

For the avoidance of doubt, this document is in a non-binding, recommended form. Its intention is to be used as a starting point for negotiation only. Individual parties are free to depart from its terms and should always satisfy themselves of the regulatory implications of its use. In particular nothing in this document is intended to, or should be construed as, a recommendation of, or support for, any particular pricing methodology by FAAN. This document assumes to function as an Ancillary Facility for the purpose of an LMA facilities agreement and should be checked (including on definitions) against the form of facilities agreement and, if applicable, intercreditor agreement.

Individual parties choosing to use this document as the basis for preparing asset based lending ancillary documentation for transactions should note that this document does not purport to offer any standardised position in relation to a number of issues associated with the use of compounded risk-free reference rates or the operation of those conventions. Those issues will require consideration and resolution by the relevant parties in the context of the relevant transaction.

[•]
AS [COMPANY/PARENT]

[•]
AS BORROWER[S]

[•]
AS BORROWING BASE AGENT

[•]
AS BORROWING BASE SECURITY AGENT

AND

[•]
AS BORROWING BASE LENDERS

BORROWING BASE ANCILLARY DOCUMENT DATED [•] RELATING TO A
BORROWING BASE ANCILLARY FACILITY FOR [•]

SUBJECT TO THE TERMS OF THE FACILITIES AGREEMENT DATED [•] FOR
[•]

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THIS AGREEMENT is dated [•] and made

BETWEEN:¹

- (1) [•], [•] as company (the "**Company**")²;
- (2) **THE SUBSIDIARIES** of the Company listed in Schedule 1 as original borrowers "**Original Borrowers**";
- (3) **THE ENTITIES** listed in Schedule 1 as borrowing base lenders (the "**Borrowing Base Lenders**");
- (4) [•], [•] as agent of the other Borrowing Base Lenders (the "**Borrowing Base Agent**")³ and
- (5) [•], [•] as security agent for the Secured Parties (the "**Borrowing Base Security Agent**").

WHEREAS

- (A) It has been agreed between the parties to the Facilities Agreement that the Borrowing Base Ancillary Facility shall be made available by the Borrowing Base Lenders to the Borrower[s] (in place of their Borrowing Base Facility Commitments under and in accordance with the Facilities Agreement).
- (B) Under this Agreement, the Borrowing Base Lenders shall provide (through the Borrowing Base Agent) credit to the Borrower[s] in the form of advance financing on Eligible Receivables [and Eligible Inventory]⁴ subject to the terms and conditions of this Agreement.
- (C) The Borrowing Base Agent shall be fronting the lending activities of the Borrowing Base Lenders under this Agreement.⁵
- (D) The parties to this Agreement wish to record the terms and conditions applicable to the Borrowing Base Ancillary Facility as set out in this Agreement.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

- 1.1 In case of a conflict between the terms of the Facilities Agreement and this Agreement, the terms of the Facilities Agreement shall prevail except in relation to any provision

¹ The Borrowing Base Lenders are assumed to be party to the Facilities Agreement.

² Please consider in combination with the Facilities Agreement if the Parent or the Company should be included here.

³ The administrative provisions applicable to the Borrowing Base Agent to be included in the Facilities Agreement, the Borrowing Base Agent shall be a facility agent under the relevant Revolving Facility

⁴ Only insert in case of inventory facility.

⁵ This Agreement assumes a fronting role of the Borrowing Base Agent, this is however to be confirmed by the Borrowing Base Lenders and the Borrowing Base Agent.

which relates specifically to the asset based lending nature of this Agreement (including any provision relating to the determination of the Borrowing Base Facility Availability, the Collection Accounts, set-off, representations, undertakings and Events of Default, in each case to the extent specifically relating to the asset based lending nature of this Agreement), in which case such provisions of this Agreement shall prevail. In case of a conflict between the terms of any Transaction Security Document to which the Borrowing Base Security Agent is a party and this Agreement, the terms of this Agreement shall prevail unless this would conflict with provisions of applicable mandatory law for the creation of the Transaction Security.

- 1.2 All fees mentioned in this Agreement are quoted exclusive of VAT, unless otherwise mentioned herein.
- 1.3 This Agreement is a Borrowing Base Ancillary Document.
- 1.4 Unless otherwise defined herein, all capitalised terms have the meaning ascribed thereto in the Facilities Agreement.
- 1.5 In addition:⁶

"Accession Letter" means a letter in the form set out in Schedule 4 (*Accession Letter*).

"Account Bank" means [•].⁷

"Additional Borrower" means any entity which becomes a Borrower under this Agreement in accordance with Clause 17.1 (*Additional Borrower*).

"Advance" means an advance in the Base Currency [or an Optional Currency], in the form of a current account drawing or the principal amount outstanding for the time being of that utilisation under the Borrowing Base Ancillary Facility.

"Advance Rate" means:

- (a) in respect of Eligible Receivables, [•] per cent of the Receivable[.]/[; and]
- (b) in respect of Eligible Inventory, [•] per cent of the Value.]

"Advance Request" means a request for an Advance made by [a]/[the] Borrower via the Online Portal.

"Agency Fees" means the fees described in Clause 9.7 (*Borrowing Base Agency and Security Agent Fee*).

["Agent's Spot Rate of Exchange" means:

- (a) the Borrowing Base Agent's spot rate of exchange; or

⁶ Insert definitions specified in the document *Definitions included in the Facilities Agreement*, if these are not yet defined in the Facilities Agreement. If preferred, the definitions already included in the FA can also be included in this Agreement.

⁷ Consider adding conditions to the definition of Account Bank where it functions as Collection Account bank.

- (b) (if the Borrowing Base Agent does not have an available spot rate of exchange) any other publicly available spot rate of exchange selected by the Borrowing Base Agent (acting reasonably),

for the purchase of the relevant currency with the Base Currency in the Amsterdam foreign exchange market at or about [11:00] a.m. ([Amsterdam] time) on a particular day.]

"Agreement" means this agreement which is a Borrowing Base Ancillary Document.

"Availability Period" means the Availability Period (as defined in the Facilities Agreement) applicable to the Borrowing Base Ancillary Facility.

"Base Currency" means euro.

"Base Rate" means:

- (a) in relation to any outstanding amount in Euro, [•] [EURIBOR][.]/[and if EURIBOR is less than zero, EURIBOR shall be deemed to be zero.]⁸;
- (b) [in relation to any outstanding amount in USD, [•] [SOFR][.]/[and if SOFR is less than zero, SOFR shall be deemed to be zero.]⁹; and
- (c) in relation to any outstanding amount in GBP, [•] [SONIA][.]/[and if SONIA is less than zero, SONIA shall be deemed to be zero.]¹⁰.]

"Borrower" means an Original Borrower and any Additional Borrower.

"Borrowing Base" means [the aggregate]¹¹ of the Borrowing Base Receivables Amount [and Borrowing Base Inventory Amount]¹².

"Borrowing Base Ancillary Facility" means the Receivables Financing Facility [and the Inventory Financing Facility made available in this Agreement].

["Borrowing Base Certificate" means the form of certificate attached in [Schedule 9].]¹³

"Borrowing Base Deficit" means that the Borrowing Base Facility Availability is less than zero.

"Borrowing Base Documents" means this Agreement, [each Borrowing Base Certificate,] each Transaction Security Document entered into by an Obligor for the

⁸ Insert if applicable.

⁹ Insert if applicable.

¹⁰ Insert if applicable.

¹¹ Only insert in case of inventory facility.

¹² Only insert in case of inventory facility.

¹³ Only use when the Borrowing Base is not calculated by the Borrowing Base Agent. TBC with Borrowing Base Lenders.

benefit of the Borrowing Base Security Agent, any Accession Letter, any Resignation Letter [,any Compliance Certificate] or any other document designated as such by the Borrowing Base Agent and the Company.

"Borrowing Base Facility Availability" has the meaning ascribed thereto in Clause 6.1.

"Borrowing Base Facility Commitment" means, in relation to a Borrowing Base Lender, the amount in the Base Currency [and any Optional Currency] set opposite its name under the heading "Borrowing Base Facility Commitment" in Part 1 of Schedule 1 (*The Borrowing Base Lenders*).

"Borrowing Base Fee" has the meaning ascribed thereto in Clause 9.5 (*Borrowing Base Fee*).

["Borrowing Base Inventory Amount" means the aggregate amount of the Value of Eligible Inventory multiplied by the Advance Rate, minus the amount of any Inventory Reserve.]

"Borrowing Base Lender's Proportion" means, in respect of each Borrowing Base Lender, at any time, the Borrowing Base Facility Commitment of such Borrowing Base Lender as a percentage of the Total Borrowing Base Facility Commitment at that time.

"Borrowing Base Receivables Amount" means the aggregate [Euro Equivalent Amount][amount] of the nominal value (including VAT, if applicable) of the Eligible Receivables multiplied by the Advance Rate, minus the amount of any Receivables Reserve.

["Borrowing Base Report" means [•].]¹⁴

["Business Day" means a day (other than a Saturday or Sunday) on which banks are open for general business in [Amsterdam] (the Netherlands) and, in relation to any date for payment or purchase of the Base Currency or the Optional Currency, any applicable RFR Banking Day.]

["Cash Dominion Event"means [•].]¹⁵

["Cash Sweep" has the meaning given thereto in Clause 7.2 (*Collection Account*).]¹⁶

"Closing Date" means:

- (a) the Closing Date under and as defined in the Facilities Agreement has occurred; and

¹⁴ Please verify with relevant Borrowing Base Lenders.

¹⁵ TBC with Borrowing Base Lenders if springing cash dominion mechanism is applicable and which event(s) should be included.

¹⁶ TBC with Borrowing Base Lenders if cash sweep mechanic is applicable and if yes, if it's manually performed by the Borrower or automatically by the Account Bank.

(b) the Borrowing Base Agent has issued the Effective Date Notice.

"Collection Account" means:

- (a) [any bank account ("*inzakerekening*") held in accordance with Clause 7.2 and the details of which are specified under the heading 'Collection Account[s]' in Schedule 7 (*Accounts*), including any replacement or additional bank account opened after the date of this Agreement and confirmed in writing to the Company by the Borrowing Base Agent]; [and]
- (b) [the bank accounts listed in [Schedule] (*Collection Accounts*), held with an Account Bank]; [and]
- (c) [following the occurrence of a Cash Dominion Event [which is continuing], in accordance with Clause 7.3 (*Cash Dominion Event*) such bank accounts (including any "*inzakerekening*") notified by the Borrowing Base Agent to the Company.]¹⁷

"Commitment Fee" has the meaning ascribed thereto in Clause 9.6 (*Commitment Fee*).

["Compliance Certificate" means a certificate substantially in the form set out in Schedule 8 (*Compliance Certificate*) setting out the calculations of the Dilution.]¹⁸

"Concentration Percentage" means, at any time, the aggregate Euro Equivalent Amount of Eligible Receivables owed by any Debtor as a percentage of the aggregate Euro Equivalent Amount of Eligible Receivables of all Debtors at that time.

"CP Documents" means [all]/[the] documents delivered to the Borrowing Base Agent listed in paragraph [•] and [•] of and] pursuant to Schedule 2 (*Conditions Precedent*).¹⁹

["Credit Limit" means the maximum insured amount per Debtor by the Borrower[s]' credit insurer under the applicable credit insurance policy.]²⁰

"Data Protection Legislation" means all applicable laws and regulations on privacy and data protection that apply to the Parties, including the GDPR and the Dutch GDPR Implementation Act (*Uitvoeringswet Algemene verordening gegevensbescherming*) as amended, replaced, or superseded from time to time.

"Debtor" means each debtor or each group of debtors (including such debtor's Affiliates) as determined as such by the Borrowing Base Agent (in its sole discretion) of a Receivable.

¹⁷ Only include if springing cash dominion mechanism applies.

¹⁸ Only insert in case a compliance certificate is required for compliance with Maximum Dilution Percentage or any other covenant agreed upon between the Borrowing Base Lenders and the Company.

¹⁹ Parties to consider which CP Documents qualify for the restriction in Clause 11.4.

²⁰ To be discussed per deal whether financing with Credit Limits mechanism or creditworthiness Debtor applies (see paragraph [(w)] of [Part 1 of] Schedule 3).

"Debtor/Inventory Ratio" means the ratio of the Borrowing Base Inventory Amount to the Borrowing Base Receivables Amount.]

"Debtor Risk" means the risk of non-payment of a Receivable as a result of the Debtor's inability to pay.

"Default" means:

- (a) any event or circumstance specified in Clause 13 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Borrowing Base Documents or any combination of any of the foregoing) be an Event of Default; and/or
- (b) any Default (as defined in the Facilities Agreement).

"Dilution" means any credit notes (including for returns, errors in invoicing or damages), bad-debt write offs, payment discounts, customer rebates or allowances, any bonuses not excluded via the Receivables Reserve, and other cash and non-cash credits and other arrangements having a similar effect that have occurred and would be recorded to reduce the value of the Receivables [(including any payment made by a Debtor in respect of a Receivable (other than a High-Risk Receivable) that is not received in a Collection Account (i.e. an indirect payment))].

"Dilution Percentage" means, at any time, the [Euro Equivalent Amount][amount] of Dilutions as a percentage of the [Euro Equivalent Amount][amount] of Receivables, including VAT, raised during the [Dilution Testing Period] at the Dilution Testing Date (in each case determined by the Borrowing Base Agent).

"Dilution Testing Date" means each date on which the Dilution Percentage is determined in accordance with Clause 10.1(h).

"Dilution Testing Period" means the period between two Dilution Testing Dates.

"Economic Benefit"²¹ means the Base Rate, Margin, arrangement fee, commitment fee and any other fees and interest to which a Borrowing Base Lender is entitled in accordance with the Borrowing Base Documents but excluding the Agency Fees and any Expenses.

"Effective Date Notice" has the meaning ascribed thereto in Clause 3.1(a)(iii).

"Eligible Inventory" has the meaning ascribed thereto in Part 2 of Schedule 3 (*Eligibility Criteria*).]²²

"Eligible Receivables" has the meaning ascribed thereto in Part 1 of Schedule 3 (*Eligibility Criteria*).

²¹ This assumes there is always a funded risk participation in place.

²² Only insert in case of inventory facility.

"EURIBOR" means, in relation to any Advance:

- (a) the applicable Screen Rate as of the Specified Time for euro and for a period of [one]/[three] months; or
- (b) as otherwise determined pursuant to Clause [•] (*Unavailability of Screen Rate*) of the Facilities Agreement,

and if, in either case, that rate [increased with the Margin] is less than zero, EURIBOR shall be deemed to be zero.²³

["Euro Equivalent Amount" means, on any date and in respect of any amount not denominated in the Base Currency, that amount converted into the Base Currency at the Agent's Spot Rate of Exchange on the date which is one Business Day before that date.]

"Event of Default" means:

- (a) any event or circumstance specified as such in Clause 13 (*Events of Default*) of this Agreement; and
- (b) an Event of Default (as defined in the Facilities Agreement).

"Expenses" means out-of-pocket costs and expenses incurred by the Borrowing Base Agent and/or the Borrowing Base Security Agent in acting as agent or security agent (as applicable) under the Finance Documents to be reimbursed by the Borrower[s], in accordance with the terms of the Finance Documents.

"Facilities Agreement" means the EUR [•] facilities agreement dated on or about the date hereof and made between, *inter alia*, the Company, [•] as Bank Agent and Bank Security Agent (each as defined therein), the Borrowing Base Agent and Borrowing Base Security Agent.

"Fee Letter" means any fee letter dated on or after the date of this Agreement between any Borrowing Base Lender and the Company or any Borrower relating to fees, costs and charges payable to the Borrowing Base Lenders or anyone thereof in respect of this Agreement.

"Field Audit" means a field examination, operational audit, (undisclosed) debtor verification or other investigation by the Borrowing Base Agent or a field examiner, or both, in relation to any Borrower and any of its Receivables [and/or Inventory] with a view to ensuring the accuracy of the Borrowing Base calculations and related reporting and control systems.

"Financing" means as determined for each relevant currency on any given date, the sum of (i) the outstanding Advances in that currency and (ii) other amounts due and payable by [any of the]/[the] Borrower[s] to the Borrowing Base Lenders in that currency in respect of the Borrowing Base Documents.

²³ TBD if EURIBOR fall back rate is applicable depending on specific transaction. To be included in the Facilities Agreement if applicable.

"Funding" means the sum of the amounts actually funded by the Borrowing Base Lenders in the relevant currency under the Borrowing Base Ancillary Facility to the Borrowing Base Agent in accordance with this Agreement.

"Funding Account" means a bank account held in the relevant Borrower's name and the details of which are specified under the heading "Funding Accounts" in Schedule 7 (*Accounts*) (including any replacement account) or any account otherwise designated as a "Funding Account" by the Borrowing Base Agent and the Borrower [and which shall be subject to Transaction Security].

"Funding/Financing Ratio" means, on any given date, (i) the Funding divided by (ii) the Financing, multiplied by 100 per cent.

"GDPR" means the General Data Protection Regulation (Regulation (EU) 2016/679).

"High Risk Country" has the meaning ascribed thereto in the definition of High Risk Receivables.

"High Risk Receivables"²⁴ means (in the sole opinion of any Borrowing Base Lender acting on the basis of its internal policies and notified by that Borrowing Base Lender to the Borrowing Base Agent) any Receivable:

- (a) directly owed or paid by a Debtor which is located in, or otherwise having a specific connection with Cuba, Iran, North Korea, Sudan and Syria and any other country as notified by the Borrowing Base Agent (acting on instruction of any Borrowing Base Lender on the basis of that Borrowing Base Lender's internal policies) from time to time as being high risk countries (each a **"High Risk Country"**); and/or
- (b) owed by a Debtor which is a Restricted Party; and/or
- (c) arising from a transaction which is not permitted or gives rise to a breach:
 - (i) under clause [•] (*Anti-corruption law*) or clause [•] (*Sanctions*) of the Facilities Agreement;[and/or
 - (ii) under clause [•] (*Misrepresentation*) of the Facilities Agreement solely as a result of a misrepresentation under clause [•] (*Anti-corruption law*) or clause [•] (*Sanctions*) of the Facilities Agreement].

["Insurance" means:

²⁴ Please check with Borrowing Base Lenders for any updates.

- (a) [credit insurance]²⁵; and
- (b) [inventory insurance and transport insurance]²⁶.

["**Inventory**"] means any inventory (*voorraad*) owned by [a]/[the] Borrower.²⁷

["**Inventory Financing Facility**"] has the meaning ascribed thereto in Clause 2.1 (*Borrowing Base Ancillary Facility*).²⁸

"**Inventory Identification Data**"²⁹ means any electronic file in a form acceptable to the Borrowing Base Agent [or data uploaded via a data exchange platform entitled "[•]"³⁰] containing the following information in respect of Inventory existing at that time:

- (a) a complete Inventory list including units (quantities, weight, packaging), the item number or product code;
- (b) an overview of all creditors in relation to Inventory (including current status and breakdown of outstanding claims of creditors in relation to the Inventory against the Borrower[s]), wherein a distinction is made between trade creditors and other creditors (including *nog te ontvangen facturen*);
- (c) the age (*ouderdom*) (based on date of entry into administration, manufacture- or best before date) of the Inventory, the days inventory outstanding (DIO), the actual volume, value (at cost price and as revalued), location (being the address of storage) and composition of the Inventory, taking into account any third-party rights (rights of retention or otherwise) in respect of the Inventory (and containing sufficient information regarding any applicable (extended) retention of title);
- (d) an overview of all custom or excise duties and licence fees payable in respect of such Inventory (including any licence fees in respect of Inventory owed by any member of the Group);
- (e) an overview of obsolete inventory and any blocked inventory;
- (f) information in respect of inventory insurance limits;
- (g) the book value (price per unit) a specification of the amount for any provision made for obsolete inventory which is delivered pursuant to paragraph (c) above;

²⁵ Only include in case credit insurance is applicable, not all receivables financing is credit insured.

²⁶ Only include in the case of inventory financing.

²⁷ Only insert in case of inventory facility.

²⁸ Only insert in case of inventory facility.

²⁹ Changes may be needed depending on the type of inventory, TBC Borrowing Base Lenders on a case by case basis.

³⁰ Only insert in case the data is not shared by means of a file but by means of an exchange platform.

- (h) the supplier per product, an item description, an item group description; a batch number
- (i) turnover and sales per product;
- (j) VAT codes (CN codes); and
- (k) any other information in relation to the Inventory as specified by the Borrowing Base Agent from time to time.

["Inventory Reserve" means, at any time, the amount determined by the Borrowing Base Agent in accordance with this Agreement which is appropriate to maintain for:

- (a) any amounts owed by the Borrower to any person or persons owning or operating a Third Party Site where Inventory of the Borrower is stored;
- (b) any amounts owed by the Borrower to any person or persons involved in the transport of handling Inventory of the Borrower;
- (c) insurance premiums due and not paid in respect of any Insurance in respect of Inventory; and/or
- (d) any other ground in the sole opinion of the Borrowing Base Agent (without double counting against any amount already so deducted from any Eligible Inventory under Schedule 3 (*Eligibility Criteria*)).³¹

["Inventory Sub-Limit" means the lower of:

- (a) [EUR [•]]/[USD [•]]/[GBP [•]]; [and
- (b) the Borrowing Base Inventory Amount remaining after applying the Maximum Debtor/Inventory Ratio at any time [•]].³²

["Majority Borrowing Base Lenders" means [•].]

"Margin" means [in respect of EUR/GBP/USD] [•] percent. per annum.

"Maximum Concentration Percentage" has the meaning given thereto in Schedule 3 (*Eligibility Criteria*).

["Maximum Debtor/Inventory Ratio" means a Debtor/Inventory Ratio of [•] per cent.].³³

"Maximum Dilution Percentage" means a Dilution Percentage of [•] per cent.

"Obligor" means the Company and each Borrower.

³¹ Only insert in case of inventory facility.

³² Only insert Maximum Debtor/Inventory Ratio if applicable.

³³ Only insert if applicable.

"Online Portal" means the online electronic information and communication system which the Borrowing Base Agent uses or makes available to the Borrower[s] as set forth in Schedule 6 (*Terms Applicable to the Online Portal*) or any replacement thereof specified by the Borrowing Base Agent.³⁴

["Optional Currency" means, subject to paragraph (ii) of Clause 19.2 (*Funding to Borrowing Base Agent*), [dollars]/[sterling].]

"Receivables" means each of the Borrower[s]' accounts receivables *vis-à-vis* Debtors (whether invoiced or not).

"Receivables Financing Facility" has the meaning ascribed thereto in Clause 2.1 (*Borrowing Base Ancillary Facility*).

"Receivables Identification File" means any electronic file in a form acceptable to the Borrowing Base Agent containing the following information in respect of one or more Receivables existing at that time:

- (a) name of each Borrower;
- (b) name of each Debtor;
- (c) Debtor identification numbers;
- (d) Debtor addresses;
- (e) invoice dates;
- (f) invoice numbers;
- (g) original invoice amounts and currencies;
- (h) invoice amounts and currencies outstanding;
- (i) due date of each Receivable; and
- (j) any other information relating to Eligible Receivables or Debtors as specified by the Borrowing Base Agent from time to time.

"Receivables Reserve" means, at any time, the amount determined by the Borrowing Base Agent in accordance with this Agreement which is appropriate to maintain for:

- (a) [bonuses;]³⁵
- (b) [refundable packaging (emballage/fusts);]³⁶

³⁴ Please verify with the Borrowing Base Agent what is used.

³⁵ Insert if applicable.

³⁶ Insert if applicable.

- (c) [royalties;]³⁷
- (d) any amounts owed by the Borrower to a Debtor (without double counting against any amount already so deducted from any Eligible Receivable under Schedule 3 (*Eligibility Criteria*));
- (e) any limit or other restriction set out in this Agreement which cannot be processed on an invoice level (without double counting against any amount already so deducted from any Eligible Receivable under Schedule 3 (*Eligibility Criteria*));
- (f) [insurance premiums due and not paid in respect of any Insurance in respect of Receivables]; and/or
- (g) any other ground, which cannot be processed on an invoice level (without double counting against any amount already so deducted from any Eligible Receivable under Schedule 3 (*Eligibility Criteria*) (e.g. reservation of certain costs and expenses)).

"Related Rights" means, with respect to any Receivable, all related accessory rights (*afhankelijke rechten*), ancillary rights (*nevenrechten*), connected rights (*kwalitatieve rechten*) and independently transferable claims (*zelfstandig overdraagbare vorderingsrechten*), including rights of mortgage (*hypotheekrechten*), rights of pledge (*pandrechten*), suretyships (*borgtochten*), guarantees, rights to receive interest and penalties and interest reset rights.

"Resignation Letter" means a letter in the form set out in Schedule 5 (*Resignation Letter*).

"Request Date" means each Business Day on which [a]/[the] Borrower requests the Borrowing Base Agent for an Advance under the terms and conditions of this Agreement.

["RFR" means:

- (a) [in relation to the Base Currency, 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 one month (displayed on page EURIBOR01 of the Bloomberg screen (or any replacement Bloomberg page which displays that rate), or on the appropriate page of such other information service which published that rate from time to time in place of Bloomberg. If such page or service ceases to be available, the Borrowing Base Agent may specify another page or service displaying the relevant rate after consultation with the Company;]
- (b) [in relation to the Optional Currency in the case such currency is dollars, the secured overnight financing rate (SOFR) administered by the Federal Reserve Bank of New York (or any other person which takes over the administration of

³⁷ Insert if applicable.

that rate) published by the Federal Reserve Bank of New York (or any other person which takes over the publication of that rate).]and]

- (c) [in relation to the Optional Currency in the case such currency is sterling, the sterling overnight interbank average (SONIA) reference rate administered by the Bank of England (or any other person which takes over the administration of that rate) as published by the Bank of England from time to time displayed on the relevant screen of any authorised distributor of that reference rate].]

["RFR Banking Day" means:

- (a) [in relation to the Base Currency, any day (other than a Saturday or Sunday) which is a TARGET Day; and
- (b) in relation to the Optional Currency, any day other than:
 - (i) a Saturday or Sunday;
 - (ii) [a day on which the Securities Industry and Financial Markets Association (or any successor organisation) recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in US Government securities, in the case that the Optional Currency is dollars.]]and]
 - (iii) [a day on which banks are open for general business in London, in the case that the Optional Currency is sterling].

"Termination Date" [means the Termination Date (as defined in the Facilities Agreement) applicable to the Borrowing Base Ancillary Facility].

["Third Party Site" means any facility, site or location not owned and operated, or leased and operated, by [a]/[the] Borrower where Inventory of that Borrower is stored.]]³⁸

["Total Borrowing Base Facility Commitment" means the sum of all Borrowing Base Facility Commitments of all Borrowing Base Lenders jointly, being EUR [•] at the date of this Agreement.]

["Value" means, in relation to Inventory, the lower of (i) the cost price of that Inventory (as recorded in the accounts of the relevant Borrower), (ii) the market value of that Inventory according to the Borrowing Base Agent (acting reasonably).]]³⁹

1.6 Construction

- (a) The provisions of clause [•] (*Construction*) of the Facilities Agreement are deemed to be incorporated in this Agreement by reference and apply to this Agreement as if included herein in full.

³⁸ Only insert in case of inventory facility.

³⁹ Only insert in case of inventory facility.

- (b) Unless a contrary indication appears, a reference in this Agreement to:
 - (i) the Borrowing Base Agent **determining** or otherwise making a **determination** means the Borrowing Base Agent making that determination acting reasonably and such determination by the Borrowing Base Agent shall, in the absence of manifest error, be binding on the Parties; and
 - (ii) the Borrowing Base Agent exercising a **discretion** means the Borrowing Base Agent making use of such discretion acting reasonably.
- (c) [\$, **USD** and **dollars** denote the lawful currency of the United States of America.]
- (d) ["£", **GBP** and **sterling** denote the lawful currency of the United Kingdom.]

2. THE FACILITY

2.1 The Borrowing Base Ancillary Facility

- (a) Subject to the terms of this Agreement, the Borrowing Base Lenders through the Borrowing Base Agent make available a [multicurrency] receivables financing facility in accordance with Clause 4 (*Receivable Advance Financing*) (the "**Receivables Financing Facility**") [and inventory financing facility in accordance with Clause 5 (*Inventory Financing*)] (the "**Inventory Financing Facility**") to the Borrower[s] in an aggregate amount in the Base Currency equal to the Borrowing Base Facility Commitment.
- (b) The Borrowing Base Agent will pre-fund the Advances on behalf of the Borrowing Base Lenders on the terms set out in this Agreement and a Borrower may utilise the Borrowing Base Ancillary Facility by way of current account drawings in accordance with the terms of this Agreement.

2.2 Purpose

Each Borrower shall apply all Advances under the Borrowing Base Ancillary Facility towards working capital purposes of the relevant Borrower, [but not towards [•]].

2.3 Online Portal

- (a) All funding requests of the Borrowing Base Ancillary Facility will be dealt with through the Borrowing Base Agent and will be submitted and accessible through the Online Portal on a Request Date.
- (b) The Borrower may only submit an Advance Request via and in accordance with the Online Portal.
- (c) [Subject to Clause 3.3 (*Conditions relating to the Optional Currency*), the Borrowers shall specify in their funding request if the Advance Request is requested in the Base Currency or in the Optional Currency.]

- (d) The Borrowing Base Agent shall use its reasonable efforts to ensure that the Online Portal, including all features relevant for the operation of this Agreement, is maintained and available for the duration of this Agreement.
- (e) The Borrowing Base Agent will grant the Borrowing Base Lenders viewing rights to the Online Portal.

3. CONDITIONS OF ADVANCES

3.1 Conditions Precedent to initial Advance

- (a) The Borrowing Base Agent will only be obliged to make Advances available in the Base Currency [(and any Optional Currency)] to the Borrower[s] in accordance with the terms of this Agreement if:
 - (i) no Default is continuing or would result from the proposed Advance;
 - (ii) the Bank Agent has given its notification to the Company and the Lenders under [paragraph [(a)] of clause [•] (*Initial conditions precedent*)] of the Facilities Agreement;
 - (iii) the Borrowing Base Agent has received all of the documents and other evidence listed in Part 1 of Schedule 2 (*Conditions Precedent to initial Advance*) in form and substance satisfactory to the Borrowing Base Agent (and the Borrowing Base Agent shall notify the Company and the Borrowing Base Lenders promptly upon being so satisfied) (the "**Effective Date Notice**");
 - (iv) all information provided by or on behalf of any Obligor to the Borrowing Base Agent in relation to or in connection with this Agreement and any appraisal or field examination, was true, complete and accurate in all material respects as at the date it was provided and is not misleading in any respect;
 - (v) all the representations and warranties in clause [•] (*Representations*) of the Facilities Agreement to be made by each Obligor are true in all material respects;
 - (vi) the Borrowing Base Agent does not reasonably suspect any act of fraud on the part of any Borrower; and
 - (vii) the Advance requested in the Advance Request does not exceed the Borrowing Base Facility Availability.
- (b) Other than to the extent that all Borrowing Base Lenders notify the Borrowing Base Agent in writing to the contrary before the Borrowing Base Agent gives the notification described in paragraph (a)(iii) above, the Borrowing Base Lenders authorise (but do not require) the Borrowing Base Agent to give that notification. The Borrowing Base Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.

3.2 Further conditions precedent

Subject to Clause 3.1 (*Conditions Precedent to initial Advance*), the Borrowing Base Agent will only be obliged to make Advances available to the Borrower[s] in accordance with the terms of this Agreement after the Closing Date, if on the Request Date and the date on which the Advance is to be made available:

- (a) no Default is continuing or would result from the proposed Advance;
- (b) all information provided by or on behalf of any Obligor to the Borrowing Base Agent in relation to or in connection with this Agreement and any appraisal or field examination, was delivered in time (excluding any applicable remedy periods), was true, complete and accurate in all material respects as at the date it was provided and is not misleading in any respect;
- (c) all Repeating Representations to be made by each Obligor are true in all material respects;
- (d) the Borrowing Base Agent does not reasonably suspect any act of fraud on the part of any Borrower;
- (e) the Advance requested in the Advance Request does not exceed the Borrowing Base Facility Availability; and
- (f) the date on which the Advance is to be made available falls within the Availability Period.

3.3 [Conditions relating to the Optional Currency]

Subject to paragraph (ii) of Clause 19.2 (*Funding to Borrowing Base Agent*), a currency will constitute an Optional Currency in relation to an Advance if it is in [dollars]/[sterling].]

4. RECEIVABLE ADVANCE FINANCING

4.1 Receivables Financing Facility

Subject to Clause 3 (*Conditions of Advances*), the Receivables Financing Facility shall be made available to the Borrower[s] by way of Advances in respect of Eligible Receivables not exceeding the Total Borrowing Base Facility Commitment and with due observance of the provisions of this Agreement.

4.2 Determining the Eligible Receivables

- (a) Each Borrower shall submit a Receivables Identification File to the Borrowing Base Agent in accordance with Clause 10.1(a) (*Information Undertakings*).
- (b) In determining whether a Receivable is an Eligible Receivable, the Borrowing Base Agent will apply the eligibility criteria set out in Part 1 of Schedule 3 (*Eligibility Criteria*) to the Receivables Identification File most recently submitted.

4.3 Determining the Borrowing Base Receivables Amount

- (a) The Borrowing Base Agent shall determine the Borrowing Base Receivables Amount, each time a new Receivables Identification File is submitted to the Borrowing Base Agent in accordance with Clause 10.1(a) (*Information Undertakings*).
- (b) If the Borrowing Base Agent determines that a Receivable which originally qualified as an Eligible Receivable but subsequently fails to meet the eligibility criteria set forth in Schedule 3 (*Eligibility Criteria*), such Receivables shall immediately cease to be an Eligible Receivable.
- (c) The Borrowing Base Agent shall determine the Dilution and Dilution Percentage at the end of each [financial [quarter] [half-year] [financial year] on a [3-months rolling] [semi-annual] [annual] basis (and more often if the Borrowing Base Agent considers it necessary. If, at any calculation date of a Dilution, the Dilution Percentage exceeds the Maximum Dilution Percentage, the Borrowing Base Agent may reduce the Advance Rate by the [same] number of percentage points by which the Dilution Percentage exceeds the Maximum Dilution Percentage (rounded up to one percentage place).
- (d) The Borrowing Base Agent may (at its sole discretion and where practicable after consultation with the Company, but in each case with immediate effect), decide to:
 - (i) reduce the Advance Rate; and/or
 - (ii) reduce any limit or threshold included in the eligibility criteria set forth in Schedule 3 (*Eligibility Criteria*),
 in the event that the Borrowing Base Agent:
 - (i) determines that, on the basis of operational Field Audits, Debtor verifications or otherwise, there is a material adverse effect on:
 - (A) the value, validity or enforceability of the Receivables (including a deterioration of the creditworthiness of the relevant Debtors);
 - (B) the Security under any Transaction Security Document to which the Borrowing Base Security Agent is a party; and/or
 - (C) the rights and remedies of the Borrowing Base Lenders under the Finance Documents; and/or
 - (ii) suspects an Event of Default is continuing.
- (e) In the event that the Borrowing Base Agent limits or adjusts the Borrowing Base Receivables Amount in accordance with this Agreement, this does not affect the Borrower[s]' obligations under any of the Finance Documents.

5. [INVENTORY FINANCING]⁴⁰

5.1 Inventory Financing Facility

Subject to Clause 3 (*Conditions of Advances*), the Inventory Financing Facility shall be made available to the Borrower[s] by way of Advances in respect of Eligible Inventory not exceeding the Total Borrowing Base Facility Commitment and with due observance of the provisions of this Agreement.

5.2 Determining the Eligible Inventory

- (a) Each Borrower shall submit an Inventory Identification File to the Borrowing Base Agent in accordance with Clause 10.1(a) (*Information Undertakings*).
- (b) In determining whether Inventory qualifies as Eligible Inventory, the Borrowing Base Agent will apply the eligibility criteria set out in Part 2 of Schedule 3 (*Eligibility Criteria*) to the Inventory Identification File most recently submitted.

5.3 Determining the Borrowing Base Inventory Amount

- (a) The Borrowing Base Agent shall determine the Borrowing Base Inventory Amount, each time new Inventory Identification Data⁴¹ is submitted in accordance with this Agreement⁴² to the Borrowing Base Agent][each time updated inventory information is processed by the Borrowing Base Agent, in a frequency to be agreed upon between the Borrowing Base Agent and the Borrower]⁴³.
- (b) If the Borrowing Base Agent determines that Inventory which originally qualified as Eligible Inventory but subsequently fails to meet the eligibility criteria set forth in Schedule 3 (*Eligibility Criteria*), such Inventory shall immediately cease to be Eligible Inventory.
- (c) The Borrowing Base Agent may (at its sole discretion and where practicable after consultation with the Company, but in each case with immediate effect), decide to:
 - (i) reduce any Inventory Sub-Limit [and Maximum Debtor/Inventory Ratio];
 - (ii) reduce the Advance Rate;

⁴⁰ Only insert in case of inventory facility.

⁴¹ This may be required by certain lenders.

⁴² Determining the inventory amount is a manual process – adding this wording ensures that, if a borrower submits Inventory Identification Data more often than agreed, the Borrowing Base Agent does not need to determine the Borrowing Base Inventory Amount.

⁴³ This may be required by certain lenders.

(iii) [reduce any limit included in the eligibility criteria set forth in Schedule 3 (*Eligibility Criteria*).]⁴⁴;

(iv) [•],⁴⁵

in the event that the Borrowing Base Agent:

(i) determines that, on the basis of operational Field Audits and/or otherwise, there is a material adverse effect on:

(A) the value, validity and enforceability the Inventory;

(B) the Security under any Transaction Security Document to which the Borrowing Base Security Agent is a party; and/or

(C) the rights and remedies of the Borrowing Base Lenders under the Finance Documents; and/or

(ii) suspects an Event Default is continuing.

(d) In the event that the Borrowing Base Agent limits or adjusts the Borrowing Base in accordance with this Agreement, this does not affect the Borrower[s]' obligations under any of the Finance Documents.

6. DETERMINING THE BORROWING BASE FACILITY AVAILABILITY⁴⁶⁴⁷

6.1 The Borrowing Base Agent shall determine the amount in the Base Currency available for Advances under the Borrowing Base Ancillary Facility [absent manifest error on the basis of and within [•] Business Days of delivery by the Company of a duly completed Borrowing Base Certificate in accordance with this Agreement to the Borrowing Base Agent] as follows:

(a) the balance in each case in the Base Currency of:

(i) the Borrowing Base [in each case, taking into account and subject to the [Maximum Debtor/Inventory Ratio]/[Inventory Sub-Limit]];⁴⁸

(ii) [increased by the amounts received by the Borrowing Base Agent [into the Collection Account]⁴⁹ [pursuant to the Cash Sweep]⁵⁰ since the

⁴⁴ TBC if applicable depending on eligibility criteria for specific transaction.

⁴⁵ TBC per transaction if any additional limb needs to be included depending on the nature of the inventory.

⁴⁶ Please consider any currency exchange rate risks and potential need for reserves in the case of Optional Currencies also in the case of match funding relating to maximum exposure of the Borrowing Base Lenders.

⁴⁷ Please consider changes if the Borrowing Base Agent works with a Borrowing Base Certificate.

⁴⁸ Only insert in case of inventory facility in EUR.

⁴⁹ Only insert in the case that an inzake rekening is used as Collection Account.

⁵⁰ Only insert in the case that Collections Accounts are not held in the form of an *inzakerekening* and a Cash Sweep is in place.

Borrowing Base Facility Availability has most recently been determined;

- (iii) decreased by the aggregate outstanding amount of Advances; and
- (iv) decreased by the outstanding amount of the aggregate Economic Benefit, commission, costs and other charges due and payable by the Borrower[s] under or pursuant to the Borrowing Base Documents[,

(the "**Borrowing Base Facility Availability**").][;and]

(b) [the balance in each case in sterling of:

- (i) the Borrowing Base [in each case, taking into account and subject to the [Maximum Debtor/Inventory Ratio]/[Inventory Sub-Limit]]⁵¹;
- (ii) increased by the amounts that the Borrowing Base Agent has received [into the Collection Account]⁵² [pursuant to the Cash Sweep]⁵³ since the Borrowing Base Facility Availability has most recently been determined;
- (iii) decreased by the aggregate outstanding amount of Advances; and
- (iv) decreased by the outstanding amount of the aggregate Economic Benefit, commission, costs and other charges due and payable by the Borrower[s] under or pursuant to the Borrowing Base Documents[,

(c) [the balance in each case in USD of:

- (i) the Borrowing Base [in each case, taking into account and subject to the [Maximum Debtor/Inventory Ratio]/[Inventory Sub-Limit]]⁵⁴;
- (ii) increased by the amounts that the Borrowing Base Agent has received [into the Collection Account]⁵⁵ [pursuant to the Cash Sweep]⁵⁶ since the Borrowing Base Facility Availability has most recently been determined;
- (iii) decreased by the aggregate outstanding amount of Advances; and

⁵¹ Only insert in case of inventory facility in GBP.

⁵² Only insert in the case that an inzake rekening is used as Collection Account.

⁵³ Only insert in the case that Collections Accounts are not held in the form of an *inzakerekening* and a Cash Sweep is in place.

⁵⁴ Only insert in case of inventory facility in USD.

⁵⁵ Only insert in the case that an inzake rekening is used as Collection Account.

⁵⁶ Only insert in the case that Collections Accounts are not held in the form of an *inzakerekening* and a Cash Sweep is in place.

- (iv) decreased by the outstanding amount of the aggregate Economic Benefit, commission, costs and other charges due and payable by the Borrower[s] under or pursuant to the Borrowing Base Documents[,

[together with the availability as determined in accordance with paragraph (a) of this Clause, the "**Borrowing Base Facility Availability**").][;and]

[together with the availability as determined in accordance with paragraph [(a) and (c)] of this Clause, the "**Borrowing Base Facility Availability**").]

- 6.2 The Borrowing Base Agent shall inform the Borrower[s] via the Online Portal of the Borrowing Base Facility Availability as determined in accordance with this Agreement. The Borrowing Base Facility Availability shall always be determined on the basis of the statements which the Borrowing Base Agent provides to the Borrower[s] pursuant to and in accordance with the Online Portal.
- 6.3 The aggregate amount of the Borrowing Base Facility Availability shall not exceed the [Euro Equivalent Amount of] Total Borrowing Base Facility Commitment.
- 6.4 The Borrowing Base Agent may administer internal accounts for the calculation of the Borrowing Base Facility Availability, which are visible in the Online Portal. Any positive or negative balances on such internal accounts will be set-off for the purpose of calculating the Borrowing Base Facility Availability[, but not] [and] for the purposes of interest netting per currency]⁵⁷.
- 6.5 [The Company shall not deliver a Borrowing Base Certificate to the Borrowing Base Agent more than [•]/[The Company shall deliver a Borrowing Base Certificate at least [•].]⁵⁸
- 6.6 [Each Borrowing Base Certificate must:
 - (a) contain a calculation of the Borrowing Base Facility Availability;
 - (b) be based on information which is not older than two Business Days prior to the date of that Borrowing Base Certificate;
 - (c) specify the Eligible Receivables [and Eligible Inventory];
 - (d) specify the Dilution Percentage;
 - (e) contain all such other information in relation to the Eligible Receivables [and Eligible Inventory] as the Borrowing Base Agent may reasonably require and notified by the Borrowing Base Agent to the Company no later than three Business Days prior to the date of such Borrowing Base Certificate; and (unless provided through the Online Portal) be signed by [a statutory director]/[the chief financial officer] of the Company;

⁵⁷ To be considered if appropriate.

⁵⁸ To be confirmed by the relevant Borrowing Base Agent whether required for its calculation method.

- (f) comply with all requirements of Clause 10 (*Information Undertakings*); and
- (g) shall be signed by [two]/[the sole authorised director(s)] of the Company confirming that all information delivered to the Borrowing Base Agent is correct, complete and accurate in all material respects.]

6.7 [The Borrowing Base Agent shall deliver a copy of the Borrowing Base Certificate and the Borrowing Base Report to the Borrowing Base Lenders.]

7. ACCOUNTS

7.1 Funding Account

- (a) [The]/[Each] Borrower shall maintain one or more Funding Accounts in its own name with a bank acceptable to the Borrowing Base Agent.
- (b) Any payment made by the Borrowing Base Agent to any Borrower under this Agreement shall be made into the relevant Funding Account.

7.2 Collection Account

- (a) [Subject to Clause 7.3 (*Cash Dominion Event*)] [A]/[a]ny Collection Account shall:
 - (i) [be held in the Borrowing Base Agent's own name (but for external purposes referring to the relevant Borrower) with the Borrowing Base Agent having the sole power of disposal in respect of such Collection Account;]⁵⁹
 - (ii) [be held with an Account Bank and provided that [(i) such bank accounts are subject to Transaction Security;] [(ii) shall not be subject to any rights of set-off for the benefit of the Account Bank and/or any security other than Transaction Security [and (iii) any amounts standing to the credit thereof shall be paid on a [weekly] basis to a bank account indicated by the Borrowing Base Agent (the "Cash Sweep")⁶⁰;]
 - (iii) be maintained solely for the purpose of receiving payments made in connection with Receivables from the relevant Borrower's Debtors [and not for any payment from such Collection Account other than by way of collection by the Borrowing Base Agent]; [and] [.]

⁵⁹ Only insert in the case that an *inzakerekening* is used as Collection Account. Please note the same legal entity should be appointed as the Borrowing Base Agent and the Borrowing Base Security Agent to ensure the Collection Accounts are held with the Borrowing Base Security Agent to address Mulder q.q./CLBN risks.

⁶⁰ Consider the second option when the collection accounts are not held in the form of an *inzakerekening* with a Borrowing Base Lender and the Borrowing Base Agent has confirmed that such option should be used. Please verify if the Transaction Security over the Collection Account is held by the Bank Security Agent or the Borrowing Base Agent and consider any consequential changes that need to be made to this Agreement. Please also consider any recourse issues in respect of such account including any prior ranking rights of pledge and rights of set-off.

- (iv) only be denominated in the Base Currency [or the Optional Currency].
- (b) [[The]/[Each] Borrower shall give viewing rights and provide reporting to the Borrowing Base Agent (in form and substance satisfactory to it) to allow the monitoring of payments on the Collection Accounts, to calculate the Borrowing Base Available Facility and otherwise to enable the Borrowing Base Agent to perform its role as agent under or in connection with this Agreement.] ⁶¹
- (c) [The]/[Each] Borrower shall ensure that each Debtor of [the]/[any] Borrower makes its payments in respect of Receivables (other than High Risk Receivables) directly into a Collection Account; and if any payments are received from Debtors in any account other than a Collection Account it shall promptly:
 - (i) inform the Borrowing Base Agent; and
 - (ii) in any event within [•] Business Days transfer all amounts so received to a Collection Account,

[provided that:

 - (A) from the date of this Agreement up to the date falling 3 months after the date of this Agreement, the obligations of this paragraph (b) shall be deemed to have been complied with if at least [•]% of all Eligible Receivables (other than High Risk Receivables) are paid into the Collection Account ; and
 - (B) from the date falling [•] months after the date of this Agreement, all Eligible Receivables (other than High Risk Receivables) must be paid into a Collection Account.]

(d) If a payment is received into any Collection Account in connection with a High Risk Receivable, the Borrowing Base Agent will be authorised to process this payment at its discretion.

7.3 [Cash Dominion Event

Following the occurrence of a Cash Dominion Event [which is continuing] and the Borrowing Base Agent has notified the Borrower thereof in writing, the Borrowing Base Agent may terminate any designated account as Collection Accounts and designate to the Borrower in writing any new account as Collection Account in its sole discretion and the Borrowing Base Agent shall have the sole power of disposal in respect of any amounts received in any Collection Account.]⁶²

⁶¹ Only insert in the case that an *inzakerekening* is not used as Collection Account.

⁶² Only include if springing cash dominion mechanism applies.

8. SET-OFF, REPAYMENT AND PREPAYMENT

8.1 Repayment by set-off

- (a) All amounts, which the Borrowing Base Agent receives under or in connection with the Finance Documents, may be set-off and applied by the Borrowing Base Agent at any time towards repayment of any amount of any Advances that it has made to the Borrower[s] and any other (matured or unmatured) obligations of the Borrower[s] under the Finance Documents.
- (b) In the event that the Borrowing Base Agent determines that, after applying set-off and application under paragraph (a) of this Clause, the aggregate amount of payments received under or in connection with the Finance Documents exceeds the aggregate amount of outstanding [Euro Equivalent Amount of the] Advances and any other amount due by the Borrower[s] under this Agreement (the "**Surplus**"), such Surplus shall qualify as an amount to which the relevant Borrower is entitled as beneficiary. [[The]/[Each] Borrower herewith grants a deferral of payment to the Borrowing Base Agent for the Surplus until the moment the Borrowing Base Agent transfers the Surplus to the Funding Account. If the [relevant] Borrower does not utilise the Surplus via an Advance Request in accordance with this Agreement, the Borrowing Base Agent will transfer any Surplus to the [relevant] Borrower periodically at its discretion and in any case by no later than the Termination Date provided that all amounts outstanding under the Finance Documents have been irrevocably repaid to the Borrowing Base Lenders.]⁶³

8.2 Repayment on the Termination Date

The Borrowing Base Ancillary Facility shall cease to be available on the last day of the Availability Period and [each]/[the] Borrower shall repay the aggregate amount of the Advances made to it together with accrued interest and all other amounts accrued or outstanding under the Borrowing Base Ancillary Facility (or any other Finance Document) to the Borrowing Base Agent by no later than the Termination Date.

8.3 Voluntary Prepayment and cancellation

- (a) [Each]/[The] Borrower may at any time prepay the whole or any part of the outstanding [Euro Equivalent Amount of the] Advances made to it.
- (b) The Company may, if it gives the Borrowing Base Agent not less than [•] Business Days' prior notice, cancel the whole or any part (being a minimum amount of EUR [•]) of the Borrowing Base Ancillary Facility. Any cancellation under this Clause shall reduce the Borrowing Base Facility Commitments of the Borrowing Base Lenders rateably.

⁶³ This may be required by certain Borrowing Base Lenders.

8.4 **Mandatory Prepayment – Borrowing Base Deficit**

If, at any time, the Borrowing Base Agent determines that a Borrowing Base Deficit has occurred, the Company shall (or shall ensure that the Borrower[s] will) within [•] Business Days:

- (a) prepay the outstanding [Euro Equivalent Amount of the] Advances; and/or
- (b) submit additional Eligible Receivables [and/or Eligible Inventory] to the Borrowing Base Agent [and immediately thereafter an updated Borrowing Base Certificate confirming there is no Borrowing Base Deficit],

in each case, in an amount that, following such prepayment or submission, results in the Borrowing Base Deficit becoming at least zero.

8.5 **[Borrowing Base Insurance Proceeds]**

[Notwithstanding any obligation to register the Borrowing Base Agent as [loss payee]/[co-insured] on each insurance subject to Transaction Security for the benefit of the Borrowing Base Agent, if [the/a] Borrower receives any [Borrowing Base Insurance Proceeds]⁶⁴ it] [[Each]/[The] Borrower] shall prepay Advances made to it promptly upon receipt of (and in amounts equal to) any Borrowing Base Insurance Proceeds by it.]⁶⁵

8.6 **[Borrowing Base Disposal Proceeds]**

[Each]/[The] Borrower shall prepay Advances made to it promptly upon receipt of (and in amounts equal to) any [Borrowing Base Disposal Proceeds]⁶⁶ by it.]⁶⁷

8.7 **Reborrowing**

Any part of the Advances which are prepaid or repaid may be reborrowed in accordance with the terms of this Agreement and the Facilities Agreement.

8.8 **Prepayments, subject to Break Costs**

Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and, subject to any Break Costs⁶⁸, without premium or penalty.

⁶⁴ Definition to be included in the Facilities Agreement.

⁶⁵ Please check if borrowing base insurance proceeds are directly paid to the Borrowing Base Security Agent or only after notification of collection following a trigger event.

⁶⁶ Definition to be included in the Facilities Agreement.

⁶⁷ Please check in the Facilities Agreement that the Permitted Disposal definitions allows for non-recourse factoring.

⁶⁸ Please remove in the case of repetition with the Facilities Agreement.

9. INTEREST AND FEES

9.1 Calculation of interest

The rate of interest over the aggregate amount outstanding for each relevant currency under the Borrowing Base Ancillary Facility for any day is the percentage rate per annum which is the aggregate of the applicable:

- (a) Margin;
- (b) the applicable Base Rate.

9.2 Interest Payment⁶⁹

- (a) Interest shall accrue from day-to-day and shall be determined on a daily basis by multiplying the applicable rate of interest by the aggregate amount outstanding for each relevant currency under the Borrowing Base Ancillary Facility of that day. The accrued interest will be 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 Market]⁷⁰ differs, in accordance with that market practice).
- (b) Interest in respect of each calendar month shall be payable by the Borrower[s] on the first day of each successive calendar month with a [value date] of the last day of the previous calendar month.
- (c) [No interest will be owed to or by the Borrowing Base Lenders to the Borrower[s] over any amount held in a Collection Account.]⁷¹

9.3 Default interest over a Borrowing Base Deficit

- (a) A fee equal to the default interest as referred to in Clause [•] (*Default interest*) of the Facilities Agreement shall accrue on the highest amount of the Borrowing Base Deficit [in a month]/[determined on a daily basis] from day to day. Default interest accruing shall be payable at the end of each month and shall constitute part of the overdue amount to the extent it is not paid.⁷²
- (b) The Borrowing Base Agent shall inform the Borrowing Base Lenders and the relevant Borrower (or the Company) of the determination of a rate of interest relating to a Borrowing Base Deficit in the Online Portal.

9.4 [Arrangement fee

The Company shall pay to the Borrowing Base Agent (for the account of the Borrowing Base Lenders) an arrangement fee in the amount and at the times agreed in a Fee Letter.]

⁶⁹ Please check with the Borrowing Base Agent how they prefer the interest to be calculated.

⁷⁰ To be verified whether specified for each currency in the Facilities Agreement.

⁷¹ To be confirmed by the relevant Borrowing Base Agent.

⁷² Please check with Borrowing Base Agent.

9.5 **Borrowing Base Fee**

The Company (on behalf of the relevant Borrowers) shall pay a borrowing base fee in an amount equal to EUR [•] [(including VAT)] per annum (the "**Borrowing Base Fee**"). The Borrowing Base Fee is payable [in four equal quarterly instalments] [twelve equal monthly instalments] in advance to the Borrowing Base Agent (for the *pro rata* account of the Borrowing Base Lenders)).

9.6 **[Commitment Fee**

- (a) The Company shall pay to the Borrowing Base Agent (for the account of the Borrowing Base Lenders) a commitment fee in the Base Currency computed at the rate of [•] per cent. per annum on the difference between the Total Borrowing Base Facility Commitment and the aggregate outstanding amount of Advances, Economic Benefit, commission, costs and other charges due and payable by the Borrower[s] under or pursuant to the Borrowing Base Documents, for the duration of the Availability Period (the "**Commitment Fee**").
- (b) Any such accrued commitment fee is payable on the first day of each successive calendar month which ends during the Availability Period applicable to the Borrowing Base Ancillary Facility, on the last day of the Availability Period applicable to the Borrowing Base Ancillary Facility and, if cancelled in full, on the cancelled amount of any Borrowing Base Lender's Borrowing Base Facility Commitment at the time the cancellation is effective.]

9.7 **[Borrowing Base Agency and Security Agent Fee**

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

9.8 **Costs and Expenses**

- (a) The provisions of clause [•] (*Costs and Expenses*) of the Facilities Agreement are deemed to be incorporated in this Agreement by reference, *mutatis mutandis*, and apply to this Agreement as if included herein in full.
- (b) In addition, the charges and fees (including, without limitation, any such charges or fees relating to money transfers (*betalingsverkeer*)) apply as listed in any overview of standard cost items from time to time provided by the Borrowing Base Agent to the Company.

9.9 Audit costs

The costs of any operational Field Audit or Debtor verification pursuant to Clause 11.5 (*Audit*) or otherwise pursuant to this Agreement shall be borne by [the Company/the Borrower[s]].

9.10 Increased Costs and Market Disruption

The provisions of clauses [•] (*Increased Costs*) [and [•] (*Market Disruption*)]⁷³ of the Facilities Agreement are deemed to be incorporated in this Agreement by reference *mutatis mutandis* and apply to this Agreement as if included herein in full [and as if references in those clauses to "Loan" are references to an Advance]⁷⁴.

10. INFORMATION UNDERTAKINGS

10.1 [Each]/[The] Borrower shall deliver to the Borrowing Base Agent by electronic file transfer (otherwise in form and substance satisfactory to it) at the times specified below or more frequently upon the request of the Borrowing Base Agent:

- (a) each [•], an updated Receivables Identification File;
- (b) each [•], an overview of all its creditors (including trade and retention creditors);
- (c) [each [•], all information on bonuses, [and] discounts [and royalties;]]⁷⁵
- (d) [promptly upon its request,]/[within [•] Business Days of entering into any new or amended agreement with a Debtor,] a copy of any new or amended agreement with a Debtor. [If it enters into a new or amended contract with a Debtor that is or is envisaged to become one of the ten Debtors of which the highest aggregate amounts of outstanding Eligible Receivables have been or are envisaged to be included in the Borrowing Base, promptly a copy of such new or amended agreement];
- (e) promptly upon an Obligor becoming aware thereof, if a ban on assignment with effect *in rem* (*goederenrechtelijke werking*) or similar⁷⁶ has been lifted, waived or has become invalid by operation of law, evidence thereof in accordance with Clause [11.3(a)(ii) (*Agreements and general terms and conditions of the Borrower*)] below;
- (f) [on the last Business Day of each [Financial Quarter]][half year][financial year]⁷⁷ (for the first time in respect of the [Financial Quarter]][half year][financial year]⁷⁸

⁷³ Credit adjustment spread to be considered in case of SOFR/SONIA.

⁷⁴ To be checked and aligned with Facilities Agreement.

⁷⁵ Only insert if bonuses are applicable.

⁷⁶ An example is penalty clauses.

⁷⁷ Insert as applicable.

⁷⁸ Insert as applicable.

ending [•]) (each a "**Dilution Testing Date**") [in a Compliance Certificate]⁷⁹ a confirmation supported with calculations in reasonable detail of the Dilution Percentage and all information on Dilutions required by the Borrowing Base Agent to determine the Dilutions and the Dilution Percentage;

- (g) [each [•], updated Inventory Identification Data;]⁸⁰
- (h) [at the end of each Financial Year, an overview of all registered trademarks incorporated in the Inventory;]⁸¹
- (i) [promptly upon its request, all trial balances, balances of the ledger accounts (i.e. invoices received prior to receipt of goods, goods received not invoiced and invoices which affect the Value of the Inventory) and all information required on the storage of the Inventory;]⁸²
- (j) [promptly, in the event that any member of the Group received or is entitled to receive any Borrowing Base Insurance Proceeds and/or Borrowing Base Disposal Proceeds;]⁸³
- (k) [promptly, inform the Borrowing Base Agent in the event any of the terms of the Insurance have been amended, varied, novated, supplemented or superseded in any material respect.]⁸⁴
- (l) promptly, following the amendment of any documents and other evidence listed in [paragraphs [•] of] Part 1 of Schedule 2 (*Conditions Precedent to initial Advance*), a copy of any such amendments and amended documents; and
- (m) promptly upon its request, such other information as may be reasonably requested by the Borrowing Base Agent to determine the Borrowing Base.
- (n) [together with each Borrowing Base Certificate delivered to the Borrowing Base Agent in accordance with this Agreement:
 - (i) an updated Debtor list for [each]/[the] Borrower which list shall state (A) each invoice's number, (B) each Debtor's name and Debtor's number, (C) each invoice's due date and (D) each invoice's date;
 - (ii) an overview setting out in reasonable detail the creditors of [each]/[the] Borrower; and

⁷⁹ Only insert in case Compliance Certificate is required for compliance with Maximum Dilution Percentage or any other covenant agreed upon between the Borrowing Base Lenders and the Company and timing of providing the Compliance Certificate to be discussed with Borrowing Base Agent.

⁸⁰ Only insert in case of inventory facility. Not all lenders use this mechanic, reference may need to be made to the Online Portal.

⁸¹ Only insert in case of inventory facility.

⁸² Only insert in case of inventory facility.

⁸³ Only insert in case the Borrower has taken out credit insurance.

⁸⁴ Only insert in case the Borrower has taken out credit insurance.

- (iii) upon request of the Borrowing Base Agent (acting reasonably), copies of invoices issued in connection with any Receivables,

in each case, in form and substance satisfactory to the Borrowing Base Agent (acting reasonably).]⁸⁵

- 10.2 [Each]/[The] Borrower shall promptly inform any relevant third party (including any creditor or bailiff (or any similar authority in another jurisdiction) serving an attachment (including any person making any attachment against [a]/[the] Borrower on Receivables [or Inventory]⁸⁶) of the existence of the Transaction Security over those Receivables [or Inventory]⁸⁷ at its own expense and provide the Borrowing Base Agent with evidence thereof.
- 10.3 [Each]/[The] Borrower shall, promptly upon becoming aware thereof, notify the Borrowing Base Agent of:⁸⁸
- (a) [any discrepancies between the amount of the funding provided by the Borrowing Base Agent in respect of Receivables [and Inventory]⁸⁹ and/or the calculations used as the basis for this amount; and
 - (b) the compliance with the eligibility criteria in respect of Receivables [and Inventory].
- 10.4 [Each]/[The] Borrower shall promptly and in any event within two Business Days of such Borrower becoming aware thereof notify the Borrowing Base Agent of:
- (a) all facts and circumstances that are reasonably likely to be material for the Borrowing Base Agent in the context of determining the Borrowing Base, including but not limited to, the creditworthiness of any Debtor, the validity and enforceability of Receivables [and/or the existence of refusal by a Debtor to acknowledge the existence of or amount payable by it under a Receivable or to pay a Receivable for whatever reason][, a material decrease in the Value of all or part of the Inventory]⁹⁰ and any risk of non-payment of a Receivable;
 - (b) any attachments against [a]/[the] Borrower on Receivables [or Inventory]⁹¹ of that Borrower [(other than any attachment for a claim or alleged claim against any Borrower in an aggregate amount not exceeding EUR [•] (or its equivalent), with a maximum of [•] attachments per year)];

⁸⁵ Only insert in the case of delivery of a Borrowing Base Certificate.

⁸⁶ Only insert in case of inventory facility.

⁸⁷ Only insert in case of inventory facility.

⁸⁸ Only insert in case of inventory facility.

⁸⁹ Only insert in case of inventory facility.

⁹⁰ Only insert in case of inventory facility.

⁹¹ Only insert in case of inventory facility.

- (c) any events or circumstances which may adversely affect the possibility of enforcement of the rights of the Borrowing Base Security Agent under the Transaction Security.

10.5 [Each]/[The] Borrower shall have systems in place in relation to its Receivables [and Inventory]⁹² that are capable of providing the information which the Borrowing Base Agent or Borrowing Base Security Agent requires pursuant to this Agreement or any other Finance Document and shall use all reasonable endeavours to maintain such systems in working order. In addition, [each]/[the] Borrower shall maintain suitable data recovery and system back-ups (and recovery plans).

11. GENERAL UNDERTAKINGS

11.1 Mitigation

[Each]/[The] Borrower will (at its own expense) take all commercially reasonable measures that are necessary for the retention of the rights of pledge on [Inventory and]⁹³ Receivables pursuant to the Transaction Security Documents to which the Borrowing Base Security Agent is a party. If required, the Borrowing Base Security Agent itself (or a third party of its behalf) can take these measures (including, but not limited to, paying any due amounts towards creditors of [each]/[the] Borrower) and charge reasonable associated costs to the Obligors.

11.2 Online Portal

[Each]/[The] Borrower shall implement, utilise and maintain the Online Portal in accordance with the terms as set forth in Schedule 6 (*Terms Applicable to the Online Portal*). An amendment of these terms by the Borrowing Base Agent shall also automatically apply to and shall be incorporated by reference in Schedule 6 (*Terms Applicable to the Online Portal*). In the event of any conflict between such terms and conditions and the Finance Documents, the Finance Documents shall prevail.

11.3 Agreements and general terms and conditions of the Borrower

- (a) [Each]/[The] Borrower shall use all reasonable efforts:
- (i) not to agree to, or not accept any restriction or prohibition to pledge and/or assign any Receivables;
 - (ii) to lift any *in rem* (*goederenrechtelijk*) or similar restriction or prohibition on assignment or pledge of any Receivable;
 - (iii) to include in each invoice, quotes (*offertes*), order confirmations and agreements;

⁹² Only insert in case of inventory facility.

⁹³ Only insert in case of inventory facility.

- (A) the applicability of the Borrower[s]' general terms and conditions;⁹⁴
- (B) the applicability of Dutch law and the competence of the Dutch courts (unless otherwise agreed between the Company and the Borrowing Base Agent); and
- (iv) to ensure that each Debtor accepts the relevant Borrower's general terms and conditions and if, in relation to new legal relationships with any Debtor, the general terms and conditions of such Debtor apply, that Borrower shall promptly notify the Borrowing Base Agent of the same.
- (b) [Each]/[The] Borrower shall ensure that the following information is included in all invoices, quotes (*offertes*), order confirmations, agreements and similar documents to and with Debtors:
 - (i) the payment term;
 - (ii) in respect of Receivables (other than High Risk Receivables), an instruction that the Debtor must pay into a Collection Account[.]; and
 - (iii) [a notification of the right of pledge of the Borrowing Base Security Agent over the Receivables reflected in the invoice satisfactory to the Borrowing Base Agent.]⁹⁵
- (c) [[Each]/[The] Borrower is obliged to include in its general terms and conditions (governing delivery and payment) or in the agreement with the Debtor, in each case where reasonably and commercially practicable, provisions regarding:
 - (i) retention of title to the moveable property that has been delivered to the Debtor until the time that the Debtor has paid all the invoiced amounts in full in respect of this moveable property and/or in respect of other deliveries and/or services;
 - (ii) the ultimate date within which the Debtor must lodge a written complaint; and
 - (iii) the charge-on of extrajudicial and judicial collection costs to the Debtor.]

11.4 No amendments

No Obligor shall amend, vary, novate, supplement, supersede, waive or terminate any term of a CP Document (or any replacement thereof subject to this Clause)⁹⁶ without

⁹⁴ Borrowing Base Lenders to confirm on deal-to-deal basis whether this undertaking should be subject to a reasonable efforts qualification.

⁹⁵ Only insert if there is a disclosed right of pledge over Receivables.

⁹⁶ In the case that certain CP documents shall become conditions subsequent this Clause may need to be amended.

the prior written consent of the Borrowing Base Agent unless this could not be reasonably expected to adversely affect the interests of the Borrowing Base Lenders.

11.5 Audit

- (a) The Borrowing Base Agent shall perform, and the Obligors shall cooperate with, periodic operational Field Audits and (undisclosed or disclosed) Debtor verifications:
 - (i) at least once in each Financial Year (for the first time in respect of the Financial Year ending [•]);
 - (ii) following the occurrence of an Event of Default which is continuing or the Borrowing Base Agent suspects an Event of Default is continuing, with such frequency as determined by the Borrowing Base Agent in its sole discretion; and
 - (iii) at all times if such operational Field Audits or Debtor verifications are required pursuant to the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation.
- (b) As soon as reasonably possible and in any event within [•] Business Days (or immediately if (the Borrowing Base Agent suspects that) an Event of Default is continuing), following a request from the Borrowing Base Agent for an audit as referred to in paragraph (a) above, the Borrower[s] shall allow the Borrowing Base Agent and any third party engaged by it during reasonable business hours access to:
 - (i) the premises, assets, books, accounts and records of [each]/[the] Borrower;
 - (ii) the computer systems used to administer Receivables [and Inventory]⁹⁷, in order to enable the Borrowing Base Agent to verify that [each]/[the] Borrower is complying with its obligations under this Agreement and to allow the Borrowing Base Agent to independently perform the administrative and tracing activities;
 - (iii) [the areas in which any Inventory is located;]⁹⁸ and
 - (iv) meet and discuss matters with senior management.
- (c) [Each]/[The] Borrower shall deliver to the Borrowing Base Agent, for the purpose of any operational Field Audit or verification referred to in this Clause, promptly at the request of the Borrowing Base Agent, any further (underlying) information (including copies of documents) requested by the Borrowing Base Agent including in respect of:

⁹⁷ Only insert in case of inventory facility.

⁹⁸ Only insert in case of inventory facility.

- (i) any material permits, licences, discharges, approvals, etc. required for [a]/[the] Borrower's purchase transactions (i.e. quote provisions, import licences, etc.);
 - (ii) documents relating to the purchase of the Inventory (particularly information regarding the identity of, conditions of, and payment to suppliers);
 - (iii) information regarding the storage and insurance of the Inventory; and
 - (iv) other information reasonably requested by the Borrowing Base Agent.
- (d) Any operational Field Audit or Debtor verification shall be performed in a manner satisfactory to the Borrowing Base Agent and the Borrowing Base Lenders. The Borrowing Base Agent may engage third parties to perform operational Field Audits or Debtor verifications. The Borrowing Base Agent shall offer two external parties to perform the audit and the Company shall within 5 Business Days of receipt of the two quotes confirm which party it prefers absent which the Borrowing Base Agent shall decide which party to appoint.
- (e) Each Borrowing Base Lender may give instructions on the audit to the Borrowing Base Agent and the Borrowing Base Agent shall follow such instructions in good faith.
- (f) The Borrowing Base Agent shall share the outcome of any such operational Field Audits or Debtor verifications including any information on which such audit is based with the Borrowing Base Lenders and subsequently with the Company.
- (g) Any Borrowing Base Lender may attend any operational Field Audit or Debtor verification referred to in this Clause.

11.6 Insurance

- (a) Each]/[The] Borrower shall
- (i) [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;
 - (ii) procure that all insurances shall be with reputable independent insurance companies or underwriters the identity of which have been approved by the Borrowing Base Agent;]⁹⁹
 - (iii) [maintain Insurances in each case in form and substance satisfactory to the Borrowing Base Lenders and all Insurances shall be subject to Transaction Security.]

⁹⁹ To be deleted if covered in the general undertakings in the SFA.

- (b) Each]/[The] Borrower shall perform all acts, provide all information, and do all that is necessary for itself and/or the Borrowing Base Agent to ensure the continuing validity of, and obtain indemnities for losses under, each Insurance and [each]/[the] Borrower shall at its own expense:
 - (i) pay any insurance premiums in relation to any Insurance (and any taxes on insurance premiums, if any) when they fall due;
 - (ii) ensure that the Insurance complies with the requirements set out in this Clause;
 - (iii) promptly submit claims to the relevant credit insurer or inventory insurer (as applicable);
 - (iv) exercise all enforcement measures concerning amounts due from the credit insurer or inventory insurer (as applicable); and

generally comply with the provisions and requirements of any Insurance.

11.7 Administration

- (a) [Each]/[The] Borrower will carry out the creditor and Debtor administration [and Inventory administration] and the monitoring and collection of Receivables [in each case satisfactory to the Borrowing Base Agent] [in the ordinary course of its business] and in compliance with applicable law and this Agreement.
- (b) [Each]/[The] Borrower shall not make any material amendments to its credit and collection policies without prior written consent by the Borrowing Base Agent, unless such amendments could not reasonably be expected to be adverse to the Borrowing Base Agent and provided that the Borrower[s] shall promptly and in any event within five Business Days following such amendment provide the Borrowing Base Agent with a copy of any such amendments.
- (c) [Each]/[The] Borrower shall keep safe and maintain all contracts and other contractual documentation and computer-based information in connection with each Receivable (and any Related Rights (if any)) and all account books and records showing all transactions, payments and proceedings relating to each Receivable (and any Related Rights (if any)), including for the purposes of VAT, for as long as provided by law in relation to such records.
- (d) After the occurrence of an Event of Default which is continuing, the Borrowing Base Agent may, at its discretion, revoke any Borrower's rights under Clause 11.7(a) and may become entitled to closely monitor and collect Receivables.

11.8 Data Protection

- (a) [Each]/[The] Borrower agrees to the processing of personal data in accordance with the Data Protection Legislation.

- (b) Each Obligor shall comply with the Data Protection Legislation in respect of the personal data of its Debtors that is transferred to the Borrowing Base Agent under or in connection with this Agreement
- (c) Nothing in this Agreement shall require [a][each] Borrower to breach the Data Protection Legislation provided that each Borrower shall use all reasonable endeavours to obtain any consent which may be required from a Debtor to enable it to comply with the provisions of this Agreement.

11.9 [License Intellectual Property rights¹⁰⁰

- (a) If any Obligor is the holder (as owner or licensee) of any Intellectual Property or industrial property right that is relevant to the Inventory, each Obligor unconditionally and irrevocably grants the Borrowing Base Security Agent permission (in the form of an irrevocable licence for no consideration) to use these rights in connection with the enforcement of any Transaction Security granted to the Borrowing Base Security Agent by the Obligors under or pursuant to the Transaction Security Documents to which the Borrowing Base Security Agent is a party and in order to be entitled to actively market the Inventory and such licence also extends to any future intellectual or industrial property rights accruing to any Obligor.
- (b) The Company shall procure that if any member of the Group is the holder (as owner or licensee) of any Intellectual Property or industrial property right that is relevant to the Inventory, that member of the Group by no later than [the Closing Date]/[[•]¹⁰¹]:
 - (i) unconditionally and irrevocably grants the Borrowing Base Security Agent permission (in the form of an irrevocable licence for no consideration satisfactory to the Borrowing Base Security Agent) to use these rights (including any future intellectual or industrial property rights accruing to that member of the Group) in connection with the enforcement of any Transaction Security granted to the Borrowing Base Security Agent by the Obligors under or pursuant to the Transaction Security Documents to which the Borrowing Base Security Agent is a party and in order to be entitled to actively market the Inventory; and
 - (ii) undertakes to comply with any distribution or licence agreement for any Intellectual Property or industrial property right that is relevant to the Inventory. The licence referred to also extends to any future intellectual or industrial property rights accruing to any Borrower.]¹⁰²

¹⁰⁰ Only insert in case of inventory facility.

¹⁰¹ Consider moving this to a specific clause including all conditions subsequent.

¹⁰² This Clause 11.9(b)(ii) provides for the declaration of use '*verklaring gebruiksrecht*' from [a]/[the] Borrower or any (other) member of the Group. If any IP rights are held by a third party, a separate '*verklaring gebruiksrecht*' needs to be provided.

11.10 Loss payee/co-insured

The Company shall ensure that the Borrowing Base Agent shall from the [Closing Date] be registered as [loss payee]/[co-insured] in relation to any Borrowing Base Insurance Proceeds (without the Borrowing Base Agent becoming liable for payment of insurance premiums or costs), and the Company shall, upon request, provide the Borrowing Base Security Agent with evidence (in form and substance satisfactory to the Borrowing Base Security Agent) in this respect.

12. NO ASSUMPTION OF DEBTOR RISK

None of the Borrowing Base Lenders nor the Borrowing Base Agent will assume the Debtor Risk and [each]/[the] Borrower shall bear all risks with regard to Eligible Receivables financed or financeable hereunder.

13. EVENTS OF DEFAULT¹⁰³

Each of the events or circumstances set out in this Clause 13 is an Event of Default.¹⁰⁴

- (a) A Borrower does not comply with any provision of Clause 10 (*Information undertakings*) [provided that no Event of Default will occur if the failure to comply is capable of remedy and is remedied within [•] Business Days of the earlier of (i) the Borrowing Base Agent giving notice to the Borrower and (ii) the Borrower becoming aware of the failure to comply]¹⁰⁵.
- (b) Any act of fraud on the part of any Borrower.
- (c) The Borrowing Base Agent reasonably suspects any act on the part of any Borrower occurs which results in a payment of any Receivable by a Debtor of that Borrower into a bank account other than a Collection Account and/or any such act occurs.
- (d) [The Dilution Percentage exceeds [•]¹⁰⁶% on [•] consecutive Dilution Testing Dates.]
- (e) An Obligor does not comply with any provision of the Borrowing Base Documents provided that no Event of Default will occur if the failure to comply is capable of remedy and is remedied within [•] Business Days of the earlier of (i) the Borrowing Base Agent giving notice to the Obligor and (ii) the Obligor becoming aware of the failure to comply.

¹⁰³ Only insert if applicable and depends per transaction.

¹⁰⁴ Please make sure a breach of sanctions reps and undertakings and breach of security document obligations are included in the Facilities Agreement.

¹⁰⁵ TBC by relevant Borrowing Base Lenders.

¹⁰⁶ This would generally be a higher percentage than the Maximum Dilution Percentage.

14. ACCELERATION

On and at any time after the occurrence of an Event of Default which is continuing, the Borrowing Base Agent may, and shall if so directed by [the Majority]/[all] Borrowing Base Lenders, by written notice to the Company:¹⁰⁷

- (a) take such action as described in Clause 4.3(b) (*Determining the Borrowing Base Receivables Amount*) [and Clause 5.3(b)¹⁰⁸ (*Determining the Borrowing Base Inventory Amount*)¹⁰⁹]
- (b) change the frequency of data to be provided relating to [Inventory,] Receivables and Debtors;
- (c) refrain from granting further Advances to the Borrower[s] under the Receivables Financing Facility [and Inventory Advance Financing Facility]¹¹⁰;
- (d) cancel any or all of the Borrowing Base Ancillary Facility Commitment;
- (e) declare that all or part of the Advances under the Borrowing Base Ancillary Facility, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents owing to the Borrowing Base Lenders be immediately due and payable, at which time they shall become immediately due and payable;
- (f) exercise or direct the Borrowing Base Security Agent to exercise any or all of its rights, remedies, powers or discretions under the Borrowing Base Documents; and/or
- (g) exercise any or all of its rights, remedies, powers or discretions under the Borrowing Base Documents.

15. TRANSACTION SECURITY AND POWER OF ATTORNEY

15.1 Transaction Security¹¹¹

[Each]/[The] Borrower hereby agrees to grant the Borrowing Base Security Agent the Security purported to be created under the Transaction Security Documents listed in Schedule 2 (*Conditions precedent*) to which the Borrowing Base Security Agent is a party.

¹⁰⁷ Reference is made to the guidance note. The Borrowing Base Lenders expect to have independent acceleration rights in respect of the Borrowing Base Ancillary Facility Commitments.

¹⁰⁸ Only insert in case of inventory facility.

¹⁰⁹ ING: TBD if the references to the clauses should be removed.

¹¹⁰ Only insert in case of inventory facility.

¹¹¹ A parallel debt construct should be included in the Facilities Agreement, if applicable, the Intercreditor Agreement or this Agreement in the case of multiple Borrowing Base Lenders.

15.2 Power of attorney¹¹²

- (a) Each Obligor by way of separate legal act hereby grants an irrevocable power of attorney to each of the Borrowing Base Agent and the Borrowing Base Security Agent (each an "**Attorney**") to execute, as sole and independent authorised representative of the Obligors, all legal acts resulting from its existing and future relationship(s) by and between the Obligors and the Attorney, and to do all that what the undersigned should, may or could do in its relationship(s) with the Attorney and to have the full benefit of those relationship(s), including the execution of legal instruments (including any Supplemental Deed of Pledge as part of any Transaction Security Document) or the performance of other (legal) acts which are required for the pledging of goods, such as present and future receivables, stocks and orders in accordance with the Borrowing Base Documents and registration of the Transaction Security with the Dutch tax authorities.
- (b) The Obligors will acknowledge and ratify all actions, under the abovementioned legal acts which the authorised representative will take. This power of attorney has been granted with the right of substitution (*recht van substitutie*) and will be independent from that what has been or will be registered in the commercial register with respect to the authorised representatives of the undersigned. This appointment also applies to situations where any Attorney or any person designated hereunder acts as or also acts as the Company's counterparty (*wederpartij*), or as representative of the Company's counterparty.
- (c) This power of attorney does not affect the other obligations of each of the Obligors as laid down in the Borrowing Base Documents and/or other agreements, including the obligations of each of the Obligors to sign documents itself or to perform other acts upon the first request by the Attorney, in order to comply with the obligation of each of the Obligors to assign or pledge claims in favour of the Attorney.
- (d) This power of attorney will be valid until all amounts outstanding under the Finance Documents have been irrevocably repaid in full.

16. OTHER TERMS AND OTHER CONDITIONS

16.1 Waiver of retention rights

[To the fullest extent permitted under applicable law, by signing this Agreement or any Accession Letter (as applicable), [each]/[the] Borrower waives, to the extent necessary in advance (*bij voorbaat*), all title retention rights (*eigendomsvoorbehoud*), extended title retention rights (*verlengd eigendomsvoorbehoud*), rights of reclamation (*recht van reclame*) and all other equivalent rights under the laws of any relevant jurisdiction that it has or may have in respect of all Inventory and Receivables *vis-a-vis* any other Borrower or member of the Group (as applicable).]¹¹³

¹¹² Consider if the omnibus poa is sufficient in which case the poa in this clause can be removed. Also consider whether the poa should be updated in case of foreign security.

¹¹³ Only insert in case of inventory facility.

16.2 Settlement by the Borrowing Base Agent

The Borrowing Base Agent may redeem any prior encumbrances (including, without limitation, prior security rights) over the assets subject to Transaction Security or procure to be subrogated in such prior encumbrances, make any payments to insurers and persons holding a retention right in respect of any goods of [a]/[the] Borrower. All principal monies, interest, costs, charges and expenses in connection therewith shall be payable by the Borrower[s] to the Borrowing Base Agent on demand and shall be a [Secured Obligation] for the purpose of this Agreement.

16.3 Evidence

In the absence of manifest error, an extract from the records of the Borrowing Base Agent shall qualify as *prima facie* conclusive evidence *vis-à-vis* the Obligors.

17. CHANGES TO THE BORROWER[S]

17.1 Additional Borrower

- (a) Subject to compliance with the provisions of clause [•] ("*Know your customer*" checks) of the Facilities Agreement, the Company may request that any of its [wholly owned] Subsidiaries becomes an Additional Borrower for the purpose of this Agreement. Subject to paragraph (c) below, that Subsidiary shall become an Additional Borrower under this Agreement if:
 - (i) it is approved by all Borrowing Base Lenders and is or becomes an Additional Guarantor under the Facilities Agreement;
 - (ii) the Company confirms no Default is continuing or would occur as a result of that Subsidiary becoming an Additional Borrower;
 - (iii) the Borrowing Base Agent has received a duly completed and executed Accession Letter; and
 - (iv) the Borrowing Base Agent has received all of the documents and other evidence set out in Part 2 of Schedule 2 (*Conditions precedent required to be delivered by an Additional Borrower*) in relation to that Additional Borrower, each in form and substance satisfactory to the Borrowing Base Agent.
- (b) The Borrowing Base Agent shall notify the Company, the Borrowing Base Lenders and the Borrowing Base Agent promptly upon being satisfied that it has received (in form and substance satisfactory to it) all of the documents and other evidence set out in Part 2 of Schedule 2 (*Conditions Precedent required to be delivered by an Additional Borrower*) in relation to that Additional Borrower.
- (c) That [wholly owned] Subsidiary shall become an Additional Borrower on the date on which the Borrowing Base Agent has given notification to the Company pursuant to paragraph (b) above or any other date which the Borrowing Base Agent agrees to.

- (d) Upon the Borrowing Base Agent's confirmation to the Company that it has received all documents referred to in paragraph (a) above in respect of an Additional Borrower, such Additional Borrower, the other Borrowers, the Company and the Borrowing Base Lenders shall each assume such obligations towards one another and/or acquire such rights against each other party as they would have assumed or acquired had such Subsidiary been an original Party to this Agreement.

17.2 Resignation of Borrower

- (a) The Company may request that a Borrower ceases to be a Borrower by delivering to the Borrowing Base Agent a Resignation Letter if:
 - (i) that Borrower is being disposed of by way of a Third Party Disposal and the Company has confirmed this is the case; and
 - (ii) the Borrowing Base Agent has consented to the resignation of that Borrower.
- (b) The Borrowing Base Agent shall accept a Resignation Letter and notify the Company of its acceptance if:
 - (i) the Company has confirmed that no Default is continuing or would result from the acceptance of the Resignation Letter;
 - (ii) no Borrowing Base Deficit will occur as a result from the acceptance of the Resignation Letter; and
 - (iii) the Borrower is under no actual or contingent obligations as a Borrower under this Agreement.
- (c) Upon notification by the Borrowing Base Agent to the Company 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 this Agreement as a Borrower.

18. FRONTING ROLE OF THE BORROWING BASE AGENT

- 18.1 It is the intention of the parties hereto that the day-to-day operation of the Borrowing Base Ancillary Facility is dealt with on a bilateral basis between the Borrowing Base Agent on the one hand and the Borrower[s] on the other hand, using the systems and procedures (including the Online Portal) maintained by the Borrowing Base Agent for its factoring business.
- 18.2 Each Borrowing Base Lender has agreed to participate in each Advance for its Borrowing Base Lender's Proportion and [(whether or not Advances have already been funded by it in accordance with Clause 19.2 (*Funding to Borrowing Base Agent*))] shall be entitled to receive:
 - (a) its Borrowing Base Lender's Proportion in each Advance upon repayment thereof (to the extent actually funded by it and not reborrowed/rolled over for new Advances);

- (b) its Borrowing Base Lender's Proportion of the Margin [and Base Rate]¹¹⁴ accrued in accordance with this Agreement on its Borrowing Base Lender's Proportion of Advances;
- (c) [its Borrowing Base Lender's Proportion of the Base Rate accrued in accordance with this Agreement on its Borrowing Base Lender's Proportion of Advances to the extent actually funded by it;]¹¹⁵
- (d) its Borrowing Base Lender's Proportion of its other Economic Benefit [(excluding the Margin and Base Rate)¹¹⁶] accrued hereunder; and
- (e) its share in Expenses up to an amount equal to (i) the amount of any such Expenses for which it has reimbursed the Borrowing Base Agent and the Borrowing Base Security Agent or anyone of them divided by the aggregate Expenses multiplied by (ii) the amount of such Expenses actually reimbursed by the Borrower[s],

but without direct involvement of the day-to-day operation of the Borrowing Base Ancillary Facility [and provided that it complies with its obligations under Clause 19.2].

18.3 The Borrowing Base Agent shall pay any amounts due and payable to each Borrowing Base Lender pursuant to Clause 18.2 [in arrears on the first Business Days of each calendar month].

18.4 The Borrowing Base Agent shall, as soon as practicable after receipt of any information from [a]/[the] Borrower under this Agreement which the Borrowing Base Agent deems relevant for the purpose of determining the Borrowing Base, forward such information to the Borrowing Base Lenders.

19. **RELATIONSHIP BETWEEN THE BORROWING BASE LENDERS AND THE OBLIGORS**

19.1 **Relationship between the Borrowing Base Lenders and the Obligors**

- (a) The obligations of the Borrowing Base Lenders, the Borrowing Base Agent and the Borrowing Base Security Agent are several and no Borrowing Base Lender shall be responsible for the obligations of any other Borrowing Base Lender under the Finance Documents.
- (b) The appointment of the Borrowing Base Agent and the Borrowing Base Security Agent and their respective rights and obligations are set out in the Facilities Agreement [and the Intercreditor Agreement].¹¹⁷

¹¹⁴ Borrowing Base Agent to confirm whether Base Rate is calculated over Borrowing Base Lender's Proportion of Advances or over the Advances actually funded by the Borrowing Base Lender.

¹¹⁵ Borrowing Base Agent to confirm whether Base Rate is calculated over Borrowing Base Lender's Proportion of Advances or over the Advances actually funded by the Borrowing Base Lender.

¹¹⁶ Subject to paragraph (b) and/or (c) above.

¹¹⁷ To be checked by the Borrowing Base Lenders' counsel.

- (c) Each Obligor confirms that it is aware that the Borrowing Base Agent will front for the Borrowing Base Lenders (other than itself in such capacity) and that accordingly each Borrowing Base Lender will participate in the funding obligations under this Agreement in an amount equal to that Borrowing Base Lender's Proportion of those funding obligations under this Agreement.
- (d) The Borrowing Base Agent agrees to front for the Borrowing Base Lenders (other than itself in such capacity) under this Agreement, but will not take the credit risk on the other Borrowing Base Lender. Accordingly, if any of Borrowing Base Lenders (other than itself in such capacity) is unable to fund its Borrowing Base Lender's Proportion of any requested Advance to the Borrowing Base Agent as required under this Agreement, the Borrowing Base Agent (in its capacity as Borrowing Base Lender) shall not be obliged to fund more than its Borrowing Base Lender's Proportion from time to time.

19.2 Funding to Borrowing Base Agent

- (a) **Settlement of Funding between Borrowing Base Agent and Borrowing Base Lenders**
 - (i) On each [•] Business Day of each month or such other Business Day as may be requested by the Borrowing Base Agent, the Borrowing Base Agent shall calculate the actual Funding/Financing Ratio for each relevant currency. On that same date, the Borrowing Base Agent shall request the Borrowing Base Lenders by written notice (each a "**Funding Notice**") either an amount of additional Funding or announcing to them an amount of Funding in the relevant currency on that date that shall be released (the "**Funding Difference**") to the Borrowing Base Lenders [on a pro rata basis to their Borrowing Base Facility Commitments], in order to ensure that the Funding is equalised with each Borrowing Base Lender's Proportion of the Financing in respect of that currency. The Borrowing Base Lenders and the Borrowing Base Agent shall comply with the Funding Notice by wire transfer of the relevant amount to the Borrowing Base Agent respectively to the Borrowing Base Lenders ultimately on the [•] Business Day after the date of the Funding Notice. The settlement mechanism referred to in this paragraph (a) shall only be done if the relevant Funding Difference is EUR [•] (or its Euro Equivalent Amount) or more and may be done more frequently if the Funding Difference is EUR [•] (or its Euro Equivalent Amount) or more and at any other time at the request of any Borrowing Base Lender.
 - (ii) If, before the date on which the relevant Advance under the Advance Request is to be made, a Borrowing Base Lender notifies the Borrowing Base Agent that:
 - (1) the Optional Currency is not readily available to it in the amount required; or
 - (2) compliance with its obligation to participate in an Advance in the Optional Currency would contravene a law or regulation applicable to it,

the Borrowing Base Agent will give notice to the Borrower[s] to that effect on that day. In this event, any Borrowing Base Lender that gives notice pursuant to this paragraph (ii) will be required to participate in the relevant Advance in the Base Currency (in an amount equal to that Borrowing Base Lender's Proportion of [the Euro Equivalent Amount of] the relevant Advance that is due to be made).

(b) Borrowing Base Lenders' default interest

[If any Borrowing Base Lender fails to make a payment to the Borrowing Base Agent under this Clause 19.2, then [•] per cent. per annum shall accrue (both before and after judgment) on the overdue amount from the due date up to the date of actual payment, from day to day. Interest accruing shall be payable at the end of each day and shall constitute part of the overdue amount to the extent it is not paid.]

20. INSTRUCTIONS, WAIVERS AND AMENDMENTS

- (a) Subject to paragraph (b) below and (to the extent applicable) without prejudice to any (prior) consent of the Borrower[s] that may be required to effect any of the matters listed below, the Borrowing Base Agent undertakes that it will not, without the prior written consent of all Borrowing Base Lenders (and will, if it is instructed to do so by the Borrowing Base Lenders in accordance with the terms of the Finance Documents):
- (i) increase the Borrowing Base other than in accordance with the scope of increases provided for under the Finance Documents;
 - (ii) sue for, commence or join any legal or arbitration proceedings against any Borrower to recover any liabilities under any of the Finance Documents;
 - (iii) agree to waive an Event of Default, other than failure to deliver (A) certain information (other than information regarding the Borrowing Base) which is remedied within [•] Business Days or (B) information regarding the Borrowing Base which is remedied within [•] Business Days, in each case of the earlier of having received notice or becoming aware of that failure;
 - (iv) agree to a change in the basis on which interest, fees, commissions or other similar payments are made or calculated (other than customary adjustments of fees and charges to standard services);
 - (v) agree to a change in the amount of, currency of, or scheduled date for, any payment or repayment;
 - (vi) agree to an increase in the maximum principal amounts available to be drawn by the Borrower[s] under any of the Finance Documents from those specified in such documents as at the date hereof, as reduced from time to time by any permanent reduction or cancellation of the relevant facility;

- (vii) [agree to any reduction or increase of the Advance Rate, the Maximum Dilution Percentage and the [Inventory Sub-Limit] [Maximum Debtor/Inventory Ratio];]
- (viii) agree to any waiver or settlement of any principal amounts under any of the Finance Documents, other than fees or amounts only payable to the Borrowing Base Agent for its own account; or
- (ix) agree to any change in the criteria set out in Schedule 3 (*Eligibility Criteria*);
- (b) Paragraph (a) above shall not restrict the Borrowing Base Agent (unless otherwise instructed by all Borrowing Base Lenders) to take any emergency measures it deems necessary or desirable to protect its position or the position of the Borrowing Base Lenders and/or to minimise losses after it has become aware of any act of fraud or misconduct on the part of [any of the]/[the] Borrower[s]. The Borrowing Base Agent will inform the Borrowing Base Lenders of such emergency measures as soon as reasonably possible.

21. [CHANGES TO REFERENCE RATES]¹¹⁸

- (a) [Subject to Clause 20 (*Instructions, Waivers and Amendments*), if a Published Rate Replacement Event has occurred in relation to any Published Rate for a currency which can be selected for an Advance, any amendment or waiver which relates to:
 - (i) providing for the use of a Replacement Reference Rate in relation to that currency in place of that Published Rate; and
 - (ii)
 - (A) aligning any provision of any Borrowing Base Document to the use of that Replacement Reference Rate;
 - (B) enabling that Replacement Reference Rate to be used for the calculation of interest under this Agreement (including, without limitation, any consequential changes required to enable that Replacement Reference Rate to be used for the purposes of this Agreement);
 - (C) implementing market conventions applicable to that Replacement Reference Rate;
 - (D) providing for appropriate fallback (and market disruption) provisions for that Replacement Reference Rate; or
 - (E) adjusting the pricing to reduce or eliminate, to the extent reasonably practicable, any transfer of economic value from one Party to another as a result of the application of that Replacement Reference Rate (and if any adjustment or method for calculating any adjustment has been formally designated, nominated or recommended by the Relevant

¹¹⁸ Please verify with the Facilities Agreement what is required.

Nominating Body, the adjustment shall be determined on the basis of that designation, nomination or recommendation),

may be made with the consent of the Borrowing Base Agent (acting on the instructions of all Borrowing Base Lenders) and the Company.

- (b) If any Borrowing Base Lender fails to respond to a request for an amendment or waiver described in paragraph (a) above within 10 Business Days (or such longer time period in relation to any request which the Company and the Borrowing Base Agent may agree) of that request being made:
 - (i) its Borrowing Base Facility Commitment(s) shall not be included for the purpose of calculating the Total Borrowing Base Facility Commitments when ascertaining whether any relevant percentage of Total Borrowing Base Facility Commitments has been obtained to approve that request; and
 - (ii) its status as an Borrowing Base Lender shall be disregarded for the purpose of ascertaining whether the agreement of any specified group of Borrowing Base Lenders has been obtained to approve that request.
- (c) In this Clause 21:

"Published Rate" means an RFR.

"Published Rate Replacement Event" means, in relation to a Published Rate:

- (a) the methodology, formula or other means of determining that Published Rate has, in the opinion of all Borrowing Base Lenders and the Company, materially changed;
- (b)
 - (i)
 - (A) the administrator of that Published Rate or its supervisor publicly announces that such administrator is insolvent; or
 - (B) information is published in any order, decree, notice, petition or filing, however described, of or filed with a court, tribunal, exchange, regulatory authority or similar administrative, regulatory or judicial body which reasonably confirms that the administrator of that Published Rate is insolvent,

provided that, in each case, at that time, there is no successor administrator to continue to provide that Published Rate;

- (ii) the administrator of that Published Rate publicly announces that it has ceased or will cease to provide that Published Rate permanently or indefinitely and, at that time, there is no successor administrator to continue to provide that Published Rate;

- (iii) the supervisor of the administrator of that Published Rate publicly announces that such Published Rate has been or will be permanently or indefinitely discontinued;
 - (iv) the administrator of that Published Rate or its supervisor announces that that Published Rate may no longer be used; or
 - (v) in the case of the RFR for euro, the supervisor of the administrator of that RFR makes a public announcement or publishes information stating that that RFR is no longer, or as of a specified future date will no longer be, representative of the underlying market or economic reality that it is intended to measure and that representativeness will not be restored (as determined by such supervisor); or
- (c) the administrator of that Published Rate (or the administrator of an interest rate which is a constituent element of that Published Rate) determines that that Published Rate should be calculated in accordance with its reduced submissions or other contingency or fallback policies or arrangements and the circumstance(s) or event(s) leading to such determination are not (in the opinion of all Borrowing Base Lenders and the Company) temporary; or
- (d) in the opinion of all Borrowing Base Lenders and the Company, that Published Rate is otherwise no longer appropriate for the purposes of calculating interest under this Agreement.

"Relevant Nominating Body" means any applicable central bank, regulator or other supervisory authority or a group of them, or any working group or committee sponsored or chaired by, or constituted at the request of, any of them or the Financial Stability Board.

"Replacement Reference Rate" means a benchmark rate or reference rate which is:

- (a) formally designated, nominated or recommended as the replacement for a Published Rate by:
 - (i) the administrator of that Published Rate (**provided that** the market or economic reality that such reference rate measures is the same as that measured by that Published Rate); or
 - (ii) any Relevant Nominating Body,

and if replacements have, at the relevant time, been formally designated, nominated or recommended under both paragraphs, the "Replacement Reference Rate" will be the replacement under paragraph (ii) above;
- (b) in the opinion of all Borrowing Base Lenders and the Company, generally accepted in the international or any relevant domestic syndicated loan markets as the appropriate successor to a Published Rate; or
- (c) in the opinion of all Borrowing Base Lenders and the Company, an appropriate successor to a Published Rate.]

22. NOTICES

[The provisions of clause [•] (*Notices*) of the Facilities Agreement are deemed to be incorporated in this Agreement by reference and apply to this Agreement as if included herein in full.]

23. 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.

24. GOVERNING LAW AND ENFORCEMENT

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

24.2 The courts of Amsterdam, The Netherlands have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (for the purpose of this Clause 24 only, a "**Dispute**").

24.3 [Each]/[The] Borrower agrees that the courts of Amsterdam, The Netherlands are the most appropriate and convenient courts to settle Disputes and accordingly no Borrower will argue to the contrary.

24.4 Notwithstanding Clause 24.2 above, any Borrowing Base Lender may take proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Borrowing Base Lenders may take concurrent proceedings in any number of jurisdictions.

SCHEDULE 1

THE ORIGINAL BORROWERS

Original Borrower[s]	Jurisdiction of incorporation	Registration number with Dutch Chamber of Commerce
[•]	[•]	[•]
[•]	[•]	[•]

PART 1 THE BORROWING BASE LENDERS

Borrowing Base Lenders	Borrowing Base Facility Commitments in EUR ¹¹⁹
[•]	[•]
[•]	[•]
Total Borrowing Base Facility Commitments	[•]

¹¹⁹ Please note that there may be a difference between the currency of the borrowing base facility and the permitted currencies eligible for financing described in the eligibility criteria (e.g. receivables denominated in GBP are eligible for financing but the Borrowing Base Facility is a euro only facility).

SCHEDULE 2 CONDITIONS PRECEDENT

PART 1 CONDITIONS PRECEDENT TO INITIAL ADVANCE

1. GENERAL

- (a) Evidence that the Bank Agent has given its notification to the Company and the Lenders under paragraph [(a)] of clause [•] (*Initial conditions precedent*) of the Facilities Agreement.
- (b) A copy of this Agreement duly executed and delivered by the Company and each Original Borrower party thereto.
- (c) A copy of the following Transaction Security Documents: [•] and the notices required to be sent thereunder all duly executed and delivered by each Obligor party thereto.¹²⁰
- (d) A copy of any Fee Letter in connection with this Agreement and evidence of payment of such fees which are due and payable in accordance therewith.
- (e) Evidence satisfactory to the Borrowing Base Agent that each Borrowing Base Lender has carried out and is satisfied with the results of all "know your client", anti-money laundering and other similar checks required by each Borrowing Base Lender in relation to the Borrower[s].

2. LEGAL OPINION

A [regulatory,] capacity and enforceability legal opinion of the legal advisers to the Borrowing Base Agent as to Dutch law, addressed to the Borrowing Base Agent and the Borrowing Base Security Agent and capable of being relied upon by the Borrowing Base Lender(s).

3. OTHER DOCUMENTS AND EVIDENCE

- (a) Completion by the Borrowing Base Agent of its operational Field Audit and debtor verification of the Borrower's business and assets and the results of such audit and field examination are satisfactory to the Borrowing Base Agent.
- (b) A copy of the [credit, storage, inventory, transport] insurance policy of [each]/[the] Borrower and including evidence of the Borrowing Base Agent being named a loss payee and/or co-insured party to or loss payee under such credit insurance policy.¹²¹
- (c) Evidence that all Collection Accounts and Funding Accounts have been set up and comply with the requirements set out in this Agreement.

¹²⁰ This should already be listed in the Facilities Agreement.

¹²¹ ING: TBD with business if these CP's can be removed if we already have (a).

- (d) Evidence that the Borrower[s] have installed an electronic interface (*elektronische koppeling*) which enables them to submit their Receivables Identification Files [and Inventory Identification Data] to the Borrowing Base Agent.
- (e) [Evidence that the Borrower[s] can provide the Borrowing Base Agent with satisfactory Inventory Identification Data in accordance with this Agreement.]¹²²
- (f) [Borrowing Base Certificate]
- (g) [*Other*]
- (h) A copy of any other authorisation or other document, opinion or assurance which the Borrowing Base Agent considers to be necessary in connection with the entry into and performance of the transactions contemplated by any Borrowing Base Document or for the validity and enforceability of any Borrowing Base Document.

¹²² Include (e) in case inventory data is received via any other means than an electronic portal (e.g. email).

PART 2

CONDITIONS PRECEDENT REQUIRED TO BE DELIVERED BY AN ADDITIONAL BORROWER

1. GENERAL

- (a) Evidence that the Bank Agent has given its notification to the Company and the Lenders under clause [•] (*Additional Borrowers*) of the Facilities Agreement in relation to the Additional Borrower (that it has received all of the documents and other evidence set out in [Part [•] (*Conditions Precedent to be delivered by an Additional Obligor*) of Schedule [•] (*Conditions Precedent*)] of the Facilities Agreement in relation to that Additional Borrower).
- (b) A copy of the Accession Letter duly executed and delivered by the Company and each Additional Borrower party thereto.
- (c) A copy of the following Transaction Security Documents: [•] and the notices required to be sent thereunder all duly executed and delivered by the Additional Borrower party thereto.¹²³
- (d) A copy of any Fee Letter in connection with this Agreement and evidence of payment of such fees which are due and payable in accordance therewith.
- (e) Evidence satisfactory to the Borrowing Base Agent that each Borrowing Base Lender has carried out and is satisfied with the results of all "know your client", anti-money laundering and other similar checks required by each Borrowing Base Lender in relation to the Borrower[s].

2. LEGAL OPINION

A [regulatory,] capacity and enforceability legal opinion (including an opinion on further acts or no consents) of the legal advisers to the Borrowing Base Agent as to Dutch law, addressed to the Borrowing Base Agent and the Borrowing Base Security Agent and capable of being relied upon by the Borrowing Base Lender(s).

3. OTHER DOCUMENTS AND EVIDENCE

- (a) Completion by the Borrowing Base Agent of its operational Field Audit and debtor verification of the Additional Borrower's business and assets and the results of such audit and field examination are satisfactory to the Borrowing Base Agent and the Borrowing Base Lenders.
- (b) A copy of the form of invoice of the Additional Borrower.
- (c) [Only in the case of prohibition on assignment or pledge (whether *in rem* (*goederenrechtelijk*) or contractual (*verbintenisrechtelijk*)) of any Receivable, consent to the creation of Transaction Security over all Receivables of each material Debtors including agreement on any applicable conditions of purchase

¹²³ This should already be listed in the Facilities Agreement.

(if applicable) as requested by the Borrowing Base Agent for the purpose of this Agreement.]¹²⁴

- (d) A copy of the general terms and conditions of [each]/[the] Borrower, the credit and collection policies of [each]/[the] Borrower and the form of payment terms and conditions applicable to the delivery of goods or performance of services of [each]/[the] Borrower.
- (e) A copy of the [credit, storage, inventory] insurance policy of [each]/[the] Borrower and including evidence of the Borrowing Base Agent being named a co-insured party to or loss payee under such credit insurance policy.
- (f) Evidence that all Collection Accounts and Funding Accounts have been set up.
- (g) Evidence that the Additional Borrower has installed an electronic interface (*elektronische koppeling*) which enables them to submit their Receivables Identification Files [and Inventory Identification Data] to the Borrowing Base Agent.
- (h) [Evidence that the Borrower[s] can provide the Borrowing Base Agent with satisfactory Inventory Identification Data in accordance with this Agreement.]¹²⁵
- (i) [Borrowing Base Certificate]
- (j) [Other]
- (k) A copy of any other authorisation or other document, opinion or assurance which the Borrowing Base Agent considers to be necessary in connection with the entry into and performance of the transactions contemplated by any Borrowing Base Document or for the validity and enforceability of any Borrowing Base Document.

¹²⁴ TBC with BB Lenders.

¹²⁵ Include (h) in case inventory data is received via any other means than an electronic portal (e.g. email).

SCHEDULE 3 ELIGIBILITY CRITERIA¹²⁶

PART 1 ELIGIBILITY CRITERIA RECEIVABLES

"Eligible Receivable" means any Receivable that meets each of the requirements set out in [Part 1 of]¹²⁷ this Schedule 3 as determined from time to time by the Borrowing Base Agent in its sole discretion:

- (a) of which [a]/[the] Borrower is the legal and beneficial owner of the Receivable and that Borrower has the full power to dispose of and encumber such Receivable;
- (b) of which the Borrower is not prohibited from disclosing any information with respect to the Receivable and or related rights to the Borrowing Base Agent and the other Borrowing Base Lenders as may be required for purposes of any sale or encumbrance of the Receivable or the enforcement of any Security over such Receivable;
- (c) which is evidenced by an invoice issued by the Borrower that originated that Receivable and which (i) includes the bank account details of the Collection Account [at that time]¹²⁸ and (ii) complies with all applicable VAT laws and regulations;
- (d) which can be identified in the Borrower's administration by its invoice number, its nominal amount, the Debtor's name, number, address and, if different, its invoicing address and any other data required by the Borrowing Base Agent;
- (e) which is not provisioned or written off in the books of the Borrower or otherwise designated as uncollectible;
- (f) which is not subject to collection action (for the avoidance of doubt, other than any standard servicing or administration activities) by the Borrower or the Borrowing Base Agent (or any person on their behalf);
- (g) which is originated by [a]/[the] Borrower under a written agreement with the Debtor in respect of the delivery of goods or the performance of services in its ordinary course of business and in accordance with applicable law;
- (h) which constitutes an unconditional, legal, valid and binding obligation of the Debtor and is enforceable against that Debtor and the assets of that Debtor (and, for instance, the Receivable is not contingent on the performance of any obligation by [a]/[the] Borrower);
- (i) which is not based on advance invoicing (*vooruitfacturatie*), milestone or stage invoicing (*deelfacturatie*) and, in general, any invoicing that is related to a non-completed transaction (*niet afgeronde prestatie*) or is otherwise invoiced before completion of the underlying performance obligation;

¹²⁶ To be reviewed and discussed on a deal-by-deal basis between Borrowing Base Lenders and Borrower.

¹²⁷ Only insert in case of inventory facility.

¹²⁸ Insert in case Cash Dominion Events are applicable.

- (j) to which apply:
 - (i) the general terms and conditions of the relevant Borrower; or
 - (ii) other terms and conditions accepted by the Borrowing Base Agent which, in the sole opinion of the Borrowing Base Agent, do not adversely affect the rights and remedies of the Borrowing Base Lenders; and
- (k) which is validly pledged (first ranking) under a Transaction Security Document in which the Borrowing Base Security Agent is the pledgee and it is not subject to any other Security, any Quasi-Security, attachment, any other encumbrance or purchase arrangement;¹²⁹
- (l) which (together with any Related Rights) [is not subject to any restriction of assignability or encumbrance with *in rem* effect (*goederenrechtelijke werking*) or similar] [is, if subject to any restriction of assignability or encumbrance with *in rem* effect (*goederenrechtelijke werking*) or similar, only eligible if and to the extent that: [•]]¹³⁰
- (m) which is not a High Risk Receivable;
- (n) which is denominated in euro, [USD][,][or] [GBP][, or [•]];
- (o) which does not have a payment term that exceeds [•] days;
- (p) which is not outstanding for more than [•] days after expiry of the applicable payment term [and not outstanding for more than [•] days from the original date specified in an invoice;
- (q) which does not represent or result from a sale on a bill-and-hold guaranteed sale, sale-and-return, sale-on-approval, consignment, sale against cash-at-delivery, sale against documents, letters of credit or any other sale on a repurchase or return basis;
- (r) which does not arise under or result from the receipt of a cheque, promissory note, bill of exchange or other negotiable instrument;
- (s) which does not arise under or result from a hire, lease, hire purchase or contract hire transaction (or a transaction having a similar effect);
- (t) which does not originate from the resale of products which were subject to Quasi-Security, an attachment or other encumbrance or had been acquired by the relevant Borrower subject to a reservation of title arrangement, unless the Quasi-Security, attachment or other encumbrance or reservation of title has lapsed due to the payment of the original acquisition price or otherwise;

¹²⁹ If collective deeds of pledge are not registered on a daily basis, it should be considered whether this requirement can be met or should be tweaked (if supplemental deeds of pledge are signed concurrently with the delivery of a Borrowing Base Certificate, the Receivables included in that certificate are not yet validly pledged).

¹³⁰ To be discussed per transaction with the Borrowing Base Lenders.

- (u) which does not arise under a contract which is subject to consumer protection or public procurement laws and regulations;
- (v) which does not relate to payments of penalties, interest, compensation and/or damages;
- (w) which is subject to [Dutch, [•]] law;
- (x) [which is not collected through direct debit, unless in accordance with the SEPA addendum included in [Part 3 of Schedule 3 (*SEPA Addendum*)];]
- (y) [which is not subject to any set-off right of the Debtor or similar rights or reductions][which may be subject to a set-off right of the Debtor, provided that only the net value after deduction of the counterclaim of the Debtor is eligible[, if the counterclaim amounts to less than [•] per cent. of the Receivables owed by the relevant Debtor to that Borrower]¹³¹;
- (z) which is not the subject of a dispute or a refusal by a Debtor to acknowledge the existence of or amount payable by it under a Receivable or to pay a Receivable for whatever reason;
- (aa) [which does not exceed the creditworthiness of a Debtor][which does not result in the applicable Credit Limit for that Debtor being exceeded;]¹³²
- (bb) which is owed by a Debtor that:
 - (i) is not a natural person (i.e. a person who is not acting in the conduct of a profession or business);
 - (ii) is not a direct or indirect Affiliate, a Subsidiary, Holding Company, or Joint Venture of a member of the Group or an employee, officer, director, supervisory director or agent of, or otherwise related or affiliated to or connected with, a member of the Group, including through being a partner, associate or holder of depositary receipts or shares in a member of the Group;
 - (iii) [complies with the Borrowing Base Lenders' Environmental and Social Responsibility-standards, as amended from time to time;]
 - (iv) made any of its payments that were so instructed into a Collection Account;
 - (v) is established in [•]; [is established in]¹³³:
 - (A) a member state of the European Union, the United Kingdom, Switzerland, Iceland, Norway or Turkey;

¹³¹ Certain Borrowing Base Agents may require the part between brackets.

¹³² To be discussed per transaction whether financing with Credit Limits mechanism or within creditworthiness Debtor applies.

¹³³ Please check the countries with the Borrowing Base Agent and Borrowing Base Lenders for updates and specifics.

- (B) a country that is not included in (i), but is a member of the Organisation for Economic Co-operation and Development (OECD) as long as the aggregate amount of the Receivables owed by Debtors in such countries does not at any time exceed [•] per cent. of all Eligible Receivables; or
- (C) a non-OECD country, as long as the aggregate amount of the Receivables owed by Debtors in such countries does not at any time exceed [•] per cent. of all Eligible Receivables [, it being understood that if the maximum non-OECD Debtors percentage threshold is exceeded, only such excess with respect to these Debtors and their Receivables shall be excluded for purposes of calculating the Borrowing Base,] and

if any of the above thresholds is exceeded, such excess with respect to these Debtors and their Receivables shall not qualify as eligible;]

- (vi) does not owe Receivables to the Borrower[s] of which an aggregate amount of [•] per cent. or more is overdue;
 - (vii) which is not subject to any of bankruptcy, attachment, insolvency proceedings, legal proceedings or analogous procedure in any jurisdiction;
 - (viii) does not owe Receivables in respect of which the Concentration Percentage exceeds [•]% at any time (the "**Maximum Concentration Percentage**"), and, if this threshold is exceeded, such excess with respect to these Debtors and their Receivables shall not qualify as eligible;
 - (ix) does not owe Receivables exceeding the due date for more than [•] per cent of the aggregate principal outstanding amount;
 - (x) is entitled to any bonus, reduction, adjustment or discount with respect to the Receivables (or any other payment obligation)[;]/[, other than bonuses given in the ordinary course of business of [a]/[the] Borrower and notified to and approved by the Borrowing Base Agent in accordance with this Agreement];and
- (cc) [other].

PART 2

[ELIGIBILITY CRITERIA INVENTORY]

"Eligible Inventory" means any Inventory that meets each of the requirements set out in [Part 2] of this Schedule 3 as determined from time to time by the Borrowing Base Agent in its sole discretion:

- (a) which consists of [raw materials], [semi-finished goods], [finished goods];
- (b) of which the relevant Borrower is the legal and beneficial owner and has the full power to dispose of and encumber such Inventory;
- (c) which is made subject to a valid and enforceable first ranking Security Right under a Transaction Security Document to which the Borrowing Base Security Agent is the pledgee and is not subject to any other Security or Quasi-Security in favour of any third party (other than as a result of a Third Party Site where that Inventory is stored), attachment or any other encumbrance;
- (d) which is not subject to retention of title including any prolonged or extended retention of title of [a]/[the] Borrower's supplier;
- (e) which is part of [a]/[the] Borrower's ordinary business operation;
- (f) which is stored for a maximum period of [•] days under Satisfactory Storage Conditions on premises:
 - (i) owned or leased (and, in each case, operated) by the relevant Borrower; or
 - (ii) held at a Third Party Site which has been approved by the Borrowing Base Agent (and not being a Third Party Site of a customs authority or any other person with taxation power)[; or
 - (iii) *[insert any third party notice & acknowledgement criteria / tri-partite agreement reference (possible as a cp) when required]*,

where **"Satisfactory Storage Conditions"** means that the Inventory is:

- (iv) stored under product-specific conditions in a warehouse;
- (v) stored separately from the movable assets of any other person or in another manner in which they can be identified as inventory of [a]/[the] Borrower;
- (vi) stored under all other conditions determined by the Borrowing Base Agent and notified to the relevant Borrower;
- (vii) easily accessible for the Borrowing Base Agent and Borrowing Base Security Agent, including access to any computer systems with which the inventory is managed;
- (g) which is subject to insurance in accordance with Clause 11.6 (*Insurance*);

- (h) which is administered in the inventory records of [a]/[the] Borrower in a way the Inventory can be sufficiently identified pursuant to Clause 10 (*Information Undertakings*);
- (i) which is not slow moving, obsolete, not merchantable, defective, used, unfit for sale, unacceptable due to age, type, category and/or quantity;
- (j) in respect of which no Borrower has made a provision for nor has been written off the books;
- (k) which is not subject to Intellectual Property (other than Intellectual Property for which the Borrowing Base Security Agent has a valid license to enforce), licenses or permits and the handling of such Inventory does not require specialist knowledge;
- (l) which is not subject to any excise duties or similar Taxes or duties;
- (m) [which is not packaging, [raw material,] [showroom inventory,] labels, or similar items;]
- (n) which has been fully paid by the relevant Borrower or, if not yet fully paid by the relevant Borrower, in relation to which the right of reclamation (*recht van reclame*) is waived, and there is no contractual retention of title (*eigendomsvoorbehoud*);
- (o) which is physically located in the jurisdiction of the Borrower[s] [or any other jurisdiction approved by the Borrowing Base Agent] and is not [in transit (*zeilende voorraad*),] in consignment (*consignatievoorraden*) or for which no proper purchase documents are in place;
- (p) [if the age is unknown of the Inventory, may not at any time, exceed [•] per cent of the aggregate amount of the Advances made in respect of all Eligible Inventory;]
- (q) [which is current, meaning it has been determined by the Borrowing Base Agent the market value of the Inventory corresponds with the book value in the accounts of the Borrower[s];] and
- (r) [*other*].



PART 3

SEPA ADDENDUM

SCHEDULE 4 ACCESSION LETTER

To: [•] as Borrowing Base Agent

From: [*Subsidiary*] and [•]

Dated: [•]

Re: the borrowing base ancillary facility agreement dated [•] and made between, [•] as the Company, [•] as Borrowing Base Agent (each as defined therein) and others (the "**Agreement**").

Dear Addressee,

1. We refer to the Agreement. This is an Accession Letter and shall take effect as an Accession Letter for the purposes of the Agreement. Terms defined in the Agreement have the same meaning in this Accession Letter unless given a different meaning in this Accession Letter.
2. [*Subsidiary*] agrees to become [a]/[the] Borrower and to be bound by the terms of the Agreement as [a]/[the] Borrower pursuant to Clause [17.1] (*Additional Borrower*) of the Agreement. [*Subsidiary*] is a company duly incorporated under the laws of [name of relevant jurisdiction] and is a limited liability company with registered number [•].
3. [*Subsidiary*] has acceded on or prior to the date hereof as Borrower to the Facilities Agreement.
4. [*Subsidiary's*] administrative details for the purposes of the Agreement are as follows:

Address:

Email:

Attention:
5. This Accession Letter and any non-contractual obligations arising out of or in connection with it are governed by Dutch law.

Yours faithfully,

[*Company*]

[*Subsidiary*]

.....
Name:
Title:

.....
Name:
Title:



[Borrowing Base Agent]

.....
Name:

Title:

.....
Name:

Title:

SCHEDULE 5 RESIGNATION LETTER

To: [•] as Borrowing Base Agent

From: [Subsidiary] and [•]

Dated: [•]

Re: the borrowing base ancillary facility agreement dated [•] and made between, [•] as the Company, [•] as Borrowing Base Agent (each as defined therein) and others (the "**Agreement**").

Dear Addressee,

1. We refer to the Agreement. This is a Resignation Letter and shall take effect as a Resignation Letter for the purposes of the Agreement. Terms defined in the Agreement have the same meaning in this Accession Letter unless given a different meaning in this Accession Letter.
2. Pursuant to Clause [17.2] (*Resignation of Borrower*) of the Agreement, we request that [*resigning Borrower*] be released from its obligations as [a]/[the] Borrower under the Agreement.
3. We confirm that:
 - (a) this request is given in relation to a Third Party Disposal of [*resigning Borrower*];
 - (b) no Default is continuing or would result from the acceptance of the Resignation Letter;
 - (c) the Borrowing Base Facility Availability is not less than zero nor would become less than zero as a result of the acceptance of the Resignation Letter; and
 - (d) [*resigning Borrower*] is under no actual or contingent obligations as [a]/[the] Borrower under the Agreement.
4. This Resignation Letter and any non-contractual obligations arising out of or in connection with it are governed by Dutch law.

Yours faithfully,

[Company]

[Subsidiary]

.....
Name:
Title:

.....
Name:
Title:



[Borrowing Base Agent]

.....
Name:

Title:

.....
Name:

Title:



SCHEDULE 6

TERMS APPLICABLE TO THE ONLINE PORTAL

[To be attached]

SCHEDULE 7 ACCOUNTS

Collection Accounts:

Borrower	Account Bank / Address	IBAN	BIC Code	Currency
[•]	[•]	[•]	[•]	[•]
[•]	[•]	[•]	[•]	[•]

Funding Accounts:

Borrower	Account Bank / Address	IBAN	BIC Code	Currency
[•]	[•]	[•]	[•]	[•]
[•]	[•]	[•]	[•]	[•]

SCHEDULE 8 [COMPLIANCE CERTIFICATE]

To: [•] as Borrowing Base Agent

From: [Company/Parent]

Dated:

**[Company/Parent] – [•] [Borrowing Base Ancillary Document dated [•] relating to a
Borrowing Base Ancillary Facility subject to the terms of the Senior Facilities
Agreement dated [•] (the "Borrowing Base Ancillary Document")]**

1. We refer to the [Borrowing Base Ancillary Document]. This is a Compliance Certificate. Terms defined in the [Borrowing Base Ancillary Document] have the same meaning when used in this Compliance Certificate unless given a different meaning in this Compliance Certificate.
2. We confirm that in respect of the Dilution Testing Date:
 - (a) all information on Dilutions required by the Borrowing Base Agent to determine the Dilutions contained in paragraph [(h)] of Clause [10] (*Information Undertakings*) [has/has not] been complied with; and
 - (b) all calculations on the Dilution Percentage required by the Borrowing Base Agent to determine the Dilution Percentage contained in paragraph [(h)] of Clause [10] (*Information Undertakings*) [has/has not] been complied with.
3. [We confirm that no Default is continuing.]*

Signed

.....
Director
For and on behalf of
[Company/Parent]

.....
Director
For and on behalf of
[Company/Parent]

[insert applicable certification language]¹³⁴

.....
for and on behalf of
[name of [Company/Parent's Auditors]/[Monitoring Accountants]]**

¹³⁴ To be agreed with the Parent's Auditors and/or the Monitoring Accountants and the Lenders prior to signing the Agreement.

NOTES:

- * If this statement cannot be made, the Compliance Certificate should identify any Default that is continuing and the steps, if any, being taken to remedy it.
- ** Only applicable if the Compliance Certificate accompanies the audited financial statements and is to be signed by the [Company/Parent's Auditors]/[Monitoring Accountants]/[Company/Parent's Auditors or the Monitoring Accountants]. To be agreed with the Company/Parent's Auditor's [and/or the Monitoring Accountants] prior to signing the Agreement.



SCHEDULE 9

BORROWING BASE CERTIFICATE

[Form to be agreed]



SIGNATURES

THE COMPANY

[•]

Name:

Title:

Name:

Title:

THE BORROWER[S]

[•]

Name:

Title:

Name:

Title:

[•]

Name:

Title:

Name:

Title:



THE BORROWING BASE AGENT

[•]

Name:

Title:

Name:

Title:

THE BORROWING BASE SECURITY AGENT

[•]

Name:

Title:

Name:

Title:



THE BORROWING BASE LENDERS

[•]

Name:

Title:

Name:

Title:

[•]

Name:

Title:

Name:

Title:

[•]