or desirable to enable the Security Trustee to perform its functions as Security Trustee. Each Lender shall deal with the Security Trustee exclusively through the Agent and shall not deal directly with the Security Trustee.

### **Credit appraisal by the Lenders**

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

the financial condition, status and nature of each member of the Group;

the legality, validity, effectiveness, adequacy or enforceability of any Finance Document and the Transaction Security and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Transaction Security;

whether that Secured Party has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the Transaction Security, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;

the adequacy, accuracy and/or completeness of the Reports and any other information provided by the Agent, any Party or by any other person under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and

the right or title of any person in or to, or the value or sufficiency of any part of the Charged Property, the priority of any of the Transaction Security or the existence of any Security affecting the Charged Property.

### **Role of Reference Banks**

No Reference Bank is under any obligation to provide a quotation or any other information to the Agent.

No Reference Bank will be liable for any action taken by it under or in connection with any Finance Document, or for any Reference Bank Quotation, unless directly caused by its gross negligence or wilful misconduct.

No Party (other than the relevant Reference Bank) may take any proceedings against any officer, employee or agent of any Reference Bank in respect of any claim it might have against that Reference Bank or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document, or to any Reference Bank Quotation, and any officer, employee or agent of each Reference Bank may rely on this Clause 27.18 subject to Clause 1.3 (Third party rights) and the provisions of the Third Parties Act.

### **Third party Reference Banks**

A Reference Bank which is not a Party may rely on Clause 27.18 (Role of Reference Banks), paragraph (b) of Clause 37.2 and Clause 40 (Confidentiality of Funding Rates and Reference Bank Quotations) subject to Clause 1.3 (Third party rights) and the provisions of the Third Parties Act.

### **Agent's management time**

Any amount payable to the Agent under Clause 16.3 (Indemnity to the Agent), Clause 18 (Costs and expenses) and Clause 27.12 (Lenders' indemnity to the Agent) shall include the cost of utilising the Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Agent may notify to the Parent and the Lenders, and is in addition to any fee paid or payable to the Agent under Clause 13 (Fees).

### **Deduction from amounts payable by the Agent**

If any Party owes an amount to the Agent under the Finance Documents the Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which the Agent would otherwise be obliged to make under the Finance Documents and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Documents that Party shall be regarded as having received any amount so deducted.

### **Reliance and engagement letters**

Each Finance Party and Secured Party confirms that each of the Arranger and the Agent has authority to accept on its behalf (and ratifies the acceptance on its behalf of any letters or reports already accepted by the Arranger or Agent) the terms of any reliance letter or engagement letters relating to the Reports or any reports or letters provided by accountants in connection with the Finance Documents or the transactions contemplated in the Finance Documents (including any net asset letter in connection with the financial assistance procedures) and to bind it in respect of those Reports, reports or letters and to sign such letters on its behalf and further confirms that it accepts the terms and qualifications set out in such letters.

## **ROLE OF THE SECURITY TRUSTEE**

### **Trust**

The Security Trustee declares that it shall hold the Transaction Security on trust for the Finance Parties on the terms contained in this Agreement. Each of the parties to this Agreement agrees that the Security Trustee shall have only those duties, obligations and responsibilities expressly specified in this Agreement or in the Transaction Security Documents (and no others shall be implied).

### **No independent power**

The Finance Parties shall not have any independent power to enforce, or have recourse to, any of the Transaction Security or to exercise any rights or powers arising under the Transaction Security Documents except through the Security Trustee.

### **Security Trustee's instructions**

The Security Trustee shall:

unless a contrary indication appears in a Finance Document, act in accordance with any instructions given to it by the Agent and shall be entitled to assume that (i) any instructions received by it from the Agent are duly given by or on behalf of the Majority Lenders or, as the case may be, the Lenders in accordance with the terms of the Finance Documents and (ii) unless it has received actual notice of revocation that any instructions or directions given by the Agent have not been revoked;

be entitled to request instructions, or clarification of any direction, from the Agent as to whether, and in what manner, it should exercise or refrain from exercising any rights, powers and discretions and the Security Trustee may refrain from acting unless and until those instructions or clarification are received by it; and

be entitled to, carry out all dealings with the Lenders through the Agent and may give to the Agent any notice or other communication required to be given by the Security Trustee to the Lenders.

### **Security Trustee's actions**

Subject to the provisions of this Clause 28:

the Security Trustee may, in the absence of any instructions to the contrary, take such action in the exercise of any of its powers and duties under the Finance Documents which in its absolute discretion it considers to be for the protection and benefit of all the Finance Parties; and

at any time after receipt by the Security Trustee of notice from the Agent directing the Security Trustee to exercise all or any of its rights, remedies, powers or discretions under any of the Finance Documents, the Security Trustee may, and shall if so directed by the Agent, take any action as in its sole discretion it thinks fit to enforce the Transaction Security.

### **Security Trustee's discretions**

The Security Trustee may:

assume (unless it has received actual notice to the contrary in its capacity as Security Trustee for the Finance Parties) that (i) no Default has occurred and no Obligor is in breach of or default under its obligations under any of the Finance Documents and (ii) any right, power, authority or discretion vested in any person has not been exercised;

if it receives any instructions or directions from the Agent to take any action in relation to the Transaction Security, assume that all applicable conditions under the Finance Documents for taking that action have been satisfied;

engage, pay for and rely on the advice or services of any lawyers, accountants, surveyors or other experts (whether obtained by the Security Trustee or by any other Finance Party) whose advice or services may at any time seem necessary, expedient or desirable;

rely upon any communication or document believed by it to be genuine and, as to any matters of fact which might reasonably be expected to be within the knowledge of a Finance Party or an Obligor, upon a certificate signed by or on behalf of that person; or

refrain from acting in accordance with the instructions of the Agent or Lenders (including bringing any legal action or proceeding arising out of or in connection with the Finance Documents) until it has received any indemnification and/or security that it may in its absolute discretion require (whether by way of payment in advance or otherwise) for all costs, losses and liabilities which it may incur in bringing such action or proceedings.

### **Security Trustee's obligations**

The Security Trustee shall promptly inform the Agent of:

the contents of any notice or document received by it in its capacity as Security Trustee from any Obligor under any Finance Document; and

the occurrence of any Default or any default by an Obligor in the due performance of or compliance with its obligations under any Finance Document of which the Security Trustee has received notice from any other party to this Agreement.

### **Excluded obligations**

The Security Trustee shall not:

- be bound to enquire as to the occurrence or otherwise of any Default or the performance, default or any breach by an Obligor of its obligations under any of the Finance Documents;
- be bound to account to any other Party for any sum or the profit element of any sum received by it for its own account;
- be bound to disclose to any other person (including any Finance Party) (i) any confidential information or (ii) any other information if disclosure would, or might in its reasonable opinion, constitute a breach of any law or be a breach of fiduciary duty;
- be under any obligations other than those which are specifically provided for in the Finance Documents; or
- have or be deemed to have any duty, obligation or responsibility to, or relationship of trust or agency with, any Obligor.

### **Exclusion of Security Trustee's liability**

Unless caused directly by its gross negligence or wilful default, the Security Trustee shall not accept responsibility or be liable for:

- the adequacy, accuracy and/or completeness of any information supplied by the Security Trustee or any other person in connection with the Finance Documents or the transactions contemplated in the Finance Documents, or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with the Finance Documents;
- the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document or the Transaction Security;
- any losses to any person or any liability arising as a result of taking or refraining from taking any action in relation to any of the Finance Documents or the Transaction Security or otherwise, whether in accordance with an instruction from the Agent or otherwise;
- the exercise of, or the failure to exercise, any judgment, discretion or power given to it by or in connection with any of the Finance Documents, the Transaction Security or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with the Finance Documents or the Transaction Security; or
- any shortfall which arises on the enforcement of the Transaction Security.

### **Own responsibility**

It is understood and agreed by each Finance Party that that Finance Party has at all times itself been, and will continue to be, solely responsible for making its own independent appraisal of and investigation into all risks arising under or in connection with the Finance Documents including but not limited to:

- the financial condition, creditworthiness, condition, affairs, status and nature of each of the Obligors;
- the legality, validity, effectiveness, adequacy and enforceability of each of the Finance Documents and the Transaction Security and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with the Finance Documents or the Transaction Security;
- whether that Finance Party has recourse, and the nature and extent of that recourse, against any Obligor or any other person or any of their respective assets under or in connection with the Finance Documents, the transactions contemplated in the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with the Finance Documents;
- the adequacy, accuracy and/or completeness of any information provided by any person in connection with the Finance Documents, the transactions contemplated in the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with the Finance Documents; and
- the right or title of any person in or to, or the value or sufficiency of any part of, the Charged Property, the priority of any of the Transaction Security or the existence of any security interest affecting the Charged Property,

and each Finance Party warrants to the Security Trustee that it has not relied on, and will not at any time rely on, the Security Trustee in respect of any of these matters.

### **No responsibility to perfect Transaction Security**

The Security Trustee shall not be liable for any failure to:

require the deposit with it of any deed or document certifying, representing or constituting the title of any Obligor to any of the Charged Property;

obtain any licence, consent or other authority for the execution, delivery, legality, validity, enforceability or admissibility in evidence of any of the Finance Documents or the Transaction Security;

register, file or record or otherwise protect any of the Transaction Security (or the priority of any of the Transaction Security) under any applicable laws in any jurisdiction or to give notice to any person of the execution of any of the Finance Documents or of the Transaction Security;

take, or to require any of the Obligors to take, any steps to perfect its title to any of the Charged Property or to render the Transaction Security effective or to secure the creation of any ancillary security interest under the laws of any jurisdiction; or

require any further assurances in relation to any of the Transaction Security Documents.

### **Insurance by Security Trustee**

The Security Trustee shall not be under any obligation to insure any of the Charged Property, to require any other person to maintain any insurance or to verify any obligation to arrange or maintain insurance contained in the Finance Documents. The Security Trustee shall not be responsible for any loss which may be suffered by any person as a result of the lack of or inadequacy of any such insurance.

Where the Security Trustee is named on any insurance policy as an insured party, it shall not be responsible for any loss which may be suffered by reason (directly or indirectly) of its failure to notify the insurers of any material fact relating to the risk assumed by the insurers or any other information of any kind, unless any Finance Party has requested it to do so in writing and the Security Trustee has failed to do so within fourteen days after receipt of that request.

### **Custodians and Nominees**

The Security Trustee may appoint and pay any person to act as a custodian or nominee on any terms in relation to any assets of the trust as the Security Trustee may determine, including for the purpose of depositing with a custodian this Agreement or any document relating to the trust created under this Agreement and the Security Trustee shall not be responsible for any loss, liability, expense, demand, cost, claim or proceedings incurred by reason of the misconduct, omission or default on the part of any person appointed by it under this Agreement or be bound to supervise the proceedings or acts of any person.

### **Acceptance of Title**

The Security Trustee shall be entitled to accept without enquiry, and shall not be obliged to investigate, the right and title as each of the Obligors may have to any of the Charged Property and shall not be liable for or bound to require any Obligor to remedy any defect in its right or title.

### **Refrain from Illegality**

The Security Trustee may refrain from doing anything which in its opinion will or may be contrary to any relevant law, directive or regulation of any jurisdiction which would or might otherwise render it liable to any person, and the Security Trustee may do anything which is, in its opinion, necessary to comply with any law, directive or regulation.

### **Business with the Obligors**

The Security Trustee may accept deposits from, lend money to, and generally engage in any kind of banking or other business with any of the Obligors.

### **Releases**

Upon a disposal of any of the Charged Property:

pursuant to the enforcement of the Transaction Security by a Receiver or the Security Trustee; or

if that disposal is permitted under the Finance Documents,

the Security Trustee shall (at the cost of the Obligors) release that property from the Transaction Security and is authorised to execute, without the need for any further authority from the Finance Parties, any release of the Transaction Security or other claim over that asset and to issue any certificates of non-crystallisation of floating charges that may be required or desirable.

#### **Winding up of Trust**

If the Security Trustee, with the approval of the Majority Lenders, determines that (a) all of the Secured Obligations and all other obligations secured by any of the Transaction Security Documents have been fully and finally discharged and (b) none of the Finance Parties is under any commitment, obligation or liability (actual or contingent) to make advances or provide other financial accommodation to any Obligor pursuant to the Finance Documents, the trusts set out in this Agreement shall be wound up and the Security Trustee shall release, without recourse or warranty, all of the Transaction Security and the rights of the Security Trustee under each of the Transaction Security Documents.

#### **Perpetuity Period**

The perpetuity period under the rule against perpetuities, if applicable to this Agreement, shall be the period of one hundred and twenty five years from the date of this Agreement.

#### **Powers Supplemental**

The rights, powers and discretions conferred upon the Security Trustee by this Agreement shall be supplemental to the Trustee Acts 1925 and 2000 and in addition to any which may be vested in the Security Trustee by general law or otherwise.

#### **Trustee division separate**

In acting as trustee for the Finance Parties, the Security Trustee shall be regarded as acting through its trustee division which shall be treated as a separate entity from any of its other divisions or departments and any information received by any other division or department of the Security Trustee may be treated as confidential and shall not be regarded as having been given to the Security Trustee's trustee division.

#### **Disapplication**

Section 1 of the Trustee Act 2000 shall not apply to the duties of the Security Trustee in relation to the trusts constituted by this Agreement. Where there are any inconsistencies between the Trustee Acts 1925 and 2000 and the provisions of this Agreement, the provisions of this Agreement shall, to the extent allowed by law, prevail and, in the case of any inconsistency with the Trustee Act 2000, the provisions of this Agreement shall constitute a restriction or exclusion for the purposes of that Act.

#### **Resignation of Security Trustee**

The Security Trustee may resign and appoint one of its Affiliates as successor by giving notice to the other Parties (or to the Agent on behalf of the Lenders).

Alternatively the Security Trustee may resign by giving notice to the other Parties (or to the Agent on behalf of the Lenders) in which case the Majority Lenders may appoint a successor Security Trustee.

If the Majority Lenders have not appointed a successor Security Trustee in accordance with paragraph (b) above within 30 days after the notice of resignation was given, the Security Trustee (after consultation with the Agent) may appoint a successor Security Trustee.

The retiring Security Trustee shall, at its own cost, make available to the successor Security Trustee such documents and records and provide such assistance as the successor Security Trustee may reasonably request for the purposes of performing its functions as Security Trustee under the Finance Documents.

The Security Trustee's resignation notice shall only take effect upon (i) the appointment of a successor and (ii) the transfer of all of the Transaction Security to that successor.

Upon the appointment of a successor, the retiring Security Trustee shall be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of Clauses 27 (Role of the Agent, the Arranger and others) and this Clause 28 (Role of Security Trustee). Its successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.

The Majority Lenders may, by notice to the Security Trustee, require it to resign in accordance with paragraph (b) above. In this event, the Security Trustee shall resign in accordance with paragraph (b) above.

### Delegation

The Security Trustee may, at any time, delegate by power of attorney or otherwise to any person for any period, all or any of the rights, powers and discretions vested in it by any of the Finance Documents.

The delegation may be made upon any terms and conditions (including the power to sub-delegate) and subject to any restrictions as the Security Trustee may think fit in the interests of the Finance Parties and it shall not be bound to supervise, or be in any way responsible for any loss incurred by reason of any misconduct or default on the part of any delegate or sub-delegate.

### Additional trustees

The Security Trustee may at any time appoint (and subsequently remove) any person to act as a separate trustee or as a co-trustee jointly with it (i) if it considers that appointment to be in the interests of the Finance Parties or (ii) for the purposes of conforming to any legal requirements, restrictions or conditions which the Security Trustee deems to be relevant or (iii) for obtaining or enforcing any judgment in any jurisdiction, and the Security Trustee shall give prior notice to the Parent and the Agent of that appointment.

Any person so appointed shall have the rights, powers and discretions (not exceeding those conferred on the Security Trustee by this Agreement) and the duties and obligations that are conferred or imposed by the instrument of appointment.

The remuneration that the Security Trustee may pay to any person, and any costs and expenses incurred by that person in performing its functions pursuant to that appointment shall, for the purposes of this Agreement, be treated as costs and expenses incurred by the Security Trustee.

### German Security Documents

With regard to the Transaction Security Documents governed by the law of Germany (the "**German Security Documents**" and the Security created thereunder, the "**German Security**") the Security Trustee shall:

hold (i) the German Security which is transferred or assigned by way of security (*Sicherungsübereignung/Sicherungsabtretung*) or otherwise granted under a non accessory security right (*nicht akzessorische Sicherheit*) and (ii) the claims under the parallel debt provision as contemplated under Clause 28.26 (Parallel Debt) below as trustee (*Treuhänder*) for the benefit of the Secured Parties;

administer in the name and on behalf of the Secured Parties such German Security which is pledged (*Verpfändung*) or otherwise transferred under an accessory security right (*akzessorische Sicherheit*) to the Security Trustee and the Secured Parties;

hold as trustee and/or administer, as the case may be, any German Security pursuant to the law of any jurisdiction other than Germany for the benefit of the Secured Parties; and

act in relation to the German Security referred to in (i) to (iii) above in accordance with the terms and subject to the conditions of this Agreement and the German Security Documents.

It is hereby agreed that, in relation to any jurisdiction the courts of which would not recognise or give effect to the trust expressed to be created by this Clause, the relationship of the Secured Parties to the Security Trustee shall be construed as one of principal and agent but, to the extent permissible under the laws of such jurisdiction, all the other provisions of this Agreement shall have full force and effect between the parties hereto.

Each of the Finance Parties herewith authorises and grants a power of attorney to the Security Trustee to:

execute for and on its behalf any and all German Security Documents and other agreements related to the German Security;

make and receive all declarations and statements which are necessary or desirable in connection with the German Security or any of the German Security Documents;

realise and enforce all German Security; and

take all other actions and measures that may be necessary or useful in connection with the administration or realisation of German Security.



The Security Trustee is released from the restrictions set forth in Sect. 181 of the German Civil Code (*Bürgerliches Gesetzbuch*, "BGB"). The Security Trustee has the power to grant sub-power of attorney including the release from the restrictions set forth in Sect. 181 of the German Civil Code (*Bürgerliches Gesetzbuch*, "BGB").

**Ratification:** Each Secured Party hereby ratifies and approves all acts done by the Security Trustee on a Secured Party's behalf in respect of German Law Security or any German Law Security Document before the date hereof.

#### **Parallel Debt**

Without prejudice to any other provision of the Finance Documents, and for the purpose of ensuring and preserving the validity and continuity of the Transaction Security, each Obligor hereby irrevocably and unconditionally undertakes by way of an abstract acknowledgement of debt to pay to the Security Trustee amounts equal to any amounts owing from time to time by that Obligor to any Secured Party under any Finance Document (the "**Primary Debt**") as and when those amounts are due (the "**Parallel Debt**").

Each Obligor and the Security Trustee acknowledge and agree that:

the Parallel Debt constitutes undertakings, obligations and liabilities of the relevant Obligor to the Security Trustee which are separate from, independent of and without prejudice to, the corresponding Primary Debt; and

the Parallel Debt constitutes the Security Trustee's own claim to receive payment from the relevant Obligor, save and except that the aggregate amount owed under the Parallel Debt by such Obligor shall at no time exceed (but shall at all times be equal to) the aggregate amount owed by the Borrower under the Primary Debt at the relevant time.

Notwithstanding any of the other provisions of this Clause 28.26,

the Parallel Debt of each Obligor shall be decreased to the extent that its Primary Debt has been irrevocably paid or (in the case of guarantee obligations) discharged; and

the Primary Debt of each Obligor shall be decreased to the extent that its Parallel Debt has been irrevocably paid or (in the case of guarantee obligations) discharged.

For the purpose of this Clause 28.26, the Security Trustee acts in its own name and not as a trustee, and its claims in respect of the Parallel Debt are its own claims and shall not be held on trust for any person. The Transaction Security granted under the Finance Documents to the Security Trustee to secure the Parallel Debt is granted to the Security Trustee in its capacity as creditor of the Parallel Debt and shall not be held on trust.

All monies received or recovered by the Security Trustee pursuant to this Clause 28.26, and all amounts received or recovered by the Security Trustee from or by the enforcement of any Security granted to secure the Parallel Debt, shall be applied in accordance with this Agreement.

Without limiting or affecting the Security Trustee's rights against the relevant Obligor (whether under this Clause 28.26 or under any other provision of the Finance Documents), each Obligor acknowledges that:

nothing in this Clause 28.26 shall impose any obligation on the Security Trustee to advance any sum to an Obligor or any of its affiliates under any Finance Document except in its capacity as Lender; and

for the purpose of any vote taken under any Finance Document, the Security Trustee acting solely in that capacity shall not be regarded as having any participation or commitment other than those which it has in its capacity as Lender.

This Clause 28.26 (Parallel debt) shall apply only to the extent permitted by the applicable law.

#### **CONDUCT OF BUSINESS BY THE FINANCE PARTIES**

No provision of this Agreement will:

interfere with the right of any Finance Party to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;

oblige any Finance Party to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or

oblige any Finance Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

## **SHARING AMONG THE FINANCE PARTIES**

### **Payments to Finance Parties**

If a Finance Party (a "**Recovering Finance Party**") receives or recovers any amount from an Obligor other than in accordance with Clause 31 (Payment mechanics) and applies that amount to a payment due under the Finance Documents then:

the Recovering Finance Party shall, within three Business Days, notify details of the receipt or recovery, to the Agent;

the Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Agent and distributed in accordance with Clause 31 (Payment mechanics), without taking account of any Tax which would be imposed on the Agent in relation to the receipt, recovery or distribution; and

the Recovering Finance Party shall, within three Business Days of demand by the Agent, pay to the Agent an amount (the "Sharing Payment") equal to such receipt or recovery less any amount which the Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with Clause 31.6 (Partial payments).

### **Redistribution of payments**

The Agent shall treat the Sharing Payment as if it had been paid by the relevant Obligor and distribute it between the Finance Parties (other than the Recovering Finance Party) in accordance with Clause 31.6 (Partial payments).

### **Recovering Finance Party's rights**

On a distribution by the Agent under Clause 30.2 (Redistribution of payments), the Recovering Finance Party will be subrogated to the rights of the Finance Parties which have shared in the redistribution.

If and to the extent that the Recovering Finance Party is not able to rely on its rights under paragraph (a) above, the relevant Obligor shall be liable to the Recovering Finance Party for a debt equal to the Sharing Payment which is immediately due and payable.

### **Reversal of redistribution**

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

each Finance Party which has received a share of the relevant Sharing Payment pursuant to Clause 30.2 (Redistribution of payments) shall, upon request of the Agent, pay to the Agent for account of that Recovering Finance Party an amount equal to the appropriate part of its share of the Sharing Payment (together with an amount as is necessary to reimburse that Recovering Finance Party for its proportion of any interest on the Sharing Payment which that Recovering Finance Party is required to pay); and

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

### **Exceptions**

This Clause 30 shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this Clause, have a valid and enforceable claim against the relevant Obligor.

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

it notified the other Finance Party of the legal or arbitration proceedings; and

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

## SECTION 11

### ADMINISTRATION

#### PAYMENT MECHANICS

##### Payments to the Agent

On each date on which an Obligor or a Lender is required to make a payment under a Finance Document, that Obligor or Lender shall make the same available to the Agent (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.

Payment shall be made to such account in Edinburgh as the Agent specifies.

##### Distributions by the Agent

Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause 31.3 (Distributions to an Obligor) and Clause 31.4 (Clawback) be made available by the Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Agent by not less than five Business Days' notice with a bank in London.

##### Distributions to an Obligor

The Agent may (with the consent of the Obligor or in accordance with Clause 32 (Set-Off)) apply any amount received by it for that Obligor in or towards payment (on the date and in the currency and funds of receipt) of any amount due from that Obligor under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

##### Clawback and pre-funding

Where a sum is to be paid to the Agent under the Finance Documents for another Party, the Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.

Unless paragraph (c) below applies, if the Agent pays an amount to another Party and it proves to be the case that the Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Agent shall on demand refund the same to the Agent together with interest on that amount from the date of payment to the date of receipt by the Agent, calculated by the Agent to reflect its cost of funds.

If the Agent is willing to make available amounts for the account of a Borrower before receiving funds from the Lenders then if and to the extent that the Agent does so but it proves to be the case that it does not then receive funds from a Lender in respect of a sum which it paid to a Borrower:

the Agent shall notify the Parent of that Lender's identity and the Borrower to whom that sum was made available shall on demand refund it to the Agent; and

the Lender by whom those funds should have been made available or, if that Lender fails to do so, the Borrower to whom that sum was made available, shall on demand pay to the Agent the amount (as certified by the Agent) which will indemnify the Agent against any funding cost incurred by it as a result of paying out that sum before receiving those funds from that Lender.

##### Impaired Agent

If, at any time, the Agent becomes an Impaired Agent, an Obligor or a Lender which is required to make a payment under the Finance Documents to the Agent in accordance with Clause 31.1 (Payments to the Agent) may instead either:

pay that amount direct to the required recipient(s); or

if it is in its absolute discretion it considers that it is not reasonable practicable to pay that amount direct to the required recipient(s), pay that amount or the relevant part of that amount to an interest-bearing account held with an Acceptable Bank within the meaning of paragraph (a) of the definition of "Acceptable Bank" and in relation to which no Insolvency Event has occurred and is continuing, in the name of the Obligor or the Lender making the payment (the "Paying Party") and designated as a trust account for the benefit of the Party or Parties beneficially entitled to that payment under the Finance Documents (the "Recipient Party" or "Recipient Parties"). In each case such payments must be made on the due date for payment under the Finance Documents.

All interest accrued on the amount standing to the credit of the trust account shall be for the benefit of Recipient Party or the Recipient Parties pro rata to their respective entitlements.

A Party which has made a payment in accordance with this Clause 31.5 shall be discharged of the relevant payment obligation under the Finance Documents and shall not take any credit risk with respect to the amounts standing to the credit of the trust account.

Promptly upon the appointment of a successor Agent in accordance with Clause 27.14 (Replacement of the Agent), each Paying Party shall (other to the extent that that Party has given an instruction pursuant to paragraph (e) below) give all requisite instructions to the bank with whom the trust account is held to transfer the amount (together with any accrued interest) to the successor Agent for distribution to the relevant Recipient Party or Recipient Parties in accordance with Clause 31.2 (Distributions by the Agent).

A Paying Party shall, promptly upon request by a Recipient Party and to the extent:

that it has not given an instruction pursuant to paragraph (d) above; and

that it has been provided with the necessary information by that Recipient Party,

give all requisite instructions to the bank with whom the trust account is held to transfer the relevant amount (together with any accrued interest) to that Recipient Party.

### **Partial payments**

If the Agent receives a payment for application against amounts due in respect of any Finance Documents that is insufficient to discharge all the amounts then due and payable by an Obligor under those Finance Documents, the Agent shall apply that payment towards the obligations of that Obligor under those Finance Documents in the following order:

first, in or towards payment pro rata of any unpaid fees, costs and expenses of the Agent and the Security Trustee under those Finance Documents;

secondly, in or towards payment pro rata of any accrued interest, fee or commission due but unpaid under those Finance Documents;

thirdly, in or towards payment pro rata of any principal due but unpaid under those Finance Documents; and

fourthly, in or towards payment pro rata of any other sum due but unpaid under the Finance Documents.

The Agent shall, if so directed by the Majority Lenders, vary the order set out in paragraphs (a)(ii) to (iv) above.

Paragraphs (a) and (b) above will override any appropriation made by an Obligor.

### **No set-off by Obligors**

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

### **Business Days**

Any payment under the Finance Documents which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).

During any extension of the due date for payment of any principal or Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

### **Currency of account**

Subject to paragraphs (b) to (e) below, Sterling is the currency of account and payment for any sum due from an Obligor under any Finance Document.

A repayment of a Utilisation or Unpaid Sum or a part of a Utilisation or Unpaid Sum shall be made in the currency in which that Utilisation or Unpaid Sum is denominated, pursuant to this Agreement, on its due date.

Each payment of interest or commitment fee shall be made in the currency in which the sum in respect of which the interest is payable was denominated, pursuant to this Agreement, when that interest or commitment fee accrued.

Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.

Any amount expressed to be payable in a currency other than in Sterling shall be paid in that other currency.

#### **Change of currency**

Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:

any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Agent (after consultation with the Parent); and

any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Agent (acting reasonably).

If a change in any currency of a country occurs, this Agreement will, to the extent the Agent (acting reasonably and after consultation with the Parent) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the relevant interbank market and otherwise to reflect the change in currency.

#### **Disruption to Payment Systems, etc.**

If either the Agent determines (in its discretion) that a Disruption Event has occurred or the Agent is notified by the Parent that a Disruption Event has occurred:

the Agent may, and shall if requested to do so by the Parent, consult with the Parent with a view to agreeing with the Parent such changes to the operation or administration of the Facilities as the Agent may deem necessary in the circumstances;

the Agent shall not be obliged to consult with the Parent in relation to any changes mentioned in paragraph (a) if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;

the Agent may consult with the Finance Parties in relation to any changes mentioned in paragraph (a) but shall not be obliged to do so if, in its opinion, it is not practicable to do so in the circumstances;

any such changes agreed upon by the Agent and the Parent shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents notwithstanding the provisions of Clause 37 (Amendments and Waivers);

the Agent shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including, without limitation for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this Clause 31.11; and

the Agent shall notify the Finance Parties of all changes agreed pursuant to paragraph (d) above.

#### **SET-OFF**

A Finance Party may set off any matured obligation due from an Obligor under the Finance Documents (to the extent beneficially owned by that Finance Party) against any matured obligation owed by that Finance Party to that Obligor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

#### **NOTICES**

##### **Communications in writing**

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

## **Addresses**

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with the Finance Documents is:

in the case of the Parent, Holdings, Schuh Ireland, Schuh Germany or the Company, that identified with its name below;

in the case of each Lender or any other Obligor, that notified in writing to the Agent on or prior to the date on which it becomes a Party; and

in the case of the Agent or the Security Trustee, that identified with its name below,

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

## **Delivery**

Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:

if by way of fax, when received in legible form; or

if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 33.2 (Addresses), if addressed to that department or officer.

Any communication or document to be made or delivered to the Agent or the Security Trustee will be effective only when actually received by the Agent or Security Trustee and then only if it is expressly marked for the attention of the department or officer identified with the Agent's or Security Trustee's signature below (or any substitute department or officer as the Agent or Security Trustee shall specify for this purpose).

All notices from or to an Obligor shall be sent through the Agent.

Any communication or document made or delivered to the Parent in accordance with this Clause 33.3 will be deemed to have been made or delivered to each of the Obligors.

Any communication or document which becomes effective, in accordance with paragraphs (a) to (d) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

## **Notification of address and fax number**

Promptly upon receipt of notification of an address, and fax number or change of address or fax number pursuant to Clause 33.2 (Addresses) or changing its own address or fax number, the Agent shall notify the other Parties.

## **Communication when Agent is Impaired Agent**

If the Agent is an Impaired Agent the Parties may, instead of communicating with each other through the Agent, communicate with each other directly and (while the Agent is an Impaired Agent) all the provisions of the Finance Documents which require communications to be made or notices to be given to or by the Agent shall be varied so that communications may be made and notices given to or by the relevant Parties directly. This provision shall not operate after a replacement Agent has been appointed unless such replacement Agent becomes an Impaired Agent.

## **Electronic communication**

Any communication to be made between the Agent or the Security Trustee and a Lender under or in connection with the Finance Documents may be made by electronic mail or other electronic means, if the Agent, the Security Trustee and the relevant Lender:

agree that, unless and until notified to the contrary, this is to be an accepted form of communication;

notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and

notify each other of any change to their address or any other such information supplied by them.

Any electronic communication made between the Agent and a Lender or the Security Trustee will be effective only when actually received in readable form and in the case of any electronic communication made by a Lender to the Agent or the Security Trustee only if it is addressed in such a manner as the Agent or Security Trustee shall specify for this purpose.

Any electronic communication which becomes effective, in accordance with paragraphs (a) to (d) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

### **English language**

Any notice given under or in connection with any Finance Document must be in English.

All other documents provided under or in connection with any Finance Document must be:

in English; or

if not in English, and if so required by the Agent, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

### **CALCULATIONS AND CERTIFICATES**

#### **Accounts**

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

#### **Certificates and determinations**

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

#### **Day count convention**

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 360 days or, in any case where the practice in the relevant interbank market differs, in accordance with that market practice.

### **PARTIAL INVALIDITY**

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

### **REMEDIES AND WAIVERS**

No failure to exercise, nor any delay in exercising, on the part of any Finance Party or Secured Party, any right or remedy under a Finance Document shall operate as a waiver of any such right or remedy or constitute an election to affirm any Finance Document. No election to affirm any Finance Document on the part of any Finance Party or Secured Party shall be effective unless it is in writing. No single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in each Finance Document are cumulative and not exclusive of any rights or remedies provided by law.

### **AMENDMENTS AND WAIVERS**

#### **Required consents**

Subject to Clause 37.2 (Exceptions) any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and the Parent and any such amendment or waiver will be binding on all Parties.

The Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause 37.

Without prejudice to the generality of paragraphs (c), (d) and (e) of Clause 27.7 (Rights and Discretions), the Agent may engage, pay for and rely on the services of lawyers in determining the consent level required for and effecting any amendment, waiver or consent under this Agreement.

Each Obligor agrees to any such amendment or waiver permitted by this Clause 37 which is agreed to by the Parent. This includes any amendment or waiver which would, but for this paragraph (c), require the consent of all of the Guarantors.

Paragraph (c) of Clause 25.10 (Pro rata interest settlement) shall apply to this Clause 37.1.

#### **Exceptions**

An amendment or waiver that has the effect of changing or which relates to:

the definition of "**Majority Lenders**" in Clause 1.1 (Definitions);

an extension to the date of payment of any amount under the Finance Documents;

a reduction in the Margin or a reduction in the amount of any payment of principal, interest, fees or commission payable;

a change in currency of payment of any amount under the Finance Documents;

an increase in any Commitment or the Total Commitments, any extension of any Availability Period or any requirement that a cancellation of Commitments reduces the Commitments of the Lenders rateably under the relevant Facility;

a change to the Borrowers or Guarantors other than in accordance with Clause 26 (Changes to the Obligors);

any provision which expressly requires the consent of all the Lenders;

Clause 2.3 (Finance Parties' rights and obligations), Clause 8 (Mandatory prepayment), Clause 25 (Changes to the Lenders), this Clause 37, Clause 40 (Governing law) or 41.1 (Jurisdiction of English courts);

the nature or scope of:

the guarantee and indemnity granted under Clause 19 (Guarantee and Indemnity);

the Charged Property; or

the manner in which the proceeds of enforcement of the Transaction Security are distributed (except in the case of paragraphs (ii) and (iii) above, insofar as it relates to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is expressly permitted under this Agreement or any other Finance Document); or

the release of any Transaction Security unless permitted under this Agreement or any other Finance Document or relating to a sale or disposal of an asset which is the subject of the Transaction Security where such sale or disposal is expressly permitted under this Agreement or any other Finance Document,

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

An amendment or waiver which relates to the rights or obligations of the Agent, the Arranger, the Security Trustee or a Reference Bank may not be effected without the consent of the Agent, the Arranger, the Security Trustee or that Reference Bank.

#### **Replacement of Screen Rate**

Subject to paragraph (b) of Clause 37.2, if the Screen Rate is not available for Sterling or Euro, any amendment or waiver which relates to providing for another benchmark rate to apply in relation to Sterling or Euro in place of that Screen Rate (or which relates to aligning any provision of a Finance Document to the use of that benchmark rate) may be made with the consent of the Majority Lenders and the Obligors.

If any Lender fails to respond to a request for an amendment or waiver described in paragraph (a) above within 10 Business Days (unless the Parent and the Agent agree to a longer time period in relation to any request) of that request being made:

its Commitment(s) shall not be included for the purpose of calculating the Total Commitments under the relevant Facility/ies when ascertaining whether any relevant percentage of Total Commitments has been obtained to approve that request; and



its status as a Lender shall be disregarded for the purpose of ascertaining whether the agreement of any specified group of Lenders has been obtained to approve that request.

### **Replacement of a Lender**

If at any time:

any Lender becomes a Non-Consenting Lender (as defined in paragraph (c) below); or

an Obligor becomes obliged to repay any amount in accordance with Clause 7.1 (Illegality) or to pay additional amounts pursuant to Clause 15.1 (Increased Costs) or Clause 14.2 (Tax gross-up) to any Lender in excess of amounts payable to the other Lenders generally,

then the Parent may, on 5 Business Days' prior written notice to the Agent and such Lender, replace such Lender by requiring such Lender to (and such Lender shall) transfer pursuant to Clause 25 (Changes to the Lenders) all (and not part only) of its rights and obligations under this Agreement to an Eligible Institution (a "**Replacement Lender**") which confirms its willingness to assume and does assume all the obligations of the transferring Lender (including the assumption of the transferring Lender's participations on the same basis as the transferring Lender) for a purchase price in cash payable at the time of transfer equal to the outstanding principal amount of such Lender's participation in the outstanding Utilisations and all accrued interest and/or Break Costs and other amounts payable in relation thereto under the Finance Documents.

The replacement of a Lender pursuant to this Clause shall be subject to the following conditions:

the Parent shall have no right to replace the Agent or Security Agent;

neither the Agent nor the Lender shall have any obligation to the Parent to find a Replacement Lender;

in the event of a replacement of a Non-Consenting Lender such replacement must take place no later than 90 days after the date the Non-Consenting Lender notifies the Parent and the Agent of its failure or refusal to give a consent in relation to, or agree to any waiver or amendment to the Finance Documents requested by the Parent; and

in no event shall the Lender replaced under this paragraph (b) be required to pay or surrender to such Replacement Lender any of the fees received by such Lender pursuant to the Finance Documents.

In the event that:

the Parent or the Agent (at the request of the Parent) has requested the Lenders to give a consent in relation to, or to agree to a waiver or amendment of, any provisions of the Finance Documents;

the consent, waiver or amendment in question requires the approval of all the Lenders; and

Lenders whose Commitments aggregate more than 85 per cent. of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than 85 per cent. of the Total Commitments prior to that reduction) have consented or agreed to such waiver or amendment,

then any Lender who does not and continues not to consent or agree to such waiver or amendment shall be deemed a "**Non-Consenting Lender**".

### **Disenfranchisement of Defaulting Lenders**

For so long as a Defaulting Lender has any Available Commitment, in ascertaining the Majority Lenders or whether any given percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments has been obtained to approve any request for a consent, waiver, amendment or other vote under the Finance Documents, that Defaulting Lender's Commitments will be reduced by the amount of its Available Commitments.

If a Defaulting Lender fails to respond to a request for a consent, waiver, amendment or other vote under the Finance Documents or any other vote of the Lenders under the terms of this Agreement within 10 Business Days in relation to consents, waivers, amendments or votes which require Majority Lender consent, and within 15 Business Days in relation to consents, waivers, amendments or votes which require all Lender consent (unless the Parent and the Agent agree to a longer time period) of

that request being made, its Commitment and/or participation shall not be included for the purpose of calculating the Total Commitments or participations under the Facility when ascertaining whether any relevant percentage of Total Commitments and/or participations has been obtained to approve that request.

For the purposes of this Clause 37.5, the Agent may assume that the following Lenders are Defaulting Lenders:

any Lender which has notified the Agent that it has become a Defaulting Lender;

any Lender in relation to which it is aware that any of the events of circumstances referred to in paragraphs (a), (b) or (c) of the definition of "Defaulting Lender" has occurred and none of the exceptions in paragraphs (i) to (vi) of the definition of "Defaulting Lender" apply.

unless it has received notice to the contrary from the Lender concerned or the Agent is otherwise aware that the Lender has ceased to be a Defaulting Lender.

### **Replacement of a Defaulting Lender**

The Parent may, at any time a Lender has become and continues to be a Defaulting Lender, by giving 5 Business Days' prior written notice to the Agent and such Lender, replace such Lender by requiring such Lender to (and such Lender shall) transfer pursuant to Clause 26 (Changes to the Lenders) all (and not part only) of its rights and obligations under this Agreement to an Eligible Institution (a "**Replacement Lender**") is acceptable to the Agent (acting reasonably), which confirms its willingness to assume and does assume all the obligations or all the relevant obligations of the transferring Lender (including the assumption of the transferring Lender's participations or unfunded participations (as the case may be) on the same basis as the transferring Lender) for a purchase price in cash payable at the time of transfer equal to the outstanding principal amount of such Lender's participation in the outstanding Utilisations and all accrued interest Break Costs and other amounts payable in relation thereto under the Finance Documents.

Any transfer of rights and obligations of a Defaulting Lender pursuant to this Clause shall be subject to the following conditions:

the Parent shall have no right to replace the Agent or Security Trustee;

neither the Agent nor the Defaulting Lender shall have any obligation to the Parent to find a Replacement Lender;

the transfer must take place no later than 5 days after the notice referred to in paragraph (a) above; and

in no event shall the Defaulting Lender be required to pay or surrender to the Replacement Lender any of the fees received by the Defaulting Lender pursuant to the Finance Documents.

### **CONFIDENTIALITY**

#### **Confidential Information**

Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 38.2 (Disclosure of Confidential Information) and Clause 38.3 (Disclosure to numbering service providers), and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

#### **Disclosure of Confidential Information**

Any Finance Party may disclose:

to any of its Affiliates and Related Funds and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives such Confidential Information as that Finance Party shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;

to any person:

to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents or which succeeds (or which may potentially

succeed) it as Agent or Security Trustee and, in each case, and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;

with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or one or more Obligors and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;

appointed by any Finance Party or by a person to whom paragraph (b)(i) or (ii) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf (including, without limitation, any person appointed under paragraph (d) of Clause 27.16 (Relationship with the Lenders));

who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraph (b)(i) or (b)(ii) above;

to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;

to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 25.9 (Security over Lenders' rights);

to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;

who is a Party; or

with the consent of the Parent;

in each case, such Confidential Information as that Finance Party shall consider appropriate if:

in relation to paragraphs (b)(i), (b)(ii) and b(iii) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;

in relation to paragraph (b)(iv) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;

in relation to paragraphs (b)(v), (b)(vi) and (b)(vii) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of that Finance Party, it is not practicable so to do in the circumstances;

to any person appointed by that Finance Party or by a person to whom paragraph (b)(i) or (b)(ii) above applies to provide administration or settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (c) if the service provider to whom the Confidential Information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Parent and the relevant Finance Party;

to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or the Obligors if the rating agency to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information.

#### **Disclosure to numbering service providers**

Any Finance Party may disclose to any national or international numbering service provider appointed by that Finance Party to provide identification numbering services in respect of this Agreement, the Facilities and/or one or more Obligors the following information:

names of Obligors;

country of domicile of Obligors;

place of incorporation of Obligors;  
date of this Agreement;  
Clause 41 (Governing law);  
the names of the Agent and the Arranger;  
date of each amendment and restatement of this Agreement;  
amounts of, and names of, the Facilities (and any tranches);  
amount of Total Commitments;  
currencies of the Facilities;  
type of Facilities;  
ranking of Facilities;  
Termination Date for Facilities;  
changes to any of the information previously supplied pursuant to paragraphs (i) to (xiii) above; and  
such other information agreed between such Finance Party and the Parent,

to enable such numbering service provider to provide its usual syndicated loan numbering identification services.

The Parties acknowledge and agree that each identification number assigned to this Agreement, the Facilities and/or one or more Obligors by a numbering service provider and the information associated with each such number may be disclosed to users of its services in accordance with the standard terms and conditions of that numbering service provider.

Each Obligor represents that none of the information set out in paragraphs (i) to (xiii) of paragraph (a) above is, nor will at any time be, unpublished price-sensitive information.

The Agent shall notify the Parent and the other Finance Parties of:

the name of any numbering service provider appointed by the Agent in respect of this Agreement, the Facilities and/or one or more Obligors;  
and

the number or, as the case may be, numbers assigned to this Agreement, the Facilities and/or one or more Obligors by such numbering service provider.

#### **Entire agreement**

This Clause 38 (Confidentiality) constitutes the entire agreement between the Parties in relation to the obligations of the Finance Parties under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

#### **Inside information**

Each of the Finance Parties acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and each of the Finance Parties undertakes not to use any Confidential Information for any unlawful purpose.

#### **Notification of disclosure**

Each of the Finance Parties agrees (to the extent permitted by law and regulation) to inform the Parent:

of the circumstances of any disclosure of Confidential Information made pursuant to paragraph (b)(v) of Clause 38.2 (Disclosure of Confidential Information) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and

upon becoming aware that Confidential Information has been disclosed in breach of this Clause 38 (Confidentiality).

### **Continuing obligations**

The obligations in this Clause 38 (Confidentiality) are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of twelve months from the earlier of:

the date on which all amounts payable by the Obligors under or in connection with the Finance Documents have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and

the date on which such Finance Party otherwise ceases to be a Finance Party.

### **DISCLOSURE OF LENDER DETAILS BY AGENT**

#### **Supply of Lender details to Parent**

The Agent shall provide to the Parent within 10 Business Days of a request by the Parent (but no more frequently than once per calendar month), a list (which may be in electronic form) setting out the names of the Lenders as at the date of that request, their respective Commitments, the address and fax number (and the department or officer, if any, for whose attention any communication is to be made) of each Lender for any communication to be made or document to be delivered under or in connection with the Finance Documents, the electronic mail address and/or any other information required to enable the sending and receipt of information by electronic mail or other electronic means to and by each Lender to whom any communication under or in connection with the Finance Documents may be made by that means and the account details of each Lender for any payment to be distributed by the Agent to that Lender under the Finance Documents.

#### **Supply of Lender details at Parent's direction**

The Agent shall, at the request of the Parent, disclose the identity of the Lenders and the details of the Lenders' Commitments to any:

other Party or any other person if that disclosure is made to facilitate, in each case, a refinancing of the Financial Indebtedness arising under the Finance Documents or a material waiver or amendment of any term of any Finance Document; and

member of the Group.

Subject to paragraph (c) below, the Parent shall procure that the recipient of information disclosed pursuant to paragraph (a) above shall keep such information confidential and shall not disclose it to anyone and shall ensure that all such information is protected with security measures and a degree of care that would apply to the recipient's own confidential information.

The recipient may disclose such information to any of its officers, directors, employees, professional advisers, auditors and partners as it shall consider appropriate if any such person is informed in writing of its confidential nature, except that there shall be no such requirement to so inform if that person is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by duties of confidentiality in relation to the information.

#### **Supply of Lender details to other Lenders**

If a Lender (a "**Disclosing Lender**") indicates to the Agent that the Agent may do so, the Agent shall disclose that Lender's name and Commitment to any other Lender that is, or becomes, a Disclosing Lender.

The Agent shall, if so directed by the Requisite Lenders, request each Lender to indicate to it whether it is a Disclosing Lender.

#### **Lender enquiry**

If any Lender believes that any entity is, or may be, a Lender and:

that entity ceases to have an Investment Grade Rating; or

an Insolvency Event occurs in relation to that entity,

the Agent shall, at the request of that Lender, indicate to that Lender the extent to which that entity has a Commitment.

#### **Lender details definitions**

In this Clause 39:

**"Investment Grade Rating"** means, in relation to an entity, a rating for its long-term unsecured and non credit-enhanced debt obligations of BBB- or higher by Standard & Poor's Rating Services or Fitch Ratings Ltd or Baa3 or higher by Moody's Investors Service Limited or a comparable rating from an internationally recognised credit rating agency.

**"Requisite Lenders"** means a Lender or Lenders whose Commitments aggregate 15 per cent. (or more) of the Total Commitments (or if the Total Commitments have been reduced to zero, aggregated 15 per cent. (or more) of the Total Commitments immediately prior to that reduction).

## **CONFIDENTIALITY OF FUNDING RATES AND REFERENCE BANK QUOTATIONS**

### **Confidentiality and disclosure**

The Agent and each Obligor agree to keep each Funding Rate (and, in the case of the Agent, each Reference Bank Quotation) confidential and not to disclose it to anyone, save to the extent permitted by paragraphs (b), (c) and (d) below.

The Agent may disclose:

any Funding Rate (but not, for the avoidance of doubt, any Reference Bank Quotation) to the relevant Borrower pursuant to Clause 10.4 (Notification of rates of interest); and

any Funding Rate or any Reference Bank Quotation to any person appointed by it to provide administration services in respect of one or more of the Finance Documents to the extent necessary to enable such service provider to provide those services if the service provider to whom that information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Agent and the relevant Lender or Reference Bank, as the case may be.

The Agent may disclose any Funding Rate or any Reference Bank Quotation, and each Obligor may disclose any Funding Rate, to:

any of its Affiliates and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives if any person to whom that Funding Rate or Reference Bank Quotation is to be given pursuant to this paragraph (i) is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of that Funding Rate or Reference Bank Quotation or is otherwise bound by requirements of confidentiality in relation to it;

any person to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation if the person to whom that Funding Rate or Reference Bank Quotation is to be given is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Agent or the relevant Obligor, as the case may be, it is not practicable to do so in the circumstances;

any person to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes if the person to whom that Funding Rate or Reference Bank Quotation is to be given is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Agent or the relevant Obligor, as the case may be, it is not practicable to do so in the circumstances; and

any person with the consent of the relevant Lender or Reference Bank, as the case may be.

The Agent's obligations in this Clause 40 relating to Reference Bank Quotations are without prejudice to its obligations to make notifications under Clause 10.4 (Notification of rates of interest) provided that (other than pursuant to paragraph (b)(i) above) the Agent shall not include the details of any individual Reference Bank Quotation as part of any such notification.

### **Related obligations**

The Agent and each Obligor acknowledge that each Funding Rate (and, in the case of the Agent, each Reference Bank Quotation) is or may be price-sensitive information and that its use may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and the Agent and each Obligor undertake not to use any Funding Rate or, in the case of the Agent, any Reference Bank Quotation for any unlawful purpose.

The Agent and each Obligor agree (to the extent permitted by law and regulation) to inform the relevant Lender or Reference Bank, as the case may be:

of the circumstances of any disclosure made pursuant to paragraph (c)(ii) of Clause 40.1 (Confidentiality and disclosure) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and upon becoming aware that any information has been disclosed in breach of this Clause 40.

**No Event of Default**

No Event of Default will occur under Clause 24.3 (Other obligations) by reason only of an Obligor's failure to comply with this Clause 40.

**COUNTERPARTS**

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

## SECTION 12

### GOVERNING LAW AND ENFORCEMENT

#### GOVERNING LAW

This Agreement is, and any non contractual obligations arising out of or in connection with it are, governed by English law.

#### ENFORCEMENT

##### Jurisdiction of English courts

The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement) (a "**Dispute**").

The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

Notwithstanding paragraph (a) above, no Finance Party or Secured Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Finance Parties and Secured Parties may take concurrent proceedings in any number of jurisdictions.

##### Service of process

Without prejudice to any other mode of service allowed under any relevant law, each Obligor (other than an Obligor incorporated in the United Kingdom):

irrevocably appoints Morton Fraser LLP, St Martin's House, 16 St. Martin's le Grand, London EC1A 4EN as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document; and

agrees that failure by an agent for service of process to notify the relevant Obligor of the process will not invalidate the proceedings concerned.

If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Parent (on behalf of all the Obligors) must immediately (and in any event within 10 days of such event taking place) appoint another agent on terms acceptable to the Agent. Failing this, the Agent may appoint another agent for this purpose.

The Parent expressly agrees and consents to the provisions of this Clause 43 and Clause 42 (Governing law).

**This Agreement has been entered into on the date stated at the beginning of this Agreement.**

#### SCHEDULE 1

#### THE ORIGINAL PARTIES

##### Part I

#### The Obligors



<b>Name of Borrower</b>	<b>Registration number (or equivalent, if any)</b>
Schuh Group Limited	SC379625 (Scotland)
Schuh (Holdings) Limited	SC265833 (Scotland)
Schuh Limited	SC125327 (Scotland)
Schuh (ROI) Limited	272987 (Ireland)
Genesco schuh GmbH	Commercial register ( <i>Handelsregister</i> ) of the local court ( <i>Amtsgericht</i> ) of Cologne no. HRB80329 (Germany)
<b>Name of Guarantor</b>	<b>Registration number (or equivalent, if any)</b>
Schuh Group Limited	SC379625 (Scotland)
Schuh (Holdings) Limited	SC265833 (Scotland)
Schuh Limited	SC125327 (Scotland)
Schuh (ROI) Limited	272987 (Ireland)
Genesco schuh GmbH	Commercial register ( <i>Handelsregister</i> ) of the local court ( <i>Amtsgericht</i> ) of Cologne no. HRB80329 (Germany)

**Part II**

**The Original Lenders**

<b>Name of Original Lender</b>	<b>Facility A Commitment</b>	<b>Facility B Commitment</b>	<b>Facility C Commitment</b>	<b>Facility D Commitment</b>
Lloyds Bank plc	£	£	£	€7,200,000

**SCHEDULE 2**

**CONDITIONS PRECEDENT**

**Part I**

**Conditions precedent to signing of Agreement**

Not restated

## Part II

### Conditions precedent required to be delivered by an Additional Obligor

An Accession Letter executed by the Additional Obligor and the Parent.

A copy of the constitutional documents of the Additional Obligor.

A copy of a resolution of the board or, if applicable, a committee of the board of directors of the Additional Obligor:

approving the terms of, and the transactions contemplated by, the Accession Letter and the Finance Documents and resolving that it execute, deliver and perform the Accession Letter and any other Finance Document to which it is party;

authorising a specified person or persons to execute the Accession Letter and other Finance Documents on its behalf;

authorising a specified person or persons, on its behalf, to sign and/or despatch all other documents and notices (including, in relation to an Additional Borrower, any Utilisation Request or Selection Notice) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party; and

authorising the Parent to act as its agent in connection with the Finance Documents

If applicable, a copy of a resolution of the board of directors of the Additional Obligor, establishing the committee referred to in paragraph 3 above.

A specimen of the signature of each person authorised by the resolution referred to in paragraph 3 above.

A copy of a resolution signed by all the holders of the issued shares of the Additional Guarantor, approving the terms of, and the transactions contemplated by, the Finance Documents to which the Additional Guarantor is a party.

A copy of a resolution of the board of directors of each corporate shareholder of each Additional Guarantor approving the terms of the resolution referred to in paragraph 6 above.

A certificate of the Additional Obligor (signed by a director) confirming that borrowing or guaranteeing or securing, as appropriate, the Total Commitments would not cause any borrowing, guarantee, security or similar limit binding on it to be exceeded.

A certificate of an authorised signatory of the Additional Obligor certifying that each copy document listed in this Part II of Schedule 2 is correct, complete and in full force and effect and has not been amended or superseded as at a date no earlier than the date of the Accession Letter.

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

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

The following legal opinions, each addressed to the Agent, the Security Trustee and the Lenders:

a legal opinion of the legal advisers to the Agent in England, as to English law in the form distributed to the Lenders prior to signing the Accession Letter; and

if the Additional Obligor is incorporated in or has its "centre of main interest" or "establishment" (as referred to in Clause 20.28 (Centre of main interests and establishments)) in a jurisdiction other than England and Wales or is executing a Finance Document which is governed by a law other than English law, a legal opinion of the legal advisers to the Agent in the jurisdiction of its incorporation, "centre of main interest" or "establishment" (as applicable) or, as the case may be, the jurisdiction of the governing law of that Finance Document (the "**Applicable Jurisdiction**") as to the law of the Applicable Jurisdiction and in the form distributed to the Lenders prior to signing the Accession Letter.

If the proposed Additional Obligor is incorporated in a jurisdiction other than England and Wales, evidence that the process agent specified in Clause 43.2 (Service of process), if not an Obligor, has accepted its appointment in relation to the proposed Additional Obligor.

Any security documents which are required by the Agent to be executed by the proposed Additional Obligor.

Any notices or documents required to be given or executed under the terms of those security documents.

In relation to financial assistance (or overseas equivalent), such documentary evidence as legal counsel to the Agent may require, that such Additional Obligor has complied with any law in its jurisdiction relating to financial assistance or analogous process.

**SCHEDULE 3**

**REQUEST**

**Part 1**

**Utilisation Request**

**Loans**

From: [Borrower] [Parent]

To: Lloyds Bank plc

Dated:

Dear Sirs

**Schuh Group Limited – £26,875,000 and €7,200,000 Senior Facilities Agreement dated [ ] (the "Facilities Agreement")**

- 1. We refer to the Facilities Agreement. This is a Utilisation Request. Terms defined in the Facilities Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
- 2. We wish to borrow a Loan on the following terms:  
 Borrower: [ ]  
 Proposed Utilisation Date: [ ] (or, if that is not a Business Day, the next Business Day)  
 Facility to be utilised: [Facility A]/[Facility B]/[Facility C]/[Facility D]  
 Amount: [ ] or, if less, the Available Facility  
 Interest Period: [ ]
- 3. We confirm that each condition specified in Clause 4.2 (Further conditions precedent) is satisfied on the date of this Utilisation Request.
- 4. [The proceeds of this Loan should be credited to [account]].
- 5. This Utilisation Request is irrevocable.

Yours faithfully

.....

authorised signatory for

[the Parent on behalf of [insert name of relevant Borrower]]/ [insert name of Borrower]

NOTES:

- \* Amend as appropriate. The Utilisation Request can be given by the Borrower or by the Parent.
- \*\* Select the Facility to be utilised and delete references to the other Facilities.

**Part II**

**Selection Notice**

**Applicable to a Term Loan**

From: Schuh Group Limited

To: Lloyds Bank plc

Dated:

Dear Sirs

**Schuh Group Limited - £26,875,000 and €7,200,000 Senior Facilities Agreement dated [ ] (the "Facilities Agreement")**

We refer to the Facilities Agreement. This is a Selection Notice. Terms defined in the Facilities Agreement have the same meaning in this Selection Notice unless given a different meaning in this Selection Notice.

We refer to the following Facility [A]/[B] Loan[s] with an Interest Period ending on [ ]\*.

[We request that the above Facility [A/B] Loan[s] be divided into I Facility [A/B] Loans with the following amounts and Interest Periods:]\*\*

[We request that the next Interest Period for the above Facility [A]/[B] Loan[s] is [ .].]\*\*\*

This Selection Notice is irrevocable.

Yours faithfully

.....

authorised signatory for the Parent

NOTES:

\* Insert details of all Term Loans for the relevant Facility which have an Interest Period ending on the same date.

\*\* Use this option if division of Facility A Loans or Facility B Loans is requested.

\*\*\* Use this option if sub-division is not required or if Selection Notice relates to Facility B Loans.

**SCHEDULE 4**

**plan referred to in the definition of Additional Livingston Property**

**SCHEDULE 5**

**FORM OF TRANSFER CERTIFICATE**

To: Lloyds Bank plc as Agent and Lloyds Bank plc as Security Trustee

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

Dated:

**Schuh Group Limited – £26,875,000 and €7,200,000 Senior Facilities Agreement  
dated [ ] (the "Facilities Agreement")**

We refer to the Facilities Agreement. This agreement (the "Agreement") shall take effect a Transfer Certificate for the purpose of the Facilities Agreement. Terms defined in the Facilities Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.

We refer to Clause 25.5 (Procedure for transfer) of the Facilities Agreement:

The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation and in accordance with Clause 25.5 (Procedure for Transfer) all of the Existing Lender's rights and obligations under the Facilities Agreement which relate to that portion (s) and participations in Utilisations under the Facilities Agreement as specified in the Schedule.

The proposed Transfer Date is [ ].

The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 33.2 (Addresses) are set out in the Schedule.

The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in paragraph (c) of Clause 25.4 (Limitation of responsibility of Existing Lenders).

The New Lender confirms, for the benefit of the Agent and without any liability to any Obligor, that it is:

[not a UK Qualifying Lender];

[a UK Qualifying Lender (other than a UK Treaty Lender);] or

[a UK Treaty Lender;]

and

[not an Irish Qualifying Lender];

[an Irish Qualifying Lender (other than solely by reason of being an Irish Treaty Lender);] or

[an Irish Treaty Lender;]

[The New Lender confirms that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:

a company resident in the United Kingdom for United Kingdom tax purposes; or

a partnership each member of which is:

a company so resident in the United Kingdom; or

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

a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section Part 17 of the CTA) of that company; or]

[a Treaty Lender].

[The New Lender confirms that it holds a passport under the HMRC DT Treaty Passport scheme (reference number [ ]) and is tax resident in [ ], so that interest payable to it by borrowers is generally subject to full exemption from UK withholding tax and requests that the Parent notify:

each Borrower which is a Party as a Borrower as at the Transfer Date; and  
each Additional Borrower which becomes an Additional Borrower after the Transfer Date,  
that it wishes that scheme to apply to the Facilities Agreement.]

[7/8]. This Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

[8/9] This Agreement and any non contractual obligations arising out of or in connection with it are governed by English law.

[9/10] This Agreement has been entered into on the date stated at the beginning of this Agreement.

**Note: The execution of this Transfer Certificate may not transfer a proportionate share of the Existing Lender's interest in the Transaction Security in all jurisdictions. It is the responsibility of the New Lender to ascertain whether any other documents or other formalities are required to perfect a transfer of such a share in the Existing Lender's Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.**



## THE SCHEDULE

### Commitment/rights and obligations to be transferred

[insert relevant details]

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

[Existing Lender]

[New Lender]

By:

By:

This Agreement is accepted as a Transfer Certificate for the purposes of the Facilities Agreement by the Agent and the Transfer Date is confirmed as [ ].

[Agent]

By:

## SCHEDULE 6

### FORM OF ASSIGNMENT AGREEMENT

To: Lloyds Bank plc as Agent

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

Dated:

**Schuh Group Limited - £26,875,000 and €7,200,000 Senior Facilities Agreement**

**dated [ ] (the "Facilities Agreement")**

We refer to the Facilities Agreement. This is an Assignment Agreement. This agreement (the "Agreement") shall take effect as an Assignment Agreement for the purposes of the Facilities Agreement. Terms defined in the Facilities Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.

We refer to Clause 25.6 (Procedure for assignment) of the Facilities Agreement.

The Existing Lender assigns absolutely to the New Lender all the rights of the Existing Lender under the Facilities Agreement, the other Finance Documents and in respect of the Transaction Security which correspond to that portion of the Existing Lender's Commitment(s) and participations in Utilisations under the Facilities Agreement as specified in the Schedule.

The Existing Lender is released from all the obligations of the Existing Lender which correspond to that portion of the Existing Lender's Commitment(s) and participations in Utilisations under the Facilities Agreement specified in the Schedule.

The New Lender becomes a Party as a Lender and is bound by obligations equivalent to those from which the Existing Lender is released under paragraph (c) above.

The proposed Transfer Date is [ ].

On the Transfer Date the New Lender becomes:

Party to the Finance Documents as a Lender; and

Party to [other relevant agreements in other relevant capacity].

The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in paragraph (c) of Clause 25.4 (Limitation of responsibility of Existing Lenders).

The New Lender confirms, for the benefit of the Agent and without any liability to any Obligor, that it is:

- (a) [a UK Qualifying Lender (other than a UK Treaty Lender);]
- (b) [a UK Treaty Lender;]
- (c) [an Irish Qualifying Lender (other than solely by reason of being an Irish Treaty Lender);]
- (d) [an Irish Treaty Lender;]
- (e) [not a Qualifying Lender].

The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 33.2 (Addresses) of the Facilities Agreement are set out in the Schedule.

[The New Lender confirms that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:

a company resident in the United Kingdom for United Kingdom tax purposes; or

a partnership each member of which is:

a company so resident in the United Kingdom; or

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

a company not so resident in the United Kingdom which carries on a trade in the United Kingdom through a permanent establishment and which brings into account interest payable in respect of that advance in computing the chargeable profits (within the meaning of section 19 of the CTA) of that company; or]

[8/9]. [The New Lender confirms that it holds a passport under the HMRC DT Treaty Passport scheme (reference number [ ]) and is tax resident in [ ], so that interest payable to it by borrowers is generally subject to full exemption from UK withholding tax and requests that the Parent notify:

each Borrower which is a Party as a Borrower as at the Transfer Date; and

each Additional Borrower which becomes an Additional Borrower after the Transfer Date,

that it wishes that scheme to apply to the Facilities Agreement.]

[9/10] This Agreement acts as notice to the Agent (on behalf of each Finance Party) and, upon delivery in accordance with Clause 25.7 (Copy of Transfer Certificate), to the Parent (on behalf of each Obligor) of the assignment referred to in this Agreement. This Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

[9/10]. This Agreement and any non contractual obligations arising out of or in connection with it is governed by English law.

[10/11] This Agreement has been [executed and delivered as a deed] [entered into] on the date stated at the beginning of this Assignment Agreement.

**Note:** The execution of this Assignment Agreement may not transfer a proportionate share of the Existing Lender's interest in the Transaction Security in all jurisdictions. It is the responsibility of the New Lender to ascertain whether any other documents or other formalities are required to perfect a transfer of such a share in the Existing Lender's Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.

## THE SCHEDULE

### Commitment/rights and obligations to be transferred by assignment, release and accession

[insert relevant details]

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

[Existing Lender]

[New Lender]

By:

By:

This Agreement is accepted as an Assignment Agreement for the purposes of the Facilities Agreement by the Agent and the Transfer Date is confirmed as [ ].

[Signature of this Assignment Agreement by the Agent constitutes confirmation by the Agent of receipt of notice of the assignment referred to in this Agreement, which notice the Agent receives on behalf of each Finance Party.]

[Agent]

By:

## SCHEDULE 7

### FORM OF ACCESSION LETTER

To: Lloyds Bank plc as Agent

From: [Subsidiary] and [Parent]

Dated:

Dear Sirs

**Schuh Group Limited – £26,875,000 and €7,200,000 Senior Facilities Agreement**

**dated [ ] (the "Facilities Agreement")**

1. We refer to the Facilities Agreement. This letter (the "**Accession Letter**") shall take effect as an Accession Letter for the purposes of the Facilities Agreement. Terms defined in the Facilities Agreement have the same meaning in this Accession Letter unless given a different meaning in this Accession Letter.
2. [Subsidiary] agrees to become an Additional [Borrower]/[Guarantor] and to be bound by the terms of the Facilities Agreement and the other Finance Documents as an Additional [Borrower]/[Guarantor] pursuant to Clause [26.2 (Additional Borrowers)]/[Clause 26.4 (Additional Guarantors)] of the Facilities Agreement. [Subsidiary] is a company duly incorporated under the laws of [name of relevant jurisdiction] and is a limited liability company and registered number [ ].
3. [The Parent confirms that no Default is continuing or would occur as a result of [Subsidiary] becoming an Additional Borrower].
4. [Subsidiary's] administrative details are as follows:

Address:

Fax No.:

Attention:

5. This Accession Letter is governed by English law.

[This Accession Letter is entered into by deed.]

[Parent]

[Subsidiary]

**SCHEDULE 8  
FORM OF RESIGNATION LETTER**

To: Lloyds Bank plc as Agent

From: [resigning Obligor] and [Parent]

Dated:

Dear Sirs

**Schuh Group Limited - £26,875,000 and €7,200,000 Senior Facilities Agreement  
dated [ ] (the "Facilities Agreement")**

We refer to the Facilities Agreement. This is a Resignation Letter. Terms defined in the Facilities Agreement have the same meaning in this Resignation Letter unless given a different meaning in this Resignation Letter.

Pursuant to [Clause 26.3 (Resignation of a Borrower)]/[Clause 26.5 (Resignation of a Guarantor)], we request that [resigning Obligor] be released from its obligations as a [Borrower]/[Guarantor] under the Facilities Agreement and the Finance Documents.

We confirm that:

no Default is continuing or would result from the acceptance of this request; and

\*[[this request is given in relation to a Third Party Disposal of [resigning Obligor];

[the Disposal Proceeds have been or will be applied in accordance with Clause 8.2 (Disposal and Insurance Proceeds);]\*\*]

[ ]\*\*\*

This letter is governed by English law.

[Parent]

[resigning Obligor]

By:

By:

NOTES:

- \* Insert where resignation only permitted in case of a Third Party Disposal.
- \*\* Amend as appropriate, e.g. to reflect agreed procedure for payment of proceeds into a specified account.
- \*\*\* Insert any other conditions required by the Facilities Agreement.

**SCHEDULE 9**  
**FORM OF COMPLIANCE CERTIFICATE**

To: Lloyds Bank plc as Agent

From: [Parent]

Dated:

Dear Sirs

**Schuh Group Limited - £26,875,000 and €7,200,000 Senior Facilities Agreement  
dated [ ] (the "Facilities Agreement")**

We refer to the Facilities Agreement. This is a Compliance Certificate. Terms defined in the Facilities Agreement have the same meaning when used in this Compliance Certificate unless given a different meaning in this Compliance Certificate.

We confirm that:

[Insert details of covenants to be certified].

[We confirm that no Default is continuing.]\*\*

Signed .....

Director of [Parent]      Director of [Parent]

**SCHEDULE 10**  
**FORM OF INCREASE CONFIRMATION**

To: Lloyds Bank plc as Agent, Lloyds Bank plc as Security Trustee and Schuh Group Limited as Parent, for and on behalf of each Obligor

From: [the *Increase Lender*] (the "**Increase Lender**")

Dated:

**Schuh Group Limited – £26,875,000 and €7,200,000 Senior Facilities Agreement  
dated [ ] (the "Facilities Agreement")**

We refer to the Facilities Agreement. This agreement (the "**Agreement**") shall take effect as an Increase Confirmation for the purpose of the Facilities Agreement. Terms defined in the Facilities Agreement have the same meaning in this Agreement unless given a different meaning in this Agreement.

We refer to clause 2.2 (Increase) of the Facilities Agreement.

The Increase Lender agrees to assume and will assume all of the obligations corresponding to the Commitment specified in the Schedule (the "**Relevant Commitment**") as if it was an Original Lender under the Facilities Agreement.

The proposed date on which the increase in relation to the Increase Lender and the Relevant Commitment is to take effect (the "**Increase Date**") is [ ].

On the Increase Date, the Increase Lender becomes party to the relevant Finance Documents.

The Facility Office and address, fax number and attention details for notices to the Increase Lender for the purposes of Clause 33 (Notices) are set out in the Schedule.

The Increase Lender expressly acknowledges the limitations on the Lenders' obligations referred to in paragraph (f) of Clause 2.2 (Increase).

The Increase Lender confirms, for the benefit of the Agent and without liability to any Obligor, that it is:

[not a UK Qualifying Lender];

[a UK Qualifying Lender (other than a UK Treaty Lender); or]

[a UK Treaty Lender;]

and

[not an Irish Qualifying Lender];

[an Irish Qualifying Lender (other than solely by reason of being an Irish Treaty Lender)]; or

[an Irish Treaty Lender].

[The Increase Lender confirms that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is either:

a company resident in the United Kingdom for United Kingdom tax purposes; or

a partnership each member of which is:

a company so resident in the United Kingdom; or

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

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

[The Increase Lender confirms (for the benefit of the Agent and without liability to any Obligor) that it is a Treaty Lender that holds a passport under the HMRC DT Treaty Passport scheme (reference number [ ]) and is tax resident in [ ], so that interest payable to it by borrowers is generally subject to full exemption from UK withholding tax and notifies the Parent that:

[each Borrower which is a Party as a Borrower as at the Increase Date must, to the extent that the Increase Lender becomes a Lender under a Facility which is made available to that Borrower pursuant to clause 2 (The Facilities) of the Facilities Agreement, make an application to HM Revenue & Customs under form DTTP2 within 30 days of the Increase Date; and]

each Additional Borrower which becomes an Additional Borrower after the Increase Date must, to the extent that the Increase Lender is a Lender under a Facility which is made available to that Additional Borrower pursuant to clause 2.1 (The Facilities) of the Facilities Agreement, make an application to HM Revenue & Customs under form DTTP2 within 30 days of becoming an Additional Borrower.]<sup>\*\*\*</sup>

[12]. This Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

[13]. This Agreement is governed by English law.

[14]. This Agreement has been entered into on the date stated at the beginning of this Agreement.

**Note: The execution of this Increase Confirmation may not be sufficient for the Increase Lender to obtain the benefit of the Transaction Security in all jurisdictions. It is the responsibility of the Increase Lender to ascertain whether any other documents or other formalities are required to obtain the benefit of the Transaction Security in any jurisdiction and, if so, to arrange for execution of those documents and completion of those formalities.**



**THE PARENT**

**SCHUH GROUP LIMITED**

By:

Address: 1 Neilson Square

Deans Industrial Estate

Livingston EH54 8RQ

Attention: David Gillan Reid

Fax: 01506 460 250

**THE BORROWERS**

**SCHUH GROUP LIMITED**

By: Address: As above

Attention: As above

Fax: As above

**SCHUH (HOLDINGS) LIMITED**

By:

Address: As above

Attention: As above

Fax: As above

**SCHUH LIMITED**

By:

Address: As above

Attention: As above

Fax: As above

**SCHUH (ROI) LIMITED**

By:

Address: As above

Attention: As above

Fax: As above

**GENESCO SCHUH GMBH**

By:

Address: As above

Attention: As above

Fax: As above

**THE GUARANTORS**

**SCHUH GROUP LIMITED**

By:

Address: As above

Attention: As above

Fax: As above

**SCHUH (HOLDINGS) LIMITED**

By:

Address: As above

Attention: As above

Fax: As above

**SCHUH LIMITED**

By:

Address: As above

Attention: As above

Fax: As above

**GENESCO SCHUH GMBH**

By:

Address: As above

Attention: As above

Fax: As above

**THE ARRANGER**

**LLOYDS BANK PLC**

By:

Address: 1st Floor

New Uberior House

11 Earl Grey Street

Edinburgh

EH3 9QB

Fax: 0131 229 5198

Attention: Andy Edwards

**THE AGENT**

**LLOYDS BANK PLC**

By:

Address: As above

Fax: As above

Attention: As above

**THE SECURITY TRUSTEE**

**LLOYDS BANK PLC**

By:

Address: As above

Fax: As above

Attention: As above

**THE LENDER**

**LLOYDS BANK PLC**

By:

Address: As above

Fax: As above

Attention: As above

**SIGNATURES TO AMENDMENT AND RESTATEMENT AGREEMENT**

**THE PARENT & OBLIGORS' AGENT**

**SCHUH GROUP LIMITED**

By:

Address: 1 Neilson Square

Deans Industrial Estate

Livingston

Fax: 01506 460250

**THE BORROWERS**

**SCHUH GROUP LIMITED**

By:

Address: As above

Fax: As above

**SCHUH (HOLDINGS) LIMITED**

By:

Address: As above

Fax: As above

**SCHUH LIMITED**

By:

Address: As above

Fax: As above

**GIVEN UNDER THE COMMON SEAL of  
SCHUH (ROI) LIMITED  
and DELIVERED as a DEED  
in the presence of:**

**Director**

---

**Director/Secretary**

---

By:

Address:

Fax:

**GENESCO SCHUH GmbH**

By:

Address: As above

Fax: As above

**THE GUARANTORS**

**SCHUH GROUP LIMITED**

By:

Address: As above

Fax: As above



**SCHUH (HOLDINGS) LIMITED**

By:

Address: As above

Fax: As above

**SCHUH LIMITED**

By:

Address: As above

Fax: As above

**GIVEN UNDER THE COMMON SEAL of  
SCHUH (ROI) LIMITED  
and DELIVERED as a DEED  
in the presence of:**

**Director**

---

**Director/Secretary**

---

By:

Address:

Fax:

**GENESCO SCHUH GmbH**

By:

Address: As above

Fax: As above

**THE ARRANGER**

**LLOYDS BANK PLC**

By:

Address: 1st Floor

New Uberior House

11 Earl Grey Street

Edinburgh

EH3 9QB

Fax: 0131 229 5198

**THE AGENT**

**LLOYDS BANK PLC**

By:

Address: As above

Fax: As above

**THE ORIGINAL LENDER**

**LLOYDS BANK PLC**

By:

Address: As above

Fax: As above

**THE SECURITY TRUSTEE**

**LLOYDS BANK PLC**

By:

Address: As above

Fax: As above

## CERTIFICATIONS

I, Robert J. Dennis, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Genesco Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: June 8, 2017

/s/ Robert J. Dennis

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Robert J. Dennis

Chief Executive Officer

## CERTIFICATIONS

I, Mimi E. Vaughn, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Genesco Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: June 8, 2017

/s/ Mimi E. Vaughn

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Mimi E. Vaughn

Chief Financial Officer

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of Genesco Inc. (the "Company") on Form 10-Q for the period ending April 29, 2017 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Robert J. Dennis, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Robert J. Dennis

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Robert J. Dennis  
Chief Executive Officer  
June 8, 2017

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of Genesco Inc. (the "Company") on Form 10-Q for the period ending April 29, 2017, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Mimi E. Vaughn, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Mimi E. Vaughn  
Mimi E. Vaughn  
Chief Financial Officer  
June 8, 2017