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

FORM 10-Q

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended September 30, 2022

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____

Commission File No.: 000-51826

MERCER INTERNATIONAL INC.

(Exact name of Registrant as specified in its charter)

Washington
*(State or other jurisdiction
of incorporation or organization)*

47-0956945
*(I.R.S. Employer
Identification No.)*

Suite 1120, 700 West Pender Street, Vancouver, British Columbia, Canada, V6C 1G8
(Address of office)

(604) 684-1099

(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$1.00 per share	MERC	NASDAQ Global Select Market

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the *Securities Exchange Act of 1934* during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. YES NO

Indicate by check mark whether the Registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). YES NO

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

Large accelerated filer	<input checked="" type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input type="checkbox"/>
		Emerging growth company	<input type="checkbox"/>

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

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

The Registrant had 66,167,191 shares of common stock outstanding as of October 26, 2022.

PART I. FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

MERCER INTERNATIONAL INC.

INTERIM CONSOLIDATED FINANCIAL STATEMENTS

FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2022

(Unaudited)

MERCER INTERNATIONAL INC.
INTERIM CONSOLIDATED STATEMENTS OF OPERATIONS
(Unaudited)
(In thousands of U.S. dollars, except per share data)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Revenues	\$ 532,814	\$ 469,746	\$ 1,697,881	\$ 1,284,298
Costs and expenses				
Cost of sales, excluding depreciation and amortization	367,710	302,221	1,187,476	910,244
Cost of sales depreciation and amortization	32,122	34,294	95,223	97,175
Selling, general and administrative expenses	24,259	19,476	70,077	60,259
Operating income	108,723	113,755	345,105	216,620
Other income (expenses)				
Interest expense	(17,935)	(16,882)	(52,731)	(53,031)
Loss on early extinguishment of debt	—	—	—	(30,368)
Other income	7,252	4,735	24,297	9,118
Total other expenses, net	(10,683)	(12,147)	(28,434)	(74,281)
Income before income taxes	98,040	101,608	316,671	142,339
Income tax provision	(31,294)	(32,490)	(89,656)	(45,873)
Net income	<u>\$ 66,746</u>	<u>\$ 69,118</u>	<u>\$ 227,015</u>	<u>\$ 96,466</u>
Net income per common share				
Basic	\$ 1.01	\$ 1.05	\$ 3.43	\$ 1.46
Diluted	\$ 1.00	\$ 1.04	\$ 3.41	\$ 1.46
Dividends declared per common share	\$ 0.075	\$ 0.065	\$ 0.225	\$ 0.195

INTERIM CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)
(Unaudited)
(In thousands of U.S. dollars)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Net income	\$ 66,746	\$ 69,118	\$ 227,015	\$ 96,466
Other comprehensive income (loss)				
Gain (loss) related to defined benefit pension plans	11	(19)	(224)	984
Income tax recovery (provision)	—	—	62	(681)
Gain (loss) related to defined benefit pension plans, net of tax	11	(19)	(162)	303
Foreign currency translation adjustment	(94,781)	(42,110)	(189,323)	(59,676)
Other comprehensive loss, net of taxes	(94,770)	(42,129)	(189,485)	(59,373)
Total comprehensive income (loss)	<u>\$ (28,024)</u>	<u>\$ 26,989</u>	<u>\$ 37,530</u>	<u>\$ 37,093</u>

See accompanying Notes to the Interim Consolidated Financial Statements.

MERCER INTERNATIONAL INC.
INTERIM CONSOLIDATED BALANCE SHEETS
(Unaudited)
(In thousands of U.S. dollars, except share and per share data)

	September 30, 2022	December 31, 2021
ASSETS		
Current assets		
Cash and cash equivalents	\$ 287,254	\$ 345,610
Term deposit	75,000	—
Accounts receivable, net	324,343	345,345
Inventories	385,961	356,731
Prepaid expenses and other	24,130	16,619
Total current assets	1,096,688	1,064,305
Property, plant and equipment, net	1,249,056	1,135,631
Investment in joint ventures	45,262	49,651
Amortizable intangible assets, net	57,406	47,902
Goodwill	33,037	—
Operating lease right-of-use assets	12,620	9,712
Pension asset	3,543	4,136
Other long-term assets	46,371	38,718
Deferred income tax	—	1,177
Total assets	<u>\$ 2,543,983</u>	<u>\$ 2,351,232</u>
LIABILITIES AND SHAREHOLDERS' EQUITY		
Current liabilities		
Accounts payable and other	\$ 322,368	\$ 282,307
Pension and other post-retirement benefit obligations	725	817
Total current liabilities	323,093	283,124
Long-term debt	1,339,086	1,237,545
Pension and other post-retirement benefit obligations	18,126	21,252
Operating lease liabilities	8,306	6,574
Other long-term liabilities	12,163	13,590
Deferred income tax	122,860	95,123
Total liabilities	1,823,634	1,657,208
Shareholders' equity		
Common shares \$1 par value; 200,000,000 authorized; 66,167,000 issued and outstanding (2021 – 66,037,000)	66,132	65,988
Additional paid-in capital	351,438	347,902
Retained earnings	583,057	370,927
Accumulated other comprehensive loss	(280,278)	(90,793)
Total shareholders' equity	720,349	694,024
Total liabilities and shareholders' equity	<u>\$ 2,543,983</u>	<u>\$ 2,351,232</u>

Commitments and contingencies (Note 16)

Subsequent event (Note 10)

See accompanying Notes to the Interim Consolidated Financial Statements.

MERCER INTERNATIONAL INC.
INTERIM CONSOLIDATED STATEMENTS OF CHANGES IN SHAREHOLDERS' EQUITY
(Unaudited)
(In thousands of U.S. dollars)

	<u>Common shares</u>			<u>Retained Earnings</u>	<u>Accumulated Other Comprehensive Loss</u>	<u>Total Shareholders' Equity</u>
	<u>Number (thousands of shares)</u>	<u>Amount, at Par Value</u>	<u>Additional Paid-in Capital</u>			
Three Months Ended September 30:						
Balance as of June 30, 2022	66,167	\$ 66,132	\$ 350,224	\$ 521,274	\$ (185,508)	\$ 752,122
Stock compensation expense	—	—	1,214	—	—	1,214
Net income	—	—	—	66,746	—	66,746
Dividends declared	—	—	—	(4,963)	—	(4,963)
Other comprehensive loss	—	—	—	—	(94,770)	(94,770)
Balance as of September 30, 2022	<u>66,167</u>	<u>\$ 66,132</u>	<u>\$ 351,438</u>	<u>\$ 583,057</u>	<u>\$ (280,278)</u>	<u>\$ 720,349</u>
Balance as of June 30, 2021	66,037	\$ 65,988	\$ 347,093	\$ 235,872	\$ (44,819)	\$ 604,134
Stock compensation expense	—	—	1,005	—	—	1,005
Net income	—	—	—	69,118	—	69,118
Dividends declared	—	—	—	(4,292)	—	(4,292)
Other comprehensive loss	—	—	—	—	(42,129)	(42,129)
Balance as of September 30, 2021	<u>66,037</u>	<u>\$ 65,988</u>	<u>\$ 348,098</u>	<u>\$ 300,698</u>	<u>\$ (86,948)</u>	<u>\$ 627,836</u>
Nine Months Ended September 30:						
Balance as of December 31, 2021	66,037	\$ 65,988	\$ 347,902	\$ 370,927	\$ (90,793)	\$ 694,024
Shares issued on grants of restricted shares	35	49	(49)	—	—	—
Shares issued on grants of performance share units	95	95	(95)	—	—	—
Stock compensation expense	—	—	3,680	—	—	3,680
Net income	—	—	—	227,015	—	227,015
Dividends declared	—	—	—	(14,885)	—	(14,885)
Other comprehensive loss	—	—	—	—	(189,485)	(189,485)
Balance as of September 30, 2022	<u>66,167</u>	<u>\$ 66,132</u>	<u>\$ 351,438</u>	<u>\$ 583,057</u>	<u>\$ (280,278)</u>	<u>\$ 720,349</u>
Balance as of December 31, 2020	65,868	\$ 65,800	\$ 345,696	\$ 217,106	\$ (27,575)	\$ 601,027
Shares issued on grants of restricted shares	49	68	(68)	—	—	—
Shares issued on grants of performance share units	120	120	(120)	—	—	—
Stock compensation expense	—	—	2,590	—	—	2,590
Net income	—	—	—	96,466	—	96,466
Dividends declared	—	—	—	(12,874)	—	(12,874)
Other comprehensive loss	—	—	—	—	(59,373)	(59,373)
Balance as of September 30, 2021	<u>66,037</u>	<u>\$ 65,988</u>	<u>\$ 348,098</u>	<u>\$ 300,698</u>	<u>\$ (86,948)</u>	<u>\$ 627,836</u>

See accompanying Notes to the Interim Consolidated Financial Statements.

MERCER INTERNATIONAL INC.
INTERIM CONSOLIDATED STATEMENTS OF CASH FLOWS
(Unaudited)
(In thousands of U.S. dollars)

	Three Months Ended		Nine Months Ended	
	September 30,		September 30,	
	2022	2021	2022	2021
Cash flows from (used in) operating activities				
Net income	\$ 66,746	\$ 69,118	\$ 227,015	\$ 96,466
Adjustments to reconcile net income to cash flows from operating activities				
Depreciation and amortization	32,144	34,315	95,288	97,237
Deferred income tax provision	620	5,005	15,627	7,485
Loss on early extinguishment of debt	—	—	—	30,368
Defined benefit pension plans and other post-retirement benefit plan expense	424	879	1,301	2,654
Stock compensation expense	1,214	1,005	3,680	2,590
Foreign exchange transaction gains	(11,283)	(5,721)	(24,702)	(12,361)
Other	(3,726)	(844)	(4,497)	(1,104)
Defined benefit pension plans and other post-retirement benefit plan contributions	(511)	(1,065)	(2,905)	(3,190)
Changes in working capital				
Accounts receivable	(17,679)	(31,441)	(4,297)	(27,500)
Inventories	(8,803)	(39,512)	(23,870)	(82,275)
Accounts payable and accrued expenses	34,323	12,180	37,569	46,783
Other	(6,809)	(3,775)	(10,198)	(5,569)
Net cash from (used in) operating activities	<u>86,660</u>	<u>40,144</u>	<u>310,011</u>	<u>151,584</u>
Cash flows from (used in) investing activities				
Purchase of property, plant and equipment	(48,554)	(38,306)	(128,875)	(125,692)
Acquisitions, net of cash acquired (Note 2)	(257,367)	(51,258)	(257,367)	(51,258)
Insurance proceeds	1,164	1,530	7,574	21,578
Purchase of term deposit	—	—	(75,000)	—
Purchase of amortizable intangible assets	(69)	(460)	(154)	(1,669)
Other	474	2,873	1,126	2,764
Net cash from (used in) investing activities	<u>(304,352)</u>	<u>(85,621)</u>	<u>(452,696)</u>	<u>(154,277)</u>
Cash flows from (used in) financing activities				
Redemption of senior notes	—	—	—	(824,557)
Proceeds from issuance of senior notes	—	—	—	875,000
Proceeds from (repayment of) revolving credit facilities, net	99,065	3,967	116,503	(53,145)
Dividend payments	(4,962)	(4,293)	(9,922)	(8,582)
Payment of debt issuance costs	(1,849)	(69)	(3,033)	(14,483)
Proceeds from government grants	—	361	1,067	8,893
Payment of finance lease obligations	(1,640)	(2,227)	(8,246)	(5,763)
Other	(27)	(27)	(593)	3,598
Net cash from (used in) financing activities	<u>90,587</u>	<u>(2,288)</u>	<u>95,776</u>	<u>(19,039)</u>
Effect of exchange rate changes on cash and cash equivalents	(5,502)	1,961	(11,447)	(636)
Net decrease in cash and cash equivalents	<u>(132,607)</u>	<u>(45,804)</u>	<u>(58,356)</u>	<u>(22,368)</u>
Cash and cash equivalents, beginning of period	419,861	384,534	345,610	361,098
Cash and cash equivalents, end of period	<u>\$ 287,254</u>	<u>\$ 338,730</u>	<u>\$ 287,254</u>	<u>\$ 338,730</u>
Supplemental cash flow disclosure:				
Cash paid for interest	\$ 32,107	\$ 32,095	\$ 65,344	\$ 72,205
Cash paid for income taxes	\$ 8,858	\$ 9,039	\$ 69,351	\$ 14,174
Supplemental schedule of non-cash investing and financing activities:				
Leased production and other equipment	\$ —	\$ 2,215	\$ —	\$ 25,394

See accompanying Notes to the Interim Consolidated Financial Statements.

MERCER INTERNATIONAL INC.
NOTES TO THE INTERIM CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)
(In thousands of U.S. dollars, except share and per share data)

Note 1. The Company and Summary of Significant Accounting Policies

Nature of Operations and Basis of Presentation

The Interim Consolidated Financial Statements contained herein include the accounts of Mercer International Inc. ("Mercer Inc.") and all of its subsidiaries (collectively the "Company"). Mercer Inc. owns 100% of its subsidiaries with the exception of the 50% joint venture interest in the Cariboo mill with West Fraser Mills Ltd., which is accounted for using the equity method. The Company's shares of common stock are quoted and listed for trading on the NASDAQ Global Select Market.

The Interim Consolidated Financial Statements have been prepared by the Company pursuant to the rules and regulations of the United States Securities and Exchange Commission (the "SEC"). The consolidated balance sheet data as of December 31, 2021 was derived from the Company's audited Consolidated Financial Statements, but does not contain all of the footnote disclosures from the annual Consolidated Financial Statements. The footnote disclosure included herein has been prepared in accordance with accounting principles generally accepted for interim financial statements in the United States ("GAAP"). The unaudited Interim Consolidated Financial Statements should be read together with the audited Consolidated Financial Statements and accompanying notes included in the Company's latest Annual Report on Form 10-K for the fiscal year ended December 31, 2021. In the opinion of the Company, the unaudited Interim Consolidated Financial Statements contained herein have been prepared on a consistent basis with the audited Consolidated Financial Statements and accompanying notes included in the Company's latest Annual Report on Form 10-K for the fiscal year ended December 31, 2021 and contain all adjustments necessary for a fair statement of the results of the interim periods included. The results for the periods included herein may not be indicative of the results for the entire year.

In these Interim Consolidated Financial Statements, unless otherwise indicated, all amounts are expressed in United States dollars ("U.S. dollars" or "\$"). The symbol "€" refers to euros and the symbol "C\$" refers to Canadian dollars.

Use of Estimates

Preparation of financial statements and related disclosures in conformity with GAAP requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Significant management judgment is required in determining the accounting for, among other things, pension and other post-retirement benefit obligations, deferred income taxes (valuation allowance and permanent reinvestment), depreciation and amortization, future cash flows associated with impairment testing for long-lived assets, the allocation of the purchase price in a business combination to the assets acquired and liabilities assumed, legal liabilities and contingencies. Actual results could differ materially from these estimates, and changes in these estimates are recorded when known.

Note 2. Acquisition of Holzindustrie Torgau KG ("HIT")

On September 30, 2022, the Company acquired all of the issued and outstanding shares of the parent company of HIT for consideration of €270.0 million (\$263,196) cash. The acquisition results in 100% ownership of a timber processing and value-add pallet production facility in Torgau, Germany and a wood processing facility in Dahlen, Germany that produces garden products. The acquisition of HIT expands the Company's solid wood business and further diversifies the Company's product offerings.

MERCER INTERNATIONAL INC.
NOTES TO THE INTERIM CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)
(In thousands of U.S. dollars, except share and per share data)

Note 2. Acquisition of Holzindustrie Torgau (“HIT”) (continued)

The following summarizes the Company’s preliminary allocation of the purchase price to the estimated fair value of the assets acquired and liabilities assumed on the acquisition date:

	Purchase Price Allocation
Cash	\$ 5,829
Accounts receivable	13,632
Inventories	50,900
Other current assets	2,760
Property, plant and equipment	203,849
Amortizable intangible asset, order backlog (a)	16,020
Goodwill (b)	33,037
Other long-term assets	3,934
Total assets acquired	329,961
Accounts payable and other current liabilities	(38,907)
Deferred income tax	(25,370)
Other long-term liabilities	(2,488)
Total liabilities assumed	(66,765)
Net assets acquired	\$ 263,196

- (a) The order backlog will be realized within one year of the acquisition.
- (b) The goodwill is primarily for expected synergies from combining the operations of HIT with the Company’s existing German operations. The goodwill is not deductible for tax purposes.

The purchase price allocation was based on a preliminary valuation and may be revised as a result of additional information obtained regarding the assets acquired and liabilities assumed, and revisions of provisional estimates of fair value, including, but not limited to, the completion of valuations related to property, plant, and equipment and the identification of intangible assets. The purchase price allocation will be finalized during the 12-month measurement period following the acquisition date.

HIT is a business under GAAP, accordingly the Company began consolidating its results of operations, financial position and cash flows in the consolidated financial statements as of the acquisition date. The amount of HIT’s revenues and net income included in the Interim Consolidated Statements of Operations for the three and nine month periods ended September 30, 2022 was \$nil. In the three and nine month periods ended September 30, 2022, \$1,707 of acquisition related costs were recognized in “Selling, general and administrative expenses” in the Interim Consolidated Statements of Operations.

The following unaudited pro forma information represents the Company’s results of operations as if the acquisition of HIT had occurred on January 1, 2021. This pro forma information does not purport to be indicative of the results that would have occurred for the periods presented or that may be expected in the future.

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Revenues	\$ 612,070	\$ 549,641	\$ 1,949,215	\$ 1,482,063
Net income	\$ 83,237	\$ 90,331	\$ 276,485	\$ 122,292

The unaudited pro forma information had no material nonrecurring adjustments directly attributable to the acquisition.

MERCER INTERNATIONAL INC.
NOTES TO THE INTERIM CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)
(In thousands of U.S. dollars, except share and per share data)

Note 3. Business Interruption Insurance

In July 2022, a fire occurred in the woodyard of the Stendal mill. In September 2022, the Company received written confirmation from the insurance provider that the business interruption insurance claim related to the fire is covered and the insurance provider paid an initial nonrefundable payment of €2.0 million (\$1,981). The Company also received €1.1 million (\$1,164) for property insurance related to the fire. The business interruption and property insurance proceeds have been recorded in “Cost of sales, excluding depreciation and amortization” in the Interim Consolidated Statements of Operations.

Note 4. Term Deposit

On April 4, 2022, the Company purchased a \$75,000 term deposit, which was classified as held to maturity and reported at cost. The term deposit had an annual interest rate of 1.38% and matured on October 4, 2022. The proceeds were held as cash.

Note 5. Inventories

Inventories as of September 30, 2022 and December 31, 2021, were comprised of the following:

	September 30, 2022	December 31, 2021
Raw materials	\$ 136,833	\$ 106,434
Finished goods	133,324	140,829
Spare parts and other	115,804	109,468
	<u>\$ 385,961</u>	<u>\$ 356,731</u>

Note 6. Accounts Payable and Other

Accounts payable and other as of September 30, 2022 and December 31, 2021, was comprised of the following:

	September 30, 2022	December 31, 2021
Trade payables	\$ 87,064	\$ 58,451
Accrued expenses	86,874	76,409
Interest payable	11,220	26,506
Income tax payable	77,423	56,241
Payroll-related accruals	26,763	20,707
Wastewater fee (a)	7,406	19,248
Finance lease liability	6,830	8,467
Operating lease liability	4,365	3,192
Government grants (b)	2,599	7,302
Other	11,824	5,784
	<u>\$ 322,368</u>	<u>\$ 282,307</u>

- (a) The Company is required to pay certain fees based on wastewater emissions at its German mills. Accrued fees can be reduced upon the mills’ demonstration of reduced wastewater emissions.
- (b) The Canadian mills have a liability for unspent government grants which are required to be used to partially finance greenhouse gas emission reduction and innovation capital projects. The grants are recorded in “Cash and cash equivalents” in the Interim Consolidated Balance Sheets, however, they are considered restricted as they are repayable if the mills do not spend the funds on approved projects.

MERCER INTERNATIONAL INC.
NOTES TO THE INTERIM CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)
(In thousands of U.S. dollars, except share and per share data)

Note 7. Debt

Debt as of September 30, 2022 and December 31, 2021, was comprised of the following:

	Maturity	September 30, 2022	December 31, 2021
Senior notes (a)			
5.500% senior notes	2026	\$ 300,000	\$ 300,000
5.125% senior notes	2029	875,000	875,000
Credit arrangements			
€300 million German joint revolving credit facility (b)	2027	97,480	—
C\$160 million Canadian joint revolving credit facility (c)	2027	38,666	—
C\$60 million Peace River revolving credit facility (c)		—	22,874
C\$60 million Celgar revolving credit facility (c)		—	—
€2.6 million demand loan (d)		—	—
Finance lease liability			
		48,742	64,041
		1,359,888	1,261,915
Less: unamortized senior note issuance costs		(13,972)	(15,903)
Less: finance lease liability due within one year		(6,830)	(8,467)
		<u>\$ 1,339,086</u>	<u>\$ 1,237,545</u>

The maturities of the principal portion of the senior notes and credit arrangements as of September 30, 2022 were as follows:

	Senior Notes and Credit Arrangements
2022	\$ —
2023	—
2024	—
2025	—
2026	300,000
Thereafter	1,011,146
	<u>\$ 1,311,146</u>

Certain of the Company's debt instruments were issued under agreements which, among other things, may limit its ability and the ability of its subsidiaries to make certain payments, including dividends. These limitations are subject to specific exceptions. As of September 30, 2022, the Company was in compliance with the terms of its debt agreements.

- (a) In January 2021, the Company issued \$875,000 in aggregate principal amount of 5.125% senior notes which mature on February 1, 2029 (the "2029 Senior Notes"). The net proceeds from the 2029 Senior Notes issuance was \$860,517 after deducting the underwriter's discount and offering expenses. The net proceeds were used to redeem the outstanding senior notes which were to mature in 2024 and 2025 and for general corporate purposes. In connection with the redemption, the Company recorded a loss on early extinguishment of debt of \$30,368 in the Interim Consolidated Statements of Operations.

The 2029 Senior Notes and the senior notes which mature on January 15, 2026 (the "2026 Senior Notes" and collectively with the 2029 Senior Notes, the "Senior Notes") are general unsecured senior obligations of the Company. The Company may redeem all or a part of the Senior Notes upon not less than 10 days' or more than 60 days' notice at the redemption price plus accrued and unpaid interest to (but not including) the applicable redemption date.

MERCER INTERNATIONAL INC.
NOTES TO THE INTERIM CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)
(In thousands of U.S. dollars, except share and per share data)

Note 7. Debt (continued)

The following table presents the redemption prices (expressed as percentages of principal amount) and the redemption periods of the outstanding Senior Notes:

2026 Senior Notes		2029 Senior Notes	
12 Month Period Beginning	Percentage	12 Month Period Beginning	Percentage
January 15, 2022	101.375%	February 1, 2024	102.563%
January 15, 2023 and thereafter	100.000%	February 1, 2025	101.281%
		February 1, 2026 and thereafter	100.000%

- (b) In September 2022, the Company's German mills entered into a new €300.0 million joint revolving credit facility that matures in September 2027. The new facility replaces the €200.0 million joint revolving credit facility. Borrowings under the new facility are unsecured and bear interest at Euribor plus a variable margin ranging from 1.30% to 2.25% dependent on conditions including but not limited to a prescribed leverage ratio. The new facility is sustainability linked whereby the interest rate margin is subject to upward or downward adjustments of up to 0.05% per annum if the Company achieves, or fails to achieve, certain specified sustainability targets. As of September 30, 2022, approximately €100.0 million (\$97,480) of this facility was drawn and accruing interest at a rate of 2.022%, approximately €13.5 million (\$13,191) of this facility was supporting bank guarantees and approximately €186.5 million (\$181,769) was available.
- (c) A C\$160.0 million joint revolving credit facility for the Celgar mill, Peace River mill and certain other Canadian subsidiaries that matures in January 2027. The facility is available by way of: (i) Canadian denominated advances, which bear interest at a designated prime rate per annum; (ii) banker's acceptance equivalent loans, which bear interest at the applicable Canadian dollar banker's acceptance plus 1.20% to 1.45% per annum; (iii) dollar denominated base rate advances at the greater of the federal funds rate plus 0.50%, an Adjusted Term SOFR for a one month tenor plus 1.00% and the bank's applicable reference rate for U.S. dollar loans; and (iv) dollar SOFR advances, which bear interest at Adjusted Term SOFR plus 1.20% to 1.45% per annum. As of September 30, 2022, approximately C\$53.0 million (\$38,666) of this facility was drawn and accruing interest at a rate of 4.995%, approximately C\$1.3 million (\$958) was supporting letters of credit and approximately C\$105.7 million (\$77,104) was available.
- The facility replaced the Peace River and Celgar C\$60.0 million revolving credit facilities.
- (d) A €2.6 million demand loan for the Rosenthal mill that does not have a maturity date. Borrowings under this facility are unsecured and bear interest at the three-month Euribor plus 2.50%. As of September 30, 2022, approximately €2.6 million (\$2,488) of this facility was supporting bank guarantees and approximately \$nil was available.

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Note 8. Pension and Other Post-Retirement Benefit Obligations

Defined Benefit Plans

Pension benefits are based on employees' earnings and years of service. The defined benefit plans are funded by contributions from the Company based on actuarial estimates and statutory requirements. The components of the net benefit costs for the Celgar and Peace River defined benefit plans, in aggregate for the three and nine month periods ended September 30, 2022 and 2021 were as follows:

	Three Months Ended September 30,			
	2022		2021	
	Pension	Other Post-Retirement Benefits	Pension	Other Post-Retirement Benefits
Service cost	\$ 885	\$ 47	\$ 981	\$ 76
Interest cost	936	102	876	98
Expected return on plan assets	(1,445)	—	(1,123)	—
Amortization of unrecognized items	72	(173)	168	(197)
Net benefit costs	<u>\$ 448</u>	<u>\$ (24)</u>	<u>\$ 902</u>	<u>\$ (23)</u>

	Nine Months Ended September 30,			
	2022		2021	
	Pension	Other Post-Retirement Benefits	Pension	Other Post-Retirement Benefits
Service cost	\$ 2,703	\$ 145	\$ 2,962	\$ 228
Interest cost	2,858	312	2,647	294
Expected return on plan assets	(4,381)	—	(3,392)	—
Amortization of unrecognized items	191	(527)	509	(594)
Net benefit costs	<u>\$ 1,371</u>	<u>\$ (70)</u>	<u>\$ 2,726</u>	<u>\$ (72)</u>

The components of the net benefit costs other than service cost are recorded in "Other income" in the Interim Consolidated Statements of Operations. The amortization of unrecognized items relates to actuarial losses (gains) and prior service costs.

Defined Contribution Plan

Effective December 31, 2008, the defined benefit plans at the Celgar mill were closed to new members and the service accrual ceased. Effective January 1, 2009, the members began to receive pension benefits, at a fixed contractual rate, under a new defined contribution plan. During the three and nine month periods ended September 30, 2022, the Company made contributions of \$405 and \$1,066, respectively to this plan (2021 – \$226 and \$921).

Multiemployer Plan

The Company participates in a multiemployer plan for the hourly-paid employees at the Celgar mill. The contributions to the plan are determined based on a percentage of pensionable earnings pursuant to a collective bargaining agreement. The Company has no current or future contribution obligations in excess of the contractual contributions. During the three and nine month periods ended September 30, 2022, the Company made contributions of \$175 and \$1,824, respectively to this plan (2021 – \$625 and \$1,949).

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Note 9. Income Taxes

Differences between the U.S. Federal statutory and the Company's effective tax rates for the three and nine month periods ended September 30, 2022 and 2021, were as follows:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
U.S. Federal statutory rate	21%	21%	21%	21%
U.S. Federal statutory rate on income before income taxes	\$ (20,566)	\$ (21,337)	\$ (66,481)	\$ (29,891)
Tax differential on foreign income	(7,911)	(7,309)	(27,961)	(16,689)
Effect of foreign earnings (a)	(1,274)	1,965	(3,377)	(4,655)
Valuation allowance (b)	695	(1,073)	1,143	(12,025)
Foreign exchange on settlement of debt	(30)	—	2,994	—
Tax benefit of partnership structure	783	783	2,349	2,349
Non-taxable foreign subsidiaries	703	733	2,064	2,224
True-up of prior year taxes	(2,059)	2,294	(465)	5,418
Annual effective tax rate adjustment	(3,000)	(9,000)	2,000	9,000
Other, net	1,365	454	(1,922)	(1,604)
Income tax provision	<u>\$ (31,294)</u>	<u>\$ (32,490)</u>	<u>\$ (89,656)</u>	<u>\$ (45,873)</u>
Comprised of:				
Current income tax provision	\$ (30,674)	\$ (27,485)	\$ (74,029)	\$ (38,388)
Deferred income tax provision	(620)	(5,005)	(15,627)	(7,485)
Income tax provision	<u>\$ (31,294)</u>	<u>\$ (32,490)</u>	<u>\$ (89,656)</u>	<u>\$ (45,873)</u>

(a) Primarily relates to the impact of the global intangible low-taxed income provision in the Tax Cuts and Jobs Act of 2017.

(b) Primarily relates to taxable losses and denied interest expense.

Note 10. Shareholders' Equity

Dividends

During the nine month period ended September 30, 2022, the Company's board of directors declared the following quarterly dividends:

Date Declared	Dividend Per Common Share	Amount
February 17, 2022	\$ 0.075	\$ 4,960
April 28, 2022	0.075	4,962
July 28, 2022	0.075	4,963
	<u>\$ 0.225</u>	<u>\$ 14,885</u>

On October 27, 2022, the Company's board of directors declared a quarterly dividend of \$0.075 per common share. Payment of the dividend will be made on December 29, 2022 to all shareholders of record on December 21, 2022. Future dividends are subject to approval by the board of directors and may be adjusted as business and industry conditions warrant.

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Note 10. Shareholders' Equity (continued)

Stock Based Compensation

In May 2022, the Company adopted an amended and restated stock incentive plan (the "2022 Plan") which provides for options, restricted stock units ("RSUs" which under the prior plan were called "restricted stock rights"), deferred stock units ("DSUs"), restricted shares, performance shares, performance share units ("PSUs"), and stock appreciation rights to be awarded to employees, consultants and non-employee directors. The 2022 Plan replaced the Company's 2010 stock incentive plan (the "2010 Plan"). However, the 2010 Plan will govern prior awards until all awards granted under the 2010 Plan have been exercised, forfeited, cancelled, expired, or otherwise terminated in accordance with the terms thereof. The Company may grant up to a maximum of 2.5 million common shares under the 2022 Plan, plus the number of common shares remaining available for grant pursuant to the 2010 Plan.

During the three and nine month periods ended September 30, 2022, there were no issued and outstanding options, performance shares or stock appreciation rights. As of September 30, 2022, after factoring in all allocated shares, there remain approximately 2.8 million common shares available for grant.

PSUs

PSUs comprise rights to receive common shares at a future date that are contingent on the Company and the grantee achieving certain performance objectives. The performance objective period is generally three years.

The following table summarizes PSU activity during the period:

	<u>Number of PSUs</u>
Outstanding as of January 1, 2022	2,754,472
Granted	1,678,070
Vested and issued	(94,940)
Forfeited	(872,172)
Outstanding as of September 30, 2022	<u>3,465,430</u>

Restricted Shares, RSUs and DSUs,

Restricted shares, RSUs and DSUs generally vest at the end of one year. The fair value is determined based upon the number of shares or units granted and the quoted price of the Company's common shares on the date of grant.

The following table summarizes restricted share, RSU and DSU activity during the period:

	<u>Number of Restricted Shares</u>	<u>Number of RSUs</u>	<u>Number of DSUs</u>
Outstanding as of January 1, 2022	49,195	—	—
Granted	34,699	50,000	15,856
Vested	(49,195)	—	—
Outstanding as of September 30, 2022	<u>34,699</u>	<u>50,000</u>	<u>15,856</u>

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Note 11. Net Income Per Common Share

The reconciliation of basic and diluted net income per common share for the three and nine month periods ended September 30, 2022 and 2021 was as follows:

	Three Months Ended		Nine Months Ended	
	September 30,		September 30,	
	2022	2021	2022	2021
Net income				
Basic and diluted	\$ 66,746	\$ 69,118	\$ 227,015	\$ 96,466
Net income per common share				
Basic	\$ 1.01	\$ 1.05	\$ 3.43	\$ 1.46
Diluted	\$ 1.00	\$ 1.04	\$ 3.41	\$ 1.46
Weighted average number of common shares outstanding:				
Basic (a)	66,132,492	65,988,357	66,089,104	65,929,712
Effect of dilutive instruments:				
PSUs	432,142	317,674	415,818	318,404
Restricted shares	5,254	—	19,689	31,561
RSUs	12,971	—	8,060	—
DSUs	6,115	—	2,038	—
Diluted	<u>66,588,974</u>	<u>66,306,031</u>	<u>66,534,709</u>	<u>66,279,677</u>

(a) For the three and nine month periods ended September 30, 2022, the weighted average number of common shares outstanding excludes 34,699 restricted shares which have been granted, but have not vested as of September 30, 2022 (2021 – 49,195 restricted shares).

The calculation of diluted net income per common share does not assume the exercise of any instruments that would have an anti-dilutive effect on net income per common share. For the three and nine month periods ended September 30, 2022 and 2021 there were no anti-dilutive instruments.

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Note 12. Accumulated Other Comprehensive Loss

The change in the accumulated other comprehensive loss by component (net of tax) for the three and nine month periods ended September 30, 2022 and 2021 was as follows:

	Foreign Currency Translation Adjustment	Defined Benefit Pension and Other Post- Retirement Benefit Items	Total
Three months Ended September 30:			
Balance as of June 30, 2022	\$ (192,059)	\$ 6,551	\$ (185,508)
Other comprehensive income (loss) before reclassifications	(94,781)	112	(94,669)
Amounts reclassified	—	(101)	(101)
Other comprehensive income (loss)	(94,781)	11	(94,770)
Balance as of September 30, 2022	<u>\$ (286,840)</u>	<u>\$ 6,562</u>	<u>\$ (280,278)</u>
Balance as of June 30, 2021			
Balance as of June 30, 2021	\$ (37,144)	\$ (7,675)	\$ (44,819)
Other comprehensive income (loss) before reclassifications	(42,110)	10	(42,100)
Amounts reclassified	—	(29)	(29)
Other comprehensive loss	(42,110)	(19)	(42,129)
Balance as of September 30, 2021	<u>\$ (79,254)</u>	<u>\$ (7,694)</u>	<u>\$ (86,948)</u>
Nine months Ended September 30:			
Balance as of December 31, 2021	\$ (97,517)	\$ 6,724	\$ (90,793)
Other comprehensive income (loss) before reclassifications	(189,323)	174	(189,149)
Amounts reclassified	—	(336)	(336)
Other comprehensive loss	(189,323)	(162)	(189,485)
Balance as of September 30, 2022	<u>\$ (286,840)</u>	<u>\$ 6,562</u>	<u>\$ (280,278)</u>
Balance as of December 31, 2020			
Balance as of December 31, 2020	\$ (19,578)	\$ (7,997)	\$ (27,575)
Other comprehensive income (loss) before reclassifications	(59,676)	388	(59,288)
Amounts reclassified	—	(85)	(85)
Other comprehensive income (loss)	(59,676)	303	(59,373)
Balance as of September 30, 2021	<u>\$ (79,254)</u>	<u>\$ (7,694)</u>	<u>\$ (86,948)</u>

Note 13. Related Party Transactions

The Company enters into related party transactions with its joint ventures. For the three and nine month periods ended September 30, 2022, pulp purchases from the Company's 50% owned Cariboo mill, which are transacted at the Cariboo mill's cost, were \$28,550 and \$79,817, respectively (2021 – \$21,136 and \$69,331) and as of September 30, 2022, the Company had a payable balance to the Cariboo mill of \$4,348 (December 31, 2021 – receivable of \$5,688). For the three and nine month periods ended September 30, 2022, services from the Company's 50% owned logging and chipping operation, which are transacted at arm's length negotiated prices, were \$3,092 and \$10,348, respectively (2021 – \$2,646 and \$7,880) and as of September 30, 2022, the Company had a receivable balance from the operation of \$216 (December 31, 2021 – payable of \$2,400).

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Note 14. Segment Information

The Company is managed based on the primary products it manufactures: pulp and solid wood. Accordingly, the Company's four pulp mills and its 50% interest in the Cariboo pulp mill are aggregated into the pulp segment. The Friesau sawmill, the HIT facilities and the cross-laminated timber ("CLT") facility are aggregated into the solid wood segment. Historically the CLT facility was included in corporate and other, but concurrent with the acquisition of HIT on September 30, 2022, the Company reorganized its operating and management structure which included having the CLT facility now being overseen by the same chief operating decision maker as the Friesau sawmill and HIT facilities. The classification of the CLT facility within the solid wood segment has been reflected retrospectively. The Company's sandalwood business is included in corporate and other as it does not meet the criteria to be reported as separate reportable segment.

None of the income or loss items following operating income in the Company's Interim Consolidated Statements of Operations are allocated to the segments, as those items are reviewed separately by management.

Information about certain segment data for the three and nine month periods ended September 30, 2022 and 2021, was as follows:

Three Months Ended September 30, 2022	Pulp	Solid Wood	Corporate and Other	Consolidated
Revenues from external customers	\$ 456,657	\$ 74,266	\$ 1,891	\$ 532,814
Operating income (loss)	\$ 109,985	\$ 2,896	\$ (4,158)	\$ 108,723
Depreciation and amortization	\$ 28,174	\$ 3,733	\$ 237	\$ 32,144
Revenues by major products				
Pulp	\$ 395,459	\$ —	\$ —	\$ 395,459
Lumber	—	61,444	—	61,444
Energy and chemicals	61,198	8,111	1,891	71,200
Wood residuals	—	4,711	—	4,711
Total revenues	\$ 456,657	\$ 74,266	\$ 1,891	\$ 532,814
Revenues by geographical markets (a)				
U.S.	\$ 70,029	\$ 36,702	\$ 577	\$ 107,308
Foreign countries				
Germany	142,607	21,265	—	163,872
China	102,158	277	—	102,435
Other countries	141,863	16,022	1,314	159,199
	386,628	37,564	1,314	425,506
Total revenues	\$ 456,657	\$ 74,266	\$ 1,891	\$ 532,814

(a) Sales are attributed to countries based on the ship-to location provided by the customer.

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Note 14. Segment Information (continued)

Three Months Ended September 30, 2021	Pulp	Solid Wood	Corporate and Other	Consolidated
Revenues from external customers	\$ 396,743	\$ 70,723	\$ 2,280	\$ 469,746
Operating income (loss)	\$ 99,918	\$ 17,949	\$ (4,112)	\$ 113,755
Depreciation and amortization	\$ 29,982	\$ 4,025	\$ 308	\$ 34,315
Revenues by major products				
Pulp	\$ 374,287	\$ —	\$ —	\$ 374,287
Lumber	—	67,605	—	67,605
Energy and chemicals	22,456	1,801	2,280	26,537
Wood residuals	—	1,317	—	1,317
Total revenues	<u>\$ 396,743</u>	<u>\$ 70,723</u>	<u>\$ 2,280</u>	<u>\$ 469,746</u>
Revenues by geographical markets (a)				
U.S.	\$ 48,627	\$ 26,812	\$ 975	\$ 76,414
Foreign countries				
Germany	125,149	18,726	—	143,875
China	100,174	412	—	100,586
Other countries	122,793	24,773	1,305	148,871
	348,116	43,911	1,305	393,332
Total revenues	<u>\$ 396,743</u>	<u>\$ 70,723</u>	<u>\$ 2,280</u>	<u>\$ 469,746</u>

(a) Sales are attributed to countries based on the ship-to location provided by the customer.

Nine Months Ended September 30, 2022	Pulp	Solid Wood	Corporate and Other	Consolidated
Revenues from external customers	\$ 1,402,892	\$ 290,048	\$ 4,941	\$ 1,697,881
Operating income (loss)	\$ 271,692	\$ 84,923	\$ (11,510)	\$ 345,105
Depreciation and amortization	\$ 82,859	\$ 11,719	\$ 710	\$ 95,288
Total assets (a)	\$ 1,669,886	\$ 559,567	\$ 314,530	\$ 2,543,983
Revenues by major products				
Pulp	\$ 1,260,949	\$ —	\$ —	\$ 1,260,949
Lumber	—	260,137	—	260,137
Energy and chemicals	141,943	18,343	4,941	165,227
Wood residuals	—	11,568	—	11,568
Total revenues	<u>\$ 1,402,892</u>	<u>\$ 290,048</u>	<u>\$ 4,941</u>	<u>\$ 1,697,881</u>
Revenues by geographical markets (b)				
U.S.	\$ 177,144	\$ 157,169	\$ 1,023	\$ 335,336
Foreign countries				
Germany	429,269	67,684	—	496,953
China	342,513	629	—	343,142
Other countries	453,966	64,566	3,918	522,450
	1,225,748	132,879	3,918	1,362,545
Total revenues	<u>\$ 1,402,892</u>	<u>\$ 290,048</u>	<u>\$ 4,941</u>	<u>\$ 1,697,881</u>

(a) Total assets for the pulp segment includes the Company's \$45,262 investment in joint ventures, primarily for the Cariboo mill. Total assets for the solid wood segment includes \$33,037 of goodwill from the acquisition of HIT.

(b) Sales are attributed to countries based on the ship-to location provided by the customer.

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Note 14. Segment Information (continued)

Nine Months Ended September 30, 2021	Pulp	Solid Wood	Corporate and Other	Consolidated
Revenues from external customers	\$ 1,046,748	\$ 232,149	\$ 5,401	\$ 1,284,298
Operating income (loss)	\$ 138,552	\$ 88,240	\$ (10,172)	\$ 216,620
Depreciation and amortization	\$ 84,995	\$ 11,496	\$ 746	\$ 97,237
Revenues by major products				
Pulp	\$ 989,060	\$ —	\$ —	\$ 989,060
Lumber	—	221,201	—	221,201
Energy and chemicals	57,688	6,607	5,401	69,696
Wood residuals	—	4,341	—	4,341
Total revenues	\$ 1,046,748	\$ 232,149	\$ 5,401	\$ 1,284,298
Revenues by geographical markets (a)				
U.S.	\$ 128,905	\$ 125,514	\$ 2,281	\$ 256,700
Foreign countries				
Germany	318,781	48,265	—	367,046
China	263,717	1,258	—	264,975
Other countries	335,345	57,112	3,120	395,577
	917,843	106,635	3,120	1,027,598
Total revenues	\$ 1,046,748	\$ 232,149	\$ 5,401	\$ 1,284,298

(a) Sales are attributed to countries based on the ship-to location provided by the customer.

As of December 31, 2021, the Company had total assets of \$1,882,078 in the pulp segment, \$313,354 in the solid wood segment and \$155,800 in corporate and other. Total assets for the pulp segment includes the Company's \$49,651 investment in joint ventures, primarily for the Cariboo mill.

Revenues between segments are accounted for at prices that approximate fair value. These include revenues from the sale of residual fiber from the solid wood segment to the pulp segment for use in pulp production and from the sale of residual fuel from the pulp segment to the solid wood segment for use in energy production. For the three and nine month periods ended September 30, 2022, the pulp segment sold \$nil of residual fuel to the solid wood segment (2021 – \$88 and \$239) and the solid wood segment sold \$7,370 and \$20,751, respectively of residual fiber to the pulp segment (2021 – \$2,536 and \$8,369).

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Note 15. Financial Instruments and Fair Value Measurement

Due to their short-term maturity, the carrying amounts of cash and cash equivalents, the term deposit, accounts receivable, and accounts payable and other approximates their fair value.

The estimated fair values of the Company's outstanding debt under the fair value hierarchy as of September 30, 2022 and December 31, 2021 were as follows:

Description	Fair value measurements as of September 30, 2022 using:			
	Level 1	Level 2	Level 3	Total
Revolving credit facilities	\$ —	\$ 136,146	\$ —	\$ 136,146
Senior notes	—	978,995	—	978,995
	<u>\$ —</u>	<u>\$ 1,115,141</u>	<u>\$ —</u>	<u>\$ 1,115,141</u>

Description	Fair value measurements as of December 31, 2021 using:			
	Level 1	Level 2	Level 3	Total
Revolving credit facilities	\$ —	\$ 22,874	\$ —	\$ 22,874
Senior notes	—	1,197,449	—	1,197,449
	<u>\$ —</u>	<u>\$ 1,220,323</u>	<u>\$ —</u>	<u>\$ 1,220,323</u>

The carrying value of the revolving credit facilities classified as Level 2 approximates the fair value as the variable interest rates reflect current interest rates for financial instruments with similar characteristics and maturities.

The fair value of the senior notes classified as Level 2 was determined using quoted prices in a dealer market, or using recent market transactions. The Company's senior notes are not carried at fair value in the Interim Consolidated Balance Sheets as of September 30, 2022 or December 31, 2021. However, fair value disclosure is required. The carrying value of the Company's senior notes, net of unamortized note issuance costs, was \$1,161,028 as of September 30, 2022 (December 31, 2021 – \$1,159,097).

Credit Risk

The Company's credit risk is primarily attributable to cash held in bank accounts, the term deposit and accounts receivable. The Company maintains cash balances in foreign financial institutions in excess of insured limits. The Company limits its credit exposure on cash held in bank accounts by periodically investing cash in excess of short-term operating requirements and debt obligations in low risk government bonds, or similar debt instruments. The Company's credit risk associated with the sale of pulp, lumber and other wood residuals is managed through setting credit limits, the purchase of credit insurance and for certain customers a letter of credit is received prior to shipping the product. The Company reviews new customers' credit history before granting credit and conducts regular reviews of existing customers' credit performance. Concentrations of credit risk on the sale of pulp, lumber and other wood residuals are with customers and agents based primarily in Germany, China and the U.S.

The Company's exposure to credit losses may increase if its customers production and other costs are adversely affected by inflation. Although the Company has historically not experienced significant credit losses, it is possible that there could be a material adverse impact from potential adjustments of the carrying amount of trade receivables if the cash flows of the Company's customers are adversely impacted by inflation. As of September 30, 2022, the Company has not had significant credit losses.

The carrying amount of cash and cash equivalents of \$287,254, the term deposit of \$75,000 and accounts receivable of \$324,343 recorded in the Interim Consolidated Balance Sheet, net of any allowances for losses, represents the Company's maximum exposure to credit risk.

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Note 16. Commitments and Contingencies

- (a) The Company is involved in legal actions and claims arising in the ordinary course of business. While the outcome of any legal actions and claims cannot be predicted with certainty, it is the opinion of management that the outcome of any such claims which are pending or threatened, either individually or on a combined basis, will not have a material adverse effect on the consolidated financial condition, results of operations or liquidity of the Company.
- (b) The Company is subject to regulations that require the handling and disposal of asbestos in a prescribed manner if a property undergoes a major renovation or demolition. Otherwise, the Company is not required to remove asbestos from its facilities. Generally asbestos is found on steam and condensate piping systems as well as certain cladding on buildings and in building insulation throughout older facilities. The Company's obligation for the proper removal and disposal of asbestos products from the Company's mills is a conditional asset retirement obligation. As a result of the longevity of the Company's mills, due in part to the maintenance procedures and the fact that the Company does not have plans for major changes that require the removal of asbestos, the timing of the asbestos removal is indeterminate. As a result, the Company is currently unable to reasonably estimate the fair value of its asbestos removal and disposal obligation. The Company will recognize a liability in the period in which sufficient information is available to reasonably estimate its fair value.
- (c) In 2021, the European Commission opened a cartel investigation into the wood pulp sector in Europe to investigate if there was an infringement of European Union competition law. In October 2021, the Commission conducted inspections of major European pulp producers including the Company's German operations. The Company is cooperating with the investigation. As the matter is currently in the investigation stage, the Company cannot predict the timing of the same and what further actions, if any, the European Commission may pursue or what the outcome of any such actions may be.

NON-GAAP FINANCIAL MEASURES

This quarterly report on Form 10-Q contains “non-GAAP financial measures”, that is, financial measures that either exclude or include amounts that are not excluded or included in the most directly comparable measure calculated and presented in accordance with the generally accepted accounting principles in the United States, referred to as “GAAP”. Specifically, we make use of the non-GAAP measure “Operating EBITDA”.

Operating EBITDA is defined as operating income plus depreciation and amortization and non-recurring capital asset impairment charges. We use Operating EBITDA as a benchmark measurement of our own operating results and as a benchmark relative to our competitors. We consider it to be a meaningful supplement to operating income as a performance measure primarily because depreciation expense and non-recurring capital asset impairment charges are not actual cash costs, and depreciation expense varies widely from company to company in a manner that we consider largely independent of the underlying cost efficiency of our operating facilities. In addition, we believe Operating EBITDA is commonly used by securities analysts, investors and other interested parties to evaluate our financial performance.

Operating EBITDA does not reflect the impact of a number of items that affect our net income, including financing costs and the effect of derivative instruments. Operating EBITDA is not a measure of financial performance under GAAP, and should not be considered as an alternative to net income or operating income as a measure of performance, or as an alternative to net cash from (used in) operating activities as a measure of liquidity. Operating EBITDA is an internal measure and therefore may not be comparable to other companies.

Operating EBITDA has significant limitations as an analytical tool, and should not be considered in isolation, or as a substitute for analysis of our results as reported under GAAP. Some of these limitations are that Operating EBITDA does not reflect: (i) our cash expenditures, or future requirements, for capital expenditures or contractual commitments; (ii) changes in, or cash requirements for, working capital needs; (iii) the significant interest expense, or the cash requirements necessary to service interest or principal payments, on our outstanding debt; (iv) the impact of realized or marked to market changes in our derivative positions, which can be substantial; and (v) the impact of non-recurring impairment charges against our investments or assets. Because of these limitations, Operating EBITDA should only be considered as a supplemental performance measure and should not be considered as a measure of liquidity or cash available to us to invest in the growth of our business. Because all companies do not calculate Operating EBITDA in the same manner, Operating EBITDA as calculated by us may differ from Operating EBITDA or EBITDA as calculated by other companies. We compensate for these limitations by using Operating EBITDA as a supplemental measure of our performance and by relying primarily on our GAAP financial statements.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

In this document: (i) unless the context otherwise requires, references to “we”, “our”, “us”, the “Company” or “Mercer” mean Mercer International Inc. and its subsidiaries; (ii) references to “Mercer Inc.” mean the Company excluding its subsidiaries; (iii) information is provided as of September 30, 2022, unless otherwise stated; (iv) our reporting currency is dollars and references to “€” mean euros and “C\$” mean Canadian dollars; (v) “ADMTs” refers to air-dried metric tonnes; (vi) “NBSK” refers to northern bleached softwood kraft; (vii) “NBHK” refers to northern bleached hardwood kraft; (viii) “MW” refers to megawatts and “MWh” refers to megawatt hours; (ix) “Mfbm” refers to thousand board feet of lumber and “MMfbm” mean million board feet of lumber; and (x) our lumber metrics are converted from cubic meters to Mfbm using a conversion ratio of 1.6 cubic meters to one Mfbm, which is the ratio commonly used in the industry.

Due to rounding, numbers presented throughout this report may not add up precisely to totals we provide and percentages may not precisely reflect the absolute figure.

The following discussion and analysis of our results of operations and financial condition for the three and nine months ended September 30, 2022 should be read in conjunction with our Interim Consolidated Financial Statements and related notes included in this quarterly report, as well as our most recent annual report on Form 10-K for the fiscal year ended December 31, 2021 filed with the Securities and Exchange Commission, referred to as the “SEC”.

Results of Operations

General

On September 30, 2022, we acquired all of the issued and outstanding shares of the parent company of Holzindustrie Torgau KG (“HIT”) for cash consideration of €270.0 million (\$263.2 million). Pursuant to the acquisition, we acquired 100% ownership of a timber processing and value-add pallet production facility in Torgau, Germany and a wood processing facility in Dahlen, Germany that produces garden products. The acquisition of HIT expands our solid wood business and further diversifies our product offerings.

We have two reportable operating segments:

- **Pulp** – consists of the manufacture, sale and distribution of pulp, electricity and other by-products at our pulp mills.
- **Solid Wood** – consists of the manufacture, sale and distribution of solid wood products, electricity and other wood residuals at the Friesau sawmill, the HIT facilities and our cross-laminated timber (“CLT”) facility.

Each segment offers primarily different products and requires different manufacturing processes, technology and sales and marketing. Historically the CLT facility was not included in the solid wood segment, but concurrent with the acquisition of HIT, we changed how we manage our operations and now include the CLT facility within our solid wood segment, which has been reflected retrospectively.

Current Market Environment

In the third quarter of 2022, we had strong pulp sales realizations driven by low customer inventory levels. Our lumber sales realizations significantly decreased in both the U.S. and European markets in the third quarter of 2022 due to higher interest rates, concerns over rising inflation and a weaker economic outlook.

Our energy revenues benefitted from both strong demand and higher prices in Germany. In the third quarter of 2022, realized average energy prices in Germany were more than triple those of the comparable quarter of 2021.

The negative impact of increased key production costs such as fiber, energy and chemicals in the third quarter is expected to continue in the fourth quarter of 2022. In particular fiber costs in Germany increased because of materially higher demand for wood for energy purposes. Our production costs are primarily incurred in euros and Canadian dollars. However, our pulp and a material portion of our lumber sales are priced in dollars. During the third quarter of 2022, the dollar continued to strengthen against the euro and the Canadian dollar. The positive impact of a strengthening dollar on our euro and Canadian dollar denominated costs and expenses partially offset the negative impact of such higher costs. The strengthening of the dollar increased our operating income by approximately \$13.8 million when compared to the second quarter of 2022 and increased our operating income by approximately \$37.0 million when compared to the third quarter of 2021.

As of September 30, 2022, third party industry quoted NBSK list prices in Europe and North America were approximately \$1,500 per ADMT and \$1,790 per ADMT, respectively and NBSK net prices in China were approximately \$948 per ADMT. Prices for China are net of discounts, allowances and rebates.

Looking into the fourth quarter, we currently expect modestly declining pulp prices as a result of lower demand from our customers due to inflationary pressures negatively impacting paper demand. We expect lumber prices to be generally consistent with the third quarter due to continued economic uncertainty caused by inflation and higher interest rates.

We currently expect continued strong energy demand and prices in Germany in the fourth quarter of 2022. In response to restricted energy supply and price increases primarily resulting from the war in Ukraine, in October, 2022, the Council of the EU implemented by regulation temporary measures which include a mandatory cap on market revenues at €180 per MWh for intra-marginal generators such as renewables, nuclear and lignite producers. The cap applies to both electricity traded in the market as well as bilateral trading. This cap will be in effect from December 1, 2022 to June 30, 2023.

Summary Financial Highlights

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
(in thousands, other than per share amounts)				
Statement of Operations Data				
Pulp segment revenues	\$ 456,657	\$ 396,743	\$ 1,402,892	\$ 1,046,748
Solid wood segment revenues	74,266	70,723	290,048	232,149
Corporate and other revenues	1,891	2,280	4,941	5,401
Total revenues	<u>\$ 532,814</u>	<u>\$ 469,746</u>	<u>\$ 1,697,881</u>	<u>\$ 1,284,298</u>
Pulp segment operating income	\$ 109,985	\$ 99,918	\$ 271,692	\$ 138,552
Solid wood segment operating income	2,896	17,949	84,923	88,240
Corporate and other operating loss	(4,158)	(4,112)	(11,510)	(10,172)
Total operating income	<u>\$ 108,723</u>	<u>\$ 113,755</u>	<u>\$ 345,105</u>	<u>\$ 216,620</u>
Pulp segment depreciation and amortization	\$ 28,174	\$ 29,982	\$ 82,859	\$ 84,995
Solid wood segment depreciation and amortization	3,733	4,025	11,719	11,496
Corporate and other depreciation and amortization	237	308	710	746
Total depreciation and amortization	<u>\$ 32,144</u>	<u>\$ 34,315</u>	<u>\$ 95,288</u>	<u>\$ 97,237</u>
Operating EBITDA ⁽¹⁾	\$ 140,867	\$ 148,070	\$ 440,393	\$ 313,857
Loss on early extinguishment of debt	\$ —	\$ —	\$ —	\$ (30,368) ⁽²⁾
Income tax provision	\$ (31,294)	\$ (32,490)	\$ (89,656)	\$ (45,873)
Net income	\$ 66,746	\$ 69,118	\$ 227,015	\$ 96,466
Net income per common share				
Basic	\$ 1.01	\$ 1.05	\$ 3.43	\$ 1.46
Diluted	\$ 1.00	\$ 1.04	\$ 3.41	\$ 1.46
Common shares outstanding at period end	66,167	66,037	66,167	66,037

(1) The following table provides a reconciliation of net income to operating income and Operating EBITDA for the periods indicated:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
(in thousands)				
Net income	\$ 66,746	\$ 69,118	\$ 227,015	\$ 96,466
Income tax provision	31,294	32,490	89,656	45,873
Interest expense	17,935	16,882	52,731	53,031
Loss on early extinguishment of debt	—	—	—	30,368
Other income	(7,252)	(4,735)	(24,297)	(9,118)
Operating income	108,723	113,755	345,105	216,620
Add: Depreciation and amortization	32,144	34,315	95,288	97,237
Operating EBITDA	<u>\$ 140,867</u>	<u>\$ 148,070</u>	<u>\$ 440,393</u>	<u>\$ 313,857</u>

(2) Redemption of 6.5% senior notes due 2024 (the "2024 Senior Notes") and 7.375% senior notes due 2025 (the "2025 Senior Notes").

Selected Production, Sales and Other Data

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2022	2021	2022	2021
Pulp Segment				
Pulp production ('000 ADMTs)				
NBSK	362.9	443.0	1,216.7	1,195.0
NBHK	82.1	57.8	190.4	143.9
Annual maintenance downtime ('000 ADMTs)				
	17.3	42.8	71.5	253.7
Annual maintenance downtime (days)				
	17	44	60	188
Pulp sales ('000 ADMTs)				
NBSK	356.6	402.2	1,267.4	1,151.3
NBHK	69.3	45.7	185.0	145.1
Average NBSK pulp prices (\$/ADMT) ⁽¹⁾				
Europe	1,500	1,345	1,422	1,223
China	969	832	959	892
North America	1,800	1,542	1,690	1,481
Average NBHK pulp prices (\$/ADMT) ⁽¹⁾				
China	855	623	779	694
North America	1,620	1,320	1,483	1,212
Average pulp sales realizations (\$/ADMT) ⁽²⁾				
NBSK	911	847	865	777
NBHK	990	684	858	604
Energy production ('000 MWh) ⁽³⁾				
	484.2	464.5	1,512.4	1,345.6
Energy sales ('000 MWh) ⁽³⁾				
	174.3	185.8	568.3	517.8
Average energy sales realizations (\$/MWh) ⁽³⁾				
	339	114	233	101
Solid Wood Segment				
Lumber production (MMfbm)				
	97.1	102.1	324.8	336.6
Lumber sales (MMfbm)				
	89.8	97.7	310.7	315.3
Average lumber sales realizations (\$/Mfbm)				
	605	692	782	702
Energy production and sales ('000 MWh)				
	20.6	14.1	70.6	51.4
Average energy sales realizations (\$/MWh)				
	394	128	260	128
Average Spot Currency Exchange Rates				
\$ / € ⁽⁴⁾	1.0066	1.1784	1.0636	1.1958
\$ / C\$ ⁽⁴⁾	0.7659	0.7937	0.7796	0.7996

- (1) Source: RISI pricing report. Europe and North America are list prices. China are net prices which include discounts, allowances and rebates.
(2) Sales realizations after customer discounts, rebates and other selling concessions. Incorporates the effect of pulp price variations occurring between the order and shipment dates.
(3) Does not include our 50% joint venture interest in the Cariboo mill, which is accounted for using the equity method.
(4) Average Federal Reserve Bank of New York Noon Buying Rates over the reporting period.

Consolidated – Three Months Ended September 30, 2022 Compared to Three Months Ended September 30, 2021

Total revenues in the third quarter of 2022 increased by approximately 13% to \$532.8 million from \$469.7 million in the same quarter of 2021 primarily due to higher energy and pulp sales realizations partially offset by lower sales volumes and lumber sales realizations.

In the third quarter of 2022, energy and chemical revenues increased by approximately 169% to \$71.2 million from \$26.5 million in the same quarter of 2021 primarily as a result of higher energy prices in Germany, which were more than triple those in the same quarter of 2021. In the third quarter of 2022, our average energy sales realizations in Germany were approximately €388 per MWh compared to about €104 per MWh in the comparative quarter of 2021.

Costs and expenses in the third quarter of 2022 increased by approximately 19% to \$424.1 million from \$356.0 million in the third quarter of 2021 driven by higher key production costs, such as fiber, chemicals and energy, and higher freight costs. Such cost increases were partially offset by the positive impact of a stronger dollar on our euro and Canadian dollar denominated costs and expenses.

In the third quarter of 2022, cost of sales depreciation and amortization decreased to \$32.1 million from \$34.3 million in the same quarter of 2021 due to the positive impact of a stronger dollar.

Selling, general and administrative expenses increased to \$24.3 million in the third quarter of 2022 from \$19.5 million in the same quarter of 2021 primarily due to costs incurred with respect to the HIT acquisition and higher employee costs.

In the third quarter of 2022, operating income decreased by approximately 4% to \$108.7 million from \$113.8 million in the same quarter of 2021 primarily due to higher per unit fiber costs, higher other production and freight costs and lower sales volumes partially offset by higher energy and pulp sales realizations and the positive impact of a stronger dollar.

Interest expense in the third quarter of 2022 increased to \$17.9 million from \$16.9 million in the same quarter of 2021 due to borrowings on our Canadian revolving credit facility.

In the third quarter of 2022, other income was \$7.3 million compared to \$4.7 million in the same quarter of 2021. Other income in both periods is primarily due to foreign exchange gains, caused by a stronger dollar, on dollar denominated cash held at our operations.

During the third quarter of 2022, we had an income tax provision of \$31.3 million or an effective tax rate of 32% and in the comparative quarter of 2021, we had an income tax provision of \$32.5 million or an effective tax rate of 32%.

For the third quarter of 2022, net income was \$66.7 million, or \$1.01 per basic share and \$1.00 per diluted share, compared to net income of \$69.1 million, or \$1.05 per basic share and \$1.04 per diluted share in the same quarter of the prior year.

In the third quarter of 2022, Operating EBITDA decreased by approximately 5% to \$140.9 million from \$148.1 million in the same quarter of 2021 primarily due to higher per unit fiber costs, higher other production and freight costs and lower sales volumes partially offset by higher energy and pulp sales realizations and the positive impact of a stronger dollar.

Operating Results by Business Segment

None of the income or loss items following operating income in our Interim Consolidated Statements of Operations are allocated to our segments, since those items are reviewed separately by management.

Pulp Segment – Three Months Ended September 30, 2022 Compared to Three Months Ended September 30, 2021

Selected Financial Information

	Three Months Ended September 30,	
	2022	2021
	(in thousands)	
Pulp revenues	\$ 395,459	\$ 374,287
Energy and chemical revenues	\$ 61,198	\$ 22,456
Depreciation and amortization	\$ 28,174	\$ 29,982
Operating income	\$ 109,985	\$ 99,918

Pulp revenues in the third quarter of 2022 increased by approximately 6% to \$395.5 million from \$374.3 million in the same quarter of 2021 due to higher sales realizations partially offset by lower sales volumes.

Energy and chemical revenues increased to a record \$61.2 million in the third quarter of 2022 from \$22.5 million in the same quarter of 2021 due to higher sales realizations. During the third quarter of 2022, we benefitted from strong energy demand and higher energy prices in Germany.

Total pulp production decreased by approximately 11% to 444,970 ADMTs in the third quarter of 2022 from 500,866 ADMTs in the same quarter of 2021 primarily due to lower production at our Stendal mill which had a fire in its woodyard. The fire resulted in the mill being down for most of July and after its restart it has operated at approximately 90% of its capacity. Total lost production in the third quarter of 2022 due to the fire was approximately 50,800 ADMTs. We currently expect to install replacement equipment at our Stendal mill in the fourth quarter of 2022 and first quarter of 2023. We maintain property and business interruption insurance for the Stendal pulp mill and we expect the property damage and business interruption will be covered by such insurance, subject to customary deductibles and limits.

In the third quarter of 2022, our pulp mills had 17 days of annual maintenance downtime (approximately 17,300 ADMTs). In the comparative quarter of 2021, we had 44 days of maintenance downtime (approximately 42,800 ADMTs). In the fourth quarter of 2022, our pulp mills currently have scheduled 14 days of planned annual maintenance downtime (approximately 30,000 ADMTs).

We estimate that annual maintenance downtime in the third quarter of 2022 adversely impacted our operating income by approximately \$15.9 million, comprised of approximately \$8.3 million in direct out-of-pocket expenses and the balance in reduced production.

Total pulp sales volumes decreased by approximately 5% to 425,854 ADMTs in the third quarter of 2022 from 447,960 ADMTs in the same quarter of 2021 primarily due to lower production.

In the third quarter of 2022, third party industry quoted average list prices for NBSK pulp increased from the same quarter of 2021 primarily as a result of low customer inventory levels. Average third party industry quoted list prices for NBSK pulp in Europe and North America were approximately \$1,500 per ADMT and \$1,800 per ADMT, respectively, in the third quarter of 2022 compared to approximately \$1,345 per ADMT and \$1,542 per ADMT, respectively, in the same quarter of 2021. Average third party industry quoted NBSK net prices in China were approximately \$969 per ADMT in the third quarter of 2022 compared to approximately \$832 per ADMT in the same quarter of 2021.

Prices quoted for China are net of discounts, allowances and rebates whereas quoted prices for Europe and North America are before applicable discounts, allowances and rebates.

Our average NBSK pulp sales realizations increased by approximately 8% to \$911 per ADMT in the third quarter of 2022 from approximately \$847 per ADMT in the same quarter of 2021.

In the third quarter of 2022 compared to the same quarter of 2021, we had a positive impact of approximately \$32.6 million in operating income due to foreign exchange, primarily as a result of the effect of the stronger U.S. dollar on costs and expenses.

Costs and expenses in the third quarter of 2022 increased by approximately 17% to \$346.7 million from \$296.9 million in the third quarter of 2021 primarily due to higher per unit fiber, chemical, energy and freight costs. The higher costs were partially offset by the positive impact of a stronger dollar and lower pulp sales volumes.

In the third quarter of 2022 per unit fiber costs increased by approximately 32% from the same quarter of 2021 due to higher per unit fiber costs for all of our mills. Our German mills had higher per unit fiber costs as a result of strong demand from other wood consumers such as heating pellet manufacturers. For our Canadian mills, per unit fiber costs increased due to strong demand in the mills' fiber baskets and for our Celgar mill a decrease in the availability of wood chips due to regional sawmill curtailments. We currently expect per unit fiber costs to increase in the fourth quarter of 2022 with an increase in Germany due to continued strong demand for wood for energy purposes and generally flat per unit fiber costs in Canada.

Transportation costs increased by approximately 28% to \$42.7 million in the third quarter of 2022 from \$33.4 million in the same quarter of 2021 primarily as a result of higher freight rates partially offset by the positive impact of a stronger dollar and lower pulp sales volumes.

In the third quarter of 2022, depreciation and amortization decreased to \$28.2 million from \$30.0 million in the same quarter of 2021 due to the positive impact of a stronger dollar.

In the third quarter of 2022, pulp segment operating income increased by approximately 10% to \$110.0 million from \$99.9 million in the same quarter of 2021 primarily due to higher sales realizations and the positive impact of a stronger dollar, partially offset by higher per unit fiber costs, higher other production and freight costs and lower sales volumes.

Solid Wood Segment – Three Months Ended September 30, 2022 Compared to Three Months Ended September 30, 2021

Selected Financial Information

	Three Months Ended September 30,	
	2022	2021
	(in thousands)	
Lumber revenues	\$ 61,444	\$ 67,605
Energy revenues	\$ 8,111	\$ 1,801
Wood residual revenues	\$ 4,711	\$ 1,317
Depreciation and amortization	\$ 3,733	\$ 4,025
Operating income	\$ 2,896	\$ 17,949

In the third quarter of 2022, lumber revenues decreased by approximately 9% to \$61.4 million from \$67.6 million in the same quarter of 2021 primarily due to lower sales volumes and sales realizations. In the third quarter of 2022, European realized lumber prices were lower due to weaker demand while U.S. pricing was generally flat compared to the same quarter of 2021. The U.S. market accounted for approximately 54% of our lumber revenues and approximately 47% of our lumber sales volumes. The majority of the balance of our lumber sales were to Europe.

Energy and wood residual revenues in the third quarter of 2022 increased to \$12.8 million from \$3.1 million in the same quarter of 2021 primarily due to higher sales realizations. In the third quarter of 2022, increased energy sales were driven by strong demand and higher energy prices in Germany and increased wood residual sales realizations are due to the correlation to the higher per unit fiber costs.

In the third quarter of 2022, lumber production decreased by approximately 5% to 97.1 MMfbm from 102.1 MMfbm in the same quarter of 2021 due to scheduled maintenance.

Lumber sales volumes decreased by approximately 8% to 89.8 MMfbm in the third quarter of 2022 from 97.7 MMfbm in the same quarter of 2021 primarily due to lower production.

Average lumber sales realizations decreased by approximately 13% to \$605 per Mfbm in the third quarter of 2022 from approximately \$692 per Mfbm in the same quarter of 2021 due to lower demand in the European market. Demand in both the European and U.S. markets is being negatively impacted by concerns over rising interest rates, inflationary pressures and a weaker economic outlook.

Fiber costs were approximately 70% of our lumber cash production costs in the third quarter of 2022. In the third quarter of 2022, per unit fiber costs modestly increased compared to the same quarter of 2021. Higher per unit fiber costs in euros due to strong fiber demand in Germany were partially offset by the positive impact of a stronger dollar on our euro denominated fiber costs. We currently expect per unit fiber costs to modestly increase in the fourth quarter of 2022.

In the third quarter of 2022, depreciation and amortization decreased to \$3.7 million compared to \$4.0 million in the same quarter of 2021 due to the positive impact of a stronger dollar.

Transportation costs in the third quarter of 2022 increased by approximately 20% to \$9.5 million from \$7.9 million in the same quarter of 2021 primarily due to higher freight rates.

In the third quarter of 2022, operating income decreased by approximately 84% to \$2.9 million from \$17.9 million in the same quarter of 2021 primarily due to higher per unit fiber costs and other production costs, lower lumber sales realizations and sales volumes partially offset by higher energy and wood residuals sales realizations.

Consolidated - Nine Months Ended September 30, 2022 Compared to Nine Months Ended September 30, 2021

Total revenues for the nine months ended September 30, 2022 increased by approximately 32% to \$1,697.9 million from \$1,284.3 million in the nine months ended September 30, 2021 primarily due to higher sales realizations and higher pulp sales volumes.

In the nine months ended September 30, 2022, energy and chemical revenues increased by approximately 137% to \$165.2 million from \$69.7 million in the same period of 2021 primarily as a result of higher energy prices in Germany, which were more than double those in the same period of 2021. In the nine months ended September 30, 2022, our average energy sales realizations in Germany were approximately €241 per MWh compared to about €89 per MWh in the comparative period of 2021.

Costs and expenses in the nine months ended September 30, 2022 increased by approximately 27% to \$1,352.8 million from \$1,067.7 million in the nine months ended September 30, 2021 primarily due to higher per unit fiber, freight, energy and chemical costs and a higher pulp sales volume partially offset by the positive impact of a stronger dollar on our euro and Canadian dollar denominated costs and expenses.

In the nine months ended September 30, 2022, cost of sales depreciation and amortization modestly decreased to \$95.2 million from \$97.2 million in the same period of 2021 due to the positive impact of a stronger dollar.

Selling, general and administrative expenses increased by approximately 16% to \$70.1 million in the nine months ended September 30, 2022 from \$60.3 million in the nine months ended September 30, 2021 primarily due to higher employee costs and costs related to the HIT acquisition.

In the nine months ended September 30, 2022, operating income increased by approximately 59% to \$345.1 million from \$216.6 million in the nine months ended September 30, 2021 primarily due to higher sales realizations, the positive impact of a stronger dollar and higher pulp sales volumes partially offset by higher per unit fiber costs and higher other production and freight costs.

In January 2021, we refinanced (the “Refinancing”) a significant portion of our debt by issuing \$875.0 million of 5.125% senior notes due 2029 (the “2029 Senior Notes”) and used the proceeds to redeem and/or repurchase all of our 6.5% 2024 Senior Notes and our 7.375% 2025 Senior Notes at a cost including premium of \$824.6 million (the “Redemption”). We recorded a loss on such Redemption of \$30.4 million (being \$0.46 per share).

Interest expense in the nine months ended September 30, 2022 modestly decreased to \$52.7 million from \$53.0 million in the nine months ended September 30, 2021 primarily as a result of a lower interest rate for our 2029 Senior Notes partially offset by interest costs on higher borrowings from our revolving credit facilities.

In the nine months ended September 30, 2022, other income increased to \$24.3 million from \$9.1 million in the same period of 2021. Other income in both periods is primarily due to foreign exchange gains, caused by a stronger dollar, on dollar denominated cash held at our operations.

During the nine months ended September 30, 2022, the provision for income taxes was \$89.7 million or an effective tax rate of 28%. In the same period of 2021, the provision for income taxes was \$45.9 million or an effective tax rate of 32%.

For the nine months ended September 30, 2022, net income was \$227.0 million, or \$3.43 per basic share and \$3.41 per diluted share compared to \$96.5 million, or \$1.46 per share, in the same period of 2021.

In the nine months ended September 30, 2022, Operating EBITDA increased by approximately 40% to \$440.4 million from \$313.9 million in the same period of 2021 primarily due to higher sales realizations, the positive impact of a stronger dollar and higher pulp sales volumes partially offset by higher per unit fiber costs and higher other production and freight costs.

Operating Results by Business Segment

None of the income or loss items following operating income in our Interim Consolidated Statements of Operations are allocated to our segments, since those items are reviewed separately by management.

Pulp Segment - Nine Months Ended September 30, 2022 Compared to Nine Months Ended September 30, 2021

Selected Financial Information

	Nine Months Ended September 30,	
	2022	2021
	(in thousands)	
Pulp revenues	\$ 1,260,949	\$ 989,060
Energy and chemical revenues	\$ 141,943	\$ 57,688
Depreciation and amortization	\$ 82,859	\$ 84,995
Operating income	\$ 271,692	\$ 138,552

Pulp revenues in the nine months ended September 30, 2022 increased by approximately 27% to \$1,260.9 million from \$989.1 million in the same period of 2021 due to higher sales realizations and a higher sales volume.

Energy and chemical revenues increased by approximately 146% to \$141.9 million in the nine months ended September 30, 2022 from \$57.7 million in the same period of 2021 due to higher sales realizations and sales volumes.

Pulp production increased by approximately 5% to 1,407,103 ADMTs in the nine months ended September 30, 2022 from 1,338,918 ADMTs in the same period of 2021 primarily due to lower annual maintenance downtime at our pulp mills. In the nine months ended September 30, 2022, our pulp mills had 60 days of annual maintenance downtime (approximately 71,500 ADMTs) and an additional six days (approximately 8,400 ADMTs) at our Celgar mill due to a slower than planned start up. In July 2022, our Stendal mill had a fire in its woodyard that resulted in the mill being down for most of July and after its restart has operated at approximately 90% of its capacity. Total lost production due to the fire in the nine months ended September 30, 2022 was approximately 50,800 ADMTs. In the nine months ended September 30, 2021, our pulp mills had 188 days of annual maintenance downtime (approximately 253,700 ADMTs).

We estimate that annual maintenance downtime in the nine months ended September 30, 2022 adversely impacted our operating income by approximately \$63.6 million, comprised of approximately \$43.7 million in direct out-of-pocket expenses and the balance in reduced production.

Pulp sales volumes increased by approximately 12% to 1,452,426 ADMTs in the nine months ended September 30, 2022 from 1,296,406 ADMTs in the same period of 2021 primarily due to higher production and strong demand.

In the nine months ended September 30, 2022, prices for NBSK pulp increased from the same period of 2021, largely as a result of low customer inventory levels. Average list prices for NBSK pulp in Europe and North America were approximately \$1,422 per ADMT and \$1,690 per ADMT, respectively in the nine months ended September 30, 2022 compared to approximately \$1,223 per ADMT and \$1,481 per ADMT, respectively, in the same period of 2021. Average NBSK net prices in China were approximately \$959 per ADMT in the nine months ended September 30, 2022 compared to approximately \$892 per ADMT in the nine months ended September 30, 2021.

Average NBSK pulp sales realizations increased by approximately 11% to \$865 per ADMT in the nine months ended September 30, 2022 from approximately \$777 per ADMT in the same period of 2021.

In the nine months ended September 30, 2022, we recorded a positive impact of approximately \$78.4 million in operating income due to foreign exchange compared to the same period of 2021, primarily as a result of the effect of the stronger U.S. dollar on costs and expenses.

Costs and expenses in the nine months ended September 30, 2022 increased by approximately 25% to \$1,131.2 million from \$908.4 million in the nine months ended September 30, 2021 primarily due to higher per unit fiber, energy, chemical and freight costs and a higher pulp sales volume. The higher costs were partially offset by the positive impact of a stronger dollar and in the nine months ended September 30, 2022, we received German regulatory approval to reverse a wastewater fee accrual of \$13.3 million as a result of completing certain capital projects.

On average, in the nine months ended September 30, 2022 overall per unit fiber costs increased by approximately 29% from the same period of 2021 due to strong demand in our mills' fiber baskets.

Transportation costs for our pulp segment increased by approximately 42% to \$133.8 million in the nine months ended September 30, 2022 from \$94.5 million in the same period of 2021 primarily as a result of the increased use of higher cost trucking, higher freight rates and higher sales volumes.

In the nine months ended September 30, 2022, depreciation and amortization modestly decreased to \$82.9 million from \$85.0 million in the same period of 2021 due to the positive impact of foreign exchange.

In the nine months ended September 30, 2022, pulp segment operating income increased to \$271.7 million from \$138.6 million in the same period of 2021 primarily due to higher sales realizations, the positive impact of a stronger dollar and higher sales volumes being only partially offset by higher per unit fiber costs and higher other production and freight costs.

Solid Wood Segment - Nine Months Ended September 30, 2022 Compared to Nine Months Ended September 30, 2021

Selected Financial Information

	Nine Months Ended September 30,	
	2022	2021
	(in thousands)	
Lumber revenues	\$ 260,137	\$ 221,201
Energy revenues	\$ 18,343	\$ 6,607
Wood residual revenues	\$ 11,568	\$ 4,341
Depreciation and amortization	\$ 11,719	\$ 11,496
Operating income	\$ 84,923	\$ 88,240

In the nine months ended September 30, 2022, lumber revenues increased by approximately 18% to \$260.1 million from \$221.2 million in the same period of 2021 primarily due to higher sales realizations. Lumber markets in both the U.S. and Europe were strong in the first half of 2022 but weakened materially later in the period due to concerns over higher interest rates and inflation. The U.S. market accounted for approximately 58% of our lumber revenues and approximately 45% of our lumber sales volumes, while the majority of remaining sales were to Europe.

Energy and wood residual revenues increased to \$29.9 million in the nine months ended September 30, 2022 from \$10.9 million in the same period of 2021 primarily due to higher sales realizations.

Lumber production decreased by approximately 4% to 324.8 MMfbm in the nine months ended September 30, 2022 from 336.6 MMfbm in the same period of 2021 primarily due to planned maintenance downtime.

Average lumber sales realizations increased by approximately 11% to \$782 per Mfbm in the nine months ended September 30, 2022 from approximately \$702 per Mfbm in the same period of 2021 primarily due to overall higher average pricing in both the European and U.S. markets. European lumber pricing increased due to steady demand

with limited supply. U.S. lumber pricing increased due to strong demand at the start of the year from the housing and renovation markets before declining sharply in the later part of the second quarter and the third quarter of 2022.

Fiber costs were approximately 75% of our lumber cash production costs in the nine months ended September 30, 2022. In the nine months ended September 30, 2022 per unit fiber costs increased by approximately 28% from the same period of 2021 as a result of using more green wood and strong demand for sawlogs. In the comparative period of 2021, per unit fiber costs were lower primarily as a result of a large supply of beetle damaged wood.

Transportation costs for our solid wood segment in the nine months ended September 30, 2022 increased by approximately 39% to \$33.4 million from \$24.0 million in the same period of 2021 primarily due to higher freight rates and a higher proportion of sales to the U.S. market.

In the nine months ended September 30, 2022, depreciation and amortization increased to \$11.7 million from \$11.5 million in the same period of 2021 primarily due to the completion of capital projects partially offset by the positive impact of a stronger dollar on our euro denominated depreciation expense.

In the nine months ended September 30, 2022, operating income decreased by approximately 4% to \$84.9 million from \$88.2 million in the same period of 2021 primarily due to higher per unit fiber costs and other production costs and higher transportation costs partially offset by higher sales realizations.

Liquidity and Capital Resources

Summary of Cash Flows

	Nine Months Ended September 30,	
	2022	2021
	(in thousands)	
Net cash from operating activities	\$ 310,011	\$ 151,584
Net cash used in investing activities	(452,696)	(154,277)
Net cash from (used in) financing activities	95,776	(19,039)
Effect of exchange rate changes on cash and cash equivalents	(11,447)	(636)
Net decrease in cash and cash equivalents	<u>\$ (58,356)</u>	<u>\$ (22,368)</u>

In connection with the acquisition of HIT, our principal German subsidiaries entered into a new €300.0 million joint revolving credit facility that matures in September 2027. The new facility replaces the prior €200.0 million joint revolving credit facility. The new facility is sustainability linked whereby the interest rate margin is subject to upward or downward adjustments of up to 0.05% per annum depending on whether we achieve certain specified sustainability targets.

We operate in a cyclical industry and our operating cash flows vary accordingly. Our principal operating cash expenditures are for fiber, labor and chemicals. Working capital levels fluctuate throughout the year and are affected by maintenance downtime, changing sales patterns, seasonality and the timing of receivables and sales and the payment of payables and expenses.

Cash Flows from Operating Activities. Cash provided by operating activities was \$310.0 million in the nine months ended September 30, 2022 compared to \$151.6 million in the comparative period of 2021. An increase in accounts receivable excluding non-cash items used cash of \$4.3 million in the nine months ended September 30, 2022 and \$27.5 million in the same period of 2021. An increase in inventories used cash of \$23.9 million in the nine months ended September 30, 2022 and \$82.3 million in the same period of 2021. An increase in accounts payable and accrued expenses provided cash of \$37.6 million in the nine months ended September 30, 2022 and \$46.8 million in the same period of 2021.

Cash Flows from Investing Activities. Investing activities in the nine months ended September 30, 2022 used cash of \$452.7 million primarily related to the acquisition of HIT for \$257.4 million and capital expenditures of \$128.9 million. In addition, we invested \$75.0 million into a six month term deposit that matured on October 4, 2022. In the nine months ended September 30, 2022, capital expenditures primarily related to upgrades to the woodrooms at our

Canadian mills and optimization projects at our German mills. In the nine months ended September 30, 2022, we received the final payment of \$6.4 million of insurance proceeds for our property damage claim related to the Peace River recovery boiler and an initial payment of \$1.2 million for our property damage claim related to the Stendal fire. Investing activities in the nine months ended September 30, 2021 used cash of \$154.3 million comprised primarily of capital expenditures of \$125.7 million and \$51.3 million for the acquisition of our CLT facility in Spokane, Washington. Capital expenditures related primarily to the Peace River recovery boiler rebuild, which was financed with insurance proceeds of which \$21.6 million was received in the nine months ended September 30, 2021.

Cash Flows from Financing Activities. In the nine months ended September 30, 2022, financing activities provided cash of \$95.8 million. In the nine months ended September 30, 2022, we borrowed approximately \$97.5 million under our new German revolving credit facility to partially finance the acquisition of HIT and \$19.0 million under our Canadian revolving credit facility. We also received \$1.1 million in government grants to partially finance innovation and greenhouse gas emission reduction capital projects at our Canadian mills. In the nine months ended September 30, 2022, we paid dividends of \$9.9 million and debt issuance costs of \$3.0 million for the new €300.0 million German revolving credit facility and C\$160.0 million Canadian revolving credit facility. In the nine months ended September 30, 2021, financing activities used cash of \$19.0 million. In the nine months ended September 30, 2021, we repaid \$53.1 million of our credit facilities, received net proceeds from the Refinancing after giving effect to the Redemption of \$50.4 million, paid debt issuance costs of \$14.5 million in respect of the 2029 Senior Notes and paid \$8.6 million of dividends.

Balance Sheet Data

The following table is a summary of selected financial information as of the dates indicated:

	<u>September 30,</u> <u>2022</u>	<u>December 31,</u> <u>2021</u>
	(in thousands)	
Cash and cash equivalents	\$ 287,254	\$ 345,610
Term deposit	\$ 75,000 ⁽¹⁾	\$ —
Working capital	\$ 773,595	\$ 781,181
Total assets	\$ 2,543,983	\$ 2,351,232
Long-term liabilities	\$ 1,500,541	\$ 1,374,084
Total shareholders' equity	\$ 720,349	\$ 694,024

(1) On April 4, 2022, we purchased a \$75.0 million term deposit, which had an interest rate of 1.38% and matured on October 4, 2022.

Sources and Uses of Funds

Our principal sources of funds are cash flows from operations and cash and cash equivalents on hand. Our principal uses of funds consist of operating expenditures, capital expenditures and interest payments on our senior notes.

The following table sets out our total capital expenditures and interest expense for the periods indicated:

	<u>Nine Months Ended September 30,</u>	
	<u>2022</u>	<u>2021</u>
	(in thousands)	
Capital expenditures	\$ 128,875	\$ 125,692 ⁽¹⁾
Cash paid for interest expense ⁽²⁾	\$ 65,344	\$ 72,205
Interest expense ⁽³⁾	\$ 52,731	\$ 53,031

(1) Includes expenditures for the recovery boiler rebuild at the Peace River mill which were financed with insurance proceeds, of which \$21.6 million was received in the nine months ended September 30, 2021.

(2) Amounts differ from interest expense, which includes non-cash items. See supplemental disclosure of cash flow information from our Interim Consolidated Statements of Cash Flows included in this report.

(3) Interest on our senior notes due 2026 is paid semi-annually in January and July of each year. Interest on our 2029 Senior Notes is paid semi-annually in February and August of each year, commencing August 2021.

As of September 30, 2022, we had cash, cash equivalents and a term deposit aggregating \$362.3 million and approximately \$258.9 million available under our revolving credit facilities and as a result aggregate liquidity of about \$621.2 million.

We currently consider the majority of undistributed earnings of our foreign subsidiaries to be indefinitely reinvested and, accordingly, no U.S. income tax has been provided on such earnings. However, if we were required to repatriate funds to the United States, we believe that we currently could repatriate the majority thereof without incurring any material amount of taxes as a result of our shareholder advances and U.S. tax reform. However, it is currently not practical to estimate the income tax liability that might be incurred if such earnings were remitted to the United States. Substantially all of our undistributed earnings are held by our foreign subsidiaries outside of the United States.

Based upon the current level of operations and our current expectations for future periods in light of the current economic environment, and in particular, current and expected pulp and lumber pricing and foreign exchange rates, we believe that cash flow from operations and available cash, together with available borrowings under our revolving credit facilities, will be adequate to finance the capital requirements for our business including the payment of our quarterly dividend during the next 12 months.

In the future we may make acquisitions of businesses or assets or commitments to additional capital projects. To achieve the long-term goals of expanding our assets and earnings, including through acquisitions, capital resources will be required. Depending on the size of a transaction, the capital resources that will be required can be substantial. The necessary resources will be generated from cash flow from operations, cash on hand, borrowing against our assets or the issuance of securities.

Debt Covenants

Certain of our long-term obligations contain various financial tests and covenants customary to these types of arrangements. See our annual report on Form 10-K for the fiscal year ended December 31, 2021.

As of September 30, 2022, we were in full compliance with all of the covenants of our indebtedness.

Off-Balance Sheet Arrangements

As of September 30, 2022, we did not have any off-balance sheet arrangements (as defined in Item 303(a)(4)(ii) of Regulation S-K).

Contractual Obligations and Commitments

There were no material changes outside the ordinary course to any of our material contractual obligations during the nine months ended September 30, 2022.

Foreign Currency

As a majority of our assets, liabilities and expenditures are held or denominated in euros or Canadian dollars, our consolidated financial results are subject to foreign currency exchange rate fluctuations.

We translate foreign denominated assets and liabilities into dollars at the rate of exchange on the balance sheet date. Equity accounts are translated using historical exchange rates. Unrealized gains or losses from these translations are recorded in other comprehensive loss and do not affect our net earnings.

As a result of the strengthening of the dollar versus the euro and Canadian dollar as of September 30, 2022, we recorded a net non-cash decrease of \$189.3 million in the carrying value of our net assets, consisting primarily of our property, plant and equipment denominated in euros and Canadian dollars. This non-cash decrease does not affect our net income, Operating EBITDA or cash but is reflected in our other comprehensive loss and as a decrease to our total equity. As a result, our accumulated other comprehensive loss increased to \$280.3 million.

Based upon the exchange rate as of September 30, 2022, the dollar has strengthened by approximately 14% against the euro and 8% against the Canadian dollar since December 31, 2021. See "Quantitative and Qualitative Disclosures about Market Risk".

Critical Accounting Policies

The preparation of financial statements and related disclosures in conformity with GAAP requires management to make estimates and assumptions that affect both the amount and the timing of the recording of assets, liabilities, revenues, and expenses in the consolidated financial statements and accompanying note disclosures. Our management routinely makes judgments and estimates about the effects of matters that are inherently uncertain. As the number of variables and assumptions affecting the probable future resolution of the uncertainties increases, these judgments become even more subjective and complex.

Our significant accounting policies are disclosed in Note 1 to our audited annual financial statements included in our annual report on Form 10-K for the fiscal year ended December 31, 2021. While all of the significant accounting policies are important to the consolidated financial statements, some of these policies may be viewed as having a high degree of judgment. On an ongoing basis using currently available information, management reviews its estimates, including those related to accounting for, among other things, pension and other post-retirement benefit obligations, deferred income taxes (valuation allowance and permanent reinvestment), depreciation and amortization, future cash flows associated with impairment testing for long-lived assets, the allocation of the purchase price in a business combination to the assets acquired and liabilities assumed, legal liabilities and contingencies. Actual results could differ materially from these estimates, and changes in these estimates are recorded when known.

We have identified certain accounting policies that are the most important to the portrayal of our current financial condition and results of operations.

For information about both our significant and critical accounting policies, see our annual report on Form 10-K for the fiscal year ended December 31, 2021.

Cautionary Statement Regarding Forward-Looking Information

The statements in this report that are not reported financial results or other historical information are "forward-looking statements" within the meaning of the *Private Securities Litigation Reform Act of 1995*, as amended.

Generally, forward-looking statements can be identified by the fact that they do not relate strictly to historical or current facts. They often include words such as "expects", "anticipates", "intends", "plans", "believes", "seeks", "estimates", or words of similar meaning, or future or conditional verbs, such as "will", "should", "could", or "may", although not all forward-looking statements contain these identifying words. Forward-looking statements are based on expectations, forecasts and assumptions by our management and involve a number of risks, uncertainties and other factors, many of which are beyond our control, that could cause actual conditions, events or results to differ significantly from those described in the forward-looking statements. These factors include, but are not limited to, the following:

Risks Related to our Business

- Inflation or a sustained increase in our key production and other costs would lead to higher manufacturing costs which could reduce our margins;
- our business, financial condition and results of operations could be adversely affected by disruptions in the global and European economies caused by Russia's invasion of Ukraine;
- the ongoing COVID-19 pandemic could materially adversely affect our business, financial position and results of operations;
- our business is highly cyclical in nature;

- cyclical fluctuations in the price and supply of our raw materials, particularly fiber, could adversely affect our business;
- we face intense competition in the forest products industry;
- our business is subject to risks associated with climate change and social and government responses thereto;
- if we are unable to offer products certified to globally recognized forestry management and chain of custody standards or meet customers' product specifications, it could adversely affect our ability to compete;
- our operations require substantial capital and we may be unable to maintain adequate capital resources to provide for such capital requirements;
- trends in non-print media and changes in consumer habits regarding the use of paper have and are expected to continue to adversely affect the demand for market pulp;
- fluctuations in prices and demand for lumber could adversely affect our business;
- our solid wood segment lumber products are vulnerable to declines in demand due to competing technologies or materials;
- we have limited control over the operations of the Cariboo mill;
- we may experience material disruptions to our production;
- our acquisition of HIT and other future acquisitions may result in additional risks and uncertainties in our business;
- we are subject to risks related to our employees;
- we are dependent on key personnel;
- if our long-lived assets become impaired, we may be required to record non-cash impairment charges that could have a material impact on our results of operations;
- our insurance coverage may not be adequate;
- we rely on third parties for transportation services;
- failures or security breaches of our information technology systems could disrupt our operations and negatively impact our business;

Risks Related to our Debt

- our level of indebtedness could negatively impact our financial condition, results of operations and liquidity;

- changes in credit ratings issued by nationally recognized statistical rating organizations could adversely affect our cost of financing and have an adverse effect on the market price of our securities;
- we are exposed to interest rate fluctuations;

Risks Related to Macro-economic Conditions

- a weakening of the global economy, including capital and credit markets, could adversely affect our business and financial results and have a material adverse effect on our liquidity and capital resources;
- we are exposed to currency exchange rate fluctuations;
- political uncertainty, an increase in trade protectionism or geo-political conflict could have a material adverse effect on global macro-economic activities and trade and adversely affect our business, results of operations and financial condition;
- we may incur losses as a result of unforeseen or catastrophic events, including the emergence of a new pandemic, terrorist attacks or natural disasters;

Legal and Regulatory Risks

- we are subject to extensive environmental regulation and we could incur substantial costs as a result of compliance with, violations of or liabilities under applicable environmental laws and regulations;
- we participate in German statutory energy programs;
- our international sales and operations are subject to applicable laws relating to trade, export controls, foreign corrupt practices and competition laws, the violation of which could adversely affect our operation;

Risks Related to Ownership of our Shares

- the price of our common stock may be volatile; and
- a small number of our shareholders could significantly influence our business.

Given these uncertainties, you should not place undue reliance on our forward-looking statements. The foregoing review of important factors is not exhaustive or necessarily in order of importance and should be read in conjunction with the risks and assumptions including those set forth under "Part II. Other Information – Item 1A. Risk Factors" and in reports and other documents we have filed with or furnished to the SEC, including in our annual report on Form 10-K for the fiscal year ended December 31, 2021. We advise you that these cautionary remarks expressly qualify in their entirety all forward-looking statements attributable to us or persons acting on our behalf. Unless required by law, we do not assume any obligation to update forward-looking statements based on unanticipated events or changed expectations. However, you should carefully review the reports and other documents we file from time to time with the SEC.

Cyclical Nature of Business

Revenues

The pulp and lumber businesses are highly cyclical in nature and markets are characterized by periods of supply and demand imbalance, which in turn can materially affect prices. Pulp and lumber markets are sensitive to cyclical changes in the global economy, industry capacity and foreign exchange rates, all of which can have a significant influence on selling prices and our operating results. The length and magnitude of industry cycles have varied over time but generally reflect changes in macro-economic conditions and levels of industry capacity. Pulp and lumber are commodities that are generally available from other producers. Because commodity products have few

distinguishing qualities from producer to producer, competition is generally based upon price, which is generally determined by supply relative to demand.

Industry capacity can fluctuate as changing industry conditions can influence producers to idle production capacity or permanently close mills. In addition, to avoid substantial cash costs in idling or closing a mill, some producers will choose to operate at a loss, sometimes even a cash loss, which can prolong weak pricing environments due to oversupply. Oversupply of our products can also result from producers introducing new capacity in response to favorable pricing trends. Certain integrated pulp and paper producers have the ability to discontinue paper production by idling their paper machines and selling their pulp production on the market, if market conditions, prices and trends warrant such actions.

Demand for each of pulp and lumber has historically been determined primarily by general global macro-economic conditions and has been closely tied to overall business activity. Pulp prices have been and are likely to continue to be volatile and can fluctuate widely over time. The third party industry quoted average European list prices for NBSK pulp between 2012 and 2022 have fluctuated between a low of \$760 per ADMT in 2012 to a high of \$1,500 per ADMT in 2022. In the same period, third party industry quoted average North American list prices for NBHK pulp have fluctuated between a low of \$700 per ADMT in 2012 to a high of \$1,620 per ADMT in 2022.

Our mills and operations voluntarily subject themselves to third-party certification as to compliance with internationally recognized, sustainable management standards because end use paper and lumber customers have shown an increased interest in understanding the origin of products they purchase. Demand for our products could be adversely affected if we, or our suppliers, are unable to achieve compliance, or are perceived by the public as failing to comply, with these standards or if our customers require compliance with alternate standards for which our operations are not certified.

A pulp producer's actual sales price realizations are net of customer discounts, rebates and other selling concessions. Accordingly, prices for pulp and lumber are driven by many factors outside our control, and we have little influence over the timing and extent of price changes, which are often volatile. Because market conditions beyond our control determine the prices for pulp and lumber, prices may fall below our cash production costs, requiring us to either incur short-term losses on product sales or cease production at one or more of our mills. Therefore, our profitability depends on managing our cost structure, particularly raw materials which represent a significant component of our operating costs and can fluctuate based upon factors beyond our control. If the prices of our products decline, or if prices for our raw materials increase, or both, our results of operations and cash flows could be materially adversely affected.

Costs

Our production costs are influenced by the availability and cost of raw materials, energy and labor, and our plant efficiencies and productivity. Our main raw material is fiber in the form of wood chips, pulp logs and sawlogs. Wood chip, pulp log and sawlog costs are primarily affected by the supply of, and demand for, lumber and pulp, which are both highly cyclical. Higher fiber prices could affect producer profit margins if they are unable to pass along price increases to pulp and lumber customers or purchasers of surplus energy.

Currency

We have manufacturing operations in Germany and Canada. Most of the operating costs and expenses of our German mills are incurred in euros and those of our Canadian mills in Canadian dollars. However, the majority of our sales are in products quoted in dollars. Our results of operations and financial condition are reported in dollars. As a result, our costs generally benefit from a strengthening dollar but are adversely affected by a decrease in the value of the dollar relative to the euro and to the Canadian dollar. Such declines in the dollar relative to the euro and the Canadian dollar reduce our operating margins and the cash flow available to fund our operations and to service our debt. This could have a material adverse effect on our business, financial condition, results of operations and cash flows.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

We are exposed to market risks from changes in interest rates and foreign currency exchange rates, particularly the exchange rates between the dollar and the euro and Canadian dollar. Changes in these rates may affect our results of operations and financial condition and, consequently, our fair value. We seek to manage these risks through internal risk management policies as well as the periodic use of derivatives.

For additional information, please refer to Part II, Item 7A. Quantitative and Qualitative Disclosures about Market Risk included in our annual report on Form 10-K for the fiscal year ended December 31, 2021.

ITEM 4. CONTROLS AND PROCEDURES

Disclosure Controls and Procedures

Our management, with the participation of our principal executive officer and principal financial officer, has evaluated the effectiveness of our disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended, referred to as the "Exchange Act"), as of the end of the period covered by this report. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed in the reports we file or submit under the Exchange Act is accumulated and communicated to management, including our principal executive officer and principal financial officer, as appropriate, to allow timely decisions regarding required disclosure. Based on such evaluation, our principal executive officer and principal financial officer have concluded that, as of the end of the period covered by this report, our disclosure controls and procedures are effective in recording, processing, summarizing and reporting, on a timely basis, information required to be disclosed by us in the reports that we file or submit under the Exchange Act.

It should be noted that any system of controls is based in part upon certain assumptions designed to obtain reasonable (and not absolute) assurance as to its effectiveness and there can be no assurance that any design will succeed in achieving its stated goals.

Changes in Internal Controls

There have been no changes in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during the period covered by this report that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

We are subject to routine litigation incidental to our business, including that which is described in our latest annual report on Form 10-K for the fiscal year ended December 31, 2021. We do not believe that the outcome of such litigation will have a material adverse effect on our business or financial condition.

ITEM 1A. RISK FACTORS

There have been no material changes to the factors disclosed in Item 1A. Risk Factors in our annual report on Form 10-K for the fiscal year ended December 31, 2021 and our quarterly reports on Form 10-Q for the quarters ended March 31, 2022 and June 30, 2022.

ITEM 2. UNREGISTERED SALE OF EQUITY SECURITIES AND USE OF PROCEEDS

None

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None.

ITEM 4. MINE SAFETY DISCLOSURES

None.

ITEM 5. OTHER INFORMATION

None.

ITEM 6. EXHIBITS

Exhibit No. Description

- 10.1 [Purchase and Sale Agreement, dated July 22, 2022, between Mercer International Inc., Mainsee 1434. VV GmbH and Wood Intermediate S.à r.l. Incorporated by reference to Exhibit 2.1 of the Company's current report on Form 8-K filed on July 27, 2022.](#)
- 10.2 [Revolving Facility Agreement dated September 15, 2022 among Zellstoff-Und Papierfabrik Rosenthal GmbH, Mercer Timber Products GmbH, Zellstoff Stendal GmbH, Mercer Holz GmbH, Stendal Pulp Holding GmbH, Zellstoff Stendal Transport GmbH Mercer Timber Products Stendal GmbH, Unicredit Bank AG, Commerzbank AG, Berlin Branch, Landesbank Baden-Württemberg and Unicredit Bank AG.](#)
- 31.1 [Section 302 Certification of Chief Executive Officer](#)
- 31.2 [Section 302 Certification of Chief Financial Officer](#)
- 32.1* [Section 906 Certification of Chief Executive Officer](#)
- 32.2* [Section 906 Certification of Chief Financial Officer](#)
- 101 The following financial information from the Quarterly Report on Form 10-Q for the fiscal period ended September 30, 2022 of Mercer International Inc., formatted in Inline Extensible Business Reporting Language (iXBRL): (i) Interim Consolidated Statements of Operations; (ii) Interim Consolidated Statements of Comprehensive Income (Loss); (iii) Interim Consolidated Balance Sheets; (iv) Interim Consolidated Statements of Changes in Shareholders' Equity; (v) Interim Consolidated Statements of Cash Flows; and (vi) Notes to the Interim Consolidated Financial Statements.
- 104 The cover page from the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2022 has been formatted in Inline XBRL.

* In accordance with Release No. 33-8212 of the SEC, these Certifications: (i) are "furnished" to the SEC and are not "filed" for the purposes of liability under the Securities Exchange Act of 1934, as amended; and (ii) are not to be subject to automatic incorporation by reference into any of the Company's registration statements filed under the Securities Act of 1933, as amended, for the purposes of liability thereunder or any offering memorandum, unless the Company specifically incorporates them by reference therein.

SIGNATURES

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

MERCER INTERNATIONAL INC.

By: /s/ Juan Carlos Bueno
Juan Carlos Bueno
Chief Executive Officer

Date: October 27, 2022

EUR 300,000,000

REVOLVING FACILITY AGREEMENT

for

ZELLSTOFF- UND PAPIERFABRIK ROSENTHAL GMBH
MERCER TIMBER PRODUCTS GMBH
ZELLSTOFF STENDAL GMBH
MERCER HOLZ GMBH
STENDAL PULP HOLDING GMBH
ZELLSTOFF STENDAL TRANSPORT GMBH
MERCER TIMBER PRODUCTS STENDAL GMBH
as Borrowers

arranged by

UNICREDIT BANK AG
COMMERZBANK AG, BERLIN BRANCH
LANDESBANK BADEN-WÜRTTEMBERG
as Mandated Lead Arrangers

and

UNICREDIT BANK AG
acting as coordinator and bookrunner

and

UNICREDIT BANK AG
acting as Agent

and

UNICREDIT BANK AG
acting as sustainability coordinator

and

OTHERS

REVOLVING FACILITY AGREEMENT

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THIS AGREEMENT (the "**Agreement**") is dated 15 September 2022 and made between:

- (1) **ZELLSTOFF- UND PAPIERFABRIK ROSENTHAL GMBH**, a limited liability company (*Gesellschaft mit beschränkter Haftung*) incorporated under the laws of the Federal Republic of Germany having its business address at Hauptstrasse 16, 07366 Rosenthal am Rennsteig, Federal Republic of Germany and is registered in the commercial register (*Handelsregister*) of the local court (*Amtsgericht*) of Jena with registration number HRB 210443 ("**ZPR**");
- (2) **MERCER TIMBER PRODUCTS GMBH**, a limited liability company (*Gesellschaft mit beschränkter Haftung*) incorporated under the laws of the Federal Republic of Germany having its business address at Am Bahnhof 123, 07929 Saalburg-Ebersdorf, Federal Republic of Germany and is registered in the commercial register (*Handelsregister*) of the local court (*Amtsgericht*) of Jena with registration number HRB 513236 ("**MTP**");
- (3) **ZELLSTOFF STENDAL GMBH**, a limited liability company (*Gesellschaft mit beschränkter Haftung*) incorporated under the laws of the Federal Republic of Germany having its business address at Goldbecker Strasse 1, 39596 Arneburg, Federal Republic of Germany and is registered in the commercial register (*Handelsregister*) of the local court (*Amtsgericht*) of Stendal with registration number HRB 2446 ("**ZSG**");
- (4) **MERCER HOLZ GMBH**, a limited liability company (*Gesellschaft mit beschränkter Haftung*) incorporated under the laws of the Federal Republic of Germany having its business address at Hauptstrasse 16, 07366 Rosenthal am Rennsteig, Federal Republic of Germany and is registered in the commercial register (*Handelsregister*) of the local court (*Amtsgericht*) of Jena with registration number HRB 514025 ("**MH**");
- (5) **STENDAL PULP HOLDING GMBH**, a limited liability company (*Gesellschaft mit beschränkter Haftung*) incorporated under the laws of the Federal Republic of Germany having its business address at Charlottenstrasse 59, 10117 Berlin, Federal Republic of Germany and is registered in the commercial register (*Handelsregister*) of the local court (*Amtsgericht*) of Berlin (Charlottenburg) with registration number HRB 99095 ("**SPH**");
- (6) **ZELLSTOFF STENDAL TRANSPORT GMBH**, a limited liability company (*Gesellschaft mit beschränkter Haftung*) incorporated under the laws of the Federal Republic of Germany having its business address at Goldbecker Strasse 38, 39596 Arneburg, Federal Republic of Germany and is registered in the commercial register (*Handelsregister*) of the local court (*Amtsgericht*) of Stendal with registration number HRB 4088 ("**ZST**");
- (7) **MERCER TIMBER PRODUCTS STENDAL GMBH**, a limited liability company (*Gesellschaft mit beschränkter Haftung*) incorporated under the laws of the Federal Republic of Germany having its business address at Goldbecker Straße 1, 39596 Arneburg, Federal Republic of Germany and is registered in the commercial register (*Handelsregister*) of the local court (*Amtsgericht*) of Stendal with registration number HRB 28026 ("**MTPS**") (ZST, ZPR, MTP, ZSG, MH, SPH and MTPS are together referred to as the "**Original Borrowers**" and each an "**Original Borrower**");

- (8) **THE ENTITES** listed in Part I of Schedule 1 (*The Original Parties*) as original guarantors (the "**Original Guarantors**");
- (9) **UNICREDIT BANK AG, COMMERZBANK AG, BERLIN BRANCH** and **LANDESBANK BADEN-WÜRTTEMBERG** as mandated lead arrangers (the "**Arranger**");
- (10) **UNICREDIT BANK AG** as coordinator and bookrunner (the "**Coordinator**");
- (11) **THE FINANCIAL INSTITUTIONS** listed in Part II of Schedule 1 (*The Original Parties*) as lenders (the "**Original Lenders**");
- (12) **UNICREDIT BANK AG** as agent of the other Finance Parties (the "**Agent**"); and
- (13) **UNICREDIT BANK AG** as sustainability coordinator (the "**Sustainability Coordinator**").

IT IS AGREED as follows:

SECTION 1

INTERPRETATION

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

"**Acceding Increase Lender**" has the meaning given to it in Clause 3 (*Accordion Increase*).

"**Accession Letter**" means a document substantially in the form set out in Schedule 5 (*Form of Accession Letter*).

"**Additional Borrower**" means a company which becomes an Additional Borrower in accordance with Clause 27.2 (*Additional Borrowers*).

"**Additional Guarantor**" means a company which becomes an Additional Guarantor in accordance with Clause 27.4 (*Additional Guarantors*).

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

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

"**Ancillary Commencement Date**" means, in relation to an Ancillary Facility, the date on which that Ancillary Facility is first made available, which date shall be a Business Day within the Availability Period.

"**Ancillary Commitment**" means, in relation to an Ancillary Lender and an Ancillary Facility, the maximum amount which that Ancillary Lender has agreed (whether or not subject to

satisfaction of conditions precedent) to make available from time to time under an Ancillary Facility and which has been authorised as such under Clause 7 (*Ancillary Facilities*), to the extent that amount is not cancelled or reduced under this Agreement or the Ancillary Documents relating to that Ancillary Facility.

"Ancillary Document" means each document relating to or evidencing the terms of an Ancillary Facility.

"Ancillary Facility" means any ancillary facility made available by an Ancillary Lender in accordance with Clause 7 (*Ancillary Facilities*).

"Ancillary Lender" means each Lender (or Affiliate of a Lender) which makes available an Ancillary Facility in accordance with Clause 7 (*Ancillary Facilities*).

"Ancillary Outstandings" means, at any time, in relation to an Ancillary Lender and an Ancillary Facility then in force the aggregate of the equivalents (as calculated by that Ancillary Lender) of the following amounts outstanding under that Ancillary Facility:

- (a) the principal amount under each overdraft facility and on demand short term loan facility (net of any Available Credit Balance);
- (b) the face amount of each guarantee, bond and letter of credit under that Ancillary Facility; and
- (c) the amount fairly representing the aggregate exposure (excluding interest and similar charges) of that Ancillary Lender under each other type of accommodation provided under that Ancillary Facility,

in each case as determined by such Ancillary Lender in accordance with the relevant Ancillary Document or normal banking practice.

"Anti-Money Laundering" means any applicable laws or regulations in any jurisdiction in which an Obligor is located or doing business that relate to money laundering, any predicate crime to money laundering, or any financial record keeping and reporting requirements related thereto.

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

"Availability Period" means the period from and including the date of this Agreement to and including the date falling one (1) month before the Termination Date.

"Available Commitment" means a Lender's Commitment minus (subject as set out below):

- (a) the amount of its participation in any outstanding Loans and the amount of the aggregate of its Ancillary Commitments; and
- (b) in relation to any proposed Utilisation, the amount of its participation in any other Loans that are due to be made on or before the proposed Utilisation Date, and the amount of its Ancillary Commitment in relation to any new Ancillary

Facility that is due to be made available on or before the proposed Utilisation Date.

For the purposes of calculating a Lender's Available Commitment in relation to any proposed Utilisation the following amounts shall not be deducted from that Lender's Commitment:

- (i) that Lender's participation in any Loans that are due to be repaid or prepaid on or before the proposed Utilisation Date; and
- (ii) that Lender's Ancillary Commitments to the extent that they are due to be reduced or cancelled on or before the proposed Utilisation Date.

"Available Credit Balance" means in relation to an Ancillary Facility, credit balances on any account of any Borrower of that Ancillary Facility with the Ancillary Lender making available that Ancillary Facility to the extent that those credit balances are freely available to be set off by that Ancillary Lender against liabilities owed to it by that Borrower under that Ancillary Facility.

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

"Borrower" means an Original Borrower or an Additional Borrower unless it has ceased to be a Borrower in accordance with Clause 27 (*Changes to the Obligors*).

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

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

exceeds:

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

"Business Day" means a day (other than a Saturday or Sunday) on which banks are open for general business in Munich and London and which is a TARGET Day.

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

"Change of Control" means if:

- (a) the Ultimate Parent ceases to Control the Obligors; or
- (b) any other person or group of persons acting in concert gains direct or indirect Control of the Ultimate Parent and the Obligors (or any of them),

and for the purposes of this definition, "**acting in concert**" means, a group of persons who, pursuant to an agreement or understanding (whether formal or informal), actively co-operate, through the acquisition of shares or partnership interests in a person, either directly or indirectly, to obtain or consolidate Control of such person.

"**Control**" means the direct or indirect power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:

- (a) cast, or control the casting of more than 50 per cent. of the maximum number of votes that might be cast at a general meeting of such body corporate or another entity; or
- (b) appoint or remove all, or the majority, of the partners, directors, management board members, or other equivalent officers of such body corporate; and/or

the holding of more than 50 per cent. of the issued share capital of such body corporate or holding the post of managing partner of a limited partnership or legal partnership (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital) and "**Controlled**" shall be construed accordingly.

"**Commitment**" means:

- (a) in relation to an Original Lender, the amount set opposite its name under the heading "**Commitment**" in Part II of Schedule 1 (*The Original Parties*) and the amount of any other Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 (*Increase*) or Clause 3 (*Accordion Increase*); and
- (b) in relation to any other Lender, the amount of any Commitment transferred to it under this Agreement or assumed by it in accordance with Clause 2.2 (*Increase*) or Clause 3 (*Accordion Increase*),

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

"**Compliance Certificate**" means a certificate substantially in the form set out in Schedule 7 (*Form of Compliance Certificate*).

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

- (a) any member of the Group or the Mercer Group or any of its advisers; or
- (b) another Finance Party, if the information was obtained by that Finance Party directly or indirectly from any member of the Group or the Mercer Group or any of its advisers, in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes:

(i) information that:

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

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

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

(ii) any Funding Rate.

"Confidentiality Undertaking" means a confidentiality undertaking substantially in a recommended form of the LMA as set out in Schedule 11 (*LMA Form of Confidentiality Undertaking*) or in any other form agreed between the Borrowers and the Agent.

"Dangerous Substance" means any chemical, biological, industrial, toxic, contaminant, explosive, radioactive, hazardous or dangerous emissions, noise and any natural or artificial substance (in whatever form) including asbestos, oil, petroleum, warfare agents (*Kampfstoffe*) other waste and any genetically modified organism the generation, transportation, storage, treatment, use or disposal of which (whether alone or in combination with any other substance) gives rise to a risk of causing harm to man or any other living organism or damaging the Environment or public health or welfare at any site owned, leased, occupied or used by any member of the Group or requires remediation under Environmental Law, in each case including any controlled, special, hazardous, toxic, radioactive or dangerous waste.

"Default" means an Event of Default or any event or circumstance specified in Clause 25 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default.

"Defaulting Lender" means any Lender:

(a) which has failed to make its participation in a Loan available (or has notified the Agent that it will not make its participation in a Loan available) by the Utilisation Date of that Loan in accordance with Clause 6.4 (*Lenders' participation*);

(b) which has otherwise rescinded or repudiated a Finance Document; or

(c) with respect to which an Insolvency Event has occurred and is continuing, unless, in the case of paragraph (a) above:

(i) its failure to pay is caused by

(A) administrative or technical error; or

(B) a Disruption Event, and

payment is made within three (3) Business Days of its due date; or

(ii) the Lender is disputing in good faith whether it is contractually obliged to make the payment in question.

"Designated Gross Amount" means the amount notified by the relevant Borrower to the Agent upon the establishment of a Multi-account Overdraft as being the maximum amount of Gross Outstandings that will, at any time, be outstanding under that Multi-account Overdraft.

"Designated Net Amount" means the amount notified by the relevant Borrower to the Agent upon the establishment of a Multi-account Overdraft as being the maximum amount of Net Outstandings that will, at any time, be outstanding under that Multi-account Overdraft.

"Disruption Event" means either or both of:

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

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

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

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

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

"Distribution" has the meaning given to such term in the Shareholders' Undertaking Agreement.

"Eligible Institution" means any Lender or other bank, financial institution, trust, fund or other entity selected by the Borrowers and which, in each case, is not a member of the Mercer Group.

"Environment" means all, or any of, the following media: the air (including the air within buildings and the air within other natural or man-made structures above or below ground, such as soil-vapour), water (including ground and surface water, coastal or inland waters, aquifers, leachates, pipes, drains and sewers) and land (including buildings and other structures in, on or under it and any surface and sub-surface soil) and human health or safety, living organism and ecological systems.

"Environmental Claim" means any claim by any person:

- (a) in respect of any loss or liability suffered or incurred by that person as a result of or in connection with any violation of Environmental Law; or
- (b) that arises as a result of or in connection with Environmental Contamination and that could give rise to any remedy or penalty (whether interim or final) that may be enforced or assessed by private or public legal action or administrative order or proceedings.

"Environmental Contamination" means each of the following and their consequences:

- (a) any release, discharge, emission, leakage or spillage of any Dangerous Substance at or from any site owned, leased, occupied or used by any member of the Group into any part of the Environment; or
- (b) any accident, fire, explosion or sudden event at any site owned, leased, occupied or used by any member of the Group which is directly or indirectly caused by or attributable to any Dangerous Substance; or
- (c) any other pollution of the Environment,

other than those in compliance with Environmental Law or any Environmental Permit, as the case may be.

"Environmental Law" means all regulations, agreements with the authorities and the like having legal effect in Germany concerning the protection of, or the prevention of damage to, human health, the Environment, the conditions of the work place or the generation, transportation, storage, treatment or disposal of Dangerous Substances or the regulation or control of Dangerous Substances or Environmental Contamination or the provision of remedies in relation to harm or damage to the Environment, plus the applicable World Bank Environmental Health and Safety Guidelines.

"Environmental Permits" means any permit, licence, consent, approval and other authorisation and the filing of any notification, report or assessment required under any Environmental Law for the operation of the business of any member of the Group conducted on or from the properties owned, leased, occupied or used by the relevant member of the Group.

"EURIBOR" means, in relation to any Loan:

- (a) the applicable Screen Rate as of the Specified Time for euro and for a period equal in length to the Interest Period of that Loan; or
- (b) as otherwise determined pursuant to Clause 12.1 (*Unavailability of Screen Rate*),

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

"Event of Default" means any event or circumstance specified as such in Clause 25 (*Events of Default*).

"Existing Indebtedness" means any Financial Indebtedness of the Group set out in Schedule 10 (*Existing Indebtedness*).

"Existing Letters of Credit" means the letters of credit under the Existing Facility outstanding on the date of this Agreement and which are listed in Schedule 8 (*Existing Letters of Credit*).

"Existing Facility" means the EUR 200,000,000 revolving facility agreement dated 19 December 2018 between, *inter alios*, UniCredit Bank AG and Commerzbank AG, Luxembourg Branch as arrangers, UniCredit Bank AG as agent, Zellstoff- und Papierfabrik Rosenthal GmbH, Mercer Timber Products GmbH, Mercer Timber Products Stendal GmbH, Zellstoff Stendal GmbH, Mercer Holz GmbH, Stendal Pulp Holding GmbH and Zellstoff Stendal Transport GmbH as original borrowers and together with Mercer Pulp Sales GmbH as original guarantors and the financial institutions named therein as lenders.

"Existing Increase Lender" has the meaning given to it in Clause 3 (*Accordion Increase*).

"Existing Security" means the Security of the Group set out in Schedule 9 (*Existing Security*).

"Facility" means the revolving loan facility made available under this Agreement as described in Clause 2 (*The Facility*).

"Facility Office" means, in respect of a Lender, the office notified by that Lender to the Agent in writing on or before the date it becomes a Lender (or, following that date, by not less than five (5) Business Days' written notice) as the office through which it will perform its obligations under this Agreement.

"FATCA" means:

- (a) sections 1471 to 1474 of the Code or any associated regulations;
- (b) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction, which (in either case) facilitates the implementation of any law or regulation referred to in paragraph (a) above; or
- (c) any agreement pursuant to the implementation of any treaty, law or regulation referred to in paragraphs (a) or (b) above with the US Internal Revenue Service,

the US government or any governmental or taxation authority in any other jurisdiction.

"FATCA Application Date" means:

- (a) in relation to a "withholdable payment" described in section 1473(1)(A)(i) of the Code (which relates to payments of interest and certain other payments from sources within the US), 1 July 2014; or
- (b) in relation to a "passthru payment" described in section 1471(d)(7) of the Code not falling within paragraph (a) above, the first date from which such payment may become subject to a deduction or withholding required by FATCA.

"FATCA Deduction" means a deduction or withholding from a payment under a Finance Document required by FATCA.

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

"Fee Letter" means:

- (a) any letter or letters dated on or about the date of this Agreement between the Arranger, Agent or Coordinator and each of the Original Borrowers setting out any of the fees referred to in Clause 13 (*Fees*); and
- (b) any other agreement setting out fees referred to in Clause 13.5 (*Interest, commission and fees on Ancillary Facilities*).

"Finance Document" means this Agreement, the Shareholders' Undertaking Agreement, the Sustainability Target Statement, the Target Group Disclosure Statement, any Fee Letter, any Accession Letter, any Resignation Letter, any Ancillary Document and any other document designated as such by the Agent and any of the Borrowers.

"Finance Party" means the Agent, the Coordinator, the Sustainability Coordinator, any Arranger or a Lender.

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

- (a) moneys borrowed;
- (b) any amount raised by acceptance under any acceptance credit facility;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with GAAP, be treated as a balance sheet liability (other than any liability in respect of a lease or hire purchase contract which would, in accordance with GAAP in force prior to 1 January 2019, have been treated as an operating lease);
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any amount raised under any other transaction (including any forward sale or purchase agreement) of a type not referred to in any other paragraph of this definition having the commercial effect of a borrowing;
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that derivative transaction, that amount) shall be taken into account);

- (h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution;
- (i) any amount raised by the issue of shares redeemable by the holder of such shares prior to the expiry of the Termination Date; and
- (j) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (i) above.

"Funding Rate" means any individual rate notified by a Lender to the Agent pursuant to paragraph (a) of Clause 12.3 (*Cost of funds*).

"GAAP" means generally accepted accounting principles in Germany.

"German Obligor" means any Obligor incorporated or established (as the case may be) in the Federal Republic of Germany.

"Gross Outstandings" means, in relation to a Multi-account Overdraft, the Ancillary Outstandings of that Multi-account Overdraft but calculated on the basis that the words "(net of any Available Credit Balance)" in paragraph (a) of the definition of "Ancillary Outstandings" were deleted.

"Group" means all entities of Mercer Germany collectively and **"member of the Group"** shall be construed accordingly.

"Guarantor" means an Original Guarantor or an Additional Guarantor, unless it has ceased to be a Guarantor in accordance with Clause 27 (*Changes to the Obligors*).

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

"Increase Accession Agreement" means a document substantially in the form of Part II of Schedule 14 (*Increase Certificate and Increase Accession Agreement*).

"Increase Amount" has the meaning given to it in Clause 3 (Accordion Increase).

"Increase Certificate" means a document substantially in the form of Part I of Schedule 14 (*Increase Certificate and Increase Accession Agreement*).

"Increase Confirmation" means a confirmation substantially in the form set out in Schedule 13 (*Form of Increase Confirmation*).

"Increase Effective Date" means the date specified by the Obligors' Agent to the Agent as being the date on which the proposed increase in the amount of the Commitment of an Increase Lender or the accession of an Acceding Increase Lender is to take effect.

"Increase Lender" has the meaning given to that term in Clause 2.2 (*Increase*). **"Increase Request"** has the meaning given to it in Clause 3 (*Accordion Increase*). **"Insolvency Event"** in relation to a Finance Party means that the Finance Party:

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

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

"Insurances" means any and all of the contracts of insurance and reinsurance that each Borrower is required to procure and maintain pursuant to the terms hereof.

"Interest Period" means, in relation to a Loan, each period determined in accordance with Clause 11 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 10.4 (*Default interest and lump sum damages*).

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

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

each as of the Specified Time for that Loan.

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

"KPI Score" means, in relation to each Sustainability KPI and the relevant financial year of the Ultimate Parent, the value of such Sustainability KPI as stated in the Sustainability KPI Compliance Certificate.

"KPI Target Score" means, in relation to each Sustainability KPI and the relevant financial year of the Ultimate Parent, the number agreed as such in the Sustainability Target Statement.

"Lender" means:

- (a) any Original Lender; and
- (b) any bank, financial institution, trust, fund or other entity which has become a Party as a "Lender" in accordance with Clause 2.2 (*Increase*), Clause 3 (*Accordion Increase*) or Clause 26 (*Changes to the Lenders*),

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

"LMA" means the Loan Market Association.

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

"Majority Lenders" means a Lender or Lenders whose Commitments aggregate more than 60 per cent. (%) of the Total Commitments (or, if the Total Commitments have been reduced to

zero, aggregated more than 60 per cent. (%) of the Total Commitments immediately prior to the reduction).

"Margin" means, subject to paragraph (b) below, 1.30 per cent. (%) per annum,

(a) but if:

- (i) no Event of Default has occurred and is continuing;
- (ii) a period of at least 12 Months has expired since the date of this Agreement; and
- (iii) the Leverage Ratio set out in the most recent Compliance Certificate is within a range set out below,

then, subject to paragraph (b) below, the Margin for each Loan will be the percentage per annum set out below opposite that range:

Leverage Ratio	Margin % p.a.
Greater than or equal to 2.5:1	2.25
Less than 2.50:1 but greater than or equal to 1.50:1	1.75
Less than 1.50:1	1.30

However:

- (A) any increase or decrease in the Margin for a Loan shall take effect on the date (the "reset date") which is 5 Business Days after receipt by the Agent of the actual Compliance Certificate pursuant to Clause 21.2 (*Compliance Certificate*);
 - (B) if, following receipt by the Agent of the Compliance Certificate related to the relevant financial statements, that Compliance Certificate does not confirm the basis for a reduced Margin, then paragraph (b) of Clause 10.3 (*Payment of interest*) shall apply and the Margin for that Loan shall be the percentage per annum determined using the table above and the revised ratio of Leverage Ratio;
 - (C) while an Event of Default is continuing, the Margin for each Loan shall be the highest percentage per annum set out above; and
 - (D) for the purpose of determining the Margin, the Leverage Ratio shall be determined in accordance with Clause 22.1 (*Financial definitions*); and
- (b) if the Agent receives the SPA Closing Notice in accordance with Clause 21.4 (*Information relating to SPA Acquisition and Target Group Disclosure Statement*), the applicable Margin shall be increased by additional 0.10 per cent. (%) points per annum, which shall take effect on the date which is 5 Business Days after receipt by the Agent of the SPA Closing Notice.

"Material Adverse Effect" means an event, occurrence or condition which has a material adverse effect (as compared with the situation which would have prevailed but for such events, occurrence or condition) on:

- (a) the business, operations, property and financial condition of the Group taken as a whole;
- (b) the ability of any Borrower to perform any of its obligations under the Finance Documents;
or
- (c) the validity or enforceability of the Finance Documents.

"Mercer Group" means the Ultimate Parent and its Subsidiaries from time to time and **"member of the Mercer Group"** shall be construed accordingly.

"Mercer Germany" means collectively the Obligors and each Subsidiary organized under the laws of Germany of any Obligor, including (for the avoidance of doubt) any Target Group Company following its accession to this Agreement as Additional Obligor in accordance with Clause 24 (*Conditions Subsequent*).

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

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

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

"Multi-account Overdraft" means an Ancillary Facility which is an overdraft facility comprising more than one account.

"Net Outstandings" means, in relation to a Multi-account Overdraft, the Ancillary Outstandings of that Multi-account Overdraft.

"New Lender" has the meaning given to that term in Clause 26 (*Changes to the Lenders*).

"Obligor" means a Borrower or a Guarantor.

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

"Original Financial Statements" means:

- (a) in relation to the Ultimate Parent, the audited consolidated financial statements of the Mercer Group for the financial year ended 2021;
- (b) in relation to each Original Obligor, its audited financial statements for its financial year ended 2021;
- (c) in relation to Mercer Germany (combined upon auditor's verifiable review (*priüferische Durchsicht*) of consolidated debt, revenues and expenses), the financial statements for its financial year ended 2021; and
- (d) in relation to each Additional Obligor the financial statements delivered as a condition precedent to its accession.

"Original Jurisdiction" means, in relation to an Obligor, the jurisdiction under whose laws that Obligor is incorporated as at the date of this Agreement or, in the case of an Additional Guarantor, as at the date on which that Additional Guarantor becomes Party as a Guarantor.

"Original Obligor" means an Original Borrower or an Original Guarantor.

"Participating Member State" means any member state of the European Union that has the euro as its lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union.

"Party" means a party to this Agreement.

"Permitted Encumbrances" means:

- (a) any lien arising by operation of law or in the ordinary course of trading;
- (b) any Security on the assets subject to a retention of title arising by operation of any retention of title agreement entered into in the ordinary course of trading;
- (c) any Security over assets in connection with lease agreements having an aggregate contract value of EUR 50,000,000 in respect of the Group (as a whole) at any time;
- (d) any Security over or affecting any asset acquired by a member of the Group after the date of this Agreement if:
 - (i) the Security was not created in contemplation of the acquisition of that asset by a member of the Group;
 - (ii) the principal amount secured has not been increased in contemplation of, or since the acquisition of that asset by a member of the Group; and
 - (iii) the Security is removed or discharged within 180 calendar days of the date of acquisition of such asset or in the case of the Target Group Factoring Agreement, on or before 30 September 2023;

- (e) any Security over or affecting any asset of any company which becomes a member of the Group after the date of this Agreement, where the Security is created prior to the date on which that company becomes a member of the Group, if:
 - (i) the Security was not created in contemplation of the acquisition of that company;
 - (ii) the principal amount secured has not increased in contemplation of or since the acquisition of that company; and
 - (iii) the Security is removed or discharged within 180 calendar days of that company becoming a member of the Group;
- (f) any liens for taxes or arising as a result of litigation or legal proceedings that are being contested in good faith by appropriate proceedings;
- (g) any Security securing any Financial Indebtedness permitted in accordance with paragraph (d) of the definition of Permitted Indebtedness; and/or
- (h) other liens on assets that were not incurred in connection with Financial Indebtedness and that do not in the aggregate materially adversely affect the value of the said assets or materially impair their use in the ordinary course of business.

"Permitted Gross Outstandings" means, in relation to a Multi-account Overdraft, any amount, not exceeding its Designated Gross Amount, which is the amount of the Gross Outstandings of that Multi-account Overdraft.

"Permitted Indebtedness" means any:

- (a) Existing Indebtedness;
- (b) Until the date of first Utilisation, Financial Indebtedness under the Existing Facility;
- (c) Financial Indebtedness incurred under, or as expressly permitted by, the Transaction Documents;
- (d) Financial Indebtedness incurred between any of the Obligors;
- (e) Financial Indebtedness incurred as Subordinated Debt by any Borrower, or if made available to any other Obligor than the Borrowers, to the extent on-lent or otherwise passed on to any Borrower, which is legally and structurally subordinated to any liabilities (including contingent liabilities) of the Borrowers and the relevant Obligor under the Finance Documents in accordance with the Shareholders' Undertaking Agreement;
- (f) Financial Indebtedness incurred by the Obligors (or any of them) in the ordinary course of business which does not exceed an aggregate amount in respect of the Obligors (calculated on a combined basis) of EUR 50,000,000 (or the equivalent in any other currency) at any time; and
- (g) any other Financial Indebtedness permitted by the Majority Lenders from time to time.

"Permitted Transaction" means:

- (a) transactions (other than the granting or creation of Security or the incurring or permitting to subsist of Financial Indebtedness) conducted in the ordinary course of business (including with respect to affiliates on an arm's length basis); and
- (b) any other disposal required, Financial Indebtedness incurred, guarantee, indemnity or Security given, or other transaction arising, under the Finance Documents or as permitted by the Majority Lenders.

"Quotation Day" means, in relation to any period for which an interest rate is to be determined, two TARGET Days before the first day of that period, unless market practice differs in the Relevant Market, in which case the Quotation Day will be determined by the Agent in accordance with market practice in the Relevant Market (and if quotations would normally be given on more than one day, the Quotation Day will be the last of those days).

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

"Relevant Jurisdiction" means the Original Jurisdiction of each Obligor and the jurisdiction of incorporation of each other member of the Group.

"Relevant Market" means the European interbank market.

"Repeating Representations" means each of the representations set out in Clause 20.1 (*Status*), Clause 20.2 (*Binding obligations*), Clause 20.3 (*Non-conflict with other obligations*), Clause 20.4 (*Power and authority*), Clause 20.5 (*Authorisations*), Clause 20.6 (*Governing law and enforcement*), Clause 20.10 (*No default*), Clause 20.11 (*No misleading information*), Clause 20.12 (*Financial Statements*), Clause 20.13 (*Pari passu ranking*), Clause 20.16 (*Good title to assets*), Clause 20.23 (*Sanctions*) and Clause 20.24 (*Anti-bribery, anti-corruption and Anti-Money Laundering*).

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

"Resignation Letter" means a letter substantially in the form set out in Schedule 6 (*Form of Resignation Letter*).

"Rollover Loan" means one or more Loans:

- (a) made or to be made on the same day that (i) a maturing Loan is due to be repaid;
- (b) the aggregate amount of which is equal to or less than the amount of the maturing Loan; and
- (c) made or to be made to the same Borrower for the purpose of refinancing that maturing Loan.

"Sanctions" means any law, regulation, executive order, embargo, restrictive measure or other enabling legislation of any kind for trade, economic or financial sanctions, imposed, enacted, administered or enforced by a Sanctions Authority.

"Sanctions Authority" means each of the United Nations, the European Union, the Federal Republic of Germany, the United Kingdom, Switzerland or the United States of America.

"Sanctioned Country" means, while it is subject to any Sanctions, each of Russia, Luhansk (city of Ukraine), Donetsk (city of Ukraine), the Islamic Republic of Iran, the Democratic Peoples' Republic of Korea (North Korea), the Republic of Cuba, the Syrian Arab Republic (Syria), the Republic of the Sudan (North Sudan), the Republic of South Sudan, the Crimea region of Ukraine (Crimea) or any country, region or territory that is, or whose government is, subject of country-wide, region-wide or territory-wide Sanctions broadly prohibiting dealings with such country, region, territory or government.

"Sanctions List" means each of the "Specially Designated Nationals and Blocked Persons List" maintained by the Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury; the "Denied Persons List" of the U.S. Department of Commerce or any similar list issued by any Sanctions Authority as amended in its current form.

"Sanctioned Person" means a person (i) located, domiciled, resident, organised under the laws of or incorporated in a Sanctioned Country, (ii) who is the government or owned or controlled by the government of a Sanctioned Country or by a party located, domiciled, resident, organised under the laws of or incorporated in a Sanctioned Country, (iii) subject to any Sanction or (iv) named on any Sanctions List.

"Screen Rate" means the euro interbank offered rate administered by the European Money Markets Institute (or any other person which takes over the administration of that rate) for the relevant period displayed (before any correction, recalculation or republication by the administrator) on page EURIBOR01 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters. If such page or service ceases to be available, the Agent may specify another page or service displaying the relevant rate after consultation with the Obligor's Agent.

"Security" means a mortgage, charge, land charge (*Grundschild*), pledge, lien, assignment, transfer for security purposes, extended retention of title arrangements (*verlängerter Eigentumsvorbehalt*) or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

"Separate Loan" has the meaning given to that term in Clause 8.1 (*Repayment of Loans*).

"Shareholder Distribution Account MPS" means the account named "Shareholder Distribution Account MPS" held by Mercer Pulp Sales GmbH with UniCredit Bank AG.

"Shareholder Distribution Account MTP" means the account named "Shareholder Distribution Account MTP" held by MTP with UniCredit Bank AG.

"Shareholder Distribution Accounts" means the Shareholder Distribution Account MPS, the Shareholder Distribution Account MTP, the Shareholder Distribution Account SPH, the Shareholder Distribution Account ZPR and the Shareholder Distribution Account ZSG.

"Shareholder Distribution Account SPH" means the account named "Shareholder Distribution Account SPH" held by SPH with UniCredit Bank AG.

"Shareholder Distribution Account ZPR" means the account named "Shareholder Distribution Account ZPR" held by ZPR with UniCredit Bank AG.

"Shareholder Distribution Account ZSG" means the account named "Shareholder Distribution Account ZSG" held by ZSG with UniCredit Bank AG.

"Shareholder Loan Agreements" means:

- (a) the SPA Acquisition Shareholder Loan; and
- (b) any shareholder loan agreement or similar document entered into from time to time between the Ultimate Parent as lender and an Obligor as borrower.

"Shareholders' Undertaking Agreement" means the shareholders' undertaking agreement originally dated 19 August 2009 and amended and restated on 12 April 2017 and on 19 December 2018 and further amended and restated by an amendment and restatement agreement dated on or about the date of this Agreement (and further amended and restated from time to time) entered into between, *inter alios*, the Agent, the Ultimate Parent and the Obligors.

"SPA" means the sale and purchase agreement signed and notarized on 22 July 2022, among Wood Intermediate S.à r.l. as the seller, Mainsee 1434. V V GmbH as the purchaser and the Ultimate Parent as guarantor.

"SPA Acquisition" means the acquisition of Wood Holdco GmbH and ancillary matters as contemplated in the SPA.

"SPA Acquisition Advance" means a one-time Loan under the Facility up to a maximum of EUR 100,000,000 to partially fund the SPA Closing.

"SPA Acquisition Shareholder Loan" means the shareholder loan agreement to be entered into between the Ultimate Parent as lender and SPH as borrower in connection with the SPA Acquisition to finance additional funds required for the SPA Closing (including costs and expenses).

"SPA Closing" means the "Closing" pursuant to the terms of the SPA.

"SPA Closing Notice" has the meaning ascribed thereto in Clause 21.4 (*Information relating to SPA Acquisition and Target Group Disclosure Statement*).

"Specified Time" means a day or time determined in accordance with Schedule 12 (*Timetables*).

"Subordinated Debt" means any debt incurred by a member of the Group pursuant to a Shareholder Loan Agreement including interest and accrued interest.

"**Subsidiary**" means a subsidiary within the meaning of sections 15 - 17 Stock Corporation Act (*Aktiengesetz*).

"**Sustainability Assurance Firm**" means an independent accounting or other assurance firm as appointed by the Ultimate Parent from time to time who provides a statement of limited assurance in relation to the Sustainability KPI's.

"**Sustainability KPI's**" means the sustainability key performance indicators (KPI 1, KPI 2 and KPI 3) set out and depicted in the Sustainability Target Statement and "**Sustainability KPI**" means any of them.

"**Sustainability KPI Compliance Certificate**" means, with respect to the relevant financial year, an annual statement that includes the KPI Score achieved by the Ultimate Parent in relation to each of the Sustainability KPI's, signed by the Ultimate Parent and provided by the Borrowers or the Ultimate Parent to the Agent each year, substantially in the form set out in Schedule 15 (*Form of Sustainability KPI Compliance Certificate*).

"**Sustainability Report**" means a report of the Ultimate Parent for a financial year that is publicly available reporting on the Sustainability KPI's for the Ultimate Parent that includes a limited assurance report of the Sustainability Assurance Firm.

"**Sustainability Target Statement**" means a sustainability target statement dated on or about the date of this Agreement setting out the Sustainability KPI's, including a defined ESG rating score and annual KPI Target Scores (as set out in the annex thereto) as agreed between the Ultimate Parent and the Sustainability Coordinator (acting on the instructions of the Majority Lenders) and as the same may be amended or restated from time to time.

"**Target Group Borrower**" means HIT Holzindustrie Torgau GmbH & Co. KG.

"**Target Group Companies**" means, collectively, the Target Group Borrower, any Target Group Guarantor, and their respective Subsidiaries from time to time and "**Target Group Company**" means any of them.

"**Target Group Disclosure Statement**" means a disclosure statement dated on or about the date of this Agreement in respect of the Target Group Companies provided by the Borrowers to the Agent.

"**Target Group Guarantors**" means, collectively, Erste HIT Beteiligungsgesellschaft mbH, Zweite HIT Beteiligungsgesellschaft mbH, HIT Holzindustrie Torgau GmbH & Co. KG, HIT Holzindustrie Torgau Verwaltungsgesellschaft mbH and PLT Torgau GmbH and "**Target Group Guarantor**" means any of them.

"**Target Group Factoring Agreement**" means a factoring facility agreement entered into by the Target Group Borrower relating to trade receivables with Targo Commercial Finance AG as factor, originally dated 22 September 2018, as amended, and last amended on 17 August 2021, providing for a facility with a maximum commitment of up to EUR 15,000,000 for non-recourse factoring.

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

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

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

"**Termination Date**" means the date falling five (5) years after the date of this Agreement.

"**Total Commitments**" means the aggregate of the Commitments, being EUR 300,000,000 at the date of this Agreement.

"**Transaction Documents**" means the Finance Documents, the Shareholder Loan Agreements and any other document agreed to be a "Transaction Document" by both the Agent and the Borrowers.

"**Transfer Certificate**" means a certificate substantially in the form set out in Schedule 4 (*Form of Transfer Certificate*) or any other form agreed between the Agent and the Borrowers.

"**Transfer Date**" means, in relation to an assignment and transfer by way of assumption of contract (*Vertragsübernahme*) pursuant to Clause 26.5 (*Procedure for assignment and transfer by way of assumption of contract (Vertragsübernahme)*), the later of:

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

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

"**Ultimate Parent**" means Mercer International Inc. a corporation organised under the laws of the State of Washington, United States of America, having an office at Suite 1120, 700 West Pender Street, Vancouver, British Columbia, Canada V6C 1G8.

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

"**U.S. GAAP**" means generally accepted accounting principles in the United States of America.

"**Utilisation**" means a utilisation of the Facility.

"**Utilisation Date**" means the date of a Utilisation, being the date on which the relevant Loan is to be made.

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

"**VAT**" means:

- (a) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and
- (b) any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph (a) above, or imposed elsewhere.

1.2 Construction

(a) Unless a contrary indication appears any reference in this Agreement to:

- (i) the "**Agent**", any "**Arranger**", the "**Coordinator**", any "**Finance Party**", any "**Lender**", any "**Obligor**" or any "**Party**" shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Finance Documents;
- (ii) "**assets**" includes present and future properties, revenues and rights of every description;
- (iii) "**director**" includes any statutory legal representative(s) (*organschaftlicher Vertreter*) of a person pursuant to the laws of its jurisdiction of incorporation, including but not limited to, in relation to a person incorporated or established in Germany, a managing director (*Geschäftsführer*) or member of the board of directors (*Vorstand*);
- (iv) a "**Finance Document**" or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended, replaced or restated;
- (v) a "**group of Lenders**" includes all the Lenders;
- (vi) "**indebtedness**" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (vii) a "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
- (viii) a "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
- (ix) a provision of law is a reference to that provision as amended or re-enacted; and
- (x) a time of day is a reference to Munich time.

- (b) The determination of the extent to which a rate is "**for a period equal in length**" to an Interest Period shall disregard any inconsistency arising from the last day of that Interest Period being determined pursuant to the terms of this Agreement.
- (c) Section, Clause and Schedule headings are for ease of reference only.
- (d) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.

- (e) Unless a contrary indication appears, when an obligation is stated to be an obligation of the Borrowers, each Borrower shall be jointly and severally (*gesamtschuldnerisch*) responsible for such obligation.
- (f) A Default or an Event of Default is "continuing" if it has not been remedied or waived.
- (g) A Borrower providing "cash cover" for an Ancillary Facility means a Borrower paying an amount in the currency of the Ancillary Facility to an interest-bearing account in the name of the Borrower and the following conditions being met:
 - (i) the account is with the Ancillary Facility for which that cash cover is to be provided;
 - (ii) until no amount is or may be outstanding under that Ancillary Facility withdrawals from the account may only be made to pay the relevant Ancillary Facility amounts due and payable to it under this Agreement in respect of that Ancillary Facility; and
 - (iii) the Borrower has executed a security document, in form and substance satisfactory to the Ancillary Facility with which that account is held, creating a first ranking security interest over that account.
- (h) A Borrower "**repaying**" or "**prepaying**" Ancillary Outstandings means:
 - (i) that Borrower providing cash cover in respect of those Ancillary Outstandings;
 - (ii) the maximum amount payable under the Ancillary Facility being reduced or cancelled in accordance with its terms; or
 - (iii) the Ancillary Lender being satisfied that it has no further liability under that Ancillary Facility,and the amount by which Ancillary Outstandings are repaid or prepaid under paragraphs (i) and (ii) above is the amount of the relevant cash cover, reduction or cancellation.
- (i) An amount borrowed includes any amount utilised under an Ancillary Facility.
- (j) Subject to Clause 37.3 (*Other exceptions*) but otherwise notwithstanding any term of any Finance Document, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.
- (k) Nothing in this Agreement shall be construed so as to exclude (*erlassen*) the liability of any person for its own gross negligence (*grobe Fahrlässigkeit*) and/or wilful misconduct (*Vorsatz*).

1.3 Currency symbols and definitions

"€", "EUR" and "euro" denote the single currency of the Participating Member States.

1.4 English language

This Agreement is made in the English language. For the avoidance of doubt, the English language version of this Agreement shall prevail over any translation of this Agreement. However, where a German translation of a word or phrase appears in the text of this Agreement, the German translation of such word or phrase shall prevail.

1.5 Shareholder Distribution Accounts

Notwithstanding any provision of this Agreement or any other Finance Document to the contrary, each Borrower, the Agent and the Lenders agree that:

- (a) the Shareholder Distribution Accounts shall not be subject to any Security from, by or under any Finance Document; and
- (b) nothing herein or in any Finance Document shall restrict, prohibit or otherwise limit any Borrower from paying, disbursing, transferring or transmitting all or parts of any moneys or assets in a Shareholder Distribution Account in its respective sole discretion from time to time and at any time.

1.6 Relevant Restructuring Event

- (a) Notwithstanding anything to the contrary in this Agreement, the Finance Parties are not entitled to:
 - (i) cancel any of the Commitments made available to a Relevant Borrower;
 - (ii) terminate or cancel this Agreement or the Facility towards a Relevant Borrower;
 - (iii) refuse to make a Loan or Utilisation available to a Relevant Borrower;
 - (iv) cancel, accelerate, declare due and payable or cause repayment or prepayment of any amounts owing under this Agreement or any other Finance Document by a Relevant Borrower prior to its stated maturity; or
 - (v) otherwise withhold performance or terminate, accelerate or, in any other way, modify this Agreement or any other Finance Document to the detriment of a Relevant Borrower,

solely by reason of the occurrence of an applicable Relevant Restructuring Event in relation to that Relevant Borrower, in each case if and to the extent such rights, remedies and/or measures are restricted or excluded by any applicable Relevant Termination Restriction.

- (b) Nothing in this Clause 1.6 shall limit or exclude:
 - (i) any of the obligations of that Relevant Borrower or any other Obligor under this Agreement or any other Finance Document; or

(ii) any of the rights, remedies or entitlements of the Finance Parties:

(A) against the respective Relevant Borrower arising on, or being available because of, any ground other than the occurrence of any applicable Relevant Restructuring Event;

(B) against any other Obligor (other than the respective Relevant Borrower); or

(C) being available under any applicable law (including section 55 paragraph 3 of the StaRUG).

(c) In this Clause 1.6:

"**COMI**" means, in relation to a person, its centre of main interest (as that term is used in Article 3(1) of the Regulation (EU) 2015/848 of 20 May 2015 on insolvency proceedings (recast) (the "**Regulation**") or any establishment (as that term is used in Article 2(10) of the Regulation) of that person.

"**EU Restructuring Directive**" means the Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, amending Directive (EU) 2017/1132 (Directive on restructuring and insolvency).

"**Relevant Borrower**" means any Borrower having its COMI in a member state of the European Union, Iceland, Liechtenstein or Norway.

"**Relevant Termination Restriction**" means:

(a) in relation to a Relevant Borrower which has its COMI in Germany, section 44 paragraph 1 of the StaRUG; and

(b) in relation to a Relevant Borrower which has its COMI in a member state of the European Union (other than Germany), Iceland, Liechtenstein or Norway, the law or regulation of that member state of the European Union, Iceland, Liechtenstein or Norway, as the case may be, which implements paragraph 5 of Article 7 (*Consequences of the stay of individual enforcement actions*) of the EU Restructuring Directive.

"**Relevant Restructuring Event**" means:

(a) in relation to a Relevant Borrower which has its COMI in Germany, any StaRUG Event; and

(b) in relation to a Relevant Borrower which has its COMI in a member state of the European Union (other than Germany), Iceland, Liechtenstein or Norway, any event in relation to which the law or regulation of that member state of the European Union, Iceland, Liechtenstein or Norway, as the case may be, which

implements paragraph 5 of Article 7 (*Consequences of the stay of individual enforcement actions*) of the EU Restructuring Directive restricts or excludes a creditor's rights, remedies and/or measures vis-à-vis the relevant debtor(s) which are or become available or exercisable by reason of such event.

"**StaRUG**" means the German Act on the Stabilisation and Restructuring Framework for Companies (*Unternehmensstabilisierungs- und -restrukturierungsgesetz*).

"**StaRUG Event**" means, in relation to a person which has its COMI in Germany, a restructuring matter (*Restrukturierungssache*) being pending (*rechtshängig*) against that person or that person utilising any tools of the restructuring or stabilisation framework (*Instrumente des Stabilisierungs- und Restrukturierungsrahmens*) pursuant to the StaRUG.

SECTION 2

THE FACILITY

2. THE FACILITY

2.1 The Facility

- (a) Subject to the terms of this Agreement, the Lenders make available to the Borrowers a euro revolving loan facility in an aggregate amount equal to the Total Commitments subject to Clause 3 (*Accordion Increase*).
- (b) Subject to the terms of this Agreement and the Ancillary Documents, an Ancillary Lender may make all or part of its Commitment available to any Borrower as a euro denominated Ancillary Facility, provided that the aggregate amount of Ancillary Facilities shall not at any time exceed an amount of EUR 30,000,000.

2.2 Increase

- (a) The relevant Borrower may by giving prior notice to the Agent by no later than the date falling thirty (30) calendar days after the effective date of a cancellation of:
 - (i) the Available Commitment of a Defaulting Lender in accordance with paragraph (g) of Clause 9.5 (*Right of replacement or repayment and cancellation in relation to a single Lender*); or
 - (ii) the Commitment of a Lender in accordance with:
 - (A) Clause 9.1 (*Illegality*); or
 - (B) paragraph (a) of Clause 9.5 (*Right of replacement or repayment and cancellation in relation to a single Lender*),

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

- (iii) the increased Commitments will be assumed by one or more Eligible Institutions (each an "**Increase Lender**") each of which confirms in writing (whether in the relevant Increase Confirmation or otherwise) its willingness to assume and does assume all the obligations of a Lender corresponding to that part of the increased Commitments which it is to assume, as if it had been an Original Lender in respect of those Commitments;
 - (iv) each of the Obligors and any Increase Lender shall assume obligations towards one another and/or acquire rights against one another as the Obligors and the Increase Lender would have assumed and/or acquired had the Increase Lender been an Original Lender in respect of that part of the increased Commitments which it is to assume;
 - (v) each Increase Lender shall become a Party as a "Lender" and any Increase Lender and each of the other Finance Parties shall assume obligations towards one another and acquire rights against one another as that Increase Lender and those Finance Parties would have assumed and/or acquired had the Increase Lender been an Original Lender in respect of that part of the increased Commitments which it is to assume;
 - (vi) the Commitments of the other Lenders shall continue in full force and effect; and
 - (vii) any increase in the Commitments shall take effect on the date specified by the relevant Borrower in the notice referred to above or any later date on which the Agent executes an otherwise duly completed Increase Confirmation delivered to it by the relevant Increase Lender.
- (b) The Agent shall, subject to paragraph (c) below, as soon as reasonably practicable after receipt by it of a duly completed Increase Confirmation appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Increase Confirmation.
 - (c) The Agent shall only be obliged to execute an Increase Confirmation delivered to it by an Increase Lender once it is satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the assumption of the increased Commitments by that Increase Lender.
 - (d) Each Increase Lender, by executing the Increase Confirmation, confirms (for the avoidance of doubt) that the Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the increase becomes effective in accordance with this Agreement and that it is bound by that decision to the same extent as it would have been had it been an Original Lender.
 - (e) The relevant Borrower shall, promptly on demand, pay the Agent the amount of all costs and expenses (including legal fees) reasonably incurred by it in connection with any increase in Commitments under this Clause 2.2.
 - (f) Neither the Agent nor any Lender shall have any obligation to find or to be an Increase Lender and in no event shall any Lender whose Commitment is replaced by an Increase

Lender be required to pay or surrender any of the fees received by such Lender pursuant to the Finance Documents.

- (g) Clause 26.4 (*Limitation of responsibility of Existing Lenders*) shall apply *mutatis mutandis* in this Clause 2.2 in relation to an Increase Lender as if references in that Clause to:
- (i) an "**Existing Lender**" were references to all the Lenders immediately prior to the relevant increase;
 - (ii) the "**New Lender**" were references to that "**Increase Lender**"; and
 - (iii) a "**re-assignment**" and "**re-assignment and re-transfer by assumption of contract (Vertragsübernahme)**" were references to respectively an "**assignment**" and "**assignment and transfer by assumption of contract (Vertragsübernahme)**".

2.3 Finance Parties' rights and obligations

- (a) The obligations of each Finance Party under the Finance Documents are several and do not constitute a joint obligation (*Ausschluss der gesamtschuldnerischen Haftung*). Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.
- (b) The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and do not constitute a joint creditorship (*Ausschluss der Gesamtgläubigerschaft*) and any debt arising under the Finance Documents to a Finance Party from an Obligor is, except as otherwise set out in this Agreement or any other Finance Document, a separate and independent debt (*Ausschluss der gesamtschuldnerischen Haftung*) in respect of which a Finance Party shall be entitled to enforce its rights in accordance with paragraph (c) below. The rights of each Finance Party include any debt owing to that Finance Party under the Finance Documents and, for the avoidance of doubt, any part of a Loan or any other amount owed by an Obligor which relates to a Finance Party's participation in the Facility or its role under a Finance Document (including any such amount payable to the Agent on its behalf) is a debt owing to that Finance Party by that Obligor.
- (c) A Finance Party may, except as specifically provided in the Finance Documents, separately enforce its rights under or in connection with the Finance Documents.

2.4 Obligors' Agent

- (a) Each Obligor (and ZPR with respect to ZSG and ZSG with respect to ZPR) by its execution of this Agreement or an Accession Letter irrevocably appoints each of ZPR and ZSG individually (each acting through one or more authorised signatories) to act on its behalf as its agent in relation to the Finance Documents and irrevocably authorises:
 - (i) each of ZPR and ZSG on its behalf to supply all information concerning itself contemplated by this Agreement to the Finance Parties and to give all notices and instructions (including, in the case of a Borrower, Utilisation Requests), to make such agreements and to effect the relevant amendments, supplements and variations

capable of being given, made or effected by any Obligor notwithstanding that they may affect the Obligor, without further reference to or the consent of that Obligor; and

(ii) each Finance Party to give any notice, demand or other communication to that Obligor pursuant to the Finance Documents to either ZPR or ZSG (as the case may be),

and in each case the Obligor shall be bound as though the Obligor itself had given the notices and instructions (including, without limitation, any Utilisation Requests) or executed or made the agreements or effected the amendments, supplements or variations, or received the relevant notice, demand or other communication.

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

3. ACCORDION INCREASE

3.1 Facility Increase

(a) The Obligors' Agent may by written notice (the "**Increase Request**") to the Agent not less than one (1) calendar year prior to the Termination Date invite:

(i) all Lenders (each an "**Existing Increase Lender**"); and/or

(ii) any other banks or financial institutions or trusts, funds or other entities which are regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets and are acceptable to the Agent (acting on the instructions of the Majority Lenders) (each an "**Acceding Increase Lender**"),

to agree to participate in the Facility with additional Commitments not exceeding EUR 75,000,000 in aggregate at any time (the "**Increase Amount**"), whereas the additional Commitments may consist of several individual amounts.

(b) The Increase Request is irrevocable.

(c) The Agent must promptly notify the Lenders of an Increase Request.

(d) The Obligors' Agent may submit an Increase Request once.

(e) The Increase Amount shall be a minimum of EUR 25,000,000.

- (f) The Total Commitments shall not exceed EUR 375,000,000 at any time following an increase under this Clause 3.
- (g) Each Existing Increase Lender and/or Acceding Increase Lender which has obtained all applicable internal approvals to increase its Commitment or to provide its Commitment (as applicable) shall on or before the date (the "**Increase Notification Deadline**") falling 30 Business Days after the date of the Increase Request notify the Agent of such Commitment.
- (h) The Agent must promptly after the Increase Notification Deadline notify the Obligors' Agent of the Commitments referred to in paragraph (g) above. Upon such notification, the Obligors' Agent shall promptly notify the Agent of (i) the Increase Effective Date which shall be a date falling not earlier than the date falling eight (8) Business Days after it has so informed the Agent, (ii) the Increase Amount and (iii) the amount of the Commitments per Lender (including any Acceding Increase Lenders) as of the Increase Effective Date.
- (i) If the aggregate amount of the proposed increase in Commitments exceeds the Increase Amount, then the proposed increase in Commitments of each Existing Increase Lender and each Acceding Increase Lender shall be reduced on a *pro rata* basis until the aggregate of the proposed increase in Commitments of all the Lenders (including the Acceding Increase Lenders) equals the Increase Amount.
- (j) Unless otherwise provided for in the relevant Increase Certificate or Increase Accession Agreement, the terms and conditions of the Facility (other than changes resulting from the inclusion of the Increase Amount) shall remain unchanged and in full force and effect.

3.2 Notification of participation in Increase Amount

The Agent shall notify each Existing Increase Lender and each Acceding Increase Lender of the amount of its additional or new Commitment by no later than five (5) Business Days prior the Increase Effective Date. The aggregate of the increases in the Commitments of all Existing Increase Lenders and the new Commitments of all Acceding Increase Lenders pursuant to this Clause 3 shall not exceed the Increase Amount.

3.3 Delivery of Increase Certificates / Increase Accession Agreements

No later than three (3) Business Days prior to the Increase Effective Date:

- (a) each Lender which is an Existing Increase Lender shall deliver to the Agent a duly completed and executed Increase Certificate; and
- (b) the Obligors' Agent shall procure that each Acceding Increase Lender shall deliver to the Agent a duly completed and executed Increase Accession Agreement.

3.4 Effectiveness of Increase

- (a) On an Increase Effective Date, the Agent shall execute each Increase Certificate and each Increase Accession Agreement delivered to it which shall take effect in accordance with Clause 3.6 (*Lender Increase*) and Clause 26.8 (*Acceding Increase Lenders*) as applicable.
- (b) On the next occurring repayment date after an Increase Effective Date, the Borrower shall repay each Loan made to it **provided that** for the avoidance of doubt, the Borrower shall be entitled to redraw each amount so repaid subject to and in accordance with this Agreement.

- (c) An increase under this Clause 3 will only be effected if on the Increase Effective Date:
 - (i) no Default is continuing or would result from the increase and the Obligors' Agent confirms this in the relevant Increase Request; and
 - (ii) the Repeating Representations to be made by each Obligor are true in all material respects and this is confirmed in the relevant Increase Request.

3.5 No obligation to participate in Increase

- (a) No Lender shall have any obligation to increase its Commitment or incur any other obligations under this Agreement and the other Finance Documents in relation to any Increase Amount, and any decision by a Lender to increase its Commitment shall be made in its sole discretion independently from any other Lender.
- (b) If a Lender does not want to increase its Commitment, the Commitment of such Lender shall remain unchanged.

3.6 Lender Increase

- (a) A Lender may increase its Commitment (as requested by the Obligors' Agent), for the purposes of this Clause 3 by delivering an Increase Certificate in accordance with this Clause.
- (b) Any Lender specified in sub-clause (a) shall increase its Commitment if the Agent executes an Increase Certificate which has been duly completed and signed on behalf of such proposed Existing Increase Lender.
- (c) On the date that the Agent executes each Increase Certificate, the Agent, the Coordinator, the Sustainability Coordinator and each Lender party to that Increase Certificate, the other Lenders and the Obligors shall acquire the same rights and assume the same obligations between themselves as they would have acquired and assumed had that Lender been an Original Lender with the Commitment specified by it in that Increase Certificate.

4. PURPOSE

4.1 Purpose

Each Borrower shall apply all amounts borrowed by it under the Facility and any utilisation of any Ancillary Facility towards:

- (a) *first*: refinancing of the Existing Facility, including any refinancing in accordance with Clause 7.3 (*Roll-in of Existing Letters of Credit*);
- (b) *second*: general corporate purposes; and/or

(c) *third*: the SPA Acquisition in accordance with Clause 6.6 (*Utilisation of Facility for SPA Acquisition*),

but not towards, in the case of any utilisation of any Ancillary Facility, prepayment of any Loan.

4.2 Monitoring

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

5. CONDITIONS OF UTILISATION

5.1 Initial conditions precedent

- (a) No Borrower may deliver a Utilisation Request unless the Agent has received all of the documents and other evidence listed in Part I of Schedule 2 (*Conditions precedent*) in form and substance satisfactory to the Agent. The Agent shall notify the Borrowers and the Lenders promptly upon being so satisfied.
- (b) Other than to the extent that the Majority Lenders notify the Agent in writing to the contrary before the Agent gives the notification described in paragraph (a) above, the Lenders authorise (but do not require) the Agent to give that notification. The Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.

5.2 Further conditions precedent

The Lenders will only be obliged to comply with Clause 6.4 (*Lenders' participation*) if on the date of the Utilisation Request and on the proposed Utilisation Date:

- (a) in the case of a Rollover Loan, no Event of Default is continuing or would result from the proposed Loan and, in the case of any other Loan, no Default is continuing or would result from the proposed Loan; and
- (b) the Repeating Representations to be made by each Obligor are true in all material respects.

5.3 Maximum number of Loans

- (a) A Borrower may not deliver a Utilisation Request if as a result of the proposed Utilisation 12 or more Loans (in aggregate) would be outstanding.
- (b) Any Separate Loan shall not be taken into account in this Clause 5.3.

SECTION 3
UTILISATION

6. UTILISATION

6.1 Delivery of a Utilisation Request

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

6.2 Completion of a Utilisation Request

- (a) Each Utilisation Request is irrevocable and will not be regarded as having been duly completed unless:
- (i) the proposed Utilisation Date is a Business Day within the Availability Period;
 - (ii) the currency and amount of the Utilisation comply with Clause 6.3 (*Currency and amount*); and
 - (iii) the proposed Interest Period complies with Clause 11 (*Interest Periods*).
- (b) Only one Loan may be requested in each Utilisation Request.

6.3 Currency and amount

- (a) The currency specified in a Utilisation Request must be euro.
- (b) The amount of the proposed Loan must be an amount which is not more than the Available Facility and which is a minimum of EUR 1,000,000 (or its equivalent) or if less, the Available Facility.
- (c) The aggregate amount of Loans outstanding and borrowed by MTP and Ancillary Facilities made available to MTP shall not exceed EUR 70,000,000 at any time.
- (d) The aggregate amount of Loans outstanding and borrowed by MH and Ancillary Facilities made available to MH shall not exceed EUR 50,000,000 at any time.
- (e) The aggregate amount of Loans outstanding and borrowed by ZST and Ancillary Facilities made available to ZST shall not exceed EUR 5,000,000 at any time.
- (f) The aggregate amount of Loans outstanding and borrowed by the Target Group Borrower and Ancillary Facilities made available to the Target Group Borrower shall not exceed EUR 70,000,000 at any time.

6.4 Lenders' participation

- (a) If the conditions set out in this Agreement have been met and subject to Clause 8.1 (*Repayment of Loans*), each Lender shall make its participation in each Loan available by the Utilisation Date through its Facility Office.

- (b) Other than as set out in paragraph (c) below, the amount of each Lender's participation in each Loan will be equal to the proportion borne by its Available Commitment to the Available Facility immediately prior to making the Loan.
- (c) If a Utilisation is made to repay Ancillary Outstandings, each Lender's participation in that Utilisation will be in an amount (as determined by the Agent) which will result as nearly as possible in the aggregate amount of its participation in the Utilisations then outstanding bearing the same proportion to the aggregate amount of the Utilisations then outstanding as its Commitment bears to the Total Commitments.
- (d) The Agent shall notify each Lender of the amount of each Loan, the amount of its participation in that Loan in each case by the Specified Time and, if different, the amount of that participation to be made available in accordance with Clause 31.1 (*Payments to the Agent*), in each case by the Specified Time.

6.5 Cancellation of Commitment

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

6.6 Utilisation of Facility for SPA Acquisition

- (a) In respect of the SPA Acquisition, the Borrowers shall be entitled to utilize:
 - (i) the SPA Acquisition Advance;
 - (ii) cash balances available on the Shareholder Distribution Accounts; and
 - (iii) otherwise restricted cash balances in the current accounts of the Borrowers.
- (b) The balance of any additional funds required for the SPA Closing (including costs and expenses) shall be funded from the SPA Acquisition Shareholder Loan.

7. ANCILLARY FACILITIES

7.1 Type of Facility

An Ancillary Facility may be made available by way of:

- (a) an overdraft facility;
- (b) a guarantee, bonding, documentary or stand-by letter of credit facility;
- (c) a short term loan facility;
- (d) a derivatives facility;
- (e) a foreign exchange facility; or
- (f) any other facility or accommodation required in connection with the business of the Group and which is agreed by the relevant Borrower with an Ancillary Lender.

7.2 Availability

- (a) If the relevant Borrower and a Lender agree and except as otherwise provided in this Agreement, the Lender may provide all or part of its Commitment as an Ancillary Facility.
- (b) An Ancillary Facility shall not be made available unless, not later than 3 Business Days prior to the Ancillary Commencement Date for an Ancillary Facility, the Agent has received from the relevant Borrower:
 - (i) a notice in writing requesting the establishment of an Ancillary Facility and specifying:
 - (A) the proposed Borrower(s) which may use the Ancillary Facility;
 - (B) the proposed Ancillary Commencement Date and expiry date of the Ancillary Facility;
 - (C) the proposed type of Ancillary Facility to be provided;
 - (D) the proposed Ancillary Lender; and
 - (E) the proposed Ancillary Commitment, the maximum amount of the Ancillary Facility and, in the case of a Multi-account Overdraft, its Designated Gross Amount and its Designated Net Amount; and
 - (ii) any other information which the Agent may reasonably request in connection with the Ancillary Facility.
- (c) The Agent shall promptly notify the relevant Borrower, the Ancillary Lender and the other Lenders of the establishment of an Ancillary Facility.
- (d) Subject to compliance with paragraph (b) above:
 - (i) the Lender concerned will become an Ancillary Lender; and
 - (ii) the Ancillary Facility will be available,

with effect from the Ancillary Commencement Date as agreed by the relevant Borrower and the Ancillary Lender (and as specified in the notice referred to in paragraph (b) above).

7.3 Roll-in of Existing Letters of Credit

Contemporaneously with the first utilisation of the Facility on the first Utilisation Date, each of the Existing Letters of Credit issued by a Lender under or in connection with the Existing Facility shall be rolled-in and deemed to be issued under the Ancillary Facilities granted by that Lender under this Agreement.

7.4 Terms of Ancillary Facilities

- (a) Except as provided below, the terms of any Ancillary Facility will be those agreed to by the Ancillary Lender and the relevant Borrower.
- (b) Those terms:
 - (i) must be based upon normal commercial terms at that time (except as varied by this Agreement);
 - (ii) may allow only a Borrower to use the Ancillary Facility;
 - (iii) may not allow the Ancillary Outstandings to exceed the Ancillary Commitment;
 - (iv) may not allow a Lender's Ancillary Commitment to exceed that Lender's Available Commitment (before taking into account the effect of the Ancillary Facility on that Available Commitment); and
 - (v) must require that the Ancillary Commitment is reduced to zero, and that all Ancillary Outstandings are repaid not later than the Termination Date applicable to the Facility (or such earlier date as the Commitment of the relevant Ancillary Lender is reduced to zero).
- (c) If there is any inconsistency between any term of an Ancillary Facility and any term of this Agreement, this Agreement shall prevail except for:
 - (i) Clause 34.3 (*Day count convention*) which shall not prevail for the purposes of calculating fees, interest or commission relating to an Ancillary Facility;
 - (ii) an Ancillary Facility comprising more than one account where the terms of the Ancillary Documents shall prevail; and
 - (iii) where the relevant term of this Agreement would be contrary to, or inconsistent with, the law governing the relevant Ancillary Document in which case that term of this Agreement shall not prevail.
- (d) Interest, commission and fees on Ancillary Facilities are dealt with in Clause 13.5 (*Interest, commission and fees on Ancillary Facilities*).

7.5 Repayment of Ancillary Facility

- (a) An Ancillary Facility shall cease to be available on the Termination Date or such earlier date on which its expiry date occurs or on which it is cancelled in accordance with the terms of this Agreement.
- (b) If an Ancillary Facility expires in accordance with its terms the Ancillary Commitment of the Ancillary Lender shall be reduced by the amount of the Ancillary Facility so expired.
- (c) No Ancillary Lender may demand repayment or prepayment of any Ancillary Outstandings prior to the expiry date of the relevant Ancillary Facility unless:

- (i) required to reduce the Gross Outstandings of a Multi-account Overdraft to or towards an amount equal to its Net Outstandings;

- (ii) the Total Commitments have been cancelled in full, or all outstanding Loans have become due and payable in accordance with the terms of this Agreement;
- (iii) it becomes unlawful in any applicable jurisdiction for the Ancillary Lender to perform any of its obligations as contemplated by this Agreement or to fund, issue or maintain its participation in its Ancillary Facility (or it becomes unlawful for any Affiliate of the Ancillary Lender for the Ancillary Lender to do so); or
- (iv) both:
 - (A) the Available Commitments relating to the Facility; and
 - (B) the notice of the demand given by the Ancillary Lender,
 would not prevent the relevant Borrower funding the repayment of those Ancillary Outstandings in full by way of Utilisation.
- (d) If a Utilisation is made to repay Ancillary Outstandings in full, the relevant Ancillary Commitment shall be reduced to zero.

7.6 Limitation on Ancillary Outstandings

Each Borrower shall procure that:

- (a) the Ancillary Outstandings under any Ancillary Facility shall not exceed the Ancillary Commitment applicable to that Ancillary Facility; and
- (b) in relation to a Multi-account Overdraft:
 - (i) the Ancillary Outstandings shall not exceed the Designated Net Amount applicable to that Multi-account Overdraft; and
 - (ii) the Gross Outstandings shall not exceed the Designated Gross Amount applicable to that Multi-account Overdraft.

7.7 Adjustment for Ancillary Facilities upon acceleration

- (a) In this Clause 7.7:
 - (i) "**Facility Outstandings**" means, in relation to a Lender, the aggregate of :
 - (A) its participation in each Loan then outstanding (together with the aggregate amount of all accrued interest, fees and commission owed to it as a Lender under the Facility); and
 - (B) if the Lender is also an Ancillary Lender, the Ancillary Outstandings in respect of Ancillary Facilities provided by that Ancillary Lender (together with the aggregate amount of all accrued interest, fees and commission owed to it as an Ancillary Lender in respect of the Ancillary Facility); and

- (ii) "**Total Facility Outstandings**" means the aggregate of all Facility Outstandings.
- (b) If a notice is served under Clause 25.18 (*Acceleration*) (other than a notice declaring Loans to be due on demand), each Lender and each Ancillary Lender shall (subject to paragraph (g) below) promptly adjust (by making or receiving (as the case may be) corresponding transfers of rights and obligations under the Finance Documents relating to Facility Outstandings) their claims in respect of amounts outstanding to them under the Facility and each Ancillary Facility to the extent necessary to ensure that after such transfers the Facility Outstandings of each Lender bear the same proportion to the Total Facility Outstandings as such Lender's Commitment bears to the Total Commitments, each as at the date the notice is served under Clause 25.18 (*Acceleration*).
- (c) If an amount outstanding under an Ancillary Facility is a contingent liability and that contingent liability becomes an actual liability or is reduced to zero after the original adjustment is made under paragraph (b) above, then each Lender and each Ancillary Lender will make a further adjustment (by making or receiving (as the case may be) corresponding transfers of rights and obligations under the Finance Documents relating to Facility Outstandings to the extent necessary) to put themselves in the position they would have been in had the original adjustment been determined by reference to the actual liability or, as the case may be, zero liability and not the contingent liability.
- (d) Any transfer of rights and obligations relating to Facility Outstandings made pursuant to this Clause 7 shall be made for a purchase price in cash, payable at the time of transfer, in an amount equal to those Facility Outstandings (less any accrued interest, fees and commission to which the transferor will remain entitled to receive notwithstanding that transfer pursuant to Clause 26.9 (*Pro rata interest settlement*)).
- (e) Prior to the application of the provisions of paragraph (b) above, an Ancillary Lender that has provided a Multi-account Overdraft shall set-off any Available Credit Balance on any account comprised in that Multi-account Overdraft.
- (f) All calculations to be made pursuant to this Clause 7.7 shall be made by the Agent based upon information provided to it by the Lenders and Ancillary Lenders.
- (g) This Clause 7.7 shall not oblige any Lender to accept the transfer of a claim relating to an amount outstanding under an Ancillary Facility which is not denominated (pursuant to the relevant Finance Document) in either euro or in another currency which is acceptable to that Lender.

7.8 Information

Each Borrower and each Ancillary Lender shall, promptly upon request by the Agent, supply the Agent with any information relating to the operation of an Ancillary Facility (including the Ancillary Outstandings) as the Agent may reasonably request from time to time. Each Borrower consents to all such information being released to the Agent and the other Finance Parties.

7.9 Amendments and Waivers – Ancillary Facilities

No amendment or waiver of a term of any Ancillary Facility shall require the consent of any Finance Party other than the relevant Ancillary Lender unless such amendment or waiver itself relates to or gives rise to a matter which would require an amendment of or under this Agreement (including, for the avoidance of doubt, under this Clause 7).

In such a case, Clause 37 (*Amendments and Waivers*) will apply.

SECTION 4

REPAYMENT, PREPAYMENT AND CANCELLATION

8. REPAYMENT

8.1 Repayment of Loans

- (a) Subject to paragraph (c) below, each Borrower which has drawn a Loan shall repay that Loan on the last day of its Interest Period.
- (b) Without prejudice to each Borrower's obligation under paragraph (a) above, if:
 - (i) one or more Loans are to be made available to a Borrower:
 - (A) on the same day that a maturing Loan is due to be repaid by that Borrower; and
 - (B) in whole or in part for the purpose of refinancing the maturing Loan; and
 - (ii) the proportion borne by each Lender's participation in the maturing Loan to the amount of that maturing Loan is the same as the proportion borne by that Lender's participation in the new Loans to the aggregate amount of those new Loans, the aggregate amount of the new Loans shall, unless that Borrower notifies the Agent to the contrary in the relevant Utilisation Request, be treated as if applied in or towards repayment of the maturing Loan so that:
 - (A) if the amount of the maturing Loan exceeds the aggregate amount of the new Loans:
 - (1) the relevant Borrower will only be required to make a payment under Clause 31.1 (*Payments to the Agent*) in an amount in the relevant currency equal to that excess; and
 - (2) each Lender's participation in the new Loans shall be treated as having been made available and applied by the Borrower in or towards repayment of that Lender's participation in the maturing Loan and that Lender will not be required to make a payment under Clause 31.1 (*Payments to the Agent*) in respect of its participation in the new Loans; and

- (B) if the amount of the maturing Loan is equal to or less than the aggregate amount of the new Loans:
- (1) the relevant Borrower will not be required to make a payment under Clause 31.1 (*Payments to the Agent*); and
 - (2) each Lender will be required to make a payment under Clause 31.1 (*Payments to the Agent*) in respect of its participation in the new Loans only to the extent that its participation in the new Loans exceeds that Lender's participation in the maturing Loan and the remainder of that Lender's participation in the new Loans shall be treated as having been made available and applied by the Borrower in or towards repayment of that Lender's participation in the maturing Loan.
- (c) At any time when a Lender becomes a Defaulting Lender, the maturity date of each of the participations of that Lender in the Loans then outstanding will be automatically extended to the Termination Date applicable to the Facility and will be treated as separate Loans (the "**Separate Loans**").
- (d) If a Borrower makes a prepayment of a Loan, a Borrower to whom a Separate Loan is outstanding may prepay that Loan by giving not less than five (5) Business Days' prior notice to the Agent. The proportion borne by the amount of the prepayment of the Separate Loan to the amount of the Separate Loans shall not exceed the proportion borne by the amount of the prepayment of the Loan to the Loans. The Agent will forward a copy of a prepayment notice received in accordance with this paragraph (d) to the Defaulting Lender concerned as soon as practicable on receipt.
- (e) Interest in respect of a Separate Loan will accrue for successive Interest Periods selected by the Borrower by the time and date specified by the Agent (acting reasonably) and will be payable by that Borrower to the Agent (for the account of that Defaulting Lender) on the last day of each Interest Period of that Separate Loan.
- (f) The terms of this Agreement relating to Loans generally shall continue to apply to Separate Loans other than to the extent inconsistent with paragraphs (c) to (e) above, in which case those paragraphs shall prevail in respect of any Separate Loan.

9. PREPAYMENT AND CANCELLATION

9.1 Illegality

If, in any applicable jurisdiction, at any time, it is or will become unlawful for any Lender to perform any of its obligations as contemplated by this Agreement or to fund, issue or maintain its participation in any Utilisation or at any time, it is or will become unlawful for any Affiliate of a Lender for that Lender to do so:

- (a) that Lender shall promptly notify the Agent upon becoming aware of that event;
- (b) upon the Agent notifying the Borrowers, the Available Commitment of that Lender will be immediately cancelled; and

- (c) to the extent that the Lender's participation has not been transferred pursuant to paragraph (d) of Clause 9.5 (*Right of replacement or repayment and cancellation in relation to a single Lender*), each Borrower shall repay that Lender's participation in the Loans made to that Borrowers on the last day of the Interest Period for each Loan occurring after the Agent has notified the Borrower or, if earlier, the date specified by the Lender in the notice delivered to the Agent (being no earlier than the last day of any applicable grace period permitted by laws) and that Lender's corresponding Commitment(s) shall be cancelled in the amount of the participations repaid.

9.2 Change of control

If a Change of Control occurs:

- (a) the Borrowers shall promptly notify the Agent upon becoming aware of that event;
- (b) a Lender shall not be obliged to fund a Utilisation (except for a Rollover Loan); and
- (c) if a Lender so requires and notifies the Agent within 5 days of the Company notifying the Agent of the event, the Agent shall, by not less than (30) Business Days' notice to the Obligors' Agent, cancel each Available Commitment of that Lender and declare the participation of that Lender in all Loans and Ancillary Outstandings, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents immediately due and payable, whereupon each such Available Commitment will be immediately cancelled, any Commitment of that Lender shall immediately cease to be available for further utilisation and all such Loans, accrued interest and other amounts shall become immediately due and payable.

9.3 Voluntary cancellation

A Borrower may, if it gives the Agent not less than five (5) Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, cancel the whole or any part (being a minimum amount of EUR 1,000,000 (or its equivalent)) of the Available Facility. Any cancellation under this Clause 9.3 shall reduce the Commitments of the Lenders rateably.

9.4 Voluntary prepayment of Loans

The Borrower to which a Loan has been made may, if it gives the Agent not less than thirty (30) calendar days' (or such shorter period as the Majority Lenders may agree) prior notice, prepay the whole or any part of a Loan (but if in part, being an amount that reduces the amount of the Loan by a minimum amount of EUR 1,000,000 (or its equivalent)).

9.5 Right of replacement or repayment and cancellation in relation to a single Lender

- (a) If:
 - (i) any sum payable to any Lender by an Obligor is required to be increased under paragraph (c) of Clause 14.2 (*Tax gross-up*); or
 - (ii) any Lender claims indemnification from a Borrower under Clause 14.3 (*Tax indemnity*),

the Borrowers may, while the circumstance giving rise to the requirement for that increase or indemnification continues, give the Agent notice of cancellation of the Commitment(s) of that Lender and its intention to procure the repayment of that Lender's participation in the Loans or give the Agent notice of its intention to replace that Lender in accordance with paragraph (d) below; or

- (b) On receipt of a notice of cancellation referred to in paragraph (a) above in relation to a Lender, the Commitment(s) of that Lender shall immediately be reduced to zero.
- (c) On the last day of each Interest Period which ends after the Borrowers have given notice of cancellation under paragraph (a) above in relation to a Lender (or, if earlier, the date specified by the Borrowers in that notice), each Borrower to which a Loan is outstanding shall repay that Lender's participation in that Loan.
- (d) If:
 - (i) any of the circumstances set out in paragraph (a) above apply to a Lender; or
 - (ii) an Obligor becomes obliged to pay any amount in accordance with Clause 9.1 (*Illegality*) to any Lender,

the Borrower may, on five (5) Business Days' prior notice to the Agent and that Lender, replace that Lender by requiring that Lender to (and to the extent permitted by law, that Lender shall) assign and transfer by way of assumption of contract (*Vertragsübernahme*) pursuant to Clause 26 (*Changes to the Lenders*) all (and not part only) of its rights and obligations under this Agreement to an Eligible Institution which confirms its willingness to assume and does assume all the obligations of the transferring Lender in accordance with Clause 26 (*Changes to the Lenders*) for a purchase price in cash payable at the time of the transfer in an amount equal to the outstanding principal amount of such Lender's participation in the outstanding Loans and all accrued interest, Break Costs and other amounts payable in relation thereto under the Finance Documents.

- (e) The replacement of a Lender pursuant to paragraph (d) above shall be subject to the following conditions:
 - (i) the Borrower shall have no right to replace the Agent;
 - (ii) neither the Agent nor any Lender shall have any obligation to find a replacement Lender;
 - (iii) in no event shall the Lender replaced under paragraph (d) above be required to pay or surrender any of the fees received by such Lender pursuant to the Finance Documents; and
 - (iv) the Lender shall only be obliged to assign and transfer its rights and obligations pursuant to paragraph (d) above once it is satisfied that it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to that transfer.

(f) A Lender shall perform the checks described in paragraph (e)(iv) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (d) above and shall notify the Agent and the Borrower when it is satisfied that it has complied with those checks.

(g)

(i) If any Lender becomes a Defaulting Lender, the relevant Borrower may, at any time while the Lender continues to be a Defaulting Lender, give the Agent five (5) Business Days' notice of cancellation of the Available Commitment of that Lender.

(ii) On the notice referred to in paragraph (g) above becoming effective, the Available Commitment of the Defaulting Lender shall immediately be reduced to zero.

The Agent shall as soon as practicable after receipt of a notice referred to in paragraph (g) above, notify all the Lenders.

9.6 Restrictions

(a) Any notice of cancellation or prepayment given by any Party under this Clause 9 shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.

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

(c) Unless a contrary indication appears in this Agreement, any part of the Facility which is prepaid or repaid may be reborrowed in accordance with the terms of this Agreement.

(d) The Borrowers shall not repay or prepay all or any part of the Loans or cancel all or any part of the Commitments except at the times and in the manner expressly provided for in this Agreement.

(e) Subject to Clause 2.2 (*Increase*) and Clause 3 (*Accordion Increase*), no amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.

(f) If the Agent receives a notice under this Clause 9 it shall promptly forward a copy of that notice to either the Borrower or the affected Lender.

(g) If all or part of any Lender's participation in a Loan is repaid or prepaid and is not available for redrawing (other than by operation of Clause 5.2 (*Further conditions precedent*)), an amount of that Lender's Commitment (equal to the amount of the participation which is repaid or prepaid) will be deemed to be cancelled on the date of repayment or prepayment.

9.7 Application of prepayments

Any prepayment of a Loan pursuant to Clause 9.4 (*Voluntary prepayment of Loans*) shall be applied *pro rata* to each Lender's participation in that Loan.

SECTION 5
COSTS OF UTILISATION

10. INTEREST

10.1 Calculation of interest

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

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

10.2 Sustainability KPI Related Margin Adjustment

- (a) Following the delivery of a Sustainability KPI Compliance Certificate, the applicable Margin shall be increased or reduced as set out in the Sustainability Target Statement, provided that the Margin shall at no point be increased or reduced by more than 0.05 percentage points per annum.
- (b) If and as long as the Borrowers fail to provide the most recent Sustainability KPI Compliance Certificate within the timeline provided under Clause 21.5 (unless the timeline is extended with the written consent of the Agent (acting on the instructions of the Majority Lenders)), or the Sustainability KPI Compliance Certificate fails to include all Sustainability KPI's or any other information or document required under Clause 21.5 (*Information relating to the Sustainability Score Related Margin Adjustment*), the applicable Margin will be increased by 0.05 percentage points per annum unless otherwise agreed with the Agent.
- (c) Any adjustment of the applicable Margin pursuant to paragraph (a) above shall take effect for any Interest Period commencing after the date on which the Agent has received the Sustainability KPI Compliance Certificate and the Sustainability Report confirming such adjustment (unless received later than five (5) Business Days before the first day of the next Interest Period, in which case the adjustment of the applicable Margin shall take effect on the first day of the next following Interest Period).
- (d) If, subject to a reasonable evaluation of the Borrowers and/or the Agent (acting on the instructions of the Majority Lenders):
 - (i) any Sustainability KPI or any KPI Target Score is no longer appropriate, relevant or representative (e.g. due to, *inter alia*, changes in law or regulation or in relation to the core business of the Group as a result of, *inter alia*, any merger, acquisition, disposal or otherwise); or
 - (ii) the Ultimate Parent is not, or anticipates that it will not be able to report any Sustainability KPI at the relevant time; or

- (iii) any relevant third party ratings or similar firm amends the valuation methodology in such a way that their defined ESG rating score can no longer be used in a comparable manner to determine the Margin or the Margin adjustment,

the Borrowers and the Agent (acting on the instructions of the Majority Lenders) shall, upon the Borrowers' request, enter into good faith negotiations with the aim to replace the relevant Sustainability KPI or KPI Target Score as applicable. Subject to paragraph (e) below, any adjustment of the Margin pursuant to paragraphs (a) and (c) above applicable at the date on which negotiations are requested shall continue to apply during the period of negotiations.

- (e) If the Borrowers and the Agent (acting on the instructions of the Majority Lenders) have not agreed on the required replacement of the relevant

Sustainability KPI(s) or KPI Target Score(s), as applicable, within twenty (20) Business Days upon the Agent having received the Borrowers' request to enter into good faith negotiations pursuant to paragraph (c) above, the applicable Margin shall be determined without any adjustment pursuant to paragraph (a) above (and if any adjustment to the Margin has already been applied pursuant to paragraph (a) above at that time, it shall be disregarded after the expiry of such twenty (20) Business Day period).

- (f) If the Borrowers notify the Agent that the Ultimate Parent ceased or will cease to target any Sustainability KPI (or all of them) (including a reasonable explanation of such decision satisfactory to the Agent (acting reasonably in the circumstances), which shall, for the avoidance of doubt, not be merely based on the fact that any KPI Target Score will or may be missed), the Margin shall be determined without any adjustment pursuant to paragraph (a) above (and if any adjustment to the Margin has already been applied pursuant to paragraph (a) above at that time, it shall be disregarded after twenty (20) Business Day period) upon the Agent having received such notice from the Borrowers.
- (g) In the case that all of the Sustainability KPI's cease to exist, the Facility will be declassified as a "sustainability-linked facility" and this Clause 10.2 and Clause 21.5 (*Information relating to the Sustainability Score Related Margin Adjustment*) will cease to apply until such time that the Ultimate Parent next determines the KPI Target Scores for each Sustainability KPI as notified by the Borrowers to the Agent and approved by the Agent (acting on the instructions of the Majority Lenders).
- (h) Notwithstanding any other term of this Agreement, in no event or circumstances will a Default or Event of Default occur or be deemed to occur by any reason of the Borrowers or the Ultimate Parent not complying with this Clause 10.2, including, among other things, by not providing a Sustainability KPI

Compliance Certificate, a Sustainability Report or failure to achieve any Sustainability KPI's, save for the failure to pay the applicable Margin as adjusted in accordance with this Clause 10.2.

10.3 Payment of interest

- (a) The Borrower to which a Loan has been made shall pay accrued interest on that Loan on the last day of each Interest Period (and, if the Interest Period is longer than six Months, on the dates falling at six Monthly intervals after the first day of the Interest Period).
- (b) If the Compliance Certificate received by the Agent which relates to the relevant financial statements shows that a higher Margin should have applied during a certain period, then the Borrowers shall promptly pay to the Agent any such shortfall, as contemplated by paragraph (ii) in the definition of "Margin" herein, provided that the Borrowers shall not be required to make any payment pursuant to this Clause 10.3(b) for any period of time after the date that is twelve (12) months after the date on which the relevant interest was initially paid, except for cases where the event or trigger justifying a higher Margin was not demonstrable from the Compliance Certificates and the other information which the Lenders have received from the Borrower, both analysed with the same

standard of care exercised by the Lenders in their own affairs since the occurrence of such event or trigger.

10.4 Default interest and lump sum damages

- (a) If an Obligor fails to pay any amount (other than interest) payable by it under a Finance Document on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to paragraph (c) below, is two (2) per cent. per annum higher than the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a Loan in the currency of the overdue amount for successive Interest Periods, each of a duration selected by the Agent (acting reasonably).
- (b) If an Obligor fails to pay interest payable by it under the Finance Documents on its due date, lump sum damages (*pauschaliertes Schadensersatz*) shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to paragraph (c) below, is two (2) per cent. per annum higher than the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a Loan in the currency of the overdue amount for successive Interest Periods, each of a duration selected by the Agent (acting reasonably). In the case of lump sum damages, the relevant Obligor shall be free to prove that no damages have arisen or that damages have not arisen in the asserted amount and any Finance Party shall be entitled to prove that further damages have arisen. Any interest or lump sum accruing under this Clause 10.4 shall be immediately payable by the Obligor on demand by the Agent.
- (c) If any overdue amount consists of all or part of a Loan which became due on a day which was not the last day of an Interest Period relating to that Loan:
 - (i) the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period relating to that Loan; and

- (ii) the rate of interest applying to the overdue amount during that first Interest Period shall be two (2) per cent. per annum higher than the rate which would have applied if the overdue amount had not become due.

10.5 Notification of rates of interest

- (a) The Agent shall promptly notify the Lenders and the relevant Borrower of the determination of a rate of interest under this Agreement.
- (b) The Agent shall promptly notify the relevant Borrower of each Funding Rate relating to a Loan.

11. INTEREST PERIODS

11.1 Selection of Interest Periods

- (a) A Borrower may select an Interest Period for a Loan in the Utilisation Request for that Loan.
- (b) Subject to this Clause 11, a Borrower may select an Interest Period of one (1), three (3) or six (6) Months, or of any other period agreed between the Borrower, the Agent and all the Lenders.
- (c) An Interest Period for a Loan shall not extend beyond the Termination Date.
- (d) Each Interest Period for a Loan shall start on the Utilisation Date.
- (e) A Loan has one Interest Period only.

11.2 Non-Business Days

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

12. CHANGES TO THE CALCULATION OF INTEREST

12.1 Unavailability of Screen Rate

- (a) If no Screen Rate is available for EURIBOR for the Interest Period of a Loan, the applicable EURIBOR shall be the Interpolated Screen Rate for a period equal in length to the Interest Period of that Loan.
- (b) If no Screen Rate is available for EURIBOR for the Interest Period of a Loan and it is not possible to calculate the Interpolated Screen Rate, there shall be no EURIBOR for that Loan and Clause 12.3 (*Cost of funds*) shall apply to that Loan for that Interest Period.

12.2 Market disruption

If before close of business in Munich on the Quotation Day for the relevant Interest Period the Agent receives notifications from a Lender or Lenders (whose participations in a Loan

exceed 35 per cent. of that Loan) that the cost to it of funding its participation in that Loan from the wholesale market for euro would be in excess of EURIBOR then Clause 12.3 (*Cost of funds*) shall apply to that Loan for the relevant Interest Period.

12.3 Cost of funds

- (a) If this Clause 12.3 applies, the rate of interest on each Lender's share of the relevant Loan for the relevant Interest Period shall be the percentage rate per annum which is the sum of:
 - (i) the Margin; and
 - (ii) the rate notified to the Agent by that Lender as soon as practicable and in any event within five (5) Business Days of the first day of that Interest Period (or, if earlier, on the date falling three (3) Business Days before the date on which interest is due to be paid in respect of that Interest Period), to be that which expresses as a percentage rate per annum the cost to the relevant Lender of funding its participation in that Loan from whatever source it may reasonably select.
- (b) If this Clause 12.3 applies and the Agent or the Borrower so requires, the Agent and the Borrower shall enter into negotiations (for a period of not more than thirty (30) calendar days) with a view to agreeing a substitute basis for determining the rate of interest.
- (c) Any alternative basis agreed pursuant to paragraph (b) above shall, with the prior consent of all the Lenders and the Borrower, be binding on all Parties.

12.4 Break Costs

- (a) The Borrowers shall, within five (5) Business Days of demand by a Finance Party, pay to that Finance Party its Break Costs attributable to all or any part of a Loan or Unpaid Sum being paid by that Borrower on a day other than the last day of an Interest Period for that Loan or Unpaid Sum.
- (b) Each Lender shall, as soon as reasonably practicable after a demand by the Agent, provide a certificate confirming the amount of its Break Costs for any Interest Period in which they accrue.

13. FEES

13.1 Commitment fee

- (a) The Obligors' Agent shall pay to the Agent (for the account of each Lender) a fee in euro computed at the rate of 35 per cent. of the applicable Margin per annum on that Lender's Available Commitment for the period commencing on the date of this Agreement and ending on the last day of the Availability Period. For the avoidance of doubt, the commitment fee will be calculated based on the applicable Margin as it may be adjusted from time to time pursuant to clause 10.2 (*Sustainability KPI Related Margin Adjustment*).

- (b) The accrued commitment fee is payable quarterly in arrears for the period commencing on the date of this Agreement and ending on the last day of the Availability Period and, if cancelled in full, on the cancelled amount of the relevant Lender's Commitment at the time the cancellation is effective.

13.2 Utilisation fee

- (a) The Obligors' Agent shall pay to the Agent (for account of each Lender *pro rata* to its Commitment) a utilisation fee calculated at the rate of:
- (i) 0.10 per cent. per annum on the aggregate amount of all Loans for each day on which the aggregate amount of Loans exceeds $33 \frac{1}{3}$ per cent. of the sum of the Total Commitments less the aggregate Ancillary Commitments but is equal to or less than $66 \frac{2}{3}$ per cent. of the sum of the Total Commitments less the aggregate Ancillary Commitments; or
 - (ii) 0.20 per cent. per annum on the aggregate amount of all Loans for each day on which the aggregate amount of all Loans exceeds $66 \frac{2}{3}$ per cent. of the sum of the Total Commitments less the aggregate Ancillary Commitments,
- (b) The fee referred to in sub-Clause (a) above shall be payable in arrears by the Obligors' Agent in euro on the last day of each successive period of three (3) Months commencing on the date of first Utilisation and on the Termination Date.

13.3 Upfront Arrangement fee

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

13.4 Agency fee

The Borrowers shall pay to the Agent (for its own account) an agency fee in the amount and at the times agreed in a Fee Letter (if any).

13.5 Interest, commission and fees on Ancillary Facilities

The rate and time of payment of interest, commission, fees and any other remuneration in respect of each Ancillary Facility shall be determined by agreement between the relevant Ancillary Lender and the Borrower of that Ancillary Facility based upon normal market rates and terms.

SECTION 6

ADDITIONAL PAYMENT OBLIGATIONS

14. TAX GROSS UP AND INDEMNITIES

14.1 Definitions

(a) In this Clause 14:

"German Borrower" means a Borrower resident for tax purposes in Germany.

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

"Tax Credit" means a credit against, relief or remission for, or repayment of any Tax.

"Tax Deduction" means a deduction or withholding for or on account of Tax from a payment under a Finance Document, other than a FATCA Deduction.

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

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

14.2 Tax gross-up

(a) Each Obligor shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.

(b) Each Borrower shall promptly upon becoming aware that an Obligor must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Agent accordingly. Similarly, a Lender shall notify the Agent on becoming so aware in respect of a payment payable to that Lender. If the Agent receives such notification from a Lender it shall notify the Borrowers and that Obligor.

(c) If a Tax Deduction is required by law to be made by an Obligor, the amount of the payment due from that Obligor shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.

(d) If an Obligor is required to make a Tax Deduction, that Obligor shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.

- (e) Within thirty (30) calendar days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Obligor making that Tax Deduction shall deliver to the Agent for the Finance Party entitled to the payment evidence reasonably satisfactory to that Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.
- (f) A Finance Party and each Obligor which makes a payment to which that Finance Party is entitled shall co-operate in completing any procedural formalities necessary for that Obligor to obtain authorisation to make that payment without a Tax Deduction.

14.3 Tax indemnity

- (a) The Borrowers shall (within five (5) Business Days of demand by the Agent) pay to a Protected Party an amount equal to the loss, liability or cost which that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Finance Document.
- (b) Paragraph (a) above shall not apply:
 - (i) with respect to any Tax assessed on a Finance Party:
 - (A) under the law of the jurisdiction in which that Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Finance Party is treated as resident for tax purposes; or
 - (B) under the law of the jurisdiction in which that Finance Party's Facility Office is located in respect of amounts received or receivable in that jurisdiction, if that Tax is imposed on or calculated by reference to the net income or profit (or similar calculation) received or receivable (but not any sum deemed to be received or receivable) by that Finance Party; or
 - (ii) to the extent a loss, liability or cost:
 - (A) is compensated for by an increased payment under Clause 14.2 (*Tax gross-up*); or
 - (B) relates to a FATCA Deduction required to be made by a Party.
- (c) A Protected Party making, or intending to make a claim under paragraph (a) above shall promptly notify the Agent of the event which will give, or has given, rise to the claim, following which the Agent shall notify the Borrower.
- (d) A Protected Party shall, on receiving a payment from an Obligor under this Clause 14.3, notify the Agent.

14.4 Tax Credit

If an Obligor makes a Tax Payment and the relevant Finance Party determines that:

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

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

14.5 Stamp taxes

The Borrowers shall pay and, within five (5) Business Days of demand, indemnify each Finance Party against any cost, loss or liability that Finance Party incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document.

14.6 VAT

- (a) All amounts expressed to be payable under a Finance Document by any Borrower to a Finance Party which (in whole or in part) constitute the

consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply, and accordingly, subject to paragraph (b) below, if VAT is or becomes chargeable on any supply made by any Finance Party to any Borrower under a Finance Document and such Finance Party is required to account to the relevant tax authority for the VAT, that Borrower must pay to such Finance Party (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of the VAT (and such Finance Party must promptly provide an appropriate VAT invoice to that Borrower).

- (b) If VAT is or becomes chargeable on any supply made by any Finance Party (the "**Supplier**") to any other Finance Party (the "**Recipient**") under a Finance Document, and any Party other than the Recipient (the "**Relevant Party**") is required by the terms of any Finance Document to pay an amount equal to the consideration for that supply to the Supplier (rather than being required to reimburse or indemnify the Recipient in respect of that consideration):

- (i) (where the Supplier is the person required to account to the relevant tax authority for the VAT) the Relevant Party must also pay to the Supplier (at the same time as paying that amount) an additional amount equal to the amount of the VAT. The Recipient must (where this paragraph (i) applies) promptly pay to the Relevant Party an amount equal to any credit or repayment the Recipient receives from the relevant tax authority which the Recipient reasonably determines relates to the VAT chargeable on that supply; and

- (ii) (where the Recipient is the person required to account to the relevant tax authority for the VAT) the Relevant Party must promptly, following demand from the Recipient, pay to the Recipient an amount equal to the VAT chargeable on that supply but only to the extent that the Recipient reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of that VAT.
- (c) Where a Finance Document requires any Borrower to reimburse or indemnify a Finance Party for any cost or expense, that Borrower shall reimburse or indemnify (as the case may be) such Finance Party for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that such Finance Party reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.
- (d) In relation to any supply made by a Finance Party to any Party under a Finance Document, if reasonably requested by such Finance Party, that Party must promptly provide such Finance Party with details of that Party's VAT registration and such other information as is reasonably requested in connection with such Finance Party's VAT reporting requirements in relation to such supply.

14.7 **FATCA Information**

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

- (iii) any duty of confidentiality.
- (d) If a Party fails to confirm whether or not it is a FATCA Exempt Party or to supply forms, documentation or other information requested in accordance with paragraph (a)(i) or (ii) above (including, for the avoidance of doubt, where paragraph (c) above applies), then such Party shall be treated for the purposes of the Finance Documents (and payments under them) as if it is not a FATCA Exempt Party until such time as the Party in question provides the requested confirmation, forms, documentation or other information.

14.8 FATCA Deduction

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

15. INCREASED COSTS

15.1 Increased costs

- (a) Subject to Clause 15.3 (*Exceptions*) the Borrowers shall, within five (5) Business Days of a demand by the Agent, pay for the account of a Finance Party the amount of any substantiated Increased Costs incurred by that Finance Party or any of its Affiliates as a result of:
 - (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation after the date of this Agreement; or
 - (ii) compliance with any law or regulation made after the date of this Agreement; or
 - (iii) the implementation or application of, or compliance with Basel III, CRD IV and CRR or any law or regulation that implements or applies Basel III, CRD IV and/or CRR.
- (b) In this Clause 15:
 - (i) "Increased Costs" means:
 - (A) a reduction in the rate of return from the Facility or on a Finance Party's (or its Affiliate's) overall capital;
 - (B) an additional or increased cost; or

(C) a reduction of any amount due and payable under any Finance Document,

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

(ii) "**Basel III**" means:

(A) the agreements on capital requirements, a leverage ratio and liquidity standards contained in "Basel III: A global regulatory framework for more resilient banks and banking systems", "Basel III: International framework for liquidity risk measurement, standards and monitoring" and "Guidance for national authorities operating the countercyclical capital buffer" published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated;

(B) the rules for global systemically important banks contained in "Global systemically important banks: assessment methodology and the additional loss absorbency requirement – Rules text" published by the Basel Committee on Banking Supervision in November 2011, as amended, supplemented or restated; and

(C) any further guidance or standards published by the Basel Committee on Banking Supervision relating to "Basel III"; and

(iii) "**CRD IV**" means:

(D) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms; and

(E) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC; and

(iv) "**CRR**" means the Regulation (EU) no. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) no. 648/2012.

15.2 Increased cost claims

(a) Subject to Clause 15.3 (*Exceptions*), a Finance Party intending to make a claim pursuant to Clause 15.1 (*Increased costs*) shall notify the Agent of the event giving rise to the claim, following which the Agent shall promptly notify the Borrower.

(b) Each Finance Party shall, as soon as practicable after a demand by the Agent, provide a certificate confirming the amount of its Increased Costs.

15.3 Exceptions

- (a) Clause 15.1 (*Increased costs*) does not apply to the extent any Increased Cost is:
- (i) attributable to a Tax Deduction required by law to be made by an Obligor;
 - (ii) attributable to a FATCA Deduction required to be made by a Party;
 - (iii) compensated for by Clause 14.3 (*Tax indemnity*) (or would have been compensated for under Clause 14.3 (*Tax indemnity*) but was not so compensated solely because any of the exclusions in paragraph (b) of Clause 14.3 (*Tax indemnity*) applied); or
 - (iv) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation.
- (b) In this Clause 15.3, a reference to a "**Tax Deduction**" has the same meaning given to that term in Clause 14.1 (*Definitions*).

16. OTHER INDEMNITIES

16.1 Currency indemnity

- (a) If any sum due from an Obligor under the Finance Documents (a "**Sum**"), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the "**First Currency**") in which that Sum is payable into another currency (the "**Second Currency**") for the purpose of:
- (i) making or filing a claim or proof against that Obligor;
 - (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings, that Obligor shall as an independent obligation, within five (5) Business Days of demand, indemnify each Finance Party to whom that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.
- (b) Each Obligor waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.

16.2 Other indemnities

The Borrowers shall within five (5) Business Days of demand, indemnify each Finance Party against any cost, loss or liability incurred by that Finance Party as a result of:

- (a) the occurrence of any Event of Default;

- (b) a failure by an Obligor to pay any amount due under a Finance Document on its due date, including without limitation, any cost, loss or liability arising as a result of Clause 30 (*Sharing among the Finance Parties*);
- (c) funding, or making arrangements to fund, its participation in a Utilisation requested by a Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by that Finance Party alone); or
- (d) a Utilisation (or part of a Utilisation) not being prepaid in accordance with a notice of prepayment given by a Borrower.

16.3 Indemnity to the Agent

The Borrowers shall promptly indemnify the Agent against:

- (a) any cost, loss or liability incurred by the Agent (acting reasonably) as a result of:
 - (i) investigating any event which it reasonably believes is a Default;
 - (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised; or
 - (iii) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under this Agreement; and
- (b) any cost, loss or liability (including, without limitation, for negligence or any other category of liability whatsoever) incurred by the Agent (otherwise than by reason of the Agent's gross negligence or wilful misconduct) (or, in the case of any cost, loss or liability pursuant to Clause 31.10 (*Disruption to Payment Systems etc.*) notwithstanding the Agent's negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent in acting as Agent under the Finance Documents.

17. MITIGATION BY THE LENDERS

17.1 Mitigation

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

17.2 **Limitation of liability**

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

18. **COSTS AND EXPENSES**

18.1 **Transaction expenses**

The Borrowers shall promptly on demand pay the Agent, the Coordinator and the Arranger the amount of all costs and expenses (including, but not limited to, legal fees) reasonably incurred by any of them in connection with the negotiation, preparation, printing, execution, syndication and perfection of:

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

18.2 **Amendment costs**

If (a) an Obligor requests an amendment, waiver or consent; or (b) an amendment is required pursuant to Clause 31.9 (*Change of currency*), the Borrowers shall, within three (3) Business Days of demand, reimburse the Agent for the amount of all costs and expenses (including, but not limited to, legal fees) reasonably incurred by the Agent in responding to, evaluating, negotiating or complying with that request or requirement.

18.3 **Agent's management time and additional remuneration**

- (a) In the event of a Default, the Borrowers shall pay to the Agent any additional remuneration that may be agreed between them or determined pursuant to paragraph (b) below.
- (b) If the Agent and the Borrowers fail to agree upon the nature of the duties, or upon the additional remuneration referred to in paragraph (a) above or whether additional remuneration is appropriate in the circumstances, any dispute shall be determined by an investment bank (acting as an expert and not as an arbitrator) selected by the Agent and approved by the Borrowers or, failing approval, nominated (on the application of the Agent) by the President for the time being of the Law Society of England and Wales (the costs of the nomination and of the investment bank being payable by the Borrowers) and the determination of any investment bank shall be final and binding upon the Parties.

18.4 **Enforcement costs**

Each Borrower shall, within five (5) Business Days of demand, pay to each Finance Party the amount of all costs and expenses (including legal fees) incurred by that Finance Party in

connection with the enforcement of, or the preservation of any rights under, any Finance Document.

SECTION 7
GUARANTEE

19. GUARANTEE AND INDEMNITY

19.1 Guarantee (*Garantie*) and indemnity (*Ausfallhaftung*)

Each Guarantor irrevocably and unconditionally jointly and severally (*gesamtschuldnerisch*):

- (a) guarantees (*garantiert*) by way of an independent payment obligation (*selbständiges Zahlungsversprechen*) to each Finance Party to pay to that Finance Party any amount of principal, interest, costs, expenses or other amount under or in connection with the Finance Documents that has not been fully and irrevocably paid by a Borrower; the payment shall be due (*fällig*) within five (5) Business Days of a written demand by a Finance Party (or the Agent on its behalf) stating the sum demanded from that Guarantor and that such sum is an amount of principal, interest, costs, expenses or other amount under or in connection with the Finance Documents that has not been fully and irrevocably paid by a Borrower; and
- (b) undertakes vis-à-vis each Finance Party to indemnify (*schadlos halten*) that Finance Party against any cost, loss or liability suffered by that Finance Party if any obligation of a Borrower under or in connection with any Finance Document or any obligation guaranteed by it is or becomes unenforceable, invalid or illegal. The amount of the cost, loss or liability shall be equal to the amount which that Finance Party would otherwise have been entitled to recover (*Ersatz des positiven Interesses*) and that claim shall be due (*fällig*) within three (3) Business Days of a written demand by that Finance Party (or the Agent on its behalf).

For the avoidance of doubt this guarantee and indemnity does not constitute a guarantee upon first demand (*Garantie auf erstes Anfordern*) and, in particular, receipt of such written demand shall not preclude any rights and/or defences the Guarantor may have with respect to any payment requested by a Finance Party (or the Agent on its behalf) under this guarantee and indemnity.

19.2 Continuing and independent guarantee and indemnity

This guarantee and indemnity is independent and separate from the obligations of any Borrower and is a continuing guarantee and indemnity which will extend to the ultimate balance of sums payable by any Borrower under the Finance Documents, regardless of any intermediate payment or discharge in whole or in part.

The guarantee and indemnity shall extend to any additional obligations of a Borrower resulting from any amendment, novation, supplement, extension, restatement or replacement of any Finance Documents, including without limitation any extension of or increase in any facility or the addition of a new facility under any Finance Document.

19.3 Reinstatement

If any payment by an Obligor or any discharge given by a Finance Party (whether in respect of the obligations of any Obligor or any security for those obligations or otherwise) is avoided or reduced as a result of insolvency or any similar event:

- (a) the liability of each Obligor shall continue as if the payment, discharge, avoidance or reduction had not occurred; and
- (b) each Finance Party shall be entitled to recover the value or amount of that security or payment from each Obligor, as if the payment, discharge, avoidance or reduction had not occurred.

19.4 Excluded defences

- (a) The obligations of each Guarantor under this Clause 19 will not be affected by an act, omission, matter or thing which relates to the principal obligation (or purported obligation) of any Borrower and which would reduce, release or prejudice any of its obligations under this Clause 19, including any personal defences of any Borrower (*Einreden des Hauptschuldners*) or any right of revocation (*Anfechtung*) or set-off (*Aufrechnung*) of any Borrower.
- (b) The obligations of each Guarantor under this Clause 19 are independent from any other security or guarantee which may have been or will be given to the Finance Parties. In particular, the obligations of each Guarantor under this Clause 19 will not be affected by any of the following:
 - (i) the release of, or any time (*Stundung*), waiver or consent granted to, any other Obligor from or in respect of its obligations under or in connection with any Finance Document;
 - (ii) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Obligor or any other person or any failure to realise the full value of any security;
 - (iii) any incapacity or lack of power, authority or legal personality of or dissolution or a deterioration of the financial condition of any other Obligor; or
 - (iv) any unenforceability, illegality or invalidity of any obligation of any other Obligor under any Finance Document.
- (c) For the avoidance of doubt nothing in this Clause 19 shall preclude any defences that any Guarantor (in its capacity as Guarantor only) may have against a Finance Party that the guarantee and indemnity does not constitute its legal, valid, binding or enforceable obligations.

19.5 Immediate recourse

No Finance Party will be required to proceed against or enforce any other rights or security or claim payment from any person before claiming from that Guarantor under this Clause 19. This applies irrespective of any provision of a Finance Document to the contrary.

19.6 Appropriations

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full, each Finance Party may:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by that Finance Party in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Guarantor shall be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any moneys received from any Guarantor or on account of any Guarantor's liability under this Clause 19.

19.7 Deferral of Guarantors' rights

Until all amounts which may be or become payable by the Obligors under or in connection with the Finance Documents have been irrevocably paid in full and unless the Agent otherwise directs, no Guarantor will exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents or by reason of any amount being payable, or liability arising, under this Clause 19:

- (a) to be indemnified by an Obligor;
- (b) to claim any contribution from any other guarantor of any Obligor's obligations under the Finance Documents;
- (c) to exercise any right of set-off against any Obligor; and/or
- (d) to take the benefit (in whole or in part and whether by way of legal subrogation or otherwise) of any rights of the Finance Parties under the Finance Documents or of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents by any Finance Party.

If a Guarantor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Finance Parties by the Obligors under or in connection with the Finance Documents to be repaid in full on trust for the Finance Parties and shall promptly pay or transfer the same to the Agent or as the Agent may direct for application in accordance with Clause 31 (*Payment mechanics*).

19.8 Release of Guarantors' right of contribution

If any Guarantor (a "**Retiring Guarantor**") ceases to be a Guarantor in accordance with the terms of the Finance Documents for the purpose of any sale or other disposal of that Retiring Guarantor then on the date such Retiring Guarantor ceases to be a Guarantor:

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

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

19.9 Additional security

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

19.10 Guarantee Limitation

- (a) In this Clause 19.10:

"German Guarantor" means a Guarantor incorporated or established in Germany in the legal form of a limited liability company (*GmbH*) or a limited partnership with a limited liability company as general partner (*GmbH & Co. KG*).

"Guarantee" means the guarantee and indemnity given pursuant to this Clause 19 (*Guarantee and Indemnity*).

"Net Assets" means an amount equal to the sum of the amounts of the German Guarantor's (or, in the case of a *GmbH & Co. KG*, its general partner's) assets (consisting of all assets which correspond to the items set forth in section 266 para 2 A, B, C, D and E of the German Commercial Code (*Handelsgesetzbuch*, "**HGB**")) less the aggregate amount of such German Guarantor's (or, in the case of a *GmbH & Co. KG*, its general partner's) liabilities (consisting of all liabilities and liability reserves which correspond to the items set forth in section 266 para 3 B, C, D and E HGB), save that:

- (i) any obligations (*Verbindlichkeiten*) of the German Guarantor (and, in the case of a *GmbH & Co. KG*, of its general partner)

(A) owing to any member of the Group or any other affiliated company which are subordinated by law or by contract to any Financial Indebtedness outstanding under this Agreement (including, for the avoidance of doubt, obligations that would in an insolvency be subordinated pursuant to section 39 para 1 no 5 or section 39 para 2 of the German Insolvency Code (*Insolvenzordnung*)) and including obligations under guarantees for obligations which are so subordinated;
or

(B) incurred in violation of any of the provisions of the Finance Documents,

shall be disregarded; and

- (ii) the assets of the German Guarantor (and, in the case of a *GmbH & Co. KG*, its general partner) shall be assessed at their liquidation value (*Liquidationswert*) instead of their book value (*Buchwert*) if, at the time demand under the Guarantee

is made, a negative prognosis as to whether the business can carry on as a going concern (*negative Fortführungsprognose*) must be made.

The Net Assets shall be determined in accordance with the generally accepted accounting principles applicable from time to time in Germany (*Grundsätze ordnungsmäßiger Buchführung*) and be based on the same principles that were applied by the German Guarantor (or, in the case of a GmbH & Co. KG, its general partner) in the preparation of its most recent annual balance sheet (*Jahresbilanz*).

"Protected Capital" means in relation to a German Guarantor the aggregate amount of:

- (iii) its (or, where the German Guarantor is a GmbH & Co. KG, its general partner's) share capital (*Stammkapital*) as registered in the commercial register (*Handelsregister*) **provided that** any increase registered after the date of this Agreement shall not be taken into account unless (i) such increase has been effected with the prior written consent of the Agent (even if such increase is permitted under this Agreement or any other Finance Document) and (ii) only to the extent it is fully paid up; and
- (iv) its (or when applicable where the German Guarantor is a GmbH & Co. KG, its general partner's) amount of profits (*Gewinne*) or reserves (*Rücklagen*) which are not available for distribution to its shareholder(s) in accordance with section 268 para 8 HGB or section 272 para 5 HGB, as applicable.

"Up-stream and/or Cross-stream Guarantee" means any Guarantee if and to the extent such Guarantee secures the obligations of an Obligor which is a shareholder of the German Guarantor (and/or, in the case of a GmbH & Co. KG, of its general partner) or an affiliated company (*verbundenes Unternehmen*) of such shareholder within the meaning of section 16, 17 or 18 of the German Stock Corporation Act (*Aktiengesetz*) (other than the German Guarantor and its Subsidiaries and, in the case of a GmbH & Co. KG, the general partner and its Subsidiaries), **provided that** it shall not constitute an Up-stream or Cross-stream Guarantee if and to the extent the Guarantee guarantees amounts outstanding under any Finance Document in relation to any financial accommodation made available under such Finance Document to any Borrower and on-lent or otherwise passed on to, or issued for the benefit of, the relevant German Guarantor or any of its Subsidiaries (and, where the German Guarantor is a GmbH & Co. KG, to, or for the benefit of, its general partner or any of its Subsidiaries) and outstanding from time to time.

- (b) This Clause 19.10 applies if and to the extent the Guarantee is given by a German Guarantor and is an Up-stream and/or Cross-stream Guarantee.
- (c) Each Finance Party agrees that the enforcement of the Guarantee given by a German Guarantor shall be limited if and to the extent that:
 - (i) the Guarantee constitutes an Up-stream and/or Cross-stream Guarantee; and
 - (ii) payment under the Guarantee would otherwise

- (A) have the effect of reducing the German Guarantor's (or, where the German Guarantor is a GmbH & Co. KG, its general partner's) Net Assets to an amount that is lower than the amount of its (or, in the case of a GmbH & Co. KG, its general partner's) Protected Capital or, if the amount of the Net Assets is already lower than the amount of its (or, in the case of a GmbH & Co. KG, its general partner's) Protected Capital, cause the Net Assets to be further reduced; and
- (B) the limitations set out in this Clause 19.10 are required at such time to avoid personal liability of the managing director of a German Guarantor because of a violation of the capital maintenance requirement as set out in section 30 para 1 of the German Limited Liability Companies Act (*Gesetz betreffend die Gesellschaften mit beschränkter Haftung*) (taking into account the ruling of the German Federal Supreme Court (*Bundesgerichtshof*); and
- (iii) the relevant German Guarantor has complied with its obligation to deliver the Management Determination and the Auditor's Determination, in each case together with an up-to-date balance sheet, in accordance with the requirements set out in Clauses (d) and (e) below.
- (d) Within five (5) Business Days after a Finance Party has made a demand under the Guarantee, the German Guarantor shall provide a certificate signed by its managing director(s) (*Geschäftsführer*) confirming in writing if and to what extent the Guarantee is an Up-stream and/or Cross-stream Guarantee and an enforcement of the Guarantee would have the effects referred to in Clause (c)(ii) above (the "**Management Determination**"). Such confirmation shall comprise an up-to-date balance sheet of the German Guarantor (and, in the case of a GmbH & Co. KG, its general partner) and a detailed calculation, based on the provisions of this Agreement, of the amount of the Net Assets and Protected Capital of the German Guarantor (or, in the case of a GmbH & Co. KG, its general partner). The relevant German Guarantor shall fulfil its obligations under the Guarantee within three (3) Business Days of providing the Management Determination (and each Finance Party shall be entitled to enforce the Guarantee) in an amount which pursuant to the Management Determination would not cause the effects set out in Clause (c)(ii) above (irrespective of whether or not the Agent agrees with the Management Determination).
- (e) If the Agent (acting on the instructions of the Majority Lenders) disagrees with the Management Determination, it may within twenty (20) Business Days of its receipt request the German Guarantor to deliver, at its own cost and expense, within twenty (20) Business Days of such request an up-to-date balance sheet of the German Guarantor (and, in the case of a GmbH & Co. KG, of its general partner), drawn-up by a firm of auditors of international standing and reputation appointed by the German Guarantor in consultation with the Agent, together with a detailed calculation, based on the provisions of this Agreement, of the amount of the Net Assets and Protected Capital of the German Guarantor (or, in the case of a GmbH & Co. KG, its general partner) (the "**Auditor's Determination**"). The German Guarantor shall fulfil its obligations under the Guarantee within three (3) Business Days of providing the Auditor's Determination (and each Finance Party shall be entitled to enforce the

Guarantee) in an amount which pursuant to the Auditor's Determination would not cause the effects set out in Clause (c)(ii) above.

- (f) No reduction of the amount enforceable pursuant to this Clause 19.10 will prejudice the right of the Finance Parties to continue to enforce the Guarantee (subject always to the operation of the limitations set out above at the time of such enforcement) until full satisfaction of the claims guaranteed.
- (g) Each German Guarantor shall (and, in the case of a German Guarantor in the form of a GmbH & Co. KG, shall procure that its general partner will) do everything commercially justifiable and legally permitted to avoid the enforcement of the Guarantee becoming limited pursuant to the terms of this Clause 19.10 and shall in particular, within three (3) months after a written request of the Agent realise at least at market value any of its (and, in the case of a GmbH & Co. KG, any of its general partner's) assets that is not necessary for its business (*nicht betriebsnotwendig*) (or, in the case of a GmbH & Co. KG, that of its general partner) and is shown in its (or, in the case of a GmbH & Co. KG, its general partner's) balance sheet with a book value that is in the reasonable opinion of the Agent significantly lower than the market value.

SECTION 8

REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT

20. REPRESENTATIONS

Each Obligor makes the representations and warranties set out in this Clause 20 to each Finance Party on the date of this Agreement, **provided that** in the case of the Target Group Companies, such representations and warranties shall be qualified by and subject to the Target Group Disclosure Statement.

20.1 Status

- (a) It and each of its Subsidiaries:
 - (i) (other than in respect of any limited partnership) is duly incorporated and validly existing under the laws of the Relevant Jurisdiction as limited liability companies;
 - (ii) (in case of any limited partnership only), is duly established and validly existing as a limited partnership under the laws of the Federal Republic of Germany; and
 - (iii) (in the case of a German Obligor only) the place from which it is administered and where all managerial decisions are taken (*tatsächlicher Verwaltungssitz*) is located within the Federal Republic of Germany.
- (b) It and each of its Subsidiaries has the power to own its assets.
- (c) It and each of its Subsidiaries has all material Authorisations necessary to carry on its business as it is being conducted, except as would not have a Material Adverse Effect.

20.2 Binding obligations

The obligations expressed to be assumed by it in each Finance Document are legal, valid, binding and enforceable obligations subject to and limited by the provisions of any applicable bankruptcy, insolvency, liquidation, reorganisation, moratorium or other laws of general application from time to time in effect relating to or affecting the creditors' rights and remedies generally.

20.3 Non-conflict with other obligations

The entry into and performance by it of, and the transactions contemplated by, the Finance Documents do not and will not conflict with:

- (a) any law or regulation applicable to it;
- (b) its or any of its Subsidiaries' constitutional documents; or
- (c) any agreement or instrument binding upon it or any of its Subsidiaries or any of its or any of its Subsidiaries' assets,

where, in respect of paragraph (a) or paragraph (b) above, such non-performance or conflict might reasonably be expected to have a Material Adverse Effect.

20.4 Power and authority

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

20.5 Authorisations

All Authorisations required to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Finance Documents to which it is a party have been obtained or effected and are in full force and effect.

20.6 Governing law and enforcement

The choice of German law as the governing law of the Finance Documents will be recognised and enforced in its jurisdiction of incorporation.

20.7 Deduction of Tax

It is not required under the law of its jurisdiction of incorporation or establishment, any jurisdiction in which it carries on business or any jurisdiction in which it is tax resident to make any deduction for or on account of Tax from any payment it may make under any Finance Document.

20.8 No filing or stamp taxes

Under the law of its jurisdiction of incorporation or establishment it is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in that

jurisdiction or that any stamp, registration or similar tax be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents.

20.9 **Insolvency**

No corporate action, legal proceeding or other procedure or step described in Clause 25.7 (*Insolvency and similar proceedings*) has been taken or, to the Borrowers' knowledge, are threatened in relation to a member of the Group; and none of the circumstances described in Clause 25.6 (*Insolvency*) applies to a member of the Group.

20.10 **No default**

- (a) No Event of Default is continuing or would be expected to result from the making of any Utilisation.
- (b) No other event or circumstance is outstanding which constitutes a default (howsoever defined) under any other agreement or instrument which is binding on it or any of its Subsidiaries or to which its (or any of its Subsidiaries') assets are subject which would have a Material Adverse Effect.

20.11 **No misleading information**

- (a) Any factual information provided by any member of the Group was true and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated.
- (b) So far as it is aware after making reasonable enquiries, all other written information provided by any member of the Group to a Finance Party was true, complete and accurate in all material respects as at the date it was provided and in light of the circumstances at the time or as at the date (if any) at which it is stated, except as may be superseded by subsequent written information provided to such Finance Party, is not misleading in any material respect.

20.12 **Financial statements**

Its most recent financial statements (delivered in accordance with Clause 21.1 (*Financial statements*)) fairly and truly represent its financial condition and operations during the relevant financial year in all material respects.

20.13 **Pari passu ranking**

Its payment obligations under the Finance Documents rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

20.14 **No proceedings**

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

20.15 **Insurances**

It maintains Insurances on and in relation to its business and assets with reputable underwriters or insurance companies and such insurance is in full effect.

20.16 **Good title to assets**

It and each of its Subsidiaries has a good and valid title to, or valid leases or licences of, the assets necessary to carry on its business in all material respects as presently conducted.

20.17 **Environmental compliance**

It and each of its Subsidiaries has obtained all requisite Environmental Permits required for the carrying on of its business as currently conducted and has at all times complied with:

- (a) all applicable Environmental Laws; and
- (b) the terms and conditions of such Environmental Permits,

where failure to do so might reasonably be expected to have a Material Adverse Effect.

20.18 **Environmental Claims**

No Environmental Claim which, if determined against it or any of its Subsidiaries, would reasonably be expected to have a Material Adverse Effect has (to the best of its knowledge and belief) been started or threatened against it or any of its Subsidiaries.

20.19 **Taxation**

- (a) It and each of its Subsidiaries has duly and punctually paid and discharged all Taxes imposed upon it or its assets or, as the case may be, upon such Subsidiary or the assets of such Subsidiary within the time period allowed without incurring penalties (save to the extent that (i) payment is being contested in good faith by appropriate proceedings and for which adequate reserves have been provided in accordance with GAAP and (ii) payment can be lawfully withheld) and to the extent that any Taxes are not due and payable, the relevant Borrower has provided adequate reserves for the payment of those Taxes in accordance with GAAP.
- (b) It and each of its Subsidiaries is not materially overdue in the filing of any Tax returns.
- (c) No claims are being or are reasonably likely to be asserted against it or any of its Subsidiaries with respect to Taxes which might reasonably be expected to have a Material Adverse Effect.

20.20 **Indebtedness**

No Obligor and no other member of the Group has any Financial Indebtedness other than Permitted Indebtedness.

20.21 No Security

Save for any Permitted Encumbrances:

- (a) no Security exists over any of the assets of any Obligor or any other member of the Group; and
- (b) no arrangement or transaction as described in clause 23.11 (*Negative pledge*) has been entered into by any Obligor or any other member of the Group and is outstanding.

20.22 Consents etc. relating to any Permitted Transaction

All material Authorisations which are required to be obtained under any applicable law or regulation for the consummation of each Permitted Transaction (including approval from shareholders, third parties and all applicable competition and anti-trust regulations authorities) have been obtained and are in full force and effect and all conditions of any such Authorisation have been complied with or will be complied with in all material respects.

20.23 Sanctions

- (a) It and any of its Subsidiaries is not subject to or, to its knowledge, violating any Sanctions, is not a Sanctioned Person and has no business activity in or with a Sanctioned Country.
- (b) Paragraph (a) shall only apply to and for the benefit of any Party if and to the extent that by agreeing to or accepting any rights under or enjoying the benefit of (including by exercising any rights on the grounds of a breach of or with respect to any request under such) such provision does not result in a violation of, or conflict with, Section 7 of the German Foreign Trade Regulations (*Außenwirtschaftsverordnung – AWW*), Article 5 of the Council Regulation (EC) No. 2271/1996 (*EU Blocking Statute*) or any similar anti-boycott law or regulation applicable to any Party.

20.24 Anti-bribery, anti-corruption and Anti-Money Laundering

- (a) Neither any Borrower nor, to the Borrowers' knowledge, any director, officer, employee, or anyone acting on behalf of any member of the Group, has engaged in any activity on its behalf which would constitute a breach of anti-bribery laws, anti-corruption laws or Anti-Money Laundering laws.
- (b) To the best of knowledge of the Borrower, no actions or investigations by any governmental or regulatory agency or body or arbitrator are ongoing or threatened against any member of the Group or any of their directors, officers or employees or anyone acting on its behalf in relation to an alleged breach of anti-bribery laws, anti-corruption laws or Anti-Money Laundering laws.
- (c) Each Borrower has instituted and maintains policies and procedures designed to prevent violation of anti-bribery laws, anti-corruption laws or Anti-Money Laundering laws, regulations and rules by it and its Subsidiaries.

20.25 Repetition

The Repeating Representations are deemed to be made by each Obligor (by reference to the facts and circumstances then existing) on:

- (a) the date of each Compliance Certificate and the date of each Utilisation Request; and
- (b) in the case of an Additional Obligor, the day on which the company becomes (or it is proposed that the company becomes) an Additional Obligor.

21. INFORMATION UNDERTAKINGS

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

21.1 Financial statements

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

- (a) as soon as the same become available, but in any event within 90 calendar days after the end of the relevant financial year:
 - (i) the audited consolidated financial statements of the Ultimate Parent (including balance sheet, profit and loss statement, cash flow statement and related auditors' report) for that financial year according to U.S.GAAP; and
 - (ii) commencing with the fiscal year ended 31 December 2022, the audited consolidated financial statements of SPH for that financial year;
 - (iii) commencing with the fiscal year ended 31 December 2022, the audited financial statements of each Obligor for that financial year; and
 - (iv) for the first time as of 31 December 2022, the audited financial combined statements of the Group (combined upon auditor's verifiable review (*prüferische Durchsicht*) of consolidated debt, revenues and expenses) for that financial year; and
- (b) as soon as the same become available, but in any event within 45 calendar days after the end of each quarter that is not also the end of a financial year (i) the unaudited financial statements of each Obligor for that period, **provided that** for the Target Group Companies such statements shall be provided for the first time with the quarter ended 30 September 2023 and (ii) the combined quarterly financial statements for the Group on a rolling twelve (12) month basis; and
- (c) thirty (30) calendar days prior to the beginning of each financial year, the budgeted balance sheet, the budgeted profit and loss statement for the next following financial year for each Obligor, SPH (consolidated) and the Group (combined).

21.2 Compliance Certificate

- (a) The Obligors' Agent shall supply to the Agent, with each set of financial statements delivered pursuant to paragraphs (a)(iv) and (b) of Clause 21.1 (*Financial statements*), a Compliance Certificate setting out (in reasonable detail) computations as to compliance with Clause 22 (*Financial Covenants*) as at the date at which those financial statements were drawn up.
- (b) Each Compliance Certificate shall be signed by one director of the Obligors' Agent.

21.3 Requirements as to financial statements

- (a) Each set of financial statements delivered by the Obligors pursuant to Clause 21.1 (*Financial statements*) shall be certified by a director of the relevant company as fairly presenting its financial condition in all material respects as at the date at which those financial statements were drawn up.
- (b) Each of the Obligors will at the request of the Agent require and authorise its auditors to discuss with the Lenders any matter reasonably related to or arising out of the annual audit of any of the Obligors by such auditors.
- (c) Each set of financial statements for the Group shall be combined upon auditor's verifiable review (*prüferische Durchsicht*) of consolidated debt, revenues and expenses.
- (d) The Borrowers shall procure that each set of financial statements delivered pursuant to Clause 21.1 (*Financial statements*) is prepared using GAAP, other than those in Clause 21.1(a)(i) which shall be prepared using U.S. GAAP.

21.4 Information relating to SPA Acquisition and Target Group Disclosure Statement

- (a) As soon as the SPA Closing has occurred, but in any event within 10 calendar days after the date of the utilisation of the SPA Acquisition Advance, the Obligors' Agent shall notify the Agent of the SPA Closing (the "**SPA Closing Notice**").
- (b) As soon as the same become available, but in any event within 30 calendar days after the date of the utilisation of the SPA Acquisition Advance, the Obligors' Agent shall:
 - (i) supply to the Agent an updated business plan for Mercer Germany including the Target Group Companies in respect of the next following financial year; and
 - (ii) supply to the Agent an updated structure chart of Mercer Germany including the Target Group Companies reflecting the structure post SPA Closing.
- (c) The Obligors' Agent shall provide to the Agent, upon reasonable request of the Agent, a written summary of the status of compliance in relation to the material subject matters of the Target Group Disclosure Statement.

21.5 Information relating to the Sustainability Score Related Margin Adjustment

The Borrowers shall supply to the Agent for all Lenders as soon as the same becomes available, but in any event within 180 days after the end of the Ultimate Parent's relevant financial year, the Sustainability KPI Compliance Certificate (together with the Sustainability Report and the respective rating report which includes the defined ESG rating score) setting out the relevant KPI Target Scores and the relevant KPI Score for each Sustainability KPI. Each of the Sustainability KPI Compliance Certificate and the Sustainability Report are to be signed by an authorised signatory of the Ultimate Parent. The Sustainability KPI Compliance Certificate shall also contain a statement of the Ultimate Parent as to the effect on the Margin.

21.6 Information: miscellaneous

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

- (a) promptly, the details of any newly created Permitted Encumbrances (save for the creation of any Security in accordance with the definition of Permitted Encumbrances);
- (b) promptly, upon the request of the Agent, a copy of any agreement between an Obligor and any member of the Mercer Group;
- (c) promptly, the details of any newly created Permitted Indebtedness;
- (d) promptly upon becoming aware of it, the details of any tax field audit (*Betriebsprüfung*) which is current, threatened or pending against any member of the Group which would, if adversely determined, have a Material Adverse Effect;
- (e) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against any member of the Group, and which would, if adversely determined, have a Material Adverse Effect;
- (f) promptly, the details of any change of its constitutional documents, any Transaction Document or any shareholders' agreement; and
- (g) promptly such further information as may be required by applicable banking supervisory laws and regulations and/or in line with standard banking practice.

21.7 Notification of default

Each Obligor shall notify the Agent of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence (unless that Obligor is aware that a notification has already been provided by another Obligor).

21.8 Use of websites

- (a) Each Obligor may satisfy its obligation under this Agreement to deliver any information in relation to those Lenders (the "**Website Lenders**") who accept this method of

communication by posting this information onto an electronic website designated by the Obligors and the Agent (the "**Designated Website**") if:

- (i) the Agent expressly agrees (after consultation with each of the Lenders) that it will accept communication of the information by this method;
- (ii) each Obligor and the Agent are aware of the address of and any relevant password specifications for the Designated Website; and
- (iii) the information is in a format previously agreed between each Obligor and the Agent.

If any Lender (a "**Paper Form Lender**") does not agree to the delivery of information electronically then the Agent shall notify each Obligor accordingly and each Obligor shall supply the information to the Agent (in sufficient copies for each Paper Form Lender) in paper form. In any event each Obligor shall supply the Agent with at least one copy in paper form of any information required to be provided by it.

- (b) The Agent shall supply each Website Lender with the address of and any relevant password specifications for the Designated Website following designation of that website by each Obligor and the Agent.
- (c) Each Obligor shall promptly upon becoming aware of its occurrence notify the Agent if:
 - (i) the Designated Website cannot be accessed due to technical failure;
 - (ii) the password specifications for the Designated Website change;
 - (iii) any new information which is required to be provided under this Agreement is posted onto the Designated Website;
 - (iv) any existing information which has been provided under this Agreement and posted onto the Designated Website is amended; or
 - (v) an Obligor becomes aware that the Designated Website or any information posted onto the Designated Website is or has been infected by any electronic virus or similar software.

If an Obligor notifies the Agent under paragraph (a)(i) or paragraph (c)(v) above, all information to be provided by the Obligor under this Agreement after the date of that notice shall be supplied in paper form unless and until the Agent and each Website Lender is satisfied that the circumstances giving rise to the notification are no longer continuing.

- (d) Any Website Lender may request, through the Agent, one paper copy of any information required to be provided under this Agreement which is posted onto the Designated Website. Each Obligor shall comply with any such request within ten (10) Business Days.

21.9 "**Know your customer**" checks

(a) If:

- (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;
- (ii) any change in the status of an Obligor (or of a Holding Company of an Obligor) or the composition of the shareholders of an Obligor (or of a Holding Company of an Obligor) after the date of this Agreement; or
- (iii) a proposed assignment or assignment and transfer by way of assumption of contract (*Vertragsübernahme*) by a Lender of any of its rights and obligations under this Agreement to a party that is not a Lender prior to such assignment or assignment and transfer by way of assumption of contract (*Vertragsübernahme*),

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

- (b) Each Lender shall promptly upon the request of the Agent supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself) in order for the Agent to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.
- (c) A Borrower shall, by not less than ten 10 Business Days' prior written notice to the Agent, notify the Agent (which shall promptly notify the Lenders) of its intention to request that one of its Subsidiaries becomes an Additional Obligor pursuant to Clause 27 (*Changes to the Obligors*).
- (d) Following the giving of any notice pursuant to paragraph (a) above, if the accession of such Additional Obligor obliges the Agent or any Lender to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, the relevant Borrower shall promptly upon the request of the Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or any

Lender (for itself or on behalf of any prospective new Lender) in order for the Agent or such Lender or any prospective new Lender to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable

laws and regulations pursuant to the accession of such Subsidiary to this Agreement as an Additional Obligor.

21.10 German Banking Act (*Kreditwesengesetz*)

Upon request of the Agent, the Borrowers shall provide the Agent with all such further information about its financial and business affairs, as well as the financial and business affairs of any of its Subsidiaries, in each case to the extent necessary for any Lender to comply with its duties under section 18 of the German Banking Act (*Kreditwesengesetz*).

22. FINANCIAL COVENANTS

22.1 Financial definitions

In this Clause 22.1:

"**Calculation Date**" means each 31 March, 30 June, 30 September and 31 December in each calendar year commencing as of 31 December 2022.

"**Defined Capital**" means on any date the aggregate amount of minimum equity capital structure of all members of the Group calculated as:

- (a) registered share capital (*Stammkapital*);
- (b) free capital reserves (*Kapitalrücklagen*) pursuant to Section 272 para. 2, No. 4 of the German Commercial Code;
- (c) retained earnings (*Gewinnvortrag*);
- (d) profit/loss (*Jahresüberschuss/ Fehlbetrag*); and
- (e) subordinated shareholder loans,

based on the pro-forma combined financials for Mercer Germany, provided that the combined profit/loss (*Jahresüberschuss/ Fehlbetrag*) of Mercer Germany for the purposes of the Minimum Equity Covenant Mercer Germany shall be determined in accordance with GAAP as at the date hereof and shall exclude (i) the cumulative effect of a change in accounting principles, (ii) any non-cash unusual losses including any goodwill impairment charges and any asset impairment charges, and (iii) any losses to the extent covered by insurance.

"**EBITDA**" means, for any period, the consolidated net income of the Group in accordance with GAAP, in each case for such period:

- (a) plus the amount of taxes on income, capital or gains of the members of the Group in relevant financial statements and (without duplication) any provisions for taxes;
- (b) plus Interest Expense;

- (c) plus any other non-cash charges deducted against the net income of the members of the Group in the relevant financial statements (including, without limitation, non-cash exchange rate gains or losses and non-cash effluent charges);
- (d) excluding extraordinary items;
- (e) minus (to the extent otherwise included) any net gain over book value arising in favour of an Obligor on the disposal of any business or asset (not being any disposals made in the ordinary course of business) during such period and any gain arising on any revaluation of any business or asset during such period;
- (f) plus (to the extent otherwise deducted) any net loss against book value incurred by an Obligor on the disposal of any business or asset (not being any disposals made in the ordinary course of business) during such period and any loss on any revaluation of any business or assets during such period;
- (g) plus any depreciation and amortisation (including for intangibles and goodwill) stated in the relevant financial statements.

"Interest Expense" means, for any period, (without duplication) the amount in EUR which will be necessary in order to pay in full all interest, premium and similar amounts (howsoever characterised and including (a) the interest element of capital leases, (b) discount and acceptance fees payable (or deducted), (c) fees payable in connection with the issue or maintenance of any bond or bank guarantee, guarantee or other insurance against Financial Indebtedness and issued by a third party on behalf of the Obligors, (d) repayment and prepayment premiums payable or incurred in repaying or prepaying any Financial Indebtedness to the extent actually paid, and (e) commitment, utilisation and non-utilisation fees payable or incurred in respect of Financial Indebtedness) accruing in respect of, this agreement and all other Financial Indebtedness of the members of the Group which have become due and payable during such period but excluding amortisation and write offs of debt issue costs.

"Leverage Ratio" means the ratio of Net Debt to EBITDA.

"Minimum Equity Covenant Mercer Germany" means the undertaking set out in paragraph (ii) of Clause 22.2 (*Financial Condition*)

"Net Debt" means, on any date, the excess of:

the sum of (without duplication):

- (a) the principal amount of Utilisations made to the Borrowers outstanding on such date; and
- (b) the principal amount of other Financial Indebtedness (except current payables to suppliers) of the members of the Group outstanding on such date (excluding Subordinated Debt and Utilisations made to a member of the Group and guaranteed by it under this Agreement),

less

(c) Unencumbered Cash at such date.

"**Obligations**" means, with respect to the members of the Group, all obligations of members of the Group with respect to the repayment or performance of all obligations (monetary or otherwise) of members of the Group or arising under or in connection with the Finance Documents and each other loan document and where the term "Obligations" is used without reference to a particular Obligor, such term means the Obligations of all Obligors.

"**Unencumbered Cash**" means, at any date, the principal amount of freely available cash balances maintained by an Obligor in bank accounts maintained with financial institutions located in approved locations on such date (and, for the avoidance of doubt, a cash balance shall not be freely available if it is subject to any lien in favour of any third party (excluding, however, any such lien arising by way of set-off rights under mandatory principles of applicable law).

22.2 Financial condition

The Obligors shall ensure that for the period from the date of this Agreement to the Termination Date:

- (i) their Leverage Ratio in respect of any twelve months period on any Calculation Date shall not exceed 3.50:1; and
- (ii) their Defined Capital shall not be less than EUR 500,000,000.

22.3 Financial testing

The financial covenants set out in Clause 22.2 (*Financial condition*) shall be tested by reference to each of the financial statements and each Compliance Certificate delivered pursuant to Clause 21.2 (*Compliance Certificate*) based on combined financial statements applying GAAP, as of the date hereof.

23. GENERAL UNDERTAKINGS

The undertakings in this Clause 23 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force, **provided that** in the case of the Target Group Companies, such undertakings shall be qualified by and subject to the Target Group Disclosure Statement.

23.1 Authorisations

Each Obligor shall promptly:

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

any Authorisation required under any law or regulation of the Relevant Jurisdictions to enable it to perform its obligations under the Finance Documents and to ensure the legality,

validity, enforceability or admissibility in evidence in each Relevant Jurisdiction of any Finance Document.

23.2 Compliance with laws

- (a) Each Obligor shall comply in all respects with all laws (including, but not limited to, for the avoidance of doubt, anti-corruption, Anti-Money Laundering and boycott laws or Sanctions applicable to it) to which it may be subject, if failure so to comply would materially impair its ability to perform its obligations under the Finance Documents.
- (b) Paragraph (a) shall only apply to and for the benefit of any Party if and to the extent that by agreeing to or accepting any rights under or enjoying the benefit of (including by exercising any rights on the grounds of a breach of or with respect to any request under such) such provision does not result in a violation of, or conflict with, Section 7 of the German Foreign Trade Regulations (*Außenwirtschaftsverordnung – AWV*), Article 5 of the Council Regulation (EC) No. 2271/1996 (*EU Blocking Statute*) or any similar anti-boycott law or regulation applicable to any Party.

23.3 Compliance with Shareholders' Undertaking Agreement

Each Obligor shall (and shall ensure that each of its Subsidiaries will) comply with any and all terms and conditions in the Shareholders' Undertaking Agreement at all times, in particular with the obligation that a payment or distribution of the respective Obligor to a Shareholder Distribution Account shall only be made in compliance with the requirements set out in paragraphs 2.4.1 and 2.4.2 of clause 2.4 (*Permitted Payments*) of the Shareholders' Undertaking Agreement.

23.4 Insurance

- (a) Each Borrower shall at all times effect and maintain insurance on and in relation to its business and assets with reputable underwriters or insurance companies.
- (b) Any Borrower shall pay all premiums and do all other things necessary to maintain the insurances required to be effected and maintained by it pursuant to paragraph (a) above.

23.5 Transactions

- (a) Each Obligor shall conclude any transaction with a third party, irrespective of whether or not it is a Subsidiary of the Ultimate Parent, only on terms reasonably no less favourable to it than those that could reasonably be obtained by it on an arm's length basis. It will further waive any Financial Indebtedness owed by any person to it only for valuable market consideration.
- (b) No Obligor shall (and shall ensure that none of its Subsidiaries will) permit to subsist or conclude any transactions with a member of the Mercer Group (other than a member of the Group), other than:

- (i) agreements with an aggregate value of less than EUR 10,000,000 (per annum and on an aggregate basis for the Group) and which are entered into on arms-length basis;
- (ii) Shareholder Loan Agreements; and
- (iii) agreements entered into with the prior written consent of the Agent (such consent not to be unreasonably withheld).

23.6 **Pari passu ranking**

Each Obligor shall ensure that its payment obligations under the Finance Documents will rank at least *pari passu* with the claims of all its unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

23.7 **Environmental Compliance**

Each Obligor shall obtain and maintain all requisite Environmental Permits and comply with:

- (a) all applicable Environmental Laws; and
- (b) the terms and conditions of all Environmental Permits applicable to it,

and take all reasonable steps in anticipation of known or expected future changes to or obligations under the same, in each case where failure to do so might reasonably be expected to have a Material Adverse Effect.

23.8 **Environmental Claims**

Each Borrower shall inform the Agent in writing as soon as reasonably practicable upon its becoming aware of:

- (a) any Environmental Claim which has been commenced or threatened against any member of the Group; or
- (b) any facts or circumstances which will or are reasonably likely to result in any Environmental Claim being commenced or threatened against any member of the Group, where the claim might, if determined against that member of the Group, would be expected to have a Material Adverse Effect.

23.9 **Taxation**

- (a) Each Obligor shall duly and punctually pay and discharge all Taxes imposed upon it or its assets within the time period allowed without incurring penalties (except to the extent that (a) such payment is being contested in good faith, (b) adequate reserves are being maintained for those Taxes and (c) such payment can be lawfully withheld).
- (b) No Obligor shall be materially overdue in the filing of any Tax returns.

23.10 Capitalisation

Each Obligor shall ensure that, at all times after the date of this Agreement or, if later, the date it becomes a Party, it and each of its Subsidiaries have sufficient equity to be and remain in compliance with all thin capitalisation rules applicable to it and them.

23.11 Negative pledge

No Obligor shall create or permit to subsist any Security over all or any of its assets or create any restriction or prohibition on encumbrances over all or any of its assets, other than Permitted Encumbrances.

23.12 Disposals

- (a) No Obligor shall, enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any asset, including any material investment (*Beteiligungen*) or divisions (*Betriebsteile*).
- (b) Paragraph (a) above does not apply to any sale, lease, transfer or other disposal:
 - (i) made in the ordinary course of business of the disposing entity;
 - (ii) of assets in exchange for other assets comparable or superior as to type, value and quality;
 - (iii) of assets that are worn out, obsolete or redundant;
 - (iv) which is a Permitted Transaction;
 - (v) to which the Majority Lenders have given their prior written consent; or
 - (vi) where the higher of the market value or consideration receivable (when aggregated with the higher of the market value or consideration receivable for any other sale, lease, transfer or other disposal, other than any permitted under paragraphs (i) to (iii) above does not exceed EUR 30,000,000 (or its equivalent in another currency or currencies) in any financial year.

23.13 Financial Indebtedness

No Obligor shall incur, create or permit to subsist or have outstanding any Financial Indebtedness or enter into any agreement or arrangement whereby it is entitled to incur, create or permit to subsist any Financial Indebtedness other than, in each case, Permitted Indebtedness or with the prior written consent of the Majority Lenders.

23.14 Treasury Transactions

No Obligor shall enter into any Treasury Transaction, other than any Treasury Transaction made in the ordinary course of business or with the prior written consent of the Majority Lenders.

23.15 Merger and agreement on profit

- (a) No Obligor shall enter into:
 - (i) any amalgamation, demerger, merger, consolidation or corporate reconstruction or any transaction with the commercial effect of the foregoing; or
 - (ii) any profit and loss transfer agreement (*Ergebnisabführungsvertrag*), any partnership agreements (*stille Beteiligungen*), any other intercompany agreement (*Unternehmensvertrag*) or any similar arrangement having as a consequence that a third party shares in the profits of any member of the Group or exercises control over any member of the Group.
- (b) Paragraph (a) above does not apply to:
 - (i) a Permitted Transaction;
 - (ii) in the case of the SPA Acquisition, any such action taken within the Target Group Companies **provided that** the Target Group Borrower shall remain the surviving company at any time; or
 - (iii) any action taken with the prior written consent of the Majority Lenders.

23.16 Acquisitions

- (a) No Obligor shall without the prior written consent of the Agent acquire (whether by way of shares or assets) any company or business (separately or in a series of related acquisitions):
 - (i) the aggregate value of which exceeds EUR 50,000,000 (or its equivalent in another currency or currencies) in respect of the Obligors (on a combined basis); and
 - (ii) the funding of which is fully or partially provided for by the proceeds of a Loan.
- (b) Paragraph (a) above does not apply to the SPA Acquisition.

23.17 Joint Ventures

- (a) Except as permitted under paragraph (b) below, no Obligor shall:
 - (i) enter into, invest in or acquire (or agree to acquire) any shares, stocks, securities or other interest in any Joint Venture; or
 - (ii) transfer any assets or lend to or guarantee or give an indemnity for or give Security for the obligations of a Joint Venture or maintain the solvency of or provide working capital to any Joint Venture (or agree to do any of the foregoing).
- (b) Paragraph (a) above does not apply to (i) any acquisition (or agreement to acquire) any interest in a Joint Venture or transfer of assets (or agreement to transfer assets) to a Joint Venture or loan made to or guarantee given in respect of the obligations of a Joint

Venture if such transaction is a Permitted Transaction or (ii) if the prior written consent of the Majority Lender is given.

23.18 Change of business

No Obligor shall make any substantial change to the general nature of its business from that carried on at the date of this Agreement.

23.19 Share capital

No Obligor shall without the prior written consent of the Majority Lenders:

- (a) redeem, purchase, return or make any repayment in respect of any of its share capital or make any capital distribution or enter into any agreement to do so; or
- (b) issue any shares or grant any person any right (whether conditional or unconditional) to call for the issue or allotment of any shares in the capital of such Obligor (including an option or a right of pre-emption or conversion) or enter into any agreement to do any of the foregoing,

in each case, other than in accordance with the terms hereof and the terms of the Shareholders' Undertaking Agreement.

23.20 Distributions and withdrawals

No Obligor shall make any Distribution or make or declare any other dividend or distribution to any third party other than dividends or distributions made in accordance with the terms of this Agreement and the terms of the Shareholders' Undertaking Agreement other than the SPA Acquisition and restricted cash balances as provided for in Clause 6.6(a) (*Utilisation of Facility for SPA Acquisition*) hereof which such distributions shall be permitted notwithstanding the Shareholders' Undertaking Agreement.

23.21 Subordinated Debt

No Obligor shall:

- (a) pay interest on any Subordinated Debt; and/or
- (b) prepay, repay, redeem, purchase or otherwise acquire any Subordinated Debt prior to the Termination Date,

in each case, other than in accordance with the terms of this Agreement and the terms of the Shareholders' Undertaking Agreement.

23.22 Sanctions

- (a) No Borrower shall and shall not permit or authorize any other person on its behalf to use, lend, fund, contribute or otherwise make available all or any part of the proceeds of the Total Commitments to any person for the purpose of funding any trade, business or other similar activities for the benefit of or for any Sanctioned Person, any business activities in

or with a Sanctioned Country or in a way that results in any Party becoming subject to or violating any Sanctions.

- (b) Paragraph (a) shall only apply to and for the benefit of any Party if and to the extent that by agreeing to or accepting any rights under or enjoying the benefit of (including by exercising any rights on the grounds of a breach of or with respect to any request under such) such provision does not result in a violation of, or conflict with, Section 7 of the German Foreign Trade Regulations (*Außenwirtschaftsverordnung – AWW*), Article 5 of the Council Regulation (EC) No. 2271/1996 (*EU Blocking Statute*) or any similar anti-boycott law or regulation applicable to any Party.

23.23 **Anti-corruption law**

Each Borrower shall:

- (a) conduct its businesses in compliance with applicable anti-corruption laws; and
- (b) maintain policies and procedures designed to promote and achieve compliance with such laws.

23.24 **Limitations of undertakings**

Notwithstanding the foregoing provisions of this Clause 23 (*General undertakings*) (but without prejudice to any of the obligations thereunder of any Obligor not incorporated in Germany), the undertakings set out in Clause 23.15 (*Merger and agreement on profit*), Clause 23.17 (*Joint Ventures*), Clause 23.18 (*Change of business*), Clause 23.19 (*Share capital*), Clause 23.20 (*Distributions and withdrawals*) and Clause 23.21 (*Subordinated Debt*) (the "**Relevant Undertakings**") are not and shall not be given by any German Obligor. However:

- (a) each German Obligor shall give to the Agent not less than twenty (20) Business Days' prior written notice if it or any of its Subsidiaries proposes to take or permit any action or circumstance which, if all the Relevant Undertakings had been given by that German Obligor on the date of this Agreement and had thereafter remained in force, would constitute a breach of any of the Relevant Undertakings;
- (b) the Agent shall be entitled, within ten (10) Business Days of receipt of notice under paragraph (a) above, to request that the relevant German Obligor supplies to the Agent, in sufficient copies for the Lenders, such further relevant information as the Agent (acting reasonably) may consider necessary for the purposes of this Clause 23.24 and such German Obligor shall supply such further information promptly and in any event within ten (10) Business Days of the request therefore, subject to any relevant confidentiality obligations **provided that** the relevant Obligor has used all reasonable endeavours to procure a release from any such confidentiality obligations;
- (c) if any Lender considers that the relevant action or circumstance (taken alone or together with other actions or circumstances, whether or not permitted hereunder) may have a Material Adverse Effect or materially and adversely affects its interests as a Lender under the Finance Documents, it may so notify the Agent in writing;

- (d) if, by not later than the date ten (10) Business Days after receipt by the Agent of notice pursuant to paragraph (a) above (or, if later and additional information has been requested pursuant to paragraph (b) above, by not later than the date ten (10) Business Days after receipt by the Agent of such additional information if received within the prescribed time or the date ten (10) Business Days after the request therefore if not), the Agent has received notices pursuant to paragraph (c) above from Lenders which constitute the Majority Lenders, the Agent shall promptly notify the Borrower and the Lenders; and
- (e) if the Agent gives notice to the Borrower pursuant to paragraph (d) above or the relevant action is undertaken or circumstance is permitted before the date two (2) Business Days after the latest time for the receipt by the Agent of notices pursuant to paragraph (d) above, the undertaking of the relevant action or permitting of the relevant circumstances shall immediately constitute an Event of Default **provided that**, for the avoidance of doubt, no failure of any German Obligor to perform or comply with an obligation under a Relevant Undertaking shall of itself constitute an Event of Default.

24. **CONDITIONS SUBSEQUENT**

The Borrowers shall ensure that:

- (a) the Target Group Borrower will accede to this Agreement as Additional Borrower in accordance with Clause 27.2 (*Additional Borrowers*), provided that Clause 27.2(a)(i) shall not apply; and
- (b) each Target Group Guarantor will accede to this Agreement as Additional Guarantor in accordance with Clause 27.4 (*Additional Guarantors*),

in each case promptly upon the SPA Closing.

25. **EVENTS OF DEFAULT**

Each of the events or circumstances set out in this Clause 25 is an Event of Default (save for Clause 25.18 (*Acceleration*)).

25.1 **Non-payment**

An Obligor does not pay on the due date any amount payable pursuant to a Finance Document at the place and in the currency in which it is expressed to be payable unless:

- (a) its failure to pay is caused by:
 - (i) administrative or technical error; or
 - (ii) a Disruption Event; and
- (b) payment is made within ten (10) Business Days of its due date.

25.2 **Financial covenants and financial indebtedness**

Any requirement of Clause 22 (*Financial covenants*) is not satisfied or any Obligor does not comply with any provision of Clause 23.13 (*Financial Indebtedness*).

25.3 Other obligations

- (a) An Obligor does not comply with any provision of the Finance Documents (other than those referred to in Clause 21.5 (*Information relating to the Sustainability Score Related Margin Adjustment*), Clause 25.1 (*Non-payment*), Clause 22 (*Financial covenants*) and Clause 23.13 (*Financial Indebtedness*)).
- (b) A German Obligor does not comply with an obligation relating to a Relevant Undertaking set out in Clause 23.24 (*Limitation of undertakings*).
- (c) No Event of Default under paragraph (a) and (b) above will occur if the Agent considers that the failure to comply is capable of remedy and is remedied within twenty (20) Business Days, of the earlier of (A) the Agent giving notice to a Borrower and (B) a Borrower becoming aware of the failure to comply.

25.4 Misrepresentation

Any representation or statement made or deemed to be made by an Obligor in the Finance Documents or any other document delivered by or on behalf of any Obligor under or in connection with any Finance Document is or proves to have been incorrect or misleading in any material respect when made or deemed to be made.

25.5 Cross default

- (a) Any Financial Indebtedness of any Obligor is not paid when due nor within any originally applicable grace period.
- (b) Any Financial Indebtedness of any Obligor is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).
- (c) Any commitment for any Financial Indebtedness of any Obligor is cancelled or suspended by a creditor of any Obligor as a result of an event of default (however described).
- (d) Any creditor of any Obligor becomes entitled to declare any Financial Indebtedness of any Obligor due and payable prior to its specified maturity as a result of an event of default (however described).
- (e) No Event of Default will occur under this Clause 25.5 if (i) the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness

falling within paragraphs (a) to (d) above is less than EUR 25,000,000 (or its equivalent in any other currency or currencies) at any one time, or (ii) any event or circumstance that would otherwise give rise to, or cause an Event of Default to occur, under paragraphs (a) to (d) above is disputed in good faith by the relevant Obligor or Obligors affected thereby by way of appropriate proceedings.

25.6 Insolvency

If:

- (a) any German Obligor or other member of the Group that is incorporated or established or has a place of business in the Federal Republic of Germany:
 - (i) is unable to pay its debts as they fall due (*Zahlungsunfähigkeit*);
 - (ii) commences negotiations with any one or more of its creditors with a view to the general readjustment or rescheduling of its indebtedness or, for any of the reasons set out in sections 17 to 19 of the German Insolvency Act (*InsO*);
 - (iii) files for insolvency (*Antrag auf Eröffnung eines Insolvenzverfahrens*) or the board of directors or management of any such German Obligor or member of the Group is required by law to file for insolvency; or
 - (iv) the competent court takes any of the actions set out in section 21 of the German Insolvency Act (*InsO*) or the competent court institutes insolvency proceedings against any such German Obligor or member of the Group (*Eröffnung des Insolvenzverfahrens*); or
- (b) any non-German Obligor or other member of the Group:
 - (i) is declared bankrupt or enters into a preliminary or definitive moratorium pursuant to the applicable bankruptcy laws;
 - (ii) becomes, or admits to being, unable generally to pay its debts as they fall due; or
 - (iii) otherwise becomes insolvent or stops or suspends making payments (whether of principal or interest) with respect to all or any class of its debts or announces an intention to do so or a moratorium is declared in respect of any of its Indebtedness.

25.7 Insolvency and similar proceedings

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

- (a) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any member of the Group other than (i) a solvent liquidation or reorganisation of any member of the Group which is not

an Obligor (ii) in the case of such action by a creditor, a Borrower can demonstrate, by providing opinion of a reputable lawyer to that effect, such action is frivolous, vexatious or an abuse of the process of the court or relates to a claim for which a good defence exists which is being vigorously defended;

- (b) a composition, assignment or arrangement with any creditor of any member of the Group;
- (c) the appointment of a liquidator (other than in respect of a solvent liquidation of a member of the Group which is not an Obligor), receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of any member of the Group or

any of its assets (including the directors of any member of the Group requesting a person to appoint any such officer in relation to it or any of its assets); or

- (d) enforcement of any Security over any assets of any member of the Group which is not discharged within thirty (30) calendar days,

or any analogous procedure or step is taken in any jurisdiction.

25.8 Execution or attachment

Any execution (*Zwangsvollstreckung*) or attachment (*Beschlagnahme*) (or any event which under the laws under of any other jurisdiction that has a similar effect) is levied against, or an encumbrancer takes possession of the whole, or any material part, of the assets of a Borrower is not discharged within thirty (30) calendar days.

25.9 Shareholders' Undertaking Agreement

- (a) The Ultimate Parent fails to comply with the provisions of, or does not perform its obligations under, the Shareholders' Undertaking Agreement unless: (i) the Agent considers the relevant non-compliance or non-performance is capable of remedy; and (ii) the relevant non-compliance or non-performance is remedied within twenty (20) Business Days of the earlier of the Agent giving notice to the Ultimate Parent and the date the Ultimate Parent became aware or ought to have reasonably become aware of such non-compliance or non-performance.

- (b) A representation or warranty given by any party in the Shareholders' Undertaking Agreement is incorrect in any material respect and, if the non-compliance or circumstances giving rise to such misrepresentation are capable of remedy, it is not remedied within thirty (30) calendar days of the earlier of the Agent giving notice to the respective party or the respective party becoming aware of the non-compliance or misrepresentation.

25.10 Cessation of business

Any Obligor or the Ultimate Parent suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or substantially all of its business except as a result of a disposal which is a Permitted Transaction.

25.11 Audit qualification

- (a) An Obligor's auditor qualifies such Obligor's audited annual financial statements.
- (b) The auditors of the Mercer Group qualify the audited annual consolidated financial statements of the Ultimate Parent.

25.12 Expropriation

The authority or ability of any Obligor to conduct its business is limited or wholly or substantially curtailed by any seizure, expropriation, nationalisation, intervention, restriction

or other action by or on behalf of any governmental, regulatory or other authority or other person in relation to any Obligor.

25.13 Repudiation and rescission of agreements

- (a) Any Obligor (or any other relevant party) rescinds or purports to rescind or repudiates or purports to repudiate a Finance Document or evidences an intention to rescind or repudiate a Finance Document.
- (b) Any party to the Transaction Documents (other than a Finance Party) rescinds or purports to rescind or repudiates or purports to repudiate any of those agreements or instruments in whole or in part where to do so has or is, in the reasonable opinion of the Majority Lenders, likely to have a Material Adverse Effect.

25.14 Litigation

Any litigation, alternative dispute resolution, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes are commenced or threatened in relation to the Transaction Documents or the transactions expressly provided for in the Transaction Documents or against any member of the Group or its assets which has or would have a Material Adverse Effect.

25.15 Unlawfulness

It is or becomes unlawful for any Obligor to perform any of its obligations under the Transaction Documents.

25.16 Environmental matters

- (a) Any Environmental Contamination is discovered on any site owned, leased, occupied or used by any member of the Group which might reasonably be expected to have a Material Adverse Effect.
- (b) Any member of the Group fails to comply with any Environmental Law or any Environmental Permit or an Environmental Claim is made against any member of the Group and as a result a Material Adverse Effect occurs or is reasonably likely to occur.

25.17 Material adverse change

Any situation or event occurs or series of events occur (including a change to any regulation) which has a Material Adverse Effect.

25.18 Acceleration

At any time after the occurrence of (i) an Event of Default set out in Clause 25.1 (*Non-payment*), Clause 25.2 (*Financial covenants and financial indebtedness*), Clause 25.6 (*Insolvency*), Clause 25.7 (*Insolvency and similar proceedings*), Clause 25.8 (*Execution or attachment*) in relation to an Obligor and Clause 25.15 (*Unlawfulness*) or (ii) any other Event of Default and at any time thereafter while such Event of Default is continuing and either the Agent, or as the case may be, the Majority Lenders has or have determined in its or their

reasonable opinion taking into account the enforcement value of any Guarantee and Security, that due to said Event of Default the ability of the Obligors to perform any of their obligations under the Finance Documents has been materially impaired and/or the Agent or the Majority Lenders have given consideration to the reasonable concerns of the Obligors and to avoid such notice, the Agent may, and will if so directed by the Majority Lenders, by written notice to the Obligors' Agent do all or any of the following in addition and without prejudice to any other rights or remedies which it or any other Finance Party may have under this Agreement or any of the other Finance Documents:

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

SECTION 9

CHANGES TO PARTIES

26. CHANGES TO THE LENDERS

26.1 Assignments and transfers by the Lenders

- (a) Subject to this Clause 26, a Lender (the "**Existing Lender**") may:
 - (i) assign any of its rights; or
 - (ii) assign and transfer by assumption of contract (*Vertragsübernahme*) any of its rights and obligations,,

to another bank or financial institution or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans,

securities or other financial assets (the "**New Lender**") **provided that** no such assignment or assignment and transfer by assumption of contract (*Vertragsübernahme*) shall be permitted to any person that competes with or operates in a business reasonably similar to a Borrower.

- (b) Subject to Clause 26.2 (*Conditions of assignment and assignment and transfer by assumption of contract (Vertragsübernahme)*), each Party hereby gives its consent in advance to any assignment and assignment and transfer by assumption of contract (*Vertragsübernahme*) as referred to in paragraph (a) above. Receipt of a Transfer Certificate by the Agent shall constitute notice of the assignment and assignment and transfer by assumption of contract (*Vertragsübernahme*) and each Party irrevocably authorises (*bevollmächtigt*) and instructs the Agent to receive each such notice on its behalf and irrevocably agrees that each such notice to be given to such party may be given to the Agent. For the purposes of this Clause 26.1 each Finance Party, which is incorporated or established under the laws of the Federal Republic of Germany hereby releases the Agent from the restrictions of section 181 of the German Civil Code (*Bürgerliches Gesetzbuch*) and similar restrictions applicable to it pursuant to any other applicable law, in each case to the extent legally possible to such Finance Party. A Finance Party which is barred by its constitutional documents or by-laws from granting such exemption shall notify the Agent accordingly.

26.2 **Conditions of assignment or assignment and transfer by assumption of contract (*Vertragsübernahme*)**

- (a) The consent of the Obligors' Agent is required for an assignment or an assignment and transfer by assumption of contract (*Vertragsübernahme*) by an Existing Lender, unless the assignment or assignment and transfer by assumption of contract (*Vertragsübernahme*) is
- (i) to another Lender or an Affiliate of a Lender; or
 - (ii) made at a time when an Event of Default is continuing.

The Obligors' Agent shall be deemed to have given their consent ten (10) calendar days after the Existing Lender has requested it unless the consent is expressly refused by the Obligors' Agent within that time.

- (b) An assignment will only be effective on:
- (i) receipt by the Agent of written confirmation from the New Lender (in form and substance satisfactory to the Agent) that the New Lender will assume the same obligations to the other Finance Parties as it would have been under if it was an Original Lender; and
 - (ii) performance by the Agent of all necessary "**know your customer**" or other similar checks under all applicable laws and regulations in relation to such assignment to a New Lender, the completion of which the Agent shall promptly notify to the Existing Lender and the New Lender.

(c) An assignment and transfer by assumption of contract (*Vertragsübernahme*) will only be effective if the procedure set out in Clause 26.5 (*Procedure for assignment and transfer by assumption of contract (Vertragsübernahme)*) is complied with.

(d) If:

(i) a Lender assigns or assigns and transfers by assumption of contract (*Vertragsübernahme*) any of its rights or obligations under the Finance Documents or changes its Facility Office; and

(ii) as a result of circumstances existing at the date the assignment, assignment and transfer by assumption of contract (*Vertragsübernahme*) or change occurs, an Obligor would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause 14 (*Tax gross-up and indemnities*) or Clause 15 (*Increased costs*),

then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under those Clauses to the same extent as the Existing Lender or Lender acting through its previous Facility Office would have been if the assignment, assignment and transfer by assumption of contract (*Vertragsübernahme*) or change had not occurred.

(e) Each New Lender, by executing the relevant Transfer Certificate, confirms, for the avoidance of doubt, that the Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the assignment or assignment and transfer by assumption of contract (*Vertragsübernahme*) becomes effective in accordance with this Agreement and that it is bound by that decision to the same extent as the Existing Lender would have been had it remained a Lender.

26.3 Assignment or assignment and transfer by assumption of contract (*Vertragsübernahme*) fee

The New Lender shall, on the date upon which an assignment or assignment and transfer by assumption of contract (*Vertragsübernahme*) takes effect, pay to the Agent (for its own account) a fee of EUR 3,500.

26.4 Limitation of responsibility of Existing Lenders

(a) Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:

(i) the legality, validity, effectiveness, adequacy or enforceability of the Finance Documents or any other documents;

(ii) the financial condition of any Obligor;

(iii) the performance and observance by any Obligor of its obligations under the Finance Documents or any other documents; or

(iv) the accuracy of any statements (whether written or oral) made in or in connection with any Finance Document or any other document,

and any representations or warranties implied by law are excluded.

(b) Each New Lender confirms to the Existing Lender and the other Finance Parties that it:

(i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Obligor and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender in connection with any Finance Document; and

(ii) will continue to make its own independent appraisal of the creditworthiness of each Obligor and its related entities while any amount is or may be outstanding under the Finance Documents or any Commitment is in force.

(c) Nothing in any Finance Document obliges an Existing Lender to:

(i) accept a re-assignment or a re-assignment and re-transfer by assumption of contract (*Vertragsübernahme*) from a New Lender of any of the rights and obligations assigned or assigned and transferred by assumption of contract (*Vertragsübernahme*) under this Clause 26; or

(ii) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by any Obligor of its obligations under the Finance Documents or otherwise.

26.5 Procedure for assignment and transfer by assumption of contract (*Vertragsübernahme*)

(a) Subject to the conditions set out in Clause 26.2 (*Conditions of assignment or assignment and transfer by assumption of contract (Vertragsübernahme)*) an assignment and transfer by assumption of contract (*Vertragsübernahme*) is effected in accordance with paragraph (c) below when the Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to paragraph (b) below, as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Transfer Certificate.

(b) The Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the transfer to such New Lender.

(c) Subject to Clause 26.9 (*Pro rata interest settlement*), on the Transfer Date:

- (i) to the extent that in the Transfer Certificate the Existing Lender seeks to assign and transfer by assumption of contract (*Vertragsübernahme*) its rights and obligations under the Finance Documents each of the Obligor and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and their respective rights against one another under the Finance Documents shall be lost (being the "**Terminated Rights and Obligations**");
- (ii) each of the Obligor and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Terminated Rights and Obligations only insofar as that Obligor and the New Lender have assumed and/or acquired the same in place of that Obligor and the Existing Lender;
- (iii) the Agent, the Coordinator, the Arranger, the New Lender and the other Lenders shall acquire the same rights and assume the same obligations between themselves as they would have acquired and assumed had the New Lender been an Original Lender with the rights and/or obligations acquired or assumed by it as a result of the assignment and transfer by assumption of contract (*Vertragsübernahme*) and to that extent the Agent, the Coordinator, the Arranger and the Existing Lender shall each be released from further obligations to each other under the Finance Documents; and
- (iv) the New Lender shall become a Party as a "Lender".

26.6 Copy of Transfer Certificate or Increase Confirmation to Borrowers

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

26.7 Security over Lenders' rights

- (a) In addition to the other rights provided to Lenders under this Clause 26.7, each Lender may without consulting with or obtaining consent from any Obligor at any time assign, charge, pledge or otherwise create Security in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of that Lender including, without limitation any assignment, charge, pledge or other Security to secure obligations to a federal reserve or central bank (including, for the avoidance of doubt, the European Central Bank) including, without limitation, any assignment of rights to a special purpose vehicle where Security over securities issued by such special purpose vehicle is to be created in favour of a federal reserve or central bank (including, for the avoidance of doubt, the European Central Bank), except that no such assignment, charge, pledge or Security shall:
 - (i) release a Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant assignment, charge, pledge or Security for the Lender as a party to any of the Finance Documents; or
 - (ii) require any payments to be made by an Obligor other than or in excess of, or grant to any person any more extensive rights than those required to be made or granted to the relevant Lender under the Finance Documents.

- (b) The limitations on assignments or transfers by a Lender set out in any Finance Document, in particular in Clause 26.1 (*Assignments and transfers by the Lenders*), Clause 26.2 (*Conditions of assignment or assignment and transfer by assumption of contract (Vertragsübernahme)*) and Clause 26.3 (*Assignment or assignment and transfer by assumption of contract (Vertragsübernahme) fee*) shall not apply to the creation of Security pursuant to paragraph (a) above.
- (c) The limitations and provisions referred to in paragraph (b) above shall further not apply to any assignment or transfer of rights under the Finance Documents made by a federal reserve or central bank (including, for the avoidance of doubt, the European Central Bank) to a third party in connection with the enforcement (*Verwertung*) of Security created pursuant to paragraph (a) above.
- (d) Any Lender may disclose such Confidential Information as that Lender is required to disclose to a federal reserve or central bank (including, for the avoidance of doubt, the European Central Bank) to (or through) whom it creates Security pursuant to paragraph (a) above, and any federal reserve or central bank (including, for the avoidance of doubt, the European Central Bank) may disclose such Confidential Information to a third party to whom it assigns or transfers (or may potentially assign or transfer) rights under the Finance Documents in connection with the enforcement of such Security.

26.8 **Acceding Increase Lenders**

- (a) The Obligors' Agent may, for the purposes of Clause 3 (*Accordion Increase*), request that an Acceding Increase Lender becomes a party to this Agreement as a "Lender", **provided that** such Acceding Increase Lender is accepted by the Agent.
- (b) Each of the Parties hereby agrees that an Acceding Increase Lender shall become a party to this Agreement as a "Lender" upon the execution and delivery by such Acceding Increase Lender to the Agent of an Increase Accession Agreement and upon the countersignature by the Agent of such document. Each Party (other than the Agent) hereby irrevocably authorises the Agent to execute a Increase Accession Agreement for this purpose.
- (c) The Agent shall, subject to sub-clause (d), after receipt by it of a duly completed Increase Accession Agreement appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Increase Accession Agreement on the relevant Increase Effective Date.
- (d) The Agent shall only be obliged to execute an Increase Accession Agreement delivered to it by an Acceding Increase Lender once it is satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to such Acceding Increase Lender.
- (e) On the date that the Agent executes an Increase Accession Agreement:

- (i) the Agent, the Sustainability Coordinator, the Coordinator, the Acceding Increase Lender party to that Increase Accession Agreement, the other Lenders and the Obligors shall acquire the same rights and assume the same obligations between themselves as they would have acquired and assumed had that Acceding Increase Lender been an Original Lender with the Participation specified by it in that Increase Accession Agreement; and
- (ii) that Acceding Increase Lender shall become a Party as a "Lender".

26.9 Pro rata interest settlement

- (a) If the Agent has notified the Lenders that it is able to distribute interest payments on a "pro rata basis" to Existing Lenders and New Lenders then (in respect of any assignment or assignment and transfer by assumption of contract (*Vertragsübernahme*) pursuant to Clause 26.5 (*Procedure for assignment and transfer by assumption of contract (Vertragsübernahme)*) the Transfer Date of which, in each case, is after the date of such notification and is not on the last day of an Interest Period):
 - (i) any interest or fees in respect of the relevant participation which are expressed to accrue by reference to the lapse of time shall continue to accrue in favour of the Existing Lender up to but excluding the Transfer Date ("**Accrued Amounts**") and shall become due and payable to the Existing Lender (without further interest accruing on them) on the last day of the current Interest Period (or, if the Interest Period is longer than six Months, on the next of the dates which falls at six Monthly intervals after the first day of that Interest Period); and
 - (ii) the rights assigned or assigned and transferred by assumption of contract (*Vertragsübernahme*) by the Existing Lender will not include the right to the Accrued Amounts, so that, for the avoidance of doubt:
 - (A) when the Accrued Amounts become payable, those Accrued Amounts will be payable to the Existing Lender; and
 - (B) the amount payable to the New Lender on that date will be the amount which would, but for the application of this Clause 26.9, have been payable to it on that date, but after deduction of the Accrued Amounts.
- (b) In this Clause 26.9 references to "**Interest Period**" shall be construed to include a reference to any other period for accrual of fees.

27. CHANGES TO THE OBLIGORS

27.1 Assignments and transfers by Obligors

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

27.2 Additional Borrowers

- (a) Subject to compliance with the provisions of paragraphs (c) and (d) of Clause 21.9 ("*Know your customer*" checks), the Obligors' Agent may request that any of the Borrowers' wholly owned Subsidiaries becomes an Additional Borrower (*Vertragsbeitritt*). That Subsidiary shall become an Additional Borrower if:
- (i) all the Lenders approve the addition of that Subsidiary;
 - (ii) the Obligors' Agent delivers to the Agent a duly completed and executed Accession Letter;
 - (iii) the relevant Subsidiary becomes an Additional Guarantor in accordance with this Agreement;
 - (iv) the relevant Borrower confirms that no Default is continuing or would occur as a result of that Subsidiary becoming an Additional Borrower; and
 - (v) the Agent has received all of the documents and other evidence listed in Part II of Schedule 2 (*Conditions Precedent*) in relation to that Additional Borrower, each in form and substance satisfactory to the Agent.
- (b) The Agent shall notify the relevant Borrower and the Lenders promptly upon being satisfied that it has received (in form and substance satisfactory to it) all the documents and other evidence listed in Part II of Schedule 2 (*Conditions Precedent*).
- (c) Other than to the extent that the Majority Lenders notify the Agent in writing to the contrary before the Agent gives the notification described in paragraph (b) above, the Lenders authorise (but do not require) the Agent to give that notification. The Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.

27.3 **Resignation of a Borrower**

- (a) The Obligors' Agent may request that a Borrower (other than an Original Borrower) ceases to be a Borrower by delivering to the Agent a Resignation Letter.
- (b) The Agent shall accept a Resignation Letter and notify the Obligors' Agent and the Lenders of its acceptance if:
- (i) the Obligors' Agent has simultaneously requested that the relevant Borrower shall cease to be a Guarantor in accordance with this Agreement;
 - (ii) no Default is continuing or would result from the acceptance of the Resignation Letter (and the Obligors' Agent has confirmed this is the case); and
 - (iii) the Borrower is under no actual or contingent obligations as a Borrower under any Finance Documents,

whereupon that company shall cease to be a Borrower and Guarantor and shall have no further rights or obligations under the Finance Documents.

27.4 Additional Guarantors

- (a) Subject to compliance with the provisions of paragraphs (c) and (d) of Clause 21.9 ("*Know your customer*" checks), the Obligors' Agent or the Agent (as the case may be) may request that any of the Borrowers' Subsidiaries organized under the laws of Germany having assets in excess of EUR 3,000,000 become an Additional Guarantor. That Subsidiary shall become an Additional Guarantor if:
- (i) the Obligors' Agent delivers to the Agent a duly completed and executed Accession Letter;
 - (ii) the Agent has received all of the documents and other evidence listed in Part II of Schedule 2 (*Conditions precedent*) in relation to that Additional Guarantor, each in form and substance satisfactory to the Agent.
- (b) The Agent shall notify the Obligors' Agent and the Lenders promptly upon being satisfied that it has received (in form and substance satisfactory to it) all the documents and other evidence listed in Part II of Schedule 2 (*Conditions precedent*).
- (c) Other than to the extent that the Majority Lenders notify the Agent in writing to the contrary before the Agent gives the notification described in paragraph (b) above, the Lenders authorise (but do not require) the Agent to give that notification. The Agent shall not be liable for any damages, costs or losses whatsoever as a result of giving any such notification.

27.5 Repetition of Representations

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

27.6 Resignation of a Guarantor

- (a) The Obligors' Agent may request that a Guarantor (other than an Original Guarantor) ceases to be a Guarantor by delivering to the Agent a Resignation Letter.
- (b) The Agent shall accept a Resignation Letter and notify the Obligors' Agent and the Lenders of its acceptance if:
- (i) the Obligors' Agent has simultaneously requested that the relevant Guarantor shall cease to be a Borrower (as applicable) in accordance with this Agreement;
 - (ii) no Default is continuing or would result from the acceptance of the Resignation Letter (and the relevant Guarantor has confirmed this is the case); and
 - (iii) all the Lenders have consented to the relevant Guarantor's request; and
- whereupon that company shall cease to be a Borrower and Guarantor and shall have no further rights or obligations under the Finance Documents.

SECTION 10

THE FINANCE PARTIES

28. ROLE OF THE AGENT, THE ARRANGER AND THE COORDINATOR

28.1 Appointment of the Agent

- (a) Each of the Arranger, the Lenders appoints the Agent to act as its agent and attorney (*Stellvertreter*) under and in connection with the Finance Documents.
- (b) Each of the Arranger and the Lenders authorises the Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Agent under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.
- (c) Each of the Arranger and the Lenders hereby exempts the Agent from the restrictions pursuant to section 181 Civil Code (*Bürgerliches Gesetzbuch*) and similar restrictions applicable to it pursuant to any other applicable law, in each case to the extent legally possible to such Finance Party. A Finance Party which cannot grant such exemption shall notify the Agent accordingly.

28.2 Instructions

- (a) The Agent shall:
 - (i) unless a contrary indication appears in a Finance Document, exercise or refrain from exercising any right, power, authority or discretion vested in it as Agent in accordance with any instructions given to it by:
 - (A) all Lenders if the relevant Finance Document stipulates the matter is an all Lender decision; and
 - (B) in all other cases, the Majority Lenders; and
 - (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with paragraph (i) above.
- (b) The Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Lenders (or, if the relevant Finance Document stipulates the matter is a decision for any other Lender or group of Lenders, from that Lender or group of Lenders) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion. The Agent may refrain from acting unless and until it receives any such instructions or clarification that it has requested.
- (c) Save in the case of decisions stipulated to be a matter for any other Lender or group of Lenders under the relevant Finance Document and unless a contrary indication appears in a Finance Document, any instructions given to the Agent by the Majority Lenders shall override any conflicting instructions given by any other Parties and will be binding on all Finance Parties.

- (d) The Agent may refrain from acting in accordance with any instructions of any Lender or group of Lenders until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Finance Documents and which may include payment in advance) for any cost, loss or liability which it may incur in complying with those instructions.
- (e) In the absence of instructions, the Agent may act (or refrain from acting) as it considers to be in the best interest of the Lenders.
- (f) The Agent is not authorised to act on behalf of a Lender (without first obtaining that Lender's consent) in any legal or arbitration proceedings relating to any Finance Document.

28.3 Duties of the Agent

- (a) The Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
- (b) Subject to paragraph (c) below, the Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Agent for that Party by any other Party.
- (c) Without prejudice to Clause 26.6 (*Copy of Transfer Certificate or Increase Confirmation to Borrowers*), paragraph(b) above shall not apply to any Transfer Certificate or any Increase Confirmation.
- (d) Except where a Finance Document specifically provides otherwise, the Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (e) If the Agent receives notice from a Party referring to this Agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the other Finance Parties.
- (f) If the Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Finance Party (other than the Agent, the Coordinator or the Arranger) under this Agreement it shall promptly notify the other Finance Parties.
- (g) The Agent shall have only those duties, obligations and responsibilities expressly specified in the Finance Documents to which it is expressed to be a party (and no others shall be implied).

28.4 Role of the Arranger

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

28.5 **Role of the Coordinator**

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

28.6 **Sustainability Coordinator**

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

28.7 **No fiduciary duties**

- (a) Nothing in any Finance Document constitutes the Agent, the Coordinator or the Arranger as a trustee (*Treuhänder*) of any other person. Neither the Agent, the Coordinator nor the Arranger has any financial or commercial duty of care (*Vermögensfürsorgepflicht*) for any person.
- (b) None of the Agent, the Coordinator, the Arranger or any Ancillary Lender shall be bound to account to any Lender for any sum or the profit element of any sum received by it for its own account.

28.8 **Business with the Group**

The Agent, the Coordinator, the Arranger and each Ancillary Lender may accept deposits from, lend money to and generally engage in any kind of banking or other business with any member of the Group.

28.9 **Rights and discretions**

- (a) The Agent may:
 - (i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
 - (ii) assume that:
 - (A) any instructions received by it from the Majority Lenders, any Lenders or any group of Lenders are duly given in accordance with the terms of the Finance Documents; and
 - (B) unless it has received notice of revocation, that those instructions have not been revoked; and
 - (iii) rely on a certificate from any person:
 - (A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or

(B) to the effect that such person approves of any particular dealing, transaction, step, action or thing,

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

- (b) The Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Lenders) that:
- (i) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 25.1 (*Non-payment*));
 - (ii) any right, power, authority or discretion vested in any Party or any group of Lenders has not been exercised; and
 - (iii) any notice or request made by a Borrower is made with the consent and knowledge of all the Obligors.
- (c) The Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
- (d) Without prejudice to the generality of paragraph (c) above or paragraph (e) below, the Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Agent (and so separate from any lawyers instructed by the Lenders) if the Agent in its reasonable opinion deems this to be necessary.
- (e) The Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
- (f) The Agent may act in relation to the Finance Documents through its officers, employees and agents and the Agent shall not:
- (i) be liable for any error of judgment made by any such person; or
 - (ii) be bound to supervise, or be in any way responsible for, any loss incurred by reason of misconduct, omission or default on the part of any such person,
- unless such error or such loss was directly caused by the Agent's gross negligence or wilful misconduct.
- (g) Unless a Finance Document expressly provides otherwise the Agent may disclose to any other Party any information it reasonably believes it has received as agent under this Agreement.
- (h) Without prejudice to the generality of paragraph (g) above, the Agent:
- (i) may disclose; and

- (ii) on the written request of the relevant Borrower, or the Majority Lenders shall, as soon as reasonably practicable, disclose, the identity of a Defaulting Lender to the Borrowers and to the other Finance Parties.
- (i) Notwithstanding any other provision of any Finance Document to the contrary, neither the Agent, the Coordinator nor the Arranger is obliged to do or omit to do anything if it would or might in its reasonable opinion constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality. In particular, and for the avoidance of doubt, nothing in any Finance Document shall be construed so as to constitute an obligation of the Agent or the Arranger to perform any services which it would not be entitled to render pursuant to the provisions of the German Act on Rendering Legal Services (*Rechtsdienstleistungsgesetz*) or pursuant to the provisions of the German Tax Advisory Act (*Steuerberatungsgesetz*) or any other services that require an express official approval, licence or registration, unless the Agent or Arranger (as the case may be) holds the required approval, licence or registration.
- (j) Notwithstanding any provision of any Finance Document to the contrary, none of the Agent or the Arranger is obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it

28.10 Responsibility for documentation

None of the Agent, the Arranger or any Ancillary Lender is responsible or liable for:

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Agent, the Arranger, an Ancillary Lender, an Obligor or any other person in or in connection with any Finance Document or the Information Memorandum or the transactions contemplated in the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; or
- (c) any determination as to whether any information provided or to be provided to any Finance Party is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.

28.11 No duty to monitor

The Agent shall not be bound to enquire:

- (a) whether or not any Default has occurred;
- (b) as to the performance, default or any breach by any Party of its obligations under any Finance Document; or

(c) whether any other event specified in any Finance Document has occurred.

28.12 Exclusion of liability

(a) Without limiting paragraph (b) below (and without prejudice to any other provision of any Finance Document excluding or limiting the liability of the Agent, or any Ancillary Lender), neither the Agent nor any Ancillary Lender will be liable for:

(i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Finance Document, unless directly caused by its gross negligence or wilful misconduct;

(ii) exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Finance Document, other than by reason of its gross negligence or wilful misconduct; or

(iii) without prejudice to the generality of paragraphs (i) and (ii) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever (but not including any claim based on the fraud of the Agent) arising as a result of:

(A) any act, event or circumstance not reasonably within its control; or

(B) the general risks of investment in, or the holding of assets in, any jurisdiction,

including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets; breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.

(b) No Party (other than the Agent or any Ancillary Lender as applicable) may take any proceedings against any officer, employee or agent of the Agent or any Ancillary Lender in respect of any claim it might have against the Agent or any Ancillary Lender or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document and any officer, employee or agent of the Agent or any Ancillary Lender may rely on this Clause

pursuant to section 328 para 1 Civil Code (*Bürgerliches Gesetzbuch*) (*echter berechtigender Vertrag zugunsten Dritter*).

(c) The Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Agent if the Agent has taken all necessary steps as soon as reasonably practicable to comply with

the regulations or operating procedures of any recognised clearing or settlement system used by the Agent for that purpose.

(d) Nothing in this Agreement shall oblige the Agent, the Coordinator or the Arranger to carry out:

(i) any "know your customer" or other checks in relation to any person; or

(ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Lender or for any Affiliate of any Lender,

on behalf of any Lender and each Lender confirms to the Agent, the Coordinator and the Arranger that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Agent, the Coordinator or the Arranger.

(e) Without prejudice to any provision of any Finance Document excluding or limiting the Agent's liability, any liability of the Agent arising under or in connection with any Finance Document shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered (as determined by reference to the date of default of the Agent or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Agent at any time which increase the amount of that loss. In no event shall the Agent be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Agent has been advised of the possibility of such loss or damages.

28.13 Lenders' indemnity to the Agent

Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify the Agent, within three (3) Business Days of demand, against any cost, loss or liability (including, without limitation, for negligence or any other category of liability whatsoever) incurred by the Agent (otherwise than by reason of the Agent's gross negligence or wilful misconduct) (or, in the case of any cost, loss or liability pursuant to Clause 31.10 (*Disruption to payment systems etc.*), notwithstanding the Agent's negligence or any other category of liability whatsoever but not including any claim based on gross negligence, wilful misconduct and/or the fraud of the Agent) in acting as Agent under the Finance Documents (unless the Agent has been reimbursed by an Obligor pursuant to a Finance Document).

28.14 Resignation of the Agent

(a) The Agent may resign and appoint one of its Affiliates acting through an office in Munich, Germany as successor by giving notice to the Lenders and the Borrowers.

- (b) Alternatively, the Agent may resign by giving thirty (30) calendar days' notice to the Lenders and the Borrowers, in which case the Majority Lenders (after consultation with the Borrowers) may appoint a successor Agent.
- (c) If the Majority Lenders have not appointed a successor Agent in accordance with paragraph (b) above within twenty (20) calendar days after notice of resignation was given, the retiring Agent (after consultation with the Borrowers) may appoint a successor Agent (acting through an office in Germany).
- (d) If the Agent wishes to resign because (acting reasonably) it has concluded that it is no longer appropriate for it to remain as agent and the Agent is entitled to appoint a successor Agent under paragraph (c) above, the Agent may (if it concludes (acting reasonably) that it is necessary to do so in order to persuade the proposed successor Agent to become a party to this Agreement as Agent) agree with the proposed successor Agent amendments to this Clause 28 and any other term of this Agreement dealing with the rights or obligations of the Agent consistent with then current market practice for the appointment and protection of corporate trustees together with any reasonable amendments to the agency fee payable under this Agreement which are consistent with the successor Agent's normal fee rates and those amendments will bind the Parties.
- (e) The retiring Agent shall, at its own cost, make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.
- (f) The Agent's resignation notice shall only take effect upon the appointment of a successor.
- (g) Upon the appointment of a successor, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (e) above) but shall remain entitled to the benefit of Clause 16.3 (*Indemnity to the Agent*) and this Clause 28 (and any agency fees for the account of the retiring Agent shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
- (h) After consultation with the Borrowers, the Majority Lenders may, by notice to the Agent, require it to resign in accordance with paragraph (b) above. In this event, the Agent shall resign in accordance with paragraph (b) above.
- (i) The Agent shall resign in accordance with paragraph (b) above (and, to the extent applicable, shall use reasonable endeavours to appoint a successor Agent pursuant to paragraph (c) above) if on or after the date which is three (3) months

before the earliest FATCA Application Date relating to any payment to the Agent under the Finance Documents, either:

- (i) the Agent fails to respond to a request under Clause 14.7 (*FATCA Information*) and a Lender reasonably believes that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;

(ii) the information supplied by the Agent pursuant to Clause 14.7 (*FATCA Information*) indicates that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or

(iii) the Agent notifies the Borrowers and the Lenders that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;

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

28.15 Replacement of the Agent

(a) After consultation with the Borrowers, the Majority Lenders may, by giving thirty (30) calendar days' notice to the Agent replace the Agent by appointing a successor Agent (acting through an office in Germany, Luxembourg or the United Kingdom).

(b) The retiring Agent shall (at the expense of the Lenders) make available to the successor Agent such documents and records and provide such assistance as the successor Agent may reasonably request for the purposes of performing its functions as Agent under the Finance Documents.

(c) The appointment of the successor Agent shall take effect on the date specified in the notice from the Majority Lenders to the retiring Agent. As from this date, the retiring Agent shall be discharged from any further obligation in respect of the Finance Documents (other than its obligations under paragraph (b) above) but shall remain entitled to the benefit of Clause 16.3 (*Indemnity to the Agent*) and this Clause 28 (and any agency fees for the account of the retiring Agent shall cease to accrue from (and shall be payable on) that date).

(d) Any successor Agent and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.

28.16 Confidentiality

(a) In acting as agent for the Finance Parties, the Agent shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments.

(b) If information is received by another division or department of the Agent, it may be treated as confidential to that division or department and the Agent shall not be deemed to have notice of it.

28.17 Relationship with the Lenders

(a) Subject to Clause 26.9 (*Pro rata interest settlement*), the Agent may treat the person shown in its records as Lender at the opening of business (in the place of the Agent's

principal office as notified to the Finance Parties from time to time) as the Lender acting through its Facility Office:

- (i) entitled to or liable for any payment due under any Finance Document on that day; and
- (ii) entitled to receive and act upon any notice, request, document or communication or make any decision or determination under any Finance Document made or delivered on that day,

unless it has received not less than five (5) Business Days' prior notice from that Lender to the contrary in accordance with the terms of this Agreement.

- (b) Any Lender may by notice to the Agent appoint a person to receive on its behalf all notices, communications, information and documents to be made or despatched to that Lender under the Finance Documents. Such notice shall contain the address, and (where communication by electronic mail or other unencrypted electronic means is permitted under Clause 33.5 (*Electronic communication*)) electronic mail address and/or any other information required to enable the transmission of information by that means (and, in each case, the department or officer, if any, for whose attention communication is to be made) and be treated as a notification of a substitute address, electronic mail address (or such other information), department and officer by that Lender for the purposes of Clause 33.2 (*Addresses*) and paragraph (a)(ii) of Clause 33.5 (*Electronic communication*) and the Agent shall be entitled to treat such person as the person entitled to receive all such notices, communications, information and documents as though that person were that Lender.

28.18 Credit appraisal by the Lenders and Ancillary Lenders

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

- (a) the financial condition, status and nature of each member of the Group;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
- (c) whether that Lender or Ancillary Lender has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and
- (d) the adequacy, accuracy or completeness of the Information Memorandum and any other information provided by the Agent, any Party or by any other person under or in

connection with any Finance Document, the transactions contemplated by any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document.

28.19 **Deduction from amounts payable by the Agent**

If any Party owes an amount to the Agent under the Finance Documents the Agent may, after giving notice to that Party, deduct an amount not exceeding that amount from any payment to that Party which the Agent would otherwise be obliged to make under the Finance Documents and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Documents that Party shall be regarded as having received any amount so deducted.

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

No provision of this Agreement will:

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

30. **SHARING AMONG THE FINANCE PARTIES**

30.1 **Payments to Finance Parties**

- (a) Subject to paragraph (b) below, if a Finance Party (a "**Recovering Finance Party**") receives or recovers any amount from an Obligor other than in accordance with Clause 31 (*Payment mechanics*) and applies that amount to a payment due under the Finance Documents then:
 - (i) the Recovering Finance Party shall, within three (3) Business Days, notify details of the receipt or recovery to the Agent;
 - (ii) the Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Agent and distributed in accordance with Clause 31 (*Payment mechanics*), without taking account of any Tax which would be imposed on the Agent in relation to the receipt, recovery or distribution; and
 - (iii) the Recovering Finance Party shall, within three (3) Business Days of demand by the Agent, pay to the Agent an amount (the "**Sharing Payment**") equal to such receipt or recovery less any amount which the Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with Clause 31.5 (*Partial payments*).

- (b) Paragraph (a) above shall not apply to any amount received or recovered by an Ancillary Lender in respect of any cash cover provided for the benefit of that Ancillary Lender.

30.2 **Redistribution of payments**

The Agent shall treat the Sharing Payment as if it had been paid by the relevant Obligor and distribute it between the Finance Parties (other than the Recovering Finance Party) in accordance with Clause 31.5 (*Partial payments*).

30.3 **Recovering Finance Party's rights**

- (a) On a distribution by the Agent under Clause 30.2 (*Redistribution of payments*), the Recovering Finance Party shall be entitled to receive by way of assignment the rights of the Finance Parties to the extent they have shared in the redistribution.
- (b) If and to the extent that the Recovering Finance Party is not able to rely on its rights under paragraph (a) above, the relevant Obligor shall be liable to the Recovering Finance Party for a debt equal to the Sharing Payment which is immediately due and payable.

30.4 **Reversal of redistribution**

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

- (a) each Finance Party which has received a share of the relevant Sharing Payment pursuant to Clause 30.2 (*Redistribution of payments*) shall, upon request of the Agent, pay to the Agent for account of that Recovering Finance Party an amount equal to the appropriate part of its share of the Sharing Payment (together with an amount as is necessary to reimburse that Recovering Finance Party for its proportion of any interest on the Sharing Payment which that Recovering Finance Party is required to pay); and
- (b) that Recovering Finance Party's rights of assignment in respect of any reimbursement shall be cancelled and the relevant Obligor will be liable to the reimbursing Finance Party for the amount so reimbursed and the Recovering Finance Party shall re-assign any claims assigned to it pursuant to paragraph (a) of Clause 30.3 (*Recovering Finance Party's rights*).

30.5 **Exceptions**

- (a) This Clause 30 shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this Clause, have a valid and enforceable claim against the relevant Obligor.
- (b) A Recovering Finance Party is not obliged to share with any other Finance Party any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:
 - (i) it notified that other Finance Party of the legal or arbitration proceedings; and

- (ii) that other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

30.6 Ancillary Lenders

- (a) This Clause 30 shall not apply to any receipt or recovery by a Lender in its capacity as an Ancillary Lender at any time prior to service of notice under Clause 25.18 (*Acceleration*).
- (b) Following service of notice under Clause 25.18 (*Acceleration*), this Clause 30 shall apply to all receipts or recoveries by Ancillary Lenders except to the extent that the receipt or recovery represents a reduction of the Gross Outstandings of a Multi-account Overdraft to or towards an amount equal to its Net Outstandings.

SECTION 11

ADMINISTRATION

31. PAYMENT MECHANICS

31.1 Payments to the Agent

- (a) On each date on which an Obligor or a Lender is required to make a payment under a Finance Document, excluding a payment under the terms of an Ancillary Document, that Obligor or Lender shall make the same available to the Agent (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
- (b) Payment shall be made to such account in the principal financial centre of the country of that currency (or, in relation to euro, in a principal financial centre in such Participating Member State or London, as specified by the Agent) and with such bank as the Agent, in each case, specifies.

31.2 Distributions by the Agent

Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause 31.3 (*Distributions to an Obligor*) and Clause 31.4 (*Clawback*) be made available by the Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Agent by not less than five (5) Business Days' notice with a bank specified by that Party in the principal financial centre of the country of that currency (or, in relation to euro, in the principal financial centre of a Participating Member State or London, as specified by that Party).

31.3 Distributions to an Obligor

The Agent may (with the consent of the Obligor or in accordance with Clause 32 (*Set-off*)) apply any amount received by it for that Obligor in or towards payment (on the date and in

the currency and funds of receipt) of any amount due from that Obligor under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

31.4 **Clawback**

- (a) Where a sum is to be paid to the Agent under the Finance Documents for another Party, the Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.
- (b) If the Agent pays an amount to another Party and it proves to be the case that the Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Agent shall on demand refund the same to the Agent together with interest on

that amount from the date of payment to the date of receipt by the Agent, calculated by the Agent to reflect its cost of funds.

31.5 **Partial payments**

- (a) If the Agent receives a payment that is insufficient to discharge all the amounts then due and payable by an Obligor under the Finance Documents, the Agent shall apply that payment towards the obligations of that Obligor under the Finance Documents in the following order:
 - (i) **first**, in or towards payment pro rata of any unpaid amount owing to the Agent or the Arranger under the Finance Documents;
 - (ii) **secondly**, in or towards payment pro rata of any accrued interest, fee or commission due but unpaid under this Agreement;
 - (iii) **thirdly**, in or towards payment pro rata of any other sum due but unpaid under the Finance Documents.
- (b) The Agent shall, if so directed by the Majority Lenders, vary the order set out in paragraphs (a)(i) to (iii) above.
- (c) Paragraphs (a) and (b) above will override any appropriation made by an Obligor.

31.6 **No set-off by Obligors**

All payments to be made by an Obligor under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim unless the counterclaim is undisputed or has been confirmed in a final non-appealable judgement. Any New Lender and any recipient of security over Lenders' rights according to Clause 26.7 (*Security over Lenders' rights*) may rely on this Clause 31.6, in the case of any New Lender to whom rights have been assigned according to paragraph (b) of Clause 26.2 (*Conditions of assignment or assignment and transfer by assumption of contract (Vertragsübernahme)*) and any recipient of security over Lenders' rights, pursuant to section 328 para 1 of the Civil Code (*Bürgerliches Gesetzbuch*) (*echter berechtigender Vertrag zugunsten Dritter*).

31.7 **Business Days**

- (a) Any payment under the Finance Documents which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (b) During any extension of the due date for payment of any principal or Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

31.8 **Currency of account**

- (a) Subject to paragraphs (b) and (c) below, euro is the currency of account and payment for any sum due from an Obligor under any Finance Document.
- (b) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
- (c) Any amount expressed to be payable in a currency other than euro shall be paid in that other currency.

31.9 **Change of currency**

- (a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
 - (i) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Agent (after consultation with the Borrowers); and
 - (ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Agent (acting reasonably).
- (b) If a change in any currency of a country occurs, this Agreement will, to the extent the Agent (acting reasonably and after consultation with the Borrowers) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the Relevant Market and otherwise to reflect the change in currency.

31.10 **Disruption to payment systems etc.**

If either the Agent determines (in its discretion) that a Disruption Event has occurred or the Agent is notified by the Borrowers that a Disruption Event has occurred:

- (a) the Agent may, and shall if requested to do so by the Borrowers, consult with the Borrowers with a view to agreeing with the Borrowers such changes to the operation or administration of the Facility as the Agent may deem necessary in the circumstances;

- (b) the Agent shall not be obliged to consult with the Borrowers in relation to any changes mentioned in paragraph (a) above if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;
- (c) the Agent may consult with the Finance Parties in relation to any changes mentioned in paragraph (a) above but shall not be obliged to do so if, in its opinion, it is not practicable to do so in the circumstances;
- (d) any such changes agreed upon by the Agent and the Borrowers shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents notwithstanding the provisions of Clause 37 (*Amendments and Waivers*);
- (e) the Agent shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever (including, without limitation for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this Clause 31.10; and
- (f) the Agent shall notify the Finance Parties of all changes agreed pursuant to paragraph (d) above.

32. SET-OFF

- (a) A Finance Party may set off any matured obligation due from an Obligor under the Finance Documents against any satisfiable (*erfüllbar*) obligation (within the meaning of section 387 Civil Code (*Bürgerliches Gesetzbuch*)) owed by that Finance Party to that Obligor, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.
- (b) Any credit balances taken into account by an Ancillary Lender when operating a net limit in respect of any overdraft under an Ancillary Facility shall on enforcement of the Finance Documents be applied first in reduction of the overdraft provided under that Ancillary Facility in accordance with its terms.

33. NOTICES

33.1 Communications in writing

Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by letter or unencrypted email, even if the content may be subject to confidentiality and banking secrecy.

33.2 Addresses

The address (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with the Finance Documents is:

- (a) in the case of each Original Obligor, that identified with its name below;
- (b) in the case of each Lender, each Ancillary Lender or any other Obligor, that notified in writing to the Agent on or prior to the date on which it becomes a Party; and
- (c) in the case of the Agent, that identified with its name below,

or any substitute address or department or officer as the Party may notify to the Agent (or the Agent may notify to the other Parties, if a change is made by the Agent) by not less than five (5) Business Days' notice.

33.3 Delivery

- (a) Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective when received (*zugegangen*), in particular if by way of letter, when it has been left at the relevant address or five (5) Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address, and, if a particular department or officer is specified as part of its address details provided under Clause 33.2 (*Addresses*), if addressed to that department or officer.
- (b) Any communication or document to be made or delivered to the Agent will be effective only when actually received by the Agent and then only if it is expressly marked for the attention of the department or officer identified with the Agent's signature below (or any substitute department or officer as the Agent shall specify for this purpose).
- (c) All notices from or to an Obligor shall be sent through the Agent.
- (d) Any communication or document by the Finance Parties to the Obligors may be made or delivered to any Obligors' Agent for its own account and for the account of the Obligors. For that purpose each Obligor appoints any Obligors' Agent as its agent of receipt (*Empfangsvertreter*).
- (e) Any communication or document which becomes effective, in accordance with paragraphs (a) to (d) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

33.4 Notification of address

Promptly upon changing its address, the Agent shall notify the other Parties.

33.5 Electronic communication

- (a) Any communication (even if the content may be subject to confidentiality and banking secrecy) to be made between any two Parties under or in connection with the Finance Documents may be made by unencrypted electronic mail or other unencrypted electronic

means (including, without limitation, by way of posting to a secure website) if those two Parties:

- (i) notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means; and
 - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five (5) Business Days' notice.
- (b) Any such electronic communication as specified in paragraph (a) above to be made between an Obligor and a Finance Party may only be made in that way to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication.
- (c) Any such electronic communication as specified in paragraph (a) above made between any two Parties will be effective only when actually received (or made available) in readable form and in the case of any electronic communication made by a Party to the Agent only if it is addressed in such a manner as the Agent shall specify for this purpose.
- (d) Any electronic communication which becomes effective, in accordance with paragraph (c) above, after 5:00 p.m. in the place in which the Party to whom the relevant communication is sent or made available has its address for the purpose of this Agreement shall be deemed only to become effective on the following day.
- (e) Any reference in a Finance Document to a communication being sent or received shall be construed to include that communication being made available in accordance with this Clause 33.5.

33.6 English language

- (a) Any notice given under or in connection with any Finance Document must be in English.
- (b) All other documents provided under or in connection with any Finance Document must be:
- (i) in English; or
 - (ii) if not in English, and if so required by the Agent, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

34. CALCULATIONS AND CERTIFICATES

34.1 Accounts

In any litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by a Finance Party are *prima facie* evidence (*Beweis des ersten Anscheins*) of the matters to which they relate.

34.2 Certificates and Determinations

- (a) The Finance Parties make the certifications or determinations of a rate or amount under any Finance Document in the exercise of their unilateral right to specify performance (*einseitiges Leistungsbestimmungsrecht*) which they will exercise with reasonable discretion (*billiges Ermessen*).
- (b) The Parties agree not to dispute in any legal proceeding the correctness of the determinations and certifications of a rate or amount made by a Finance Party under any Finance Document unless the determinations or certifications are inaccurate on *their face or gross negligence or fraud can be shown*.

34.3 Day count convention

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of calendar days elapsed and a year of 360 calendar days or, in any case where the practice in the Relevant Market differs, in accordance with that market practice.

35. PARTIAL INVALIDITY

The Parties agree that should at any time, any provisions of this Agreement be or become void (*nichtig*), invalid or due to any reason ineffective (*unwirksam*) this will indisputably (*unwiderlegbar*) not affect the validity or effectiveness of the remaining provisions and this Agreement will remain valid and effective, save for the void, invalid or ineffective provisions, without any Party having to argue (*darlegen*) and prove (*beweisen*) the Parties intent to uphold this Agreement even without the void, invalid or ineffective provisions.

The void, invalid or ineffective provision shall be deemed replaced by such valid and effective provision that in legal and economic terms comes closest to what the Parties intended or would have intended in accordance with the purpose of this Agreement if they had considered the point at the time of conclusion of this Agreement.

36. REMEDIES AND WAIVERS

No failure to exercise, nor any delay in exercising, on the part of any Finance Party, any right or remedy under a Finance Document shall operate as a waiver of any such right or remedy or constitute an election to affirm any of the Finance Documents. No election to affirm any Finance Document on the part of any Finance Party shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in each Finance Document are cumulative and not exclusive of any rights or remedies provided by law.

37. AMENDMENTS AND WAIVERS

37.1 Required consents

- (a) Subject to Clause 37.2 (*All Lender matters*) and Clause 37.3 (*Other exceptions*) any term of the Finance Documents may be amended or waived only with the consent of the

Majority Lenders and the Obligors and any such amendment or waiver will be binding on all Parties.

- (b) The Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause 37.

37.2 All Lender matters

Subject to Clause 37.4 (*Replacement of Screen Rate*) an amendment or waiver of any term of any Finance Document that has the effect of changing or which relates to:

- (a) the definition of "Majority Lenders" in Clause 1.1 (*Definitions*);
- (b) an extension to the date of payment of any amount under the Finance Documents;
- (c) a reduction in the Margin (including via a direct change of the maximum amount of the Sustainability Margin Adjustment, but excluding, for the avoidance of doubt, any amendment or waiver which relates to the provisions dealing with the Sustainability KPI's) or a reduction in the amount of any payment of principal, interest, fees or commission payable;
- (d) an increase in any Commitment (other than in accordance with Clause 3 (*Accordion Increase*), an extension of the Availability Period or any requirement that a cancellation of Commitments reduces the Commitments of the Lenders rateably under the Facility;
- (e) a change to the Borrowers or Guarantors (other than, for the avoidance of doubt, a change to the Parties pursuant to the operation of Clause 27 (*Changes to the Obligors*));
- (f) paragraph (g) of the definition of Permitted Encumbrances in connection with clause 2.1.2 of the Shareholders' Undertaking Agreement;
- (g) any provision which expressly requires the consent of all the Lenders;
- (h) Clause 2.3 (*Finance Parties' rights and obligations*), Clause 9.1 (*Illegality*), Clause 9.2 (*Change of control*), Clause 9.7 (*Application of prepayments*), Clause 20.23 (*Sanctions*), Clause 23.22 (*Sanctions*), Clause 26 (*Changes to the Lenders*), Clause 27 (*Changes to the Obligors*), Clause 30 (*Sharing among the Finance Parties*), this Clause 37, Clause 40 (*Governing law*) or Clause 41.1 (*Jurisdiction*); or
- (i) the nature or scope of the guarantee and indemnity granted under Clause 19 (*Guarantee and indemnity*),

shall not be made without the prior consent of all the Lenders.

37.3 Other exceptions

An amendment or waiver which relates to the rights or obligations of the Agent, the Coordinator, the Arranger or any Ancillary Lender (each in their capacity as such) may not be effected without the consent of the Agent, the Coordinator, the Arranger or that Ancillary Lender, as the case may be.

37.4 Replacement of Screen Rate

(a) Subject to Clause 37.3 (*Other exceptions*), if a Screen Rate Replacement Event has occurred in relation to the Screen Rate for euro any amendment or waiver which relates to:

(i) providing for the use of a Replacement Benchmark in relation to euro in place of that Screen Rate; and

(A) aligning any provision of any Finance Document to the use of that Replacement Benchmark;

(B) enabling that Replacement Benchmark to be used for the calculation of interest under this Agreement (including, without limitation, any consequential changes required to enable that Replacement Benchmark to be used for the purposes of this Agreement);

(C) implementing market conventions applicable to that Replacement Benchmark;

(D) providing for appropriate fallback (and market disruption) provisions for that Replacement Benchmark; or

(E) adjusting the pricing to reduce or eliminate, to the extent reasonably practicable, any transfer of economic value from one Party to another as a result of the application of that Replacement Benchmark (and if any adjustment or method for calculating any adjustment has been formally designated, nominated or recommended by the Relevant Nominating Body, the adjustment shall be determined on the basis of that designation, nomination or recommendation),

may be made with the consent of the Agent (acting on the instructions of the Majority Lenders) and the Obligors.

(b) If any Lender fails to respond to a request for an amendment or waiver described in paragraph (a) above within ten (10) Business Days (or such longer time period in relation to any request which the relevant Borrower and the Agent may agree) of that request being made:

(i) its Commitment shall not be included for the purpose of calculating the Total Commitments when ascertaining whether any relevant percentage of Total Commitments has been obtained to approve that request; and

(ii) its status as a Lender shall be disregarded for the purpose of ascertaining whether the agreement of any specified group of Lenders has been obtained to approve that request.

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

"Replacement Benchmark" means a benchmark rate which is:

- (a) formally designated, nominated or recommended as the replacement for the Screen Rate by:
 - (i) the administrator of the Screen Rate (provided that the market or economic reality that such benchmark rate measures is the same as that measured by the Screen 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 Benchmark" will be the replacement under paragraph (ii) above;
- (b) in the opinion of the Majority Lenders and the Obligors, generally accepted in the international or any relevant domestic syndicated loan markets as the appropriate successor to the Screen Rate; or
- (c) in the opinion of the Majority Lenders and the Obligors, an appropriate successor to the Screen Rate.

"Screen Rate Replacement Event" means, in relation to the Screen Rate:

- (a) the methodology, formula or other means of determining the Screen Rate has, in the opinion of the Majority Lenders, and the Obligors materially changed;
 - (A) the administrator of the Screen 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 the Screen Rate is insolvent,provided that, in each case, at that time, there is no successor administrator to continue to provide the Screen Rate;
- (ii) the administrator of the Screen Rate publicly announces that it has ceased or will cease, to provide the Screen Rate permanently or indefinitely and, at that time, there is no successor administrator to continue to provide the Screen Rate;
- (iii) the supervisor of the administrator of the Screen Rate publicly announces that the Screen Rate has been or will be permanently or indefinitely discontinued; or
- (iv) the administrator of the Screen Rate or its supervisor announces that the Screen Rate may no longer be used; or

- (b) the administrator of the Screen Rate determines that the Screen Rate should be calculated in accordance with its reduced submissions or other contingency or fallback policies or arrangements and either:
 - (i) the circumstance(s) or event(s) leading to such determination are not (in the opinion of the Majority Lenders and the Obligors) temporary; or
 - (ii) that Screen Rate is calculated in accordance with any such policy or arrangement for a period no less than fifteen (15) Business Days; or
- (c) in the opinion of the Majority Lenders and the Obligors, the Screen Rate is otherwise no longer appropriate for the purposes of calculating interest under this Agreement.

37.5 Disenfranchisement of Defaulting Lenders

- (a) For so long as a Defaulting Lender has any Available Commitment, in ascertaining:
 - (i) the Majority Lenders; or
 - (ii) whether:
 - (A) any given percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments under the Facility; or
 - (B) the agreement of any specified group of Lenders,

has been obtained to approve any request for a consent, waiver, amendment or other vote under the Finance Documents, that Defaulting Lender's Commitment under the Facility will be reduced by the amount of its Available Commitment under the Facility and to the extent that that reduction results in that Defaulting Lender's Commitment being zero, that Defaulting Lender shall be deemed not to be a Lender for the purposes of paragraphs (i) and (ii) above.

- (b) For the purposes of this Clause 37.5, the Agent may assume that the following Lenders are Defaulting Lenders:
 - (i) any Lender which has notified the Agent that it has become a Defaulting Lender;
 - (ii) any Lender in relation to which it is aware that any of the events or circumstances referred to in paragraphs (a), (b) or (c) of the definition of "Defaulting Lender" has occurred,

unless it has received notice to the contrary from the Lender concerned (together with any supporting evidence reasonably requested by the Agent) or the Agent is otherwise aware that the Lender has ceased to be a Defaulting Lender.

37.6 Excluded Commitments

If any Defaulting Lender fails to respond to a request for a consent, waiver, amendment of or in relation to any term of any Finance Document or any other vote of Lenders under the

terms of this Agreement within fifteen (30) Business Days (unless the Borrowers and the Agent agree to a longer time period in relation to any request) of that request being made:

- (a) its Commitment shall not be included for the purpose of calculating the Total Commitments under the Facility when ascertaining whether any relevant percentage (including, for the avoidance of doubt, unanimity) of Total Commitments has been obtained to approve that request; and
- (b) its status as a Lender shall be disregarded for the purpose of ascertaining whether the agreement of any specified group of Lenders has been obtained to approve that request.

37.7 Replacement of a Defaulting Lender

- (a) The Borrowers may, at any time a Lender has become and continues to be a Defaulting Lender, by giving ten (10) Business Days' prior written notice to the Agent and such Lender:
 - (i) replace such Lender by requiring such Lender to (and to the extent permitted by law, such Lender shall) transfer pursuant to Clause 26 (*Changes to the Lenders*) all (and not part only) of its rights and obligations under this Agreement; or
 - (ii) require such Lender to (and to the extent permitted by law, such Lender shall) transfer pursuant to Clause 26 (*Changes to the Lenders*) all (and not part only) of the undrawn Commitment of the Lender ,

to a Lender or other bank, financial institution, trust, fund or other entity (a "**Replacement Lender**") selected by the Borrowers and which confirms its willingness to assume and does assume all the obligations or all the relevant obligations of the transferring Lender in accordance with Clause 26 (*Changes to the Lenders*) for a purchase price in cash payable at the time of transfer which is either:

- (A) in an amount equal to the outstanding principal amount of such Lender's participation in the outstanding Loans and all accrued interest (to the extent that the Agent has not given a notification under Clause 26.8 (*Pro rata interest settlement*)), Break Costs and other amounts payable in relation thereto under the Finance Documents; or
 - (B) in an amount agreed between that Defaulting Lender, the Replacement Lender and the Borrowers and which does not exceed the amount described in paragraph (A) above.
- (b) Any transfer of rights and obligations of a Defaulting Lender pursuant to this Clause shall be subject to the following conditions:
 - (i) the Borrowers shall have no right to replace the Agent;
 - (ii) neither the Agent nor the Defaulting Lender shall have any obligation to the Borrowers to find a Replacement Lender;

- (iii) the transfer must take place no later than thirty (30) calendar days after the notice referred to in paragraph (a) above;
 - (iv) in no event shall the Defaulting Lender be required to pay or surrender to the Replacement Lender any of the fees received by the Defaulting Lender pursuant to the Finance Documents; and
 - (v) the Defaulting Lender shall only be obliged to transfer its rights and obligations pursuant to paragraph (a) above once it is satisfied that it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to that transfer to the Replacement Lender.
- (c) The Defaulting Lender shall perform the checks described in paragraph (b)(v) above as soon as reasonably practicable following delivery of a notice referred to in paragraph (a) above and shall notify the Agent and the Borrowers when it is satisfied that it has complied with those checks.

38. CONFIDENTIAL INFORMATION

38.1 Confidentiality

Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 26.7 (*Security over Lenders' rights*), Clause 38.2 (*Disclosure of Confidential Information*) and Clause 38.3 (*Disclosure to numbering service providers*), and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

38.2 Disclosure of Confidential Information

Any Finance Party may disclose:

- (a) to any of its Affiliates and Related Funds and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives such Confidential Information as that Finance Party shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
- (b) to any person:
 - (i) to (or through) whom it assigns or assigns and transfers by way of assumption of contract (*Vertragsübernahme*) (or may potentially assign or assign and transfer by way of assumption of contract (*Vertragsübernahme*)) all or any of its rights and/or obligations under one or more Finance Documents or which succeeds (or which may

- potentially succeed) it as Agent and, in each case, to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
- (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or one or more Obligors and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
 - (iii) appointed by any Finance Party or by a person to whom paragraph (b)(i) or (ii) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf (including, without limitation, any person appointed under paragraph (b) of Clause 28.17 (*Relationship with the Lenders*));
 - (iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraph (b)(i) or (b)(ii) above;
 - (v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;
 - (vi) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;
 - (vii) to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so) pursuant to Clause 26.7 (*Security over Lenders' rights*);
 - (viii) who is a Party; or
 - (ix) with the consent of the Borrowers;

in each case, such Confidential Information as that Finance Party shall consider appropriate if:

- (A) in relation to paragraphs (b)(i), (b)(ii) and (b)(iii) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;
- (B) in relation to paragraph (b) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential

Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;

- (C) in relation to paragraphs (b)(iv), (b)(v) and (b)(vi) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of that Finance Party, it is not practicable so to do in the circumstances; and
- (c) to any person appointed by that Finance Party or by a person to whom paragraph (b)(i) or (b)(ii) above applies to provide administration or settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (c) if the service provider to whom the Confidential Information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Borrowers and the relevant Finance Party; and
- (d) to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or the Obligors if the rating agency to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information.

38.3 **Disclosure to numbering service providers**

- (a) Any Finance Party may disclose to any national or international numbering service provider appointed by that Finance Party to provide identification numbering services in respect of this Agreement, the Facility and/or one or more Obligors the following information:
- (i) names of Obligors;
 - (ii) country of domicile of Obligors;
 - (iii) place of incorporation of Obligors;
 - (iv) date of this Agreement;
 - (v) Clause 40 (*Governing law*);
 - (vi) the names of the Agent, the Coordinator and the Arranger;
 - (vii) date of each amendment and restatement of this Agreement;
 - (viii) amounts of, and names of, the Facility (and any tranches);

- (ix) amount of Total Commitments;
- (x) currency of the Facility;
- (xi) type of Facility;
- (xii) ranking of Facility;
- (xiii) Termination Date for Facility;
- (xiv) changes to any of the information previously supplied pursuant to paragraphs (i) to (xiii) above; and
- (xv) such other information agreed between such Finance Party and the Borrowers,

to enable such numbering service provider to provide its usual syndicated loan numbering identification services.

- (b) The Parties acknowledge and agree that each identification number assigned to this Agreement, the Facility and/or one or more Obligor by a numbering service provider and the information associated with each such number may be disclosed to users of its services in accordance with the standard terms and conditions of that numbering service provider.
- (c) Each Obligor represents that none of the information set out in paragraphs (i) to (xv) of paragraph (a) above is, nor will at any time be, unpublished price-sensitive information.
- (d) The Agent shall notify the Borrowers and the other Finance Parties of:
 - (i) the name of any numbering service provider appointed by the Agent in respect of this Agreement, the Facility and/or one or more Obligor; and
 - (ii) the number or, as the case may be, numbers assigned to this Agreement, the Facility and/or one or more Obligor by such numbering service provider.

38.4 Entire agreement

This Clause 38 and Clause 26.7 (*Security over Lenders' rights*) constitutes the entire agreement between the Parties in relation to the obligations of the Finance Parties under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

38.5 Inside information

Each of the Finance Parties acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing, trading and tipping and market abuse and each of the Finance Parties undertakes not to use any Confidential Information for any unlawful purpose.

38.6 Notification of disclosure

Each of the Finance Parties agrees (to the extent permitted by law and regulation) to inform the Borrowers:

- (a) of the circumstances of any disclosure of Confidential Information made pursuant to paragraph (b)(iv) of Clause 38.2 (*Disclosure of Confidential Information*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
- (b) upon becoming aware that Confidential Information has been disclosed in breach of this Clause 38.

38.7 Continuing obligations

The obligations in this Clause 38 are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of twelve (12) months from the earlier of:

- (a) the date on which all amounts payable by the Obligors under or in connection with this Agreement have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and
- (b) the date on which such Finance Party otherwise ceases to be a Finance Party.

38.8 Electronic Communication

For reasons of technical practicality, electronic communication may be sent in unencrypted form, even if the content may be subject to confidentiality and banking secrecy.

39. CONFIDENTIALITY OF FUNDING RATES

39.1 Confidentiality and disclosure

- (a) The Agent and each Obligor agree to keep each Funding Rate confidential and not to disclose it to anyone, save to the extent permitted by paragraphs (b) and (c) below.
- (b) The Agent may disclose:
 - (i) any Funding Rate to the relevant Borrower pursuant to Clause 10.5 (*Notification of rates of interest*); and
 - (ii) any Funding Rate to any person appointed by it to provide administration services in respect of one or more of the Finance Documents to the extent necessary to enable such service provider to provide those services if the service provider to whom that information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Agent and the relevant Lender, as the case may be.

- (c) The Agent may disclose any Funding Rate, and each Obligor may disclose any Funding Rate, to:
- (i) any of its Affiliates and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives if any person to whom that Funding Rate is to be given pursuant to this paragraph (i) is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of that Funding Rate or is otherwise bound by requirements of confidentiality in relation to it;
 - (ii) any person to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation if the person to whom that Funding Rate is to be given is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Agent or the relevant Obligor, as the case may be, it is not practicable to do so in the circumstances;
 - (iii) any person to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes if the person to whom that Funding Rate is to be given is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the Agent or the relevant Obligor, as the case may be, it is not practicable to do so in the circumstances; and
 - (iv) any person with the consent of the relevant Lender, as the case may be.

39.2 Related obligations

- (a) The Agent and each Obligor acknowledge that each Funding Rate is or may be price-sensitive information and that its use may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and the Agent and each Obligor undertake not to use any Funding Rate for any unlawful purpose.
- (b) The Agent and each Obligor agree (to the extent permitted by law and regulation) to inform the relevant Lender:
 - (i) of the circumstances of any disclosure made pursuant to paragraph (c)(ii) of Clause 39.1 (*Confidentiality and disclosure*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
 - (ii) upon becoming aware that any information has been disclosed in breach of this Clause 39.

39.3 No Event of Default

No Event of Default will occur under Clause 25.3 (*Other obligations*) by reason only of an Obligor's failure to comply with this Clause 39.

SECTION 12

GOVERNING LAW AND ENFORCEMENT

40. GOVERNING LAW

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

41. ENFORCEMENT

41.1 Jurisdiction

- (a) The courts of Munich, Germany have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a "**Dispute**").
- (b) The Parties agree that the courts of Munich, Germany, are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) This 41.1 is for the benefit of the Finance Parties only. As a result, no Finance Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Finance Parties may take concurrent proceedings in any number of jurisdictions.

42. CONCLUSION OF THIS AGREEMENT (*VERTRAGSSCHLUSS*)

- (a) The Parties to this Agreement may choose to conclude this Agreement by an exchange of signed signature page(s), transmitted by any means of telecommunication (*telekommunikative Übermittlung*) such as by way of electronic photocopy.
- (b) If the Parties to this Agreement choose to conclude this Agreement pursuant to paragraph (a) above, they will transmit the signed signature page(s) of this Agreement to Dentons Europe LLP, attention to Axel Schlieter (axel.schlieter@dentons.com) or Julia Heitmann (julia.heitmann@dentons.com) (each a "**Recipient**"). The Agreement will be considered concluded once one Recipient has actually received the signed signature page(s) (*Zugang der Unterschriftsseite(n)*) from all Parties to this Agreement (whether by way of electronic photocopy or other means of telecommunication) and at the time of the receipt of the last outstanding signature page(s) by such one Recipient.
- (c) For the purposes of this Clause 42 only, the Parties to this Agreement appoint each Recipient as their attorney (*Empfangsvertreter*) and expressly allow (*gestatten*) each Recipient to collect the signed signature page(s) from all and for all Parties to this Agreement. For the avoidance of doubt, each Recipient will have no further duties connected with its position as Recipient. In particular, each Recipient may assume the

conformity to the authentic original(s) of the signature page(s) transmitted to it by means of telecommunication, the genuineness of all signatures on the original signature page(s) and the signing authority of the signatories.

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

SIGNATURES

THE ORIGINAL BORROWERS

ZELLSTOFF- UND PAPIERFABRIK ROSENTHAL GMBH

By: /s/ Leonhard Nossol
Name: Leonhard Nossol
Title: Managing Director

By: _____
Name:
Title:

Address: Zellstoff- und Papierfabrik Rosenthal GmbH
Hauptstrasse 16
07366 Rosenthal am Rennsteig
Federal Republic of Germany

Email: Leonhard.Nossol@mercerint.com

Attention: Leonhard Nossol, Managing Director

MERCER TIMBER PRODUCTS GMBH

By: /s/ Torsten Kröger
Name: Torsten Kröger
Title: Managing Director

By: _____
Name:
Title:

Address: Mercer Timber Products GmbH
Am Bahnhof 123
07929 Saalburg-Ebersdorf
Federal Republic of Germany

Email: Torsten.Kroeger@mercerint.com

Attention: Torsten Kröger, Managing Director

ZELLSTOFF STENDAL GMBH

By: /s/ André Listemann
Name: André Listemann
Title: Managing Director

By: _____
Name:
Title:

Address: Zellstoff Stendal GmbH
Goldbecker Strasse 1
39596 Arneburg
Federal Republic of Germany

Email: Andre.Listemann@mercerint.com

Attention: André Listemann, Managing Director

MERCER HOLZ GMBH

By: /s/ Wolfgang Beck
Name: Wolfgang Beck
Title: Managing Director

By: _____
Name:
Title:

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Federal Republic of Germany

Email: Wolfgang.Beck@mercerint.com
Attention: Wolfgang Beck, Managing Director

STENDAL PULP HOLDING GMBH

By: /s/ Adolf Koppensteiner
Name: Adolf Koppensteiner
Title: Managing Director

By: /s/ David Ure
Name: David Ure
Title: Managing Director

Address: Stendal Pulp Holding GmbH
Charlottenstrasse 59
10117 Berlin
Federal Republic of Germany

Email: David Ure@mercerint.com
Attention: David Ure, Managing Director

ZELLSTOFF STENDAL TRANSPORT GMBH

By: /s/ André Listemann
Name: André Listemann
Title: Managing Director

By: _____
Name:
Title:

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Federal Republic of Germany

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Attention: André Listemann, Managing Director

MERCER TIMBER PRODUCTS STENDAL GMBH

By: /s/ Carsten Merforth
Name: Dr. Carsten Merforth
Title: Managing Director

By: _____
Name:
Title:

Address: Mercer Timber Products Stendal GmbH
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Email: Carsten.Merforth@mercerint.com
Attention: Dr. Carsten Merforth, Managing Director

THE ORIGINAL GUARANTORS

ZELLSTOFF- UND PAPIERFABRIK ROSENTHAL GMBH

By: /s/ Leonhard Nossol
Name: Leonhard Nossol
Title: Managing Director

By: _____
Name:
Title:

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Email: Leonhard.Nossol@mercerint.com

Attention: Leonhard Nossol, Managing Director

MERCER TIMBER PRODUCTS GMBH

By: /s/ Torsten Kröger
Name: Torsten Kröger
Title: Managing Director

By: _____
Name:
Title:

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07929 Saalburg-Ebersdorf
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Email: Torsten.Kroeger@mercerint.com
Attention: Torsten Kröger, Managing Director

ZELLSTOFF STENDAL GMBH

By: /s/ André Listemann
Name: André Listemann
Title: Managing Director

By: _____
Name:
Title:

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39596 Arneburg
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Email: Andre.Listemann@mercerint.com
Attention: André Listemann, Managing Director

MERCER HOLZ GMBH

By: /s/ Wolfgang Beck
Name: Wolfgang Beck
Title: Managing Director

By: _____
Name:
Title:

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Email: Wolfgang.Beck@mercerint.com
Attention: Wolfgang Beck, Managing Director

STENDAL PULP HOLDING GMBH

By: /s/ Adolf Koppensteiner
Name: Adolf Koppensteiner
Title: Managing Director

By: /s/ David Ure
Name: David Ure
Title: Managing Director

Address: Stendal Pulp Holding GmbH
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Federal Republic of Germany

Email: David Ure@mercerint.com
Attention: David Ure, Managing Director

ZELLSTOFF STENDAL TRANSPORT GMBH

By: /s/ André Listemann
Name: André Listemann
Title: Managing Director

By: _____
Name:
Title:

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Email: Andre.Listemann@mercerint.com
Attention: André Listemann, Managing Director

MERCER PULP SALES GMBH

By: /s/ Uwe Bentlage
Name: Uwe Bentlage
Title: Managing Director

By: /s/ Nils Hegerding
Name: Nils Hegerding
Title: Managing Director

Address: Mercer Pulp Sales GmbH
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Email: Uwe.Bentlage@mercerint.com
Attention: Uwe Bentlage, Managing Director

MERCER TIMBER PRODUCTS STENDAL GMBH

By: /s/ Carsten Merforth
Name: Dr. Carsten Merforth
Title: Managing Director

By: _____
Name:
Title:

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Email: Carsten.Merforth@mercerint.com
Attention: Dr. Carsten Merforth, Managing Director

THE ARRANGER

UNICREDIT BANK AG

By: /s/ Frank Biburger
Name: Frank Biburger
Title: MD

By: /s/ Alberto Covelli
Name: Alberto Covelli
Title: Director

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Federal Republic of Germany

Email: alberto.covelli@unicredit.de

Attention: Alberto Covelli

Email: Kerstin.Weinling@unicredit.de

Attention: Kerstin Weinling

COMMERZBANK AG, BERLIN BRANCH

By: /s/ Uwe Prinz
Name: Uwe Prinz
Title: Director

By: /s/ Thomas Leopold
Name: Thomas Leopold
Title: Director

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Large Corporates Region East
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Email: bianca.bahn@commerzbank.com

Attention: Bianca Balm

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Attention: Anna Wojtal

LANDESBANK BADEN-WURTTENBERG

By: /s/ Ingo Bach
Name: Ingo Bach
Title: Director

By: /s/ Cathleen Junge
Name: Cathleen Junge
Title: Associate Director

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Email: tino.petzold@lbbw.de

Attention: Tino Petzold

THE COORDINATOR

UNICREDIT BANK AG

By: /s/ Frank Biburger
Name: Frank Biburger
Title: MD

By: /s/ Alberto Covelli
Name: Alberto Covelli
Title: Director

Address: UniCredit Bank AG
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Email: alberto.covelli@unicredit.de

Attention: Alberto Covelli

Email: Kerstin.Weinling@unicredit.de

Attention: Kerstin Weinling

THE AGENT

UNICREDIT BANK AG

By: /s/ Massimo Orlandi
Name: Massimo Orlandi
Title: Managing Director

By: /s/ Alexandra Brückner
Name: Alexandra Brückner
Title: Analyst

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Email: Manuela.Schoettner-Ullrich@unicredit.de

Attention: Manuela Schoettner-Ullrich

THE SUSTAINABILITY COORDINATOR

UNICREDIT BANK AG

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Name: Frank Biburger
Title: M D

By: /s/ Alberto Covelli
Name: Alberto Covelli
Title: Director

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Email: alberto.covelli@unicredit.de

Attention: Alberto Covelli

Email: Kerstin.Weinling@unicredit.de

Attention: Kerstin Weinling

THE ORIGINAL LENDER

BARCLAYS BANK IRELAND PLC

By: /s/ Mark Pope
Name: Mark Pope
Title: Assistant Vice President

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Ireland, D02 RF29

Email: Mark.Pope@barclays.com

Attention: Mark

COMMERZBANK AG, BERLIN BRANCH

By: /s/ Uwe Prinz
Name: Uwe Prinz
Title: Director

By: /s/ Thomas Leopold
Name: Thomas Leopold
Title: Director

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Email: bianca.bahn@commerzbank.com

Attention: Bianca Bahn

Email: gs-mo5.1.1centralloanbookluxembourg@commerzbank.com

Attention: Anna Wojtal

CREDIT SUISSE (DEUTSCHLAND) AKTIENGESELLSCHAFT

By: /s/ Garrett Lynskey
Name: Garrett Lynskey
Title: Authorised Signatory

By: /s/ Andrew Senicki
Name: Andrew Senicki
Title: VP

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Germany

Email: andrew.senicki@credit-suisse.com

Attention: Andrew Senicki

Email: list.csfbi-loans-grp@credit-suisse.com

Attention: Loan Operations

LANDESBANK BADEN-WÜRTTEMBERG

By: /s/ Ingo Bach
Name: Ingo Bach
Title: Director

By: /s/ Cathleen Junge
Name: Cathleen Junge
Title: Associate Director

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Email: tino.petzold@lbbw.de

Attention: Tino Petzold

ROYAL BANK OF CANADA

By: /s/ David Heyes
Name: David Heyes
Title: Director

By: _____
Name:
Title:

Address: Royal Bank of Canada
100 Bishopsgate
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Email: Glalocy@rbc.com

Attention: Global Loans Administration

UNICREDIT BANK AG

By: /s/ Alberto Cavelli
Name: Alberto Cavelli
Title: Director

By: /s/ Frank Biburger
Name: Frank Biburger
Title: M D

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81925 Munich
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Email: alberto.covelli@unicredit.de

Attention: Alberto Covelli

Email: Kerstin.Weinling@unicredit.de

Attention: Kerstin Weinling

CERTIFICATION OF PERIODIC REPORT

I, Juan Carlos Bueno, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Mercer International Inc. (the "Registrant");
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the Registrant as of, and for, the periods presented in this report;
4. The Registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the Registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the Registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the Registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the Registrant's internal control over financial reporting that occurred during the Registrant's most recent fiscal quarter (the Registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the Registrant's internal control over financial reporting; and
5. The Registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the Registrant's auditors and the audit committee of the Registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the Registrant's internal control over financial reporting.

Dated: October 27, 2022

/s/ Juan Carlos Bueno

Juan Carlos Bueno
Chief Executive Officer

CERTIFICATION OF PERIODIC REPORT

I, David K. Ure, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Mercer International Inc. (the "Registrant");
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the Registrant as of, and for, the periods presented in this report;
4. The Registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the Registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the Registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the Registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the Registrant's internal control over financial reporting that occurred during the Registrant's most recent fiscal quarter (the Registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the Registrant's internal control over financial reporting; and
5. The Registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the Registrant's auditors and the audit committee of the Registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the Registrant's internal control over financial reporting.

Dated: October 27, 2022

/s/ David K. Ure

David K. Ure

Chief Financial Officer

CERTIFICATION OF PERIODIC REPORT

I, Juan Carlos Bueno, Chief Executive Officer of Mercer International Inc. (the "Company"), certify pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the *Sarbanes-Oxley Act of 2002*, that, to my knowledge:

- (1) the Quarterly Report on Form 10-Q of the Company for the quarterly period ended September 30, 2022 (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the *Securities Exchange Act of 1934*; and
- (2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: October 27, 2022

/s/ Juan Carlos Bueno

Juan Carlos Bueno

Chief Executive Officer

A signed original of this written statement required by Section 906 of the *Sarbanes-Oxley Act of 2002* has been provided to Mercer International Inc. and will be retained by Mercer International Inc. and furnished to the Securities and Exchange Commission or its staff upon request.

This certification accompanies the Report pursuant to Section 906 of the *Sarbanes-Oxley Act of 2002* and shall not, except to the extent required by the *Sarbanes-Oxley Act of 2002*, be deemed filed by the Company for purposes of Section 18 of the *Securities Exchange Act of 1934*, as amended.

CERTIFICATION OF PERIODIC REPORT

I, David K. Ure, Chief Financial Officer of Mercer International Inc. (the "Company"), certify pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

- (1) the Quarterly Report on Form 10-Q of the Company for the quarterly period ended September 30, 2022 (the "Report") fully complies with the requirements of Section 13(a) or 15 (d) of the Securities Exchange Act of 1934; and
- (2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: October 27, 2022

/s/ David K. Ure
David K. Ure
Chief Financial Officer

A signed original of this written statement required by Section 906 of the Sarbanes-Oxley Act of 2002 has been provided to Mercer International Inc. and will be retained by Mercer International Inc. and furnished to the Securities and Exchange Commission or its staff upon request.

This certification accompanies the Report pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and shall not, except to the extent required by the Sarbanes-Oxley Act of 2002, be deemed filed by the Company for purposes of Section 18 of the Securities Exchange Act of 1934, as amended.