
UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, DC 20549

FORM 8-K

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

DATE OF REPORT: June 29, 2005
(Date of earliest event reported)

POWELL INDUSTRIES, INC.

(Exact Name of Registrant as Specified in Its Charter)

Delaware

(State or other jurisdiction of
incorporation or
organization)

001-12488

(Commission File Number)

88-0106100

(I.R.S. Employer
Identification Number)

8550 Mosley Drive
Houston, Texas

(Address of Principal Executive
Offices)

77075-1180

(Zip Code)

(713) 944-6900

(Registrant's Telephone Number, Including Area Code)

N/A

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

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

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14D-2(b))
 - ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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TABLE OF CONTENTS

[Item 1.01. Entry into a Material Definitive Agreement](#)

[Item 1.02. Termination of a Material Definitive Agreement](#)

[Item 2.01. Completion of Acquisition or Disposition of Assets](#)

[Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant](#)

[Item 9.01. Financial Statements and Exhibits](#)

[SIGNATURES](#)

[EXHIBIT INDEX](#)

[Agreement for the Sale & Purchase of Certain Assets](#)

[Agreement for the Sale of Freehold Land at Ripley Road](#)

[Credit Agreement](#)

[Press Release dated July 5, 2005](#)

Item 1.01. Entry into a Material Definitive Agreement.

On June 29, 2005, Powell Industries, Inc. (“Company”), together with Inhoco 3210 Limited and Switchgear & Instrumentation Properties Limited, indirect wholly owned subsidiaries of the Company (collectively, “Subsidiaries”), entered into a credit agreement with Bank of America, N.A. as administrative agent and the other banks and financial institutions indicated in the credit agreement. The credit agreement is a senior credit facility extending a \$22,000,000 revolving line of credit to the Company, a £4,000,000 (approximately \$ 7,036,000 on July 5, 2005) revolving line of credit to the Subsidiaries and a £6,000,000 (approximately \$10,500,000 on July 6, 2005) single advance term loan (in part to fund the acquisition described in Item 2.01 below) to the Subsidiaries. The credit agreement also provides for the issuance of letters of credit. The credit agreement allows the Company (or, as applicable, the Subsidiaries) to elect an interest rate on amounts borrowed of (a) the higher of the federal funds rate plus .50% or the bank’s prime rate, which was 6.25% at June 30, 2005 or (b) the LIBOR rate, which was 4.75% at June 30, 2005, plus an additional percentage of 1.00% to 1.75% based on the Company’s performance. As of July 6, 2005 the interest rate on the single advance term loan was 6.50%. A fee of .20% to .375% is charged on the unused balance of the revolving lines of credit. The Subsidiaries are required to repay the single advance term loan, advanced on June 30, 2005, in installments of £300,000 plus accrued and unpaid interest on the principal balance outstanding on the last business day of each calendar quarter, beginning March 31, 2006. The credit agreement contains customary affirmative and negative covenants and requirements to maintain a minimum level of tangible net worth and profitability. Obligations under the credit agreement are secured by a pledge of 100% of the capital stock of the Company’s domestic subsidiaries and 65% of the capital stock of the Company’s foreign subsidiaries and are guaranteed by the Company’s domestic subsidiaries. Upon the occurrence of a default, the obligation of any lender to advance funds or extend letters of credit is terminated and all outstanding amounts owing under the credit agreement are immediately due and payable.

The foregoing description of the credit agreement is not complete and is qualified in its entirety by reference to the copy of the credit agreement filed as Exhibit 10.1 to this report.

The disclosure under Item 2.01 of this report is incorporated herein by reference.

Item 1.02. Termination of a Material Definitive Agreement.

The credit agreement described in Item 1.01 of this report terminates and replaces the Amended Loan Agreement dated October 29, 2004, between Powell Industries, Inc. and Bank of America, N.A. The loan agreement provided for a \$15,000,000 revolving line of credit. By its terms, the loan agreement would have expired in February 2007.

Item 2.01. Completion of Acquisition or Disposition of Assets.

On July 4, 2005, Powell Industries, Inc., through its indirect wholly owned subsidiaries, Inhoco 3210 Limited and Switchgear & Instrumentation Properties Limited (collectively, “Subsidiaries”), entered into acquisition agreements to acquire the business and substantially all of the assets, including the real property and fixtures, inventories, equipment and machinery, receivables and intellectual property, of Switchgear & Instrumentation Limited (“Seller”) for an aggregate purchase price of \$9,194,000 and £5,000,000 (approximately \$ 8,795,000 on July 5, 2005). The closing of the transactions contemplated by the agreements occurred immediately after the signing of the agreements.

The foregoing description of the acquisition agreements is not complete and is qualified in its entirety by reference to the copies of the acquisition agreements filed as Exhibits 2.1 and 2.2 to this report.

Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

The disclosure under Item 1.01 of this report is incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(a) *Financial Statements of Businesses Acquired.*

(b) *Pro Forma Financial Information.*

The financial information required hereunder will be filed by amendment to this Form 8-K Current Report within 71 calendar days after the date that the initial report on Form 8-K was required to be filed.

(c) *Exhibits.*

- 2.1 Agreement for the sale and purchase of certain assets and the assumption of certain liabilities of Switchgear & Instrumentation Limited, dated July 4, 2005. Exhibits and schedules to the Agreement, which are identified in the table of contents, have been omitted but will be provided supplementally upon request of the Securities and Exchange Commission.
- 2.2 Agreement for the sale of freehold land at Ripley Road, Bradford, dated July 4, 2005. Exhibits and schedules to the Agreement, which are identified in the table of contents, have been omitted but will be provided supplementally upon request of the Securities and Exchange Commission.
- 10.1 Credit Agreement dated as of June 29, 2005 among Powell Industries, Inc., Inhoco 3210 Limited and Switchgear & Instrumentation Properties Ltd. and Bank of America and the other lenders parties thereto
- 99.1 Press Release of Powell Industries, Inc., dated July 5, 2005.

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.

POWELL INDUSTRIES, INC.

Date: July 6, 2005

By: /s/ DON R. MADISON

Don R. Madison

Vice President/Treasurer/

Chief Financial Officer

(Principal Accounting and Financial Officer)

EXHIBIT INDEX

<u>Exhibit Number</u>	<u>Description</u>
2.1	Agreement for the sale and purchase of certain assets and the assumption of certain liabilities of Switchgear & Instrumentation Limited, dated July 4, 2005. Exhibits and schedules to the Agreement, which are identified in the table of contents, have been omitted but will be provided supplementally upon request of the Securities and Exchange Commission.
2.2	Agreement for the sale of freehold land at Ripley Road, Bradford, dated July 4, 2005. Exhibits and schedules to the Agreement, which are identified in the table of contents, have been omitted but will be provided supplementally upon request of the Securities and Exchange Commission.
10.1	Credit Agreement dated as of June 29, 2005 among Powell Industries, Inc., Inhoco 3210 Limited and Switchgear & Instrumentation Properties Ltd. and Bank of America and the other lenders parties thereto
99.1	Press Release of Powell Industries, Inc., dated July 5, 2005.

Dated 4 July 2005

SWITCHGEAR & INSTRUMENTATION LIMITED

INHOCO 3210 LIMITED

(to be renamed Switchgear & Instrumentation Limited)

AGREEMENT
for the sale and purchase of certain assets
and the assumption of certain liabilities of
Switchgear & Instrumentation Limited

ADDLESHAW GODDARD

Contents

Clause	Page
1 Definitions	3
2 Interpretation	9
3 Sale of the Business and Assets	10
4 Excluded Assets and Liabilities	11
5 Purchase Price	12
6 Retention	13
7 Completion	14
8 Business responsibility and indemnities	15
9 Receivables	16
10 Contracts and Confidentiality Agreements	17
11 Employees	18
12 Pensions	20
13 Apportionments	21
14 Warranties	22
15 Limitation on liability	22
16 Buyer's Assurances	22
17 Restrictive covenants	23
18 Post-Completion matters	24
19 VAT	26
20 Announcements and confidentiality	27
21 Assignment and third party rights	28
22 Notices	28
23 General	29
24 Governing law and jurisdiction	31
 Schedule	
1 Balance Sheet & Purchase Price Allocation	
2 Completion	
3 Completion Balance Sheet and adjustment to the Purchase Price by reference to the Completion NAV	
Part 1 — General provisions	
Part 2 — Format of Completion Balance Sheet and specific accounting policies	
Part 3 — Dispute resolution	
Part 4 — Form of letter of instruction to the Independent Accountants pursuant to paragraph 2 of part 3 of this schedule	
4 Assumed Liabilities	
5 Loose Plant and Machinery	
6 Contracts	
Part 1 — General	
Part 2 — [Not used]	
Part 3 — Customer	
Part 4 — Supplier	
Part 5 — Contracts not assumed by the Buyer	
7 Employees	
8 Intellectual Property Rights	
Part 1 — Business Intellectual Property	
Part 2 — IP Licences	

9	Warranties
10	Computer Systems
11	Computer Contracts
12	Shared Services
13	Bonds
14	Determination of Negative Cashflow Payment
	Part 1 — General provisions
	Part 2 — Format of Negative Cashflow Payment Statement
	Part 3 — Dispute resolution
	Part 4 — Form of letter of instruction to the Independent Accountants pursuant to paragraph 2 of part 3 of this schedule
15	Limitations on the Seller's liability
16	Environmental Liabilities

This Agreement is made on 4 July 2005

Between

- (1) **Switchgear & Instrumentation Limited** (No. 620929) whose registered office is at Heathcote, Kings Road, Ilkley, West Yorkshire LS29 9AS (**Seller**); and
- (2) **Inhoco 3210 Limited** (to be renamed Switchgear & Instrumentation Limited) (No. 5464765) whose registered office is at 100 Barbirolli Square, Manchester M2 3AB (**Buyer**).

Whereas:

- (A) The Seller's business includes the Business.
- (B) The Seller has agreed to sell and the Buyer has agreed to purchase the Business as a going concern and the Assets and to assume the Assumed Liabilities on the terms of this Agreement.

It is agreed

1 Definitions

In this Agreement, unless the context otherwise requires:

Accounts means the audited balance sheet of the Seller as at the Accounts Date and the audited profit and loss account of the Seller for the financial year ended on the Accounts Date together with the notes to, and the auditors' and directors' reports on those accounts

Accounts Date means 28 February 2005

Accruals means all amounts payable at the Transfer Date by the Seller in relation to goods and services provided to the Business before the Transfer Date but which have not been paid for by the Seller at that date to be apportioned in accordance with clause 13.1 but excluding amounts payable in respect of Trade Creditors, the contracts listed in part 5 of schedule 6 and Excluded Liabilities.

agreed form means in relation to any document, that document in the form agreed by the parties and, for the purposes of identification, signed or initialled by or on behalf of the parties

Assets means the assets, contracts and rights owned or held by the Seller and used in or in connection with the Business to be sold or transferred pursuant to this Agreement described in clause 3 but not including any of the Excluded Assets

Assumed Liabilities means the liabilities and obligations specifically agreed to be assumed by the Buyer pursuant to this Agreement including those set out in schedule

Bailey Guarantee means the guarantee of the Seller's obligations under this Agreement granted by The NG Bailey Organisation Limited in the agreed form

Base NAV means £3,255,000

Bonds means all letters of credit, performance bonds and any other agreement to which the Seller or any member of the Seller's Group is a party which secures the performance by the Seller of the Customer Contracts

Borrowing means any borrowings of the Business and/or of the Seller whether from a bank or any other source

Business means the Switchgear Business and the Laser Cutting Business

Business Day means any day on which the banks are open for business in London (excluding Saturdays, Sundays and public holidays)

Business Intellectual Property means all Intellectual Property Rights owned or used by the Seller or any member of the Seller's Group or which any such person has the right to use in each case in connection with the Business as carried on at or prior to the Transfer Date (including, without limitation, those Intellectual Property Rights specified in schedule part)

Business Names means "Switchgear & Instrumentation", "S & I" and "NGBM" and the exclusive right to use such names after Completion in the style or format and/or with the logo in which such names are or have been used by the Seller in connection with the Business at or prior to the Transfer Date but for the avoidance of doubt excluding any right to use the name "Bailey" or the letters "NGB" (other than within "NGBM") whether alone or in conjunction with any other word, symbol, letter or number

Buyer's Group means the Buyer and any holding company or subsidiary of the Buyer and any subsidiary of such holding company and any equivalent company incorporated outside England and Wales which had such been incorporated in England and Wales the same would have been such a holding company or subsidiary

Buyer's Nominated Account means such account as the Buyer shall specify in writing to the Seller following Completion

Buyer's Solicitors means Addleshaw Goddard of Sovereign House, PO Box 8, Sovereign Street, Leeds LS1 1HQ, acting for the Buyer and S & I Properties

Companies Act means the Companies Act 1985

Completion means completion of the sale and purchase of the Business and the Assets and the assumption of the Assumed Liabilities in accordance with clause 8 of this Agreement

Completion Balance Sheet means the balance sheet of the Buyer as at the Completion Balance Sheet Date to be prepared in accordance with paragraph of part of schedule

Completion Balance Sheet Date means 00.01 on the Completion Date

Completion Date means 4 July 2005

Completion NAV means the aggregate value of the Assets less the Assumed Liabilities as shown in the Completion Balance Sheet

Computer Contracts means all legally binding arrangements and agreements pursuant to which any third party, including any member of the Seller's Group, provides any element of the Computer Systems to the Business (or any services in relation to the same including, without limitation, maintenance and support, security, disaster recovery, facilities management, bureau and online services) including the agreements particulars of which are set out in schedule

Computer Systems means all Hardware, software, databases, networks, printers and other information technology owned or used by the Seller in connection with the Business including without limitation those items which are set out in schedule

Confidential Information means all information, know-how and techniques (in whatever form held) to the extent to which it relates to all or any part of the Business and/or Assets, including all names and lists of customers and suppliers, sales and marketing information (including targets, sales and market share statistics, market surveys and reports on research)

Contracts means all contracts, commitments and licences entered into by or on behalf of the Seller in connection with the Business and which remain to be performed (in whole or in part) or in respect of which obligations remain outstanding at the Transfer Date including the Customer Contracts, the Lease Contracts, the Computer Contracts, the Licences and the Supplier Contracts but excluding those contracts referred to in part of schedule

Customer Advance Payments means the total amount of all interim sales invoices raised by the Seller in respect of the Customer Contracts

Customer Contracts means those contracts that the Seller has with customers of the Business including those specified in part 3 of schedule but excluding those in part 5 of schedule 6

Customer Letter means the joint letter from the Seller and the Buyer to customers of the Business in the agreed form

Customs means HM Revenue and Customs

Data Room means the data room documentation, an index of which is attached to the Disclosure Letter

Debtors means those persons who owe Receivables

Disclosure Letter means the letter (together with its annexures and documents) in the agreed form from the Seller to the Buyer signed and delivered immediately prior to the execution of this Agreement

Employees means those persons employed by the Seller in the Business at the Transfer Date who are listed in schedule

Employment Liabilities means all earned but unpaid salaries, bonuses and commissions of Employees at the Transfer Date

Environmental Liabilities has the meaning given to the term in schedule

Excluded Assets means the assets listed in clause 4 as Excluded Assets

Excluded Contracts means those contracts set out in paragraph of part of schedule

Excluded Liabilities means all liabilities and obligations of the Business, the Seller or any member of the Seller's Group other than the Assumed Liabilities, including the obligations and liabilities listed in clause 4 as Excluded Liabilities

Goodwill means the goodwill of the Seller in connection with the Business including the exclusive rights for the Buyer to represent itself as carrying on the Business in succession to the Seller and to use the Business Names

Guarantee means any legally enforceable guarantee, indemnity, suretyship, letter of comfort, security or right of set-off given or undertaken directly or indirectly by a person to secure or support the obligations (actual or contingent) of any third party

Hardware means all hardware, peripherals, communication links, storage media and networking equipment used by the Business

ICTA means the Income and Corporation Taxes Act 1988

Intellectual Property Rights means patents, rights in inventions, know-how, registered and unregistered trademarks and service marks (including any trade or brand name and the Business Names), domain names, registered designs, design rights, utility models, copyright (including all such rights in computer software and any databases), moral rights, topography rights and rights in confidential information (in each case for the full period thereof and all extensions and renewals thereof), applications for registration of any of the foregoing and the right to apply for any of the foregoing in each case in any part of the world and any similar rights situated in any country but for the avoidance of doubt excluding any right to use the name "Bailey" or the letters "NGB" (other than as within "NGBM") whether alone or in conjunction with any other word, symbol, letter or number

IP Licences means any licences, authorisations or permissions in any form whatsoever whether express or implied, pertaining to the use, right to use or exploitation of the Business Intellectual Property, whether by the Seller, any member of the Seller's Group or any third party including, without limitation, those licences, authorisations or permissions specified in part of schedule

Laser Cutting Business means that part of the business carried on by the Seller at the Transfer Date comprising the business of the NGBM division of the Seller

Lease Contracts means the finance lease, hire, hire purchase, rent or conditional sale agreements entered into by or on behalf of the Seller with persons other than members of the Seller's Group in or in connection with the Business and which remain to be performed (in whole or in part) at the Transfer Date

Licence means any licence, permit, consent, certificate, exemption, permission or other approval, filing of notification or return, report and assessment, registration or authorisation required for, or in connection with, any part of the Business or the ownership, use, possession or occupation of any of the Assets including the IP Licences and including all consents to discharge trade effluent under Section 118 of the Water Services Industry Act 1991

Loose Plant and Machinery means all the items of loose plant, machinery, equipment, tools, motor vehicles, furniture, trade utensils and other chattels which are (1) owned by the Seller and used in or in connection with the Business at the Transfer Date or (2) used by the Seller in connection with the Business at the Transfer Date in accordance with lease or hire arrangements between the Seller and other members of the Seller's Group, including in each case those listed in schedule

Negative Cashflow Contract has the meaning set out in clause 10.2

Negative Cashflow Payment means the aggregate of all positive sums in respect of Negative Cashflow Contracts determined in accordance with clause 10.2 and schedule

Overseas Subsidiaries means all the subsidiaries of Switchgear & Instrumentation (International) Limited (No. 3587064)

Pension Schemes means The Pension & Life Assurance Plan of The NG Bailey Organisation, The Bailey Stakeholder Pension Plan, The Combined Specialists Plan and The Friends Provident Stakeholder Scheme

Prepayments means all amounts paid on or before the Transfer Date by the Seller in relation to goods and services which at the Transfer Date are yet to be provided by third parties in relation to the Business to be calculated as apportioned in clause 13.1

Property means all that freehold property known as The S & I Factory, Ripley Road, West Bowling, Bradford, West Yorkshire BD4 7EH and registered under title number WYK 562789

Property Guarantee means the guarantee of the Seller's obligations under the Property Transfer Agreement granted by The NG Bailey Organisation Limited in the agreed form

Property Transfer Agreement means the agreement for the sale and purchase of the Property between the Seller and Switchgear & Instrumentation Properties Limited (No. 5464761) in the agreed form

Purchase Price has the meaning given in clause 5

Receivables means all sales invoices raised by the Seller in relation to the Customer Contracts which are unpaid at the Transfer Date

Relevant Associate has the same meaning as in paragraph 3(7) of Schedule 10 VATA

Relevant Claim means any claim for breach of the Warranties pursuant to this Agreement

Retained Records means all accounting, financial, Tax and other records of the Seller relating to the Business which the Seller is required by law or this Agreement to retain, keep or preserve

Retention Account means the interest bearing deposit account with The Royal Bank of Scotland Plc, St Anne Street, Manchester, M60 2SS under sort code 16-00-02 and account number 20512479 held in the joint names of the Seller's Solicitors and the Buyer's Solicitors and operated in accordance with clause 6

Retention Account Instruction Letter means the joint letter of instruction from the Seller and the Buyer to the Seller's Solicitors and the Buyer's Solicitors in connection with the operation of the Sterling Nominated Retention Account in the agreed form

Retention Period means the period of twenty seven months commencing immediately after the Completion Date

Retention Sum means the sum of £1,000,000.00 to be paid into the Sterling Nominated Retention Account in accordance with clause 6

S & I Properties means Switchgear and Instrumentation Properties Limited (No. 5464761)

Security Interest means any lien, equity, mortgage, charge, hypothecation, pledge, retention of title or encumbrance

Seller's Solicitors means Eversheds LLP of Cloth Hall Court, Infirmary Street, Leeds LS1 2JB

Seller's Group means the Seller and any holding company or subsidiary of the Seller and any subsidiary of such holding company for the time being and any equivalent company incorporated outside England and Wales which had such been incorporated in England and Wales the same would have been such a holding company or subsidiary

Shared Services means the services to be provided as between the Buyer and the Seller and/or any member of the Seller's Group as set out in schedule

Sterling Nominated Account means the Seller's Solicitors' client account numbered 00018988 at National Westminster Bank Plc of 8 Park Row, Leeds LS1 1QS, sort code 60-60-05

Stock means all stock in trade, products in the course of production, raw materials and components for incorporation into products for sale, consumables, finished goods, goods for re-sale, work in progress and packaging and promotional material of the Seller in relation to the Business wherever situate at the Transfer Date but not including such stock as is specifically referable to the business of Switchgear & Instrumentation (International) Limited (No. 3587064), the Overseas Subsidiaries and/or to the Excluded Contracts

Supplier Contracts means those contracts that the Seller has with suppliers of and/or vendors to the Business including, but not limited to those specified in part 4 of schedule

Supplier Letter means the joint letter from the Seller and the Buyer to suppliers of the Business in the agreed form

Switchgear Business means that part of the business carried on by the Seller at the Transfer Date comprising the business of designing, manufacturing and supplying medium and low voltage switchgear, intelligent motor control systems and power distribution solutions

Tax means all forms of taxation, duties, levies, imposts, charges, contributions and rates whenever created or imposed and whether of the United Kingdom or elsewhere including any withholding or deduction in respect of the same, national insurance and social security contributions and any penalty, fine, charge, surcharge or interest relating to any of the above or to any failure to make any return or supply any information relating to any of the above

Tax Authority includes Customs and any other revenue, customs, fiscal, governmental, statutory, state, provincial, local government or municipal authority, body or person whether of the United Kingdom or elsewhere in the world competent to impose, administer, assess or collect Tax

Tax Warranties means the Warranties relating to Tax set out in paragraph of schedule

Trade Creditors means all amounts invoiced to and unpaid by the Seller at the Transfer Date to the extent that such invoices have been received by and recorded in the Seller's accounts on the Transfer Date

Transfer Date means 00.01 on the Completion Date

Transferred Records means all accounting and financial records, sales literature and publicity material, correspondence, books and documents and other similar or like materials (including customer and supplier lists and records, the Contracts and related documents), in whatever medium relating to, used or intended for use in the Business or the Assets (other than the Retained Records)

TUPE Regulations means the Transfer of Undertakings (Protection of Employment) Regulations 1981 as amended at the date of this Agreement

US\$ Nominated Account means the following account: NatWest Bank Leeds City Office 8 Park Row Leeds LS1 1QS, sort code 60-60-05, "Eversheds LLP Client USD Account", account number 10268472, SWIFT code NWBKGB2L, IBAN GB46NWBK60730110268472 (paying through JP Morgan Chase New York (ABA 021000021))

VAT means Value Added Tax

VATA means the Value Added Tax Act 1994

VAT Records means the records relating to the Business as at the Transfer Date which are referred to in section 49(1)(b) VATA

Warranties means the warranties referred to in clause 14 and set out in schedule

2 Interpretation

2.1 In this Agreement unless the context otherwise requires:

- (a) any recitals and schedules form part of this Agreement and references to this Agreement include them;
- (b) references to recitals, clauses and schedules are to recitals and clauses of, and schedules to, this Agreement respectively and references in a schedule or part of a schedule to paragraphs are to paragraphs of that schedule or that part of that schedule respectively;
- (c) references to this Agreement or any other document are to this Agreement or that document as in force for the time being and as amended from time to time in accordance with this Agreement or that document (as the case may be);
- (d) words importing a gender include every gender, references to the singular include the plural and vice versa and words denoting persons include individuals and bodies corporate, partnerships, unincorporated associations and other bodies (in each case, wherever resident and for whatever purpose) and vice versa;
- (e) a person is deemed to be connected with another if that person is so connected within the meaning of section 839 ICTA (as in force and construed at the date of this Agreement); and

- (f) the terms subsidiary and holding company have the meanings ascribed by sections 736 and 736A Companies Act and include parent and subsidiary undertakings as defined in section 258 Companies Act.

2.2 In this Agreement, unless the context otherwise requires:

- (a) a reference to a statute or statutory provision shall be construed as including a reference to any subordinate legislation (as defined by section 21(1) Interpretation Act 1978) made from time to time under that statute or provision (whether before or after the date of this Agreement);
- (b) a reference to a statute, statutory provision or subordinate legislation (as so defined) shall be construed as including a reference to:
 - (i) that statute, provision or subordinate legislation as in force at the date of this Agreement and as from time to time modified or consolidated, superseded, re-enacted or replaced; and
 - (ii) any statute, statutory provision or subordinate legislation (as so defined) which it consolidates, supersedes, re-enacts or replaces (whether with or without modification)

provided always that no such subordinate legislation referred to in clause 2.2(a) and no such modification, consolidation, replacement, re-enactment and no such superseding in each case referred to in clause 2.2(b) shall impose a liability or incur a liability greater than could have existed at the date of this Agreement.

2.3 The headings and contents table in this Agreement are for convenience only and do not affect its interpretation.

2.4 In this Agreement the words "other", "including" and "in particular" do not limit the generality of any preceding words and any words which follow them shall not be construed as being limited in scope to the same class as the preceding words where a wider construction is possible.

3 Sale of the Business and Assets

3.1 The Seller agrees to sell with full title guarantee and the Buyer agrees to purchase the Business as a going concern and all the Assets free from all Security Interests (except as specified in clause 3.3) as at the Transfer Date.

3.2 The Assets are as follows:

- (a) the Goodwill;
- (b) the Stock;
- (c) the Loose Plant and Machinery;
- (d) the Receivables;
- (e) subject to the provisions of clause 10, the benefit subject to the burden of the Contracts;
- (f) the Business Intellectual Property;

- (g) the Transferred Records;
- (h) the benefit of Prepayments in accordance with clause 13.1;
- (i) the Seller's rights against third parties which relate to the Business (to the extent that the Seller can grant, assign or otherwise transfer such rights), including rights in connection with guarantees, warranties and representations given by third parties concerning goods and services supplied to the Seller in the course of the Business which relate to the Assets but excluding rights in respect of insurances or insurance claims or the Excluded Assets; and
- (j) all other assets, rights and interests owned by the Seller in relation to the Business (other than the Excluded Assets).

3.3 The Stock is sold subject to any title transfer and retention arrangements relating to its purchase and the Seller's right to possess, deal in and perfect the title to such Stock will pass to the Buyer to the greatest extent to which the Seller is able to pass it on and from Completion.

3.4 In relation to Business Intellectual Property, clause 3.1 shall not operate as a transfer or assignment of the same, but merely an agreement to transfer or assign the same and the parties shall further execute assignments (or agreements to assign as applicable) in agreed form in accordance with clause 7.2(b) and schedule . For the avoidance of doubt pending any assignment of all right, title and interest in the Business Intellectual Property the Seller shall hold the same on trust for the Buyer and without prejudice to the foregoing the Seller shall take only such actions in relation to the Business Intellectual Property as the Buyer directs provided that the Seller shall not be obliged to take any steps which are unlawful or in breach of contract.

3.5 The Buyer agrees to assume on and from the Transfer Date the Assumed Liabilities but no other liabilities of the Business, the Seller or any member of the Seller's Group.

4 Excluded Assets and Liabilities

There are excluded from the sale and purchase pursuant to this Agreement and the Buyer shall have no responsibility and accepts no liability whatsoever in relation to:

Excluded Assets

- (a) all of the Seller's cash in hand or in a bank as at the Transfer Date;
- (b) the benefit of those contracts referred to in part of schedule ;
- (c) VAT and other Tax allowances and repayments arising in relation to the carrying on of the Business prior to the Transfer Date;
- (d) the Retained Records;
- (e) all assets of the Seller other than the Assets;
- (f) the shares in Switchgear & Instrumentation (International) Limited (No. 3587064)

Excluded Liabilities

- (g) all actual or contingent liabilities and obligations of the Business or the Seller or the Seller's Group of whatever nature (including Tax), including without limitation those relating to:
- (i) any of the Excluded Assets other than Trade Creditors;
 - (ii) the burden of any of those contracts referred to in part of schedule other than Trade Creditors;
 - (iii) Switchgear & Instrumentation (International) Limited (No. 3587064);
 - (iv) amounts owing by the Seller (whether or not invoiced and whether or not due and payable) to creditors, other than Trade Creditors and amounts included in Accruals;
 - (v) Employment Liabilities;
 - (vi) litigation, litigation costs and restructuring liabilities caused by activities or events occurring prior to or on Completion and all legal and other fees and expenses incurred in connection with the sale of the Business;
 - (vii) any Borrowing;
 - (viii) the Pension Schemes or any agreement, arrangement, custom or practice (whether enforceable or not) for the provision of relevant benefits (as defined in section 612 ICTA, but ignoring the exception in that definition) for any person to which the Seller or any member of the Seller's Group is or has been or will be a party;
 - (ix) Environmental Liabilities; and
 - (x) Tax in connection with activities or events occurring prior to Completion
- other than the Assumed Liabilities.

5 Purchase Price

- 5.1 Subject to adjustment (if any) as provided in this clause 5 and schedule, the consideration for the sale of the Business and Assets is £6,255,000 to be satisfied by the payment of £2,004,000.00 and US\$7,817,000.00 (Purchase Price) which shall be paid in accordance with clause 7.4 and schedule and shall be apportioned between the Assets and Assumed Liabilities as set out in schedule.
- 5.2 The Purchase Price is to be adjusted in accordance with clause 5.3 and schedule to reflect any difference between the Base NAV and the Completion NAV.
- 5.3 If the Completion NAV is:
- (a) a positive sum which is less than the Base NAV, the Seller shall pay to the Buyer a sum equal to the difference;

- (b) a negative sum, the Seller shall pay to the Buyer a sum equal to the aggregate of the Base NAV and the amount by which the Completion NAV is less than zero (treating such sum as a positive sum);
- (c) equal to or more than the Base NAV, no payment between the Buyer and the Seller shall be made pursuant to this clause 5 (other than the Purchase Price in the amounts set out in clause 5.1).

5.4 Any adjustment to the Purchase Price pursuant to clause 5.3 shall be allocated firstly against Goodwill and to the extent such amount is insufficient then pro rata amongst all the Assets.

6 Retention

- 6.1 The Retention Sum shall at Completion be paid in sterling by the Buyer into the Retention Account and the monies standing to the credit of the Retention Account including, without limitation, any accrued interest shall be dealt with only in accordance with the provisions of this clause 6.
- 6.2 The Buyer and the Seller shall ensure that all rights to the Retention Account remain free from any Security Interest except as set out in this clause 6.
- 6.3 The Seller and the Buyer shall provide the Retention Account Instruction Letter duly signed to the Seller's Solicitors and the Buyer's Solicitors (respectively) on Completion and shall procure (respectively) that the Seller's Solicitors and the Buyer's Solicitors shall give all necessary instructions and do all acts and things reasonably required to ensure that the Retention Account and the principal monies and interest standing to its credit are administered in accordance with the provisions of this Agreement. The Seller and the Buyer shall procure (respectively) that the Seller's Solicitors and the Buyer's Solicitors are not required to and do not take any action with respect to the Retention Account except on the joint written instructions of the Seller and the Buyer.
- 6.4 The interest accrued on the Retention Sum shall be credited to the Retention Account and in relation to any payment made from the Retention Account pursuant to this Agreement, accrued interest shall follow the principal monies.
- 6.5 The Retention Sum shall be used to satisfy (to the extent of the principal sum deposited in it) any monetary liabilities of the Seller pursuant to this Agreement (other than to make payments under clauses 5.3, 9.6, 10.2, 11.9 and 11.10 unless otherwise required by the Buyer in writing), and/or the Property Transfer Agreement in priority to the Buyer and/or S & I Properties recovering any amount from the Seller and/or The NG Bailey Organisation Limited directly whether under this Agreement (other than clause 6), the Bailey Guarantee, the Property Transfer Agreement, the Property Guarantee or otherwise (and except for setoff).
- 6.6 Before any payment of any of the Retention Sum may be made to the Buyer under clause 6:
 - (a) the Buyer shall give at least 7 Business Days prior written notice to the Seller; and
 - (b) the amount of the claim and the liability of the Seller for that claim shall have been (i) agreed between the Buyer or S & I Properties (if relevant) and the Seller in writing or (ii) finally determined or finally adjudged by a court of law or, if agreed by the parties to this Agreement or the parties to the Property Transfer Agreement (if relevant), an expert, arbitrator or mediator.

- 6.7 The balance of the Retention Account, not paid or due for payment in accordance with clause 6.8, if any (together with any accrued interest and less any bank charges) shall be paid to the Seller's Solicitors for the account of the Seller at the end of the Retention Period.
- 6.8 Within 15 Business Days of a claim being agreed or determined in accordance with clause 6.6(b) there shall be paid to the Buyer's Solicitors for the account of the Buyer or S & I Properties (if relevant) from the Retention Account an amount equal to the amount so determined or agreed between the parties to this Agreement or the parties to the Property Transfer Agreement (if relevant) in respect of such claim (**Agreed Amount**) (to the extent there are sufficient sums of money in such account).
- 6.9 The Seller shall promptly pay to the Buyer's Solicitors for the account of the Buyer or S & I Properties (if relevant), in cleared funds, such part of any Agreed Amount as is not satisfied by payment to the Buyer or S & I Properties (if relevant) from the Retention Account pursuant to clause 6.8.

7 Completion

- 7.1 Completion shall take place on the Completion Date when all of the business referred to in clauses 7.2 and 7.3 (to the extent then outstanding or unless otherwise agreed) shall be transacted.

- 7.2 At Completion the Seller shall:

- (a) permit the Buyer to assume conduct of the Business with effect from the Transfer Date; and
- (b) deliver or make available to the Buyer each of the items set out in schedule

- 7.3 At Completion:

- (a) the Buyer shall deliver to the Seller a copy of the Retention Account Instruction Letter signed by or on behalf of the Buyer and S & I Properties and the Property Transfer Agreement signed by or on behalf of S & I Properties;
- (b) the Buyer shall pay the Retention Sum into the Retention Account whereupon the provisions of clause 6 shall apply to such sum and such account;
- (c) the Seller, the Buyer and S & I Properties shall give joint written instructions to the Seller's Solicitors and the Buyer's Solicitors in terms of the Retention Account Instruction Letter duly signed in the agreed form;
- (d) the Seller, the Buyer and S & I Properties shall each deliver to the other a copy of the Retention Account Instruction Letter signed by it;
- (e) the Buyer shall deliver to the Seller a copy of the minutes of a meeting of the directors authorising the execution by the Buyer of this Agreement and any other documents arising out of or in connection with this Agreement; and
- (f) the Seller shall delivery to the Buyer a copy of the minutes of a meeting of the directors authorising the execution by the Seller of this Agreement and any other documents arising out of or in connection with this Agreement;

- (g) the Buyer shall deliver to the Seller a copy of the minutes of a meeting of the directors authorising the execution by S & I Properties of the Property Transfer Agreement and any other documents arising out of or in connection with it;
- (h) the Buyer shall deliver to the Seller the Bailey Guarantee duly executed by the Buyer; and
- (i) the Property Guarantee duly executed by S & I Properties.

7.4 The Buyer shall procure at Completion that payment is made to the Sterling Nominated Account by electronic funds transfer (for same day value) of £1,004,000.00 and to the US\$ Nominated Account by electronic funds transfer (for same day value) of US\$7,817,000.00 and to the Retention Account by electronic funds transfer (for same day value) of £1,000,000.00 (being the Purchase Price).

7.5 The Buyer is not obliged to complete the purchase of the Business or any of the Assets unless the Business and all the Assets are sold simultaneously in accordance with this Agreement.

7.6 At or before Completion, the Seller shall procure that all leases relating to the Assets between the Seller and any other member of the Seller's Group are terminated.

8 Business responsibility and indemnities

8.1 Except as otherwise provided in this Agreement, the profit or loss of the Business from the Transfer Date shall be for the account of the Buyer and prior thereto shall be for the account of the Seller.

8.2 The Seller shall pay, discharge and satisfy:

- (a) all the Excluded Liabilities; and
- (b) all obligations and liabilities relating to the operation of the Business prior to the Transfer Date other than the Assumed Liabilities, when the same fall due to be paid, satisfied or discharged, or if later, in accordance with the Seller's usual practice prior to Completion.

8.3 The Seller shall indemnify the Buyer and each member of the Buyer's Group against all liabilities, losses, actions, proceedings, damages, costs, claims, demands and expenses brought or made against or suffered or incurred by the Buyer or any member of the Buyer's Group arising out of or in connection with:

- (a) any of the Excluded Liabilities; and
- (b) any actual or contingent obligations or liabilities relating to the operation of the Business prior to the Transfer Date other than the Assumed Liabilities

Provided that the provisions of schedule 16 shall apply in respect of Environmental Liabilities to the exclusion of the preceding provisions of clause 8.3.

8.4 The Buyer:

- (a) is responsible for the Assumed Liabilities and all obligations and liabilities in connection with the Assets relating to the operation of the Business after the Transfer Date; and
- (b) shall indemnify the Seller and each member of the Seller's Group against all liabilities, losses, actions proceedings, damages, acts, claims, demands and expenses brought or made against or suffered or incurred by the Seller or any member of the Seller's Group in connection with:
 - (i) the ownership or operation of the Business or the Assets after the Transfer Date;
 - (ii) the Assumed Liabilities; and
 - (iii) the Seller complying with clause 10.4 other than to the extent that they arise as a result of the Seller's failure (or that of any person connected with it) to duly perform and comply with the terms of the relevant Contract prior to the Transfer Date.

9 Receivables

- 9.1 With effect from the Transfer Date, the Receivables shall belong to and be payable to the Buyer and the Seller shall hold any payments which it receives in respect of the Receivables after the Transfer Date on trust for the Buyer and shall account to the Buyer for the same promptly and no later than on a fortnightly basis without any deduction or set-off.
- 9.2 The Buyer shall hold any payment which it receives after the Transfer Date in respect of the Excluded Assets and in respect of any Receivable in relation to which the Seller has made a payment under clause 9.6 on trust for the Seller and shall account to the Seller for the same together with all amounts payable pursuant to paragraph of schedule promptly and no later than on a fortnightly basis without any deduction or setoff.
- 9.3 The Seller and the Buyer shall as soon as reasonably practicable after receipt of a written request from the Buyer to do so in respect of any Receivable overdue for payment:
 - (a) give notice pursuant to section 136 Law of Property Act 1925 to any relevant Debtors notifying them of the assignment of the relevant Receivables to the Buyer; and
 - (b) execute in favour of the Buyer assignments of any of the relevant Receivables in the agreed form.
- 9.4 Each party shall supply to the other any information reasonably requested by that party in respect of the payments to be made under clauses 9.1 and 9.2.
- 9.5 The Buyer undertakes to the Seller that the Buyer shall use all reasonable endeavours to collect the Receivables using methods of credit collection no less rigorous than those employed by the Seller in the Business prior to Completion.
- 9.6 In the event that any Receivables which are pursuant to invoices dated on or before 31 May 2005 are outstanding following the expiry of the period of 180 days commencing immediately after Completion, then the Seller shall pay to the Buyer the amount outstanding by reference to such invoices on such expiry within 3 Business Days of receipt of written notice from the Buyer requiring the Seller to do so.

- 9.7 Upon each payment of any amount by the Seller under clause 9.6 (**Relevant Amount**), the Buyer shall assign and do all such acts and execute all such documents as the Seller may reasonably require in order to vest in the Seller the right to recover such Relevant Amount from the original debtor.
- 9.8 In the event that the Seller decides to commence or to threaten to commence legal proceedings in order to recover a Relevant Amount from an original debtor:
- (a) it shall first notify the Buyer in writing of such a decision;
 - (b) the Seller agrees to consult with the Buyer for a period of 5 Business Days immediately following the Buyer's receipt of such written notification; and
 - (c) if, prior to 2 Business Days immediately following the expiry of such period, the Buyer provides the Seller with notice in writing that it does not want the Seller to proceed with such legal proceedings or threat of legal proceedings, the Seller agrees not to so proceed provided that the Buyer repays such relevant amount in full to the Seller within 3 Business Days of the Seller's receipt of such written notice and the Seller shall assign and do all such acts and execute all such documents as the Buyer may reasonably require in order to vest in the Buyer the right to recover such Relevant Amount from the original debtor.

10 Contracts and Confidentiality Agreements

- 10.1 Subject to clause 13, the Buyer shall with effect from the Transfer Date assume the obligations, and become entitled to the benefits of, the Seller under the Contracts and the Buyer shall carry out all the obligations and liabilities created by or arising under the Contracts except any which are Excluded Liabilities.
- 10.2 If at the Completion Balance Sheet Date in respect of any Customer Contract the result of the following formula is a positive sum:
- Where:
- $(AP - AR) - WIP$
- AP = The total amounts invoiced to the customer as at the Completion Balance Sheet Date in respect of that Customer Contract;
- AR = As at the Completion Balance Sheet Date, the unpaid amounts due in respect of amounts invoiced to the customer in respect of that Customer Contract which are included in Receivables in the Completion Balance Sheet; and
- WIP = The value of work in progress which relates to that Customer Contract which is included in the Completion Balance Sheet without deduction of any amounts invoiced to the customers.
- (such Customer Contract being a **Negative Cashflow Contract**) then a sum equal to the Negative Cashflow Payment shall be paid by the Seller to the Buyer within 3 Business Days of the Final Negative Cashflow Determination Date.
- 10.3 If any Contract contains a prohibition on assignment or requires the consent of any other party or the satisfaction of any requirement for its assignment or novation, this Agreement shall not operate so as to transfer the benefit of any such Contract or any rights under any

such Contract and the Seller and the Buyer shall use all reasonable endeavours to obtain the relevant consent or to satisfy any such requirement as soon as reasonably practicable after Completion and shall at the Seller's own expense enter into any assignment or novation or similar agreement regarding that Contract in order effectively to substitute the Buyer with effect from the Transfer Date in place of the Seller as a party to that Contract but not so as to either result in any lesser economic benefit to the Buyer or to impose on the Buyer any greater liability or obligation than would otherwise arise under clause 10.1.

10.4 Until any Contract is assigned to, novated in favour of or assumed by, the Buyer:

- (i) the Seller shall continue in its corporate existence and shall hold that Contract from the Transfer Date on trust for the Buyer absolutely and shall take all lawful steps in relation to that Contract as the Buyer directs including permitting the Buyer to perform the Contract as a sub-contractor or agent;
- (ii) the Buyer shall subject to clause 10.1 perform that Contract in accordance with its terms;
- (iii) the Seller shall account promptly to the Buyer for any consideration received by the Seller in relation to that Contract without any deduction; and
- (iv) the Seller shall give all such assistance to the Buyer as the Buyer reasonably requires to enable it to enjoy the benefit and assume the burden of that Contract. In particular, the Seller shall provide the Buyer with access to all relevant documents and other information in relation to that Contract as the Buyer may require from time to time.

10.5 Any money or goods received by either party from a customer or debtor of the Business shall be deemed to be received on account of or in respect of the contract or liability specified by the customer or debtor.

10.6 The Seller shall procure that where a Contract with a member of the Seller's Group requires the Seller or any member of the Seller's Group or any officer of such company to act in a particular capacity for the Seller (**Representative**), for example as a participant in dispute resolution, that the relevant member of the Seller's Group agrees to amend the Contract to specify that the Representative shall instead be any officer of the Buyer.

11 Employees

11.1 Each of the Seller and the Buyer considers the sale of the Business and Assets under this Agreement to constitute the transfer of an undertaking for the purposes of the TUPE Regulations. The Seller and the Buyer agree that the following provisions will apply irrespective of whether or not the TUPE Regulations apply as a matter of law.

11.2 The Seller and the Buyer acknowledge that pursuant to the TUPE Regulations the contracts of employment between the Seller and the Employees (except in so far as such contracts relate to any occupational pension scheme as defined in Regulation 7 of the Regulations) will have effect after the Transfer Date as if originally made between the Buyer and the Employees. The Buyer will make such pension provisions in respect of the Employees as complies with its obligations under Sections 257 and 258 Pensions Act 2004 and the regulations under these sections, namely the Transfer of Employment (Pension Protection) Regulations 2005.

- 11.3 The Seller shall pay to each of the Employees on or before Completion all remuneration (including all emoluments, benefits, benefits in kind, bonuses, contributions and incentive payments) due or accrued at the Transfer Date including any such remuneration which is contingent upon or related to Completion and payable pursuant to an agreement or arrangement with the Seller or any member of the Seller's Group in existence at Completion.
- 11.4 The Seller shall indemnify the Buyer against all liabilities, losses, actions, proceedings, damages, costs, claims, demands and expenses brought or made against or suffered or incurred by the Buyer which are attributable to any act or omission of the Seller on or before the Transfer Date in respect of any of its obligations or duties to or in relation to any of the Employees.
- 11.5 The Buyer shall indemnify the Seller against all liabilities, losses, actions, proceedings, damages, costs, claims, demands and expenses brought or made against or suffered or incurred by the Seller arising directly or indirectly in connection with the employment or termination of or variation of the terms of employment by the Buyer of any of the Employees (whether or not terminated by notice and, if so terminated, whenever that notice expires) after the Transfer Date save to the extent that terms of employment of the Employees have not been disclosed to the Buyer in breach of Warranty.
- 11.6 If, by operation of law the contract of employment of any employee of the Seller other than the Employees takes effect as if originally made with the Buyer, the Buyer may, within 1 month of becoming aware of such fact, terminate such person's contract of employment with or without notice, and the Seller shall:
- (a) indemnify the Buyer against all liabilities, losses, actions, proceedings, damages, costs, claims, demands and expenses of the Buyer to or in respect of such termination (including, for the avoidance of doubt, all legal costs and expenses and any statutory or other compensation or awards payable in consequence of such termination); and
 - (b) indemnify the Buyer against all costs and expenses (save to the extent of increases in remuneration awarded after the Transfer Date) of employing such person from the Transfer Date until the earlier of the expiry of such 1 month period and such termination.
- 11.7 The Seller and the Buyer shall give each other such assistance as either may reasonably require to comply with the TUPE Regulations in relation to the Employees and in contesting any claim by any person employed in the Business at or before the Transfer Date resulting from or in connection with the transaction contemplated by this Agreement, including their respective obligations to inform and consult with the Employees and their representatives pursuant to the TUPE Regulations. Subject to clause 11.8, the Seller shall be liable for any failure to inform and consult with the Employees and/or their representatives prior to the Transfer Date and shall indemnify the Buyer in respect of such failure except when such failure arises out of any failure by the Buyer to comply with its obligations under regulation 10(3) of the TUPE Regulations in which case the Buyer shall be so liable and shall indemnify the Seller in respect of such failure.
- 11.8 Neither party shall be liable to the other in respect of the failure to provide to Employees and/or their representatives the Buyer's name prior to Completion.
- 11.9 If on the first anniversary of the Completion Date any of Mark Williams (Sales and Marketing Director), Steve Ward (Operations General Manager), Clive Porter (NGBM General Manager) and Mike Leveratt (Commercial Director) are still employed by the Buyer or any member of

the Buyer's Group, the Seller shall pay to the Buyer an amount of up to £100,000 to be apportioned between such Employees as agreed between the Buyer and the Seller within 5 Business Days of the date of such anniversary. Such amount shall be paid by the Buyer to the relevant Employees net of applicable tax and national insurance within one month of the receipt by the Buyer.

- 11.10 The Seller shall pay to the Buyer an amount equal to the aggregate of all sums paid by the Buyer (including all tax and employers and employees NI) in respect of and pursuant to the bonus scheme for the managers of the laser division described in the disclosure against Warranty 6.10 within 14 days of receipt of a written demand from the Buyer to do so enclosing details of the sums paid and the date of payment.

12 Pensions

- 12.1 The Seller shall fully indemnify and keep indemnified the Buyer against all liabilities, losses, actions, proceedings, damages, costs, claims, demands and expenses brought or made against or incurred or suffered by the Buyer in connection with any failure by the Buyer to provide to any Employee at any time after Completion any benefits relating to an occupational pension scheme, other than benefits for old age, invalidity or survivors within the meaning of regulation 7(2) of the TUPE Regulations and/or Article 3(3) of Council Directive 77/187/EEC of 14 February 1977, which the Buyer may be legally obliged to provide to any Employee by virtue of being a transferee of the Business within the meaning of those regulations and/or that Directive.
- 12.2 For the purposes of this clause 12, **Seller's Scheme** means the Pension and Life Assurance Plan of The NG Bailey Organisation.
- 12.3 In relation to those Employees eligible for additional credited pensionable service in The Pension and Life Assurance Plan of The NG Bailey Organisation (the "Final Salary Scheme") after completion of qualifying levels of service:
- (a) it is agreed that any Employees who have already completed the qualifying service] are already entitled to an additional 5 years' pensionable service credited in the Final Salary Scheme. This is an additional liability of the Final Salary Scheme at completion and the Buyer does not have any liability to pay any amount in respect of this additional pensionable service.
 - (b) it is agreed that Messrs Radcliffe, Crawford, Faulkner, Kelly and Sharples all Employees who could complete the qualifying service if they stayed with NG Bailey ("Gold Watch Employees") could become entitled to an additional 5 years' pensionable service credited in the Final Salary Scheme if they complete the qualifying service necessary to do so. It is agreed that if the Gold Watch Employees remain with the Buyer so that their service with the Buyer when added together with their pensionable service in the Final Salary Scheme at Completion would equal the amount of qualifying service which would have entitled them to an additional 5 years pensionable service credited in the Final Salary Scheme had they stayed employed with the Seller, then that additional five years pensionable service will be credited by the Seller in the Final Salary Scheme. The Buyer shall not have any liability to pay any amount in respect of this additional pensionable service.
 - (c) the Seller agrees to indemnify the Buyer against any and all liabilities, losses, actions, proceedings, damages, costs, claims, demands and expenses brought or made by any Employee in respect of the right to additional periods of credited pensionable service in the Final Salary Scheme, including without prejudice to the generality of

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this paragraph, any claim brought that the periods of qualifying service are discriminatory (either directly or indirectly) or that any other person is entitled to a pension service credit, or any costs associated with legal or other professional costs which the Buyer incurs in dealing with any claims or demands.

- (d) If the Buyer becomes aware that any of the Employees intends to bring a claim in relation to any additional pensionable service credit the Buyer shall:
- i. give written notice to the Seller of the circumstances as soon as practicable and in any event within 5 Business Days of becoming so aware;
 - ii. not make any admission of liability, agreement or compromise with any Employee in relation to the circumstances without the prior written consent of the Seller (such consent not to be unreasonably withheld);
 - iii. co-operate with the Seller on an ongoing basis regarding the conduct of any claim or demand arising from the circumstances in (a) above and provide the Seller with such information (including copy documents) relating to such claim or demand as the Seller may reasonably request, subject to the Buyer being indemnified by the Seller to the Buyer's reasonable satisfaction against all consequent liabilities and costs.

13 Apportionments

- 13.1 All Prepayments, Accruals and other charges in respect of but not limited to rent, rates, water, gas, electricity, the standing and rental or hire elements of telephone charges, the Contracts (other than those listed in part of schedule), service charges, and all other outgoings of the Business or Assets, together with all receipts of the Business or Assets which are of a periodic nature which cover a period both before and after the Transfer Date or which otherwise relate to the period before and after Completion and which cannot be attributed to a specific time, through lack of metering or other recording, shall be apportioned on a time basis so that, subject to clause 4, such part of the relevant charge or receipt attributable to the period ended on the Transfer Date shall be borne or received by the Seller and such part of the relevant charge or receipt attributable to the period commencing immediately following the Transfer Date shall be borne or received by the Buyer.
- 13.2 All VAT payable to or recoverable from Customs in respect of supplies, importations and acquisitions (as defined in VATA) made or received by the Seller shall be for the account of the Seller and all VAT payable to or recoverable from Customs in respect of supplies, importations and acquisitions made or received by the Buyer shall be for the account of the Buyer.
- 13.3 All amounts falling to be apportioned in accordance with this clause 13 shall be determined in accordance with the provisions of part of schedule and save to the extent that such liabilities are provided for in the Completion Balance Sheet be paid by the relevant party to the other party within 5 Business Days of agreement or, failing agreement, determination by the Independent Accountants (as defined in schedule).

14 Warranties

- 14.1 The Seller warrants to the Buyer in the terms of the Warranties, save as fairly disclosed in or deemed disclosed by the Disclosure Letter. For these purposes, fairly disclosed means disclosed in such manner and in such detail as to enable a reasonable person to make a reasonably informed assessment of the matter concerned including its significance to the Business and the Assets.
- 14.2 Each of the Warranties shall be construed independently such that the Buyer shall have a separate claim and right of action for every breach of each Warranty.
- 14.3 The Seller waives all rights which it may have in respect of any misrepresentation, inaccuracy or omission in or from any information or advice supplied or given by any of the Employees in enabling the Seller to give the Warranties or to prepare the Disclosure Letter save to the extent of any fraud or any dishonest, reckless or wilful misconduct by such an Employee towards the Seller in this regard.
- 14.4 If any Warranty is qualified by the expression "to the best of the knowledge, information and belief of the Seller" or "so far as the Seller is aware" or any similar expression that expression is deemed to include a warranty by the Seller that the statement has been made after due enquiry of the persons named below but the Seller will not be deemed to have made enquiry of any other persons and will not be liable for breach of Warranty should a fact or circumstance which would otherwise constitute a breach of Warranty be known to any other person other than those listed below:

Christopher Wootton, Mark Williams, Steven Ward, Michael Leveratt, Gordon Skinner, Clive Porter, Paul Cogan, Philip Powdrill, Robin Graham, Linda Ashman.

15 Limitation on liability

- 15.1 The Seller's liability under the Warranties is limited in accordance with the provisions of schedule.

16 Buyer's Assurances

- 16.1 The Buyer warrants to the Seller that it has full power to enter into and perform this Agreement and that this Agreement constitutes binding obligations on the Buyer in accordance with its terms and, without prejudice to the generality of the foregoing, the Buyer further warrants that all authorisations, approvals, consents and licences required by the Buyer to permit the Buyer to enter into this Agreement and the arrangements herein contemplated have been unconditionally and irrevocably obtained and are in full force and effect.
- 16.2 The Buyer shall have no claim against the Seller for any breach of Warranty to the extent that Don Madison, Mike Whaley or Randall Baker were actually aware prior to Completion that the Buyer would (but for this clause 16.2) have a claim for breach of that Warranty.
- 16.3 The Buyer will from the Transfer Date procure that neither it nor any member of the Buyer's Group will use the name N G Bailey Manufacturing as a trading or business name other than in accordance with clause 18.6 and will only use the letters "NGB" in combination with the letter "M" as "NGBM".

17 Restrictive covenants

17.1 The Seller covenants with the Buyer with the intent of securing to the Buyer the full benefit and other value of the Goodwill and connection of the Business and as an essential part of this Agreement that it shall not (and shall procure that no other member of the Seller's Group shall) without the prior written consent of the Buyer (whether as principal or agent and whether alone or jointly with or as a shareholder of any other company):

- (a) (subject to clause 17.2) for a period of 5 years from the Transfer Date directly or indirectly:
 - (i) carry on or otherwise be engaged concerned or interested in any capacity (whether for reward or otherwise) in any business which is similar to, and competes with directly or indirectly, any business being carried on by the Business as carried on at the Transfer Date;
 - (ii) in connection with any business which is similar to and competes with the Business as carried on at the Transfer Date seek to do business with or canvass or solicit orders from or assist another person to do business with or canvass or solicit orders from or otherwise have dealings in the course of any such business with or entice away from the Buyer any person who at any time in the 12 months preceding the Transfer Date was a customer or client of the Business or who at the Transfer Date was in the process of negotiating with the Seller;
 - (iii) employ or engage save pursuant to a general recruitment advertisement placed by the Seller, or solicit or contact with a view to employment or engagement any person who is, and was at the date of this Agreement or at any time during the 6 months prior to the date of this Agreement, an employee of the Business, whether or not such person would commit a breach of contract by leaving his employment;
 - (iv) do or say anything which is harmful to the reputation of the Business or which is likely to cause any person to reduce the amount of business transacted between that person and the Business or to seek to change the terms of such business in a manner adverse to the Business in each case where the Seller is aware that the thing being done will have such effect; or
- (b) directly or indirectly carry on any business of any kind at any time under the Business Names (or any similar name or a name likely to be confused with it save that no member of the Seller's Group shall be precluded from using the acronym "NGB" with another letter, number, symbol or word (other than the combination "NGBM")).

17.2 Nothing in clause 17.1 shall preclude the Seller or any member of the Seller's Group from holding (directly or through nominees) investments listed on the Official List of the UK Listing Authority or in respect of which dealings take place in the Alternative Investment Market of London Stock Exchange plc or any other recognised investment exchange provided that such investment does not exceed 3% of the issued shares or other securities of any class of the relevant company.

17.3 While the restrictions contained in clause 17.1 are considered by the parties to be fair and reasonable in all the circumstances the parties agree that if such restrictions by themselves or taken together shall be adjudged to go beyond what is reasonable in all the circumstances for the protection of the interests of the Buyer but would be adjudged reasonable if part or parts

of the wording thereof were deleted or the periods thereof were reduced or the range of businesses or area dealt with thereby were reduced in scope the relevant restriction or restrictions shall apply with such modifications as may be necessary to make it or them valid and effective.

17.4 The Seller undertakes with the Buyer that:

- (a) it will at all times after the Transfer Date keep secret and not use nor disclose or divulge to any third party any Confidential Information. This clause 17.4 is without prejudice to any restrictions imposed by law;
- (b) it will not represent itself after Completion as then being in any way connected with or interested in the Business.

17.5 The Seller undertakes to the Buyer:

- (a) to use its reasonable endeavours to procure either the liquidation and termination of the corporate existence of or the change of name of each of the Overseas Subsidiaries to a name which does not contain or which is not similar to the Business Names as soon as reasonably practicable after Completion; and
- (b) to procure that after the Transfer Date each of those companies referred to in (a) shall not trade other than to complete their respective obligations under any contract in existence at the Transfer Date.

17.6 The Buyer undertakes with the Seller that it will at all times after the Transfer Date keep secret and not use or disclose or divulge to any third party any information in the Transferred Records which relates to the Excluded Contracts, other than as required by the Buyer's provision of Shared Services under schedule. This clause 17.6 is without prejudice to any restrictions imposed by law.

18 Post-Completion matters

18.1 Following Completion the Seller shall discontinue carrying on the Business so that the Buyer may carry on and continue the Business in succession to the Seller.

18.2 Forthwith after Completion the Seller and the Buyer shall dispatch the Customer Letter to customers of the Business and the Supplier Letter to suppliers to the Business.

18.3 The Seller shall as soon as reasonably practicable pass all notices, correspondence, information and enquiries, and assign all orders, in relation to the Business or the Assets to the Buyer.

18.4 The Buyer shall preserve all Tax records forming part of the Transferred Records for at least 7 years and all other Transferred Records for 3 years and during such periods the Buyer shall, permit, on reasonable notice and during normal business hours, the Seller and/or its agents and professional advisers reasonable access to, and the right to inspect and copy, the Transferred Records (at the Seller's expense) as may be necessary for Tax and accounting purposes of the Seller but only relating to the period up to and including the Transfer Date or which relate to the Excluded Contracts.

18.5 The Seller shall preserve all Tax records forming part of the Retained Records for at least 7 years and all other Retained Records for 3 years and during such periods shall permit, on reasonable notice and during normal business hours, the Buyer and/or its agents and professional advisers reasonable access to, and the right to inspect and copy, the Retained

Records (at the Buyer's expense) for any purpose in connection with or incidental to the Business.

18.6 The Seller hereby grants the Buyer a free non-exclusive licence to use the name "NGB Manufacturing" in connection with the Business in a substantially similar manner to the manner it was carried on prior to Completion for a period of one calendar year commencing immediately following the Completion Date.

18.7 The Seller shall:

- (a) provide to the Buyer the Seller's audited accounts for the financial year ending February 2004 and February 2005 within 45 days of Completion (unless provided sooner);
- (b) provide all financial information and analysis thereof which the Buyer may reasonably request to enable the Buyer and the Buyer's Group to comply with its financial reporting requirements and the requirements of any competent regulatory body to publish information;
- (c) authorise the use and/or release of the information referred to in (a) and (b) above in compliance with the Buyer's and the Buyer's Group's financial reporting requirements and the requirements of any competent regulatory body to publish information; and
- (d) take all reasonable steps (including the execution of any reasonable authority to do so required by the Seller's external auditors to assist the Buyer to obtain from the Seller's external auditors such information and working papers and the authority to use and/or release such information and papers as the Buyer may reasonably request to enable the Buyer and the Buyer's Group to comply with their financial reporting requirements and the requirements of any competent regulatory body to publish information.

18.8 Subject to clause 18.10 and schedule.

- (a) the Seller and the Buyer shall use their respective reasonable endeavours to secure as soon as practicable after Completion (but with effect from Completion) the release of the Seller and/or each other member of the Seller's Group (if relevant) from any Guarantees given by the Seller and/or each other member of the Seller's Group (if relevant) to the extent that they relate to the Business, the Assets or the Assumed Liabilities;
- (b) until a relevant Guarantee is released, the Seller shall maintain such Guarantee and the Buyer shall indemnify and keep indemnified the Seller and/or each other member of the Seller's Group (if relevant) against all actions, proceedings, losses, costs, claims, damages, liabilities and expenses which the Seller may suffer or incur in respect of any claim made under such Guarantee in relation to the operation by the Buyer of the Business and/or the Assets and/or the Assumed Liabilities after Completion.

18.9 The Seller and the Buyer shall provide the Shared Services on the terms set out in schedule.

18.10 The Seller and Buyer shall comply with schedule in respect of the Bonds.

19 VAT

- 19.1 All payments to be made and other consideration to be given under this Agreement shall be deemed to be exclusive of VAT unless otherwise provided.
- 19.2 The Seller and the Buyer intend that, and shall use all reasonable endeavours to procure that, the sale of the Business and Assets pursuant to this Agreement is treated as a transfer of a business (or part of a business) as a going concern for the purposes of section 49 VATA and article 5 of the Value Added Tax (Special Provisions) Order 1995 and as neither a supply of goods nor a supply of services for the purposes of VATA and the Value Added Tax (Special Provisions) Order 1995 and accordingly, subject to the provisions of this clause 19, no amount in respect of VAT shall be payable by the Buyer to the Seller in respect of the sale of the Business and Assets.
- 19.3 The Seller warrants and undertakes to the Buyer that the Seller is and will at Completion be registered for VAT with VAT registration number GB17396602.
- 19.4 The Buyer warrants and undertakes to the Seller that:
- (a) the Buyer has made an application to Customs to be registered for VAT with effect from a date on or before Completion;
 - (b) it intends to use and shall use the Assets to carry on the same kind of business as the Business with effect from Completion in a VAT grouping with S & I Properties.
- 19.5 The Seller will as soon as reasonably practicable after Completion request a direction from Customs under section 49(1)(b) VATA that from and after the Transfer Date the Seller shall be obliged to keep and preserve the VAT Records and:
- (a) if such a direction is made the Seller shall deliver a copy of such direction to the Buyer and shall preserve the VAT Records for such periods as may be required by law and shall allow the Buyer and its agents access to, and to take copies of, such records on reasonable notice during normal business hours; and
 - (b) if such a direction is not made the Seller shall keep and preserve the VAT Records on behalf of the Buyer for such periods as may be required by law and to allow the Buyer and its agents access to, and to take copies of, such records on reasonable notice during normal business hours.
- 19.6 If Customs expressly determine in writing that the sale of any or all of the Business and Assets cannot be treated in the manner contemplated by clause 19.2 the Buyer shall, in addition to any amounts or other consideration expressed in this Agreement to be payable or given by the Buyer, pay to the Seller the amount of any VAT which is properly chargeable on the sale of any or all of the Business and Assets under this Agreement, such amount to be payable no later than the later of, Completion, the date of receipt of a valid VAT invoice (together with a copy of the determination of Customs) from the Seller in respect of such VAT and 3 Business Days prior to the date on which the Seller must account to Customs for such VAT.
- 19.7 If the Buyer disagrees with the express determination referred to in clause 19.6, it may by notice require the Seller (subject to being indemnified to the Seller's reasonable satisfaction against all consequent liabilities and costs) to take such actions as the Buyer may reasonably require to appeal against or obtain a review of such determination.

- 19.8 If the Buyer pays an amount in respect of VAT and it is subsequently determined by Customs or any court or tribunal that any such VAT was not chargeable, the Seller shall forthwith notify the Buyer and shall forthwith within 3 Business Days pay a sum equal to any such amount to the Buyer.
- 19.9 If the sale of the Property is not a transfer of a business as a going concern because of any breach by the Buyer of its warranties in clause 19.4, the Buyer will indemnify the Seller against any interest and penalties charged or imposed by the Inland Revenue and Customs arising as a result of that breach.

20 Announcements and confidentiality

- 20.1 Each party shall, and shall use reasonable endeavours to procure that their officers, employees, agents and advisers shall, keep the existence and contents of this Agreement (and any matter ancillary to it and information disclosed during its negotiation) confidential and shall not make any announcement in relation to this Agreement or otherwise publicise its existence or its contents, or the existence of the negotiations between the parties in relation to it, unless permitted to do so by clause 20.4.
- 20.2 The standard of care employed by a party in protecting the information referred to in clause 20.1 from disclosure shall be no less than the standard which that party employs in the protection of its own confidential information.
- 20.3 The Seller may not make any announcement to its staff or to any third party in respect of this Agreement or its execution or completion until after the earlier of the expiry of 7 days following Completion or the date on which the Buyer has made all announcements required to be made by it by law or any competent regulatory body upon execution and Completion. The Buyer shall promptly provide confirmation to the Seller when such announcements have been made.
- 20.4 Subject to clause 20.3 any party may disclose information if and to the extent that:
- (a) the other party has given its written consent; or
 - (b) the information is contained in an announcement in an agreed form; or
 - (c) that party is required to disclose it by law, court proceedings or any competent regulatory body or recognised investment exchange provided that, so far as is practicable, the disclosure shall be made only after consultation with the other party and after taking into account the other party's reasonable requirements as to timing, content and manner of communication; or
 - (d) such disclosure is on a confidential basis to that party's professional adviser for the purpose of advising that party in connection with this Agreement; or
 - (e) such disclosure is on a confidential basis to that party's officers and employees whose function requires such disclosure; or
 - (f) such disclosure is to any Independent Accountant referred to in this Agreement;
 - (g) such disclosure is to a party's or a party's holding company's bankers on a confidential basis.
- 20.5 The obligations in this clause 20 shall survive Completion and the Seller shall procure that each member of the Seller's Group complies with this undertaking and the Buyer shall procure that each member of the Buyer's Group complies with this undertaking.

20.6 For the avoidance of doubt the obligations of the Buyer under this clause 20 shall not apply to its use or disclosure of Confidential Information after Completion.

21 Assignment and third party rights

21.1 Unless this Agreement expressly states otherwise, no right or obligation arising under it (or any document entered into pursuant to or in connection with it) may be assigned, transferred or otherwise disposed of, in whole or in part, without the prior written agreement of the parties.

21.2 Notwithstanding clause 21.1, the benefit of this Agreement (and/or any document entered into pursuant to or in connection with it) may at any time and on more than one occasion be assigned to any member of the Buyer's Group at that time. However, the assignee shall only be entitled to enforce such benefit whilst it remains a member of the Buyer's Group. Before the assignee ceases to be a member of the Buyer's Group, the Buyer shall procure that the assignee reassigns such benefit to the Buyer (or another member of the Buyer's Group at that time).

21.3 If there is an assignment as permitted by clause 21.2 the amount of loss or damage recoverable by the assignee shall be calculated as if that person had been originally named as that party in this Agreement but shall not exceed the amount which would have applied had such assignment not taken place.

21.4 A party shall immediately give the other party relevant details of any action taken by it in accordance with this clause 21.

21.5 References in this Agreement to a party shall, except where the context requires otherwise, include its successors in title and permitted assigns.

21.6 Unless this Agreement expressly states otherwise:

- (a) a person who is not a party to this Agreement has no right to enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999; and
- (b) if a person who is not a party to this Agreement is stated to have the right to enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999, the parties may vary this Agreement (and any documents entered into pursuant to or in connection with it) without the consent of that person.

22 Notices

22.1 All notices (including all other documents) to be given to a party under this Agreement shall be in writing in English and shall be marked for the attention of the person, and delivered by hand or sent by first class prepaid post (or by air mail if to an address outside the United Kingdom) to the address detailed for the party below:

- (a) in the case of the Seller:

c/o The N G Bailey Organisation Limited
Denton Hall
Ilkley
LS29 0HH

Attention: The company secretary

- (b) in the case of the Buyer:

The S&I Factory Site
Ripley Road
West Bowling
Bradford
BD4 7EH
West Yorkshire

Attention: Don Madison and the company secretary

A party may change the details recorded for it in this clause by notice to the other in accordance with this clause 22 in which case each such change shall be effective 10 Business Days following such notice.

22.2 A notice shall be treated as having been received:

- (a) if delivered by hand between 9.00 am and 5.00 pm on a Business Day when so delivered; and if delivered by hand outside such hours, at 9.00 am on the next Business Day;
- (b) if sent by first class post, at 9.00 am on the second Business Day after posting if posted on a Business Day and at 9.00 am on the third Business Day after posting if not posted on a Business Day; and
- (c) if sent by air mail, at 9.00 am on the fifth Business Day after posting if posted on a Business Day and at 9.00 am on the sixth Business Day after posting if not posted on a Business Day.

22.3 In proving that a notice has been given it shall be conclusive evidence to prove that delivery was made, or that the envelope containing the notice was properly addressed and posted (as the case may be).

22.4 E-mailed or faxed notices are not valid for the purposes of this Agreement.

23 General

23.1 **Entire agreement:** This Agreement and the Property Transfer Agreement (together with all other documents to be entered into pursuant to either or both of them) sets out the entire agreement and understanding between the parties to those documents, and supersedes all proposals and prior agreements, arrangements and understandings between the parties, relating to its subject matter.

23.2 **Acknowledgment:** Each party acknowledges that it is not entering into this Agreement (or any other document to be entered into pursuant to it) in reliance upon, and waives all rights and remedies which, but for this clause, might otherwise be available to it in respect of, any representation, warranty, collateral contract or other assurance made by or on behalf of any other party before execution of this Agreement (except those set out in this Agreement and the documents referred to in it).

23.3 **Further assurance:** Each party shall do and execute, or arrange for the doing and executing of, any other act and document reasonably requested of it by the other party to implement and give full effect to the terms of this Agreement.

- 23.4 **Time:** Time is of the essence as regards any time, date or period specified in this Agreement and as regards any time, date or period which may be substituted for any of them in accordance with this Agreement.
- 23.5 **Survival of rights:** Completion shall not affect any rights or liabilities that have accrued prior to Completion or the coming into force or continuance in force of any term that is expressly or by implication intended to come into or continue in force on or after Completion.
- 23.6 **Variation:** No variation of this Agreement shall be effective unless it is in writing and is signed by or on behalf of each of the parties.
- 23.7 **Waiver:** Delay in exercising, or failure to exercise, any right or remedy in connection with this Agreement shall not operate as a waiver of that right or remedy. The waiver of a right to require compliance with any provision of this Agreement in any instance shall not operate as a waiver of any further exercise or enforcement of that right and the waiver of any breach shall not operate as a waiver of any subsequent breach. No waiver in connection with this Agreement shall, in any event, be effective unless it is in writing, refers expressly to this clause, is duly signed by or on behalf of the party granting it and is communicated to the other party in accordance with clause 22.
- 23.8 **Misrepresentation Act 1967:** The Buyer acknowledges and agrees that in entering into this Agreement, and the documents referred to in it, it has not relied on, and will have no remedy in equity, contract, or under the Misrepresentation Act 1967 in respect of any representation other than as expressly set out in this Agreement or any such document and for the avoidance of doubt the wording "going concern" in recital (B) and clause 3.1 shall not imply a warranty or representation on behalf of the Seller.
- 23.9 **Rights cumulative:** Subject to 23.8 and 23.14, the rights and remedies of the parties in connection with this Agreement are cumulative and, except as expressly stated in this Agreement, are not exclusive of any other rights or remedies provided by law or equity or otherwise. Except as expressly stated in this Agreement (or at law or in equity in the case of rights and remedies provided by law or equity) any right or remedy may be exercised (wholly or partially) from time to time.
- 23.10 **Costs:** Except as otherwise stated in this Agreement each party shall bear its own costs and expenses incurred in connection with the preparation, negotiation, completion and implementation of this Agreement and all ancillary documents.
- 23.11 **Severability:** The parties intend each provision of this Agreement to be severable and distinct from the others. If a provision of this Agreement is held to be illegal, invalid or unenforceable, in whole or in part, the parties intend that the legality, validity and enforceability of the remainder of this Agreement shall not be affected.
- 23.12 **Counterparts:** This Agreement may be entered into in any number of counterparts and by the parties on separate counterparts, all of which taken together shall constitute one and the same instrument.
- 23.13 **Fraud:** Nothing in this Agreement shall have the effect of limiting or restricting any liability of the parties arising as a result of any fraud.
- 23.14 **No Rescission:** Neither party shall have any right to rescind this Agreement.

24 **Governing law and jurisdiction**

24.1 This Agreement is governed by and shall be interpreted in accordance with English law.

24.2 Each party irrevocably submits to the exclusive jurisdiction of the English courts in relation to all matters arising out of or in connection with this Agreement.

Executed as a deed by the parties or their duly authorised representatives but not delivered until the date of this Agreement.

Executed as a deed by
Switchgear & Instrumentation Limited
acting by two directors or by a director and its
secretary

) /s/ Mark Andrews
) Director
)
) /s/ Linda Ashman
) Director/Secretary

Executed as a deed by
Inhoco 3210 Limited
acting by two directors or by a director and its
secretary

) /s/ Don R. Madison
) Director
)
) /s/ Mark W. Reid
) Director/Secretary

Dated 4 July 2005

SWITCHGEAR & INSTRUMENTATION LIMITED

SWITCHGEAR & INSTRUMENTATION PROPERTIES LIMITED

AGREEMENT
for the sale of freehold land at
Ripley Road, Bradford

ADDLESHAW GODDARD

Contents

	Clause	Page
1	Interpretation	1
2	Sale and Purchase	4
3	Deposit	4
4	Completion	5
5	Application of the Standard Conditions	5
6	Title	5
7	Title Guarantee	6
8	Transfer	6
9	Non-Merger	6
10	Entire Agreement	6
11	[not used]	6
12	[not used]	6
13	Value Added Tax	6
14	Warranties	8
15	Environmental	9
16	Limitation on liability	9
17	Notices	9
18	Governing law and jurisdiction	10
19	Assignment and third party rights	10
20	Buyer's Assurances	11
21	Further assurance	11
22	Business Transfer Agreement	11
23	General	11
	Description of Property	
	Warranties	
	Environmental matters	
	Schedule 4	
4	Limitations on the Seller's liability	
	Annexure	
	Transfer	

This Agreement is made 4 July 2005

Between

- (1) Switchgear & Instrumentation Limited** (Company No. 620929) whose registered office is at Heathcote, Kings Road, Ilkley, West Yorkshire LS29 9AS (**Seller**); and
- (2) Switchgear & Instrumentation Properties Limited** (Company No. 5464761) whose registered office is at 100 Barbirolli Square, Manchester M2 3AB (**Buyer**).

It is agreed

1 Interpretation

1.1 In this Agreement unless the context otherwise requires:

Actual Use means the purposes for which the Property is used being the Business and purposes ancillary thereto

Buildings means the buildings at the Property which:

- (a) constitute buildings (as defined in section 271(1)(b) of the CAA 2001);
- (b) on which the Seller has claimed or will claim industrial buildings allowances; and
- (c) in respect of which the Seller is therefore required, on a sale of the Property, to bring into account in its corporation tax computations a disposal value

Business has the meaning set out in the Business Transfer Agreement

Business Day means any day on which the banks are open for business in London (excluding Saturdays, Sundays and public holidays)

Business Transfer Agreement means an agreement of even date made between the Seller and Inhoco 3210 Limited to purchase the Business

Buyer's Group means the Buyer and any holding company or subsidiary of the Buyer and any subsidiary of such holding company and any equivalent company incorporated outside England and Wales which had such been incorporated in England and Wales the same would have been such a holding company or subsidiary

Buyer's Solicitors means Addleshaw Goddard of Sovereign House, PO Box 8, Sovereign Street, Leeds LS1 1HQ

CAA 2001 means the Capital Allowances Act 2001

Completion means the completion of the sale and purchase of the Property in accordance with clause 4 of this Agreement

Completion Date means 4 July 2005

Conduits means all sewers drains pipes wires cables conduits and other conducting media and ancillary equipment and apparatus

Contamination means the presence at any time prior to or on Completion of any Hazardous Substance at in on or under the Property or the Migration from the Property of any such Hazardous Substance

Customs means HM Customs & Excise or HM Revenue & Customs

Disclosure Letter means the letter (together with its annexures and documents) in the agreed form from the Seller to the Buyer signed and delivered immediately prior to the execution of this Agreement

Elected Plant means plant and machinery contained in the Property which:

- (a) constitute fixtures (as defined in section 173 of the CAA 2001);
- (b) on which the Seller has claimed or will claim capital allowances;
- (c) in respect of which the Seller is therefore required, on a sale of the Property, to bring into account in its corporation tax computations a disposal value

Environment means living organisms including the ecological systems of which they form part and the following media (alone or in combination):

- (a) air (including the air within buildings and the air within other natural or man made structures whether above or below ground);
- (b) water (including without limitation water under or within land or in drains or sewers and coastal and inland waters);
- (c) and land (including land under water); and
- (d) in the case of man includes his senses and his property

Fittings means all those chattels included in the sale

Hazardous Substance means any substance whether in solid liquid vaporous or gaseous form and whether alone or in combination with any other substance capable of causing harm to the Environment or to any living organism and shall include without limitation CO 2, Diesel and Asbestos

holding company shall bear the meaning given to that expression in section 736 of the Companies Act 1985

Losses means losses, claims, liabilities, costs or expenses (including legal, technical, consultancy, engineers, experts or other professional fees, costs or expenses), damages, charges, payments, non-criminal fines or penalties or any costs of or liability to undertake or pay for Remedial Action

Migration means the leaching migration escape seepage or other movement through air land or water of any Hazardous Substance from the Property into an adjoining property

Planning Legislation means the Local Government Planning and Land Act 1980, the Town and Country Planning Act 1990, the Town and Country Planning (Consequential Provisions) Act 1990, the Planning (Control of Hazardous Substances) Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning and Compensation Act 1991 and all statutes and statutory instruments containing provisions relating to town and country

planning from time to time in force and all other regulations, rules, orders and directions made thereunder

Price means:

- (a) £2,020,385.00 as to the Buildings
- (b) £1,604,615.00 as to the land (excluding the Buildings) comprising the Property
- (c) £120,000.00 as to Elected Plant

which will be satisfied by the payment of £2,996,000.00 and US\$1,377,000.00

Property means the property described in schedule 1

related company in relation to any company means any subsidiary or holding company of that company or any subsidiary of any such holding company

Relevant Claim means any claim for breach of the Warranties pursuant to this Agreement

Remedial Action means:

- (a) any remediation as defined in section 78A(1)(7) of the Environmental Protection Act 1990 (as enacted by section 57 of the Environment Act 1990) and/or
- (b) the carrying out of any investigative work as is reasonably required in relation to (a)).

subsidiary means a subsidiary (as defined by sections 736 and 736A of the Companies Act 1985)

Seller shall be deemed to include the successors in title of the Seller

Seller's Solicitors means Eversheds LLP of Cloth Hall Court, Infirmary Street, Leeds LS1 2JB

Standard Conditions means Standard Conditions of Sale (4th Edition) and all references in the Standard Conditions to property shall be deemed to be references to the Property

Sterling Nominated Account means the Seller's Solicitors' client account numbered 00018988 at National Westminster Bank Plc of 8 Park Row, Leeds LS1 1QS, sort code 60-60-05

Transfer means the transfer of the Property by the Seller under this Agreement

UK Statutory Contaminated Land Regime means Part IIA of the Environmental Protection Act 1990 and/or sections 161A-D of the Water Resources Act 1991 (as enacted by section 57 and paragraph 162 of Schedule 22 respectively of the Environment Act 1995) and any guidance notes or regulations issued from time to time in relation thereto

US\$ Nominated Account means the following account: NatWest Bank Leeds City Office 8 Park Row Leeds LS1 1QS, sort code 60-60-05, "Eversheds LLP Client USD Account", account number 10268472, SWIFT code NWBKGB2L, IBAN GB46NWBK60730110268472 (paying through JP Morgan Chase New York (ABA 021000021))

VAT means Value Added Tax

VAT Records means the records relating to the Property as at Completion which are referred to in section 49(1)(b) VATA

VATA means the Value Added Tax Act 1994

Warranties means the warranties referred to in clause 14 and set out in schedule 2

1.2 In this Agreement unless the context otherwise requires:

- (a) word importing any gender include every gender;
- (b) words importing the singular number also include the plural number and vice versa;
- (c) words importing persons include firms companies and corporations and vice versa;
- (d) references to numbered clauses and schedules are to the relevant numbered clause in or schedule to this Agreement;
- (e) where any obligation is undertaken by two or more persons jointly those persons shall be jointly and severally liable in respect of that obligation;
- (f) the headings to the clauses and schedules shall not affect the interpretation; and
- (g) references to statute are references to such statute as amended from time to time.

2 Sale and Purchase

2.1 The Seller will sell and the Buyer will purchase the Property and the Fittings for the Price (as apportioned) on the terms of this Agreement.

2.2 As soon as practicable and in any event, prior to the date that is two years from the date of this Agreement, the Seller and the Buyer will enter into an election under section 198 of the CAA 2001 in relation to the Elected Plant at the figure referred to in the definition of Price and the Seller and the Buyer will give notice of such election to the Inland Revenue.

2.3 The Seller confirms:

- (a) that the amount paid for the Elected Plant under this clause 2 does not exceed the Seller's capital expenditure on such Elected Plant for the purposes of its trade; and
- (b) that the amount paid for the Buildings does not exceed the Seller's capital expenditure on the construction of such Buildings for the purposes of its trade.

2.4 At the Buyer's reasonable cost, the Seller is to provide such assistance and information as the Buyer may reasonably require in connection with the Buyer's claims for capital allowances and industrial buildings allowances in respect of the Elected Plant and Buildings respectively.

3 Deposit

No deposit shall be paid.

4 Completion

- 4.1 The sale and purchase shall be completed at the Buyer's Solicitors offices or at such other place as the parties may agree and the Price shall be paid on the Completion Date.
- 4.2 The sterling portion of the Price shall be paid by the Buyer to the Sterling Nominated Account and the US\$ portion of the Price shall be paid to the US\$ Nominated Account by electronic funds transfer (for same day value) at Completion.
- 4.3 Completion shall take place at 00.01 on the Completion Date.
- 4.4 The keys necessary to obtain access to the Property will be made available to the Buyer on Completion and a key to 136 Bowling Park Drive will be delivered upon Completion.

5 Application of the Standard Conditions

- 5.1 The Property and the Fixtures and Fittings are sold subject to the Standard Conditions so far as they are not varied by or inconsistent with this Agreement and are applicable to a sale by private treaty.
- 5.2 The contract rate specified in definition 1.1.1(g) shall for the purposes of the Standard Conditions be 4.75% per annum, calculated on the basis of a year of 365 days from, and excluding, the Completion Date up to, and including, the date of payment.
- 5.3 Standard Conditions 3.1.3, 4.4.2 and 4.6.5 and 7 shall not apply.

6 Title

- 6.1 Title is to be deduced in a manner agreed between the parties.
- 6.2 The Property is sold and will be transferred subject to and (where appropriate) with the benefit of:
 - (a) any matters contained or referred to in the Property Proprietorship and the Charges Register of the registered title to the Property kept at the Land Registry other than mortgages or charges by way of legal mortgage so far as they relate to the Property and are still subsisting and capable of taking effect at Completion but otherwise with vacant possession;
 - (b) any unregistered interest that overrides the disposition effected pursuant to this Agreement under section 11(4)(c) or schedules 1, 3 or 12 of the Land Registration Act 2002;
 - (c) all public or private rights of way and other rights, easements or quasi-easements and wayleaves affecting the Property but without any liability on the Seller to define them; and
 - (d) all liability to repair and maintain roads, paths, conduits, fences and other like matters or to contribute to the cost of their repair and maintenance but without any liability on the Seller to provide evidence of or to apportion liability.
- 6.3 Section 6(2)(a) of the Law of Property (Miscellaneous Provisions) Act 1994 is to be construed as if all entries made in any public register which a prudent buyer would inspect are within the actual knowledge of the Buyer.

- 6.4 The Buyer is to use all reasonable endeavours to register the Transfer at the Land Registry as soon as reasonably practicable after Completion and, on completion of that registration, is to provide the Seller with official copies of the title to the Property showing the Buyer registered as proprietor, together with any title plan produced or updated by the Land Registry as part of that registration. The Buyer is to comply with this clause at its own cost and expense.
- 6.5 The Buyer shall be deemed to buy with full knowledge and notice of all matters referred to in clause 6.2 and shall not raise any objection or requisition whatsoever in respect of the same.
- 6.6 The Buyer shall accept the title of the Seller to the Property which has been deduced in full to the Buyer and shall not raise any requisition or objection in respect of the title to the Property.

7 Title Guarantee

The Seller shall sell with the title guarantee set out in the annexed form of transfer.

8 Transfer

- 8.1 The Transfer shall be in the form annexed.
- 8.2 The Buyer shall, at the Buyer's expense, prepare, execute and deliver to the Seller within 20 Business Days after Completion a duplicate of the Transfer.

9 Non-Merger

The obligations of the Seller and the Buyer shall continue notwithstanding Completion insofar as they remain to be performed and observed

10 Entire Agreement

- 10.1 This Agreement and the Business Transfer Agreement together with all other documents to be entered into pursuant to either or both of them sets out the entire contract between the parties and the agreement and understanding between the parties to those documents, and supersedes all proposals and prior agreements and understandings between the parties, relating to its subject matter. The Buyer acknowledges that the Buyer has not entered into this Agreement and any other such documentation in reliance on any advertisement or other matter issued by the Seller or the Seller's agents or in reliance on any statements made to the Buyer by either of them save those written statements of the Seller's Solicitors made in response to the Buyer's Solicitors written enquires dated 14 June 2005 and any subsequent written enquiries raised by the Buyer's Solicitors (including those statements made in the Seller's Solicitors response to those enquires dated 29 June 2005).

11 [not used]

12 [not used]

13 Value Added Tax

- 13.1 All payments to be made and other consideration to be given under this Agreement shall be deemed to be exclusive of VAT unless otherwise provided.
- 13.2 The Seller and the Buyer intend that, and shall use all reasonable endeavours to procure that, the sale of the Property pursuant to this Agreement is treated as a transfer of a business (or part of a business) as a going concern for the purposes of section 49 VATA and article 5 of

the Value Added Tax (Special Provisions) Order 1995 and as neither a supply of goods nor a supply of services for the purposes of VATA and the Value Added Tax (Special Provisions) Order 1995 and accordingly, subject to the provisions of this clause 13, no amount in respect of VAT shall be payable by the Buyer to the Seller in respect of the sale of the Property.

- 13.3 The Seller warrants and undertakes to the Buyer that the Seller is and will at Completion be registered for VAT with VAT registration number 179 3966 02.
- 13.4 The Buyer warrants to the Seller that:
- (a) the Buyer has made an application to Customs to be registered for VAT as a member of a VAT group with effect from a date on or before Completion in a VAT grouping with Inhoco 3210 Limited;
 - (b) it intends that members of the same group as the Buyer (for the purposes of section 43 VATA) shall use the Property to carry on the same kind of business as the Business with effect from Completion; and
 - (c) it has made an election to waive exemption in respect of the Property and has given written notification of such election to Customs.
- 13.5 The Seller will as soon as reasonably practicable after Completion request a direction from Customs under section 49(1)(b) VATA that from and after Completion the Seller shall be obliged to keep and preserve the VAT Records and:
- (a) if such a direction is made the Seller shall deliver a copy of such direction to the Buyer and shall preserve the VAT Records for such periods as may be required by law and shall allow the Buyer and its agents access to, and to take copies of, such records on reasonable notice during normal business hours; and
 - (b) if such a direction is not made the Seller shall keep and preserve the VAT Records on behalf of the Buyer for such periods as may be required by law and to allow the Buyer and its agents access to, and to take copies of, such records on reasonable notice during normal business hours.
- 13.6 The Seller undertakes and warrants to the Buyer that:
- (a) it has made a valid and current election to waive exemption in respect of the Property which has not been disapplied, and that it has given written notification of such election as required by paragraph 3(6)(b) Schedule 10 VATA together with any other information referred to in that paragraph; and
 - (b) that it has not made and will not make an application to Customs to revoke its election referred to in clause 13.6(a).
- 13.7 The Buyer hereby notifies the Seller (in accordance with Article 5(2A)(b) of the Value Added Tax (Special Provisions) Order 1995), that Article 5(2B) of the Value Added Tax (Special Provisions) Order 1995 does not, and will not at Completion, apply in respect of the Property to the Buyer or to any company in relation to which the Buyer is a relevant associate (as defined in paragraph 3(7) of Schedule 10 VATA).
- 13.8 The Seller warrants to the Buyer that the Property is a capital item for the purposes of Part XV of the Value Added Tax Regulations 1995 and undertakes to the Buyer that within 14 days of Completion it will provide the Buyer with the following information in respect of the Property:

- (a) the amount of the total input tax which is subject to adjustment;
- (b) the percentage of the total input tax which was reclaimed in respect of the capital item in the first interval applicable to it; and
- (c) the date of acquisition of the capital item, the date on which it first became a capital item and the number of intervals in the adjustment period applicable to it which shall remain after Completion.

13.9 If Customs expressly determine in writing that the sale of any or all of the Property cannot be treated in the manner contemplated by clause 13.2 the Buyer shall, in addition to any amounts or other consideration expressed in this Agreement to be payable or given by the Buyer, pay to the Seller the amount of any VAT which is properly chargeable on the sale of any or all of the Property under this Agreement, such amount to be payable no later than the later of, Completion, the date of receipt of a valid VAT invoice (together with a copy of the determination of Customs) from the Seller in respect of such VAT and three Business Days prior to the date on which the Seller must account to Customs for such VAT.

13.10 If the Buyer pays an amount in respect of VAT and it is subsequently determined by Customs or any court or tribunal that any such VAT was not chargeable the Seller shall forthwith notify the Buyer and shall forthwith within three Business Days pay a sum equal to any such amount to the Buyer.

13.11 If the sale of the Property is not a transfer of a business as a going concern transfer because of any breach by the Buyer of its warranties in clause 13.4 the Buyer will indemnify the Seller against any interest and penalties charged or imposed by Customs arising as a result of that breach.

14 Warranties

14.1 The Seller warrants to the Buyer in the terms of the Warranties, save as fairly disclosed in or deemed disclosed by the Disclosure Letter. For these purposes, fairly disclosed means disclosed in such manner and in such detail as to enable a reasonable person to make a reasonably informed assessment of the matter concerned including its significance to the Property.

14.2 Each of the Warranties shall be construed independently such that the Buyer shall have a separate claim and right of action for every breach of each Warranty.

14.3 The Seller waives all rights which it may have in respect of any misrepresentation, inaccuracy or omission in or from any information or advice supplied or given by any of the employees of the Business in enabling the Seller to give the Warranties or to prepare the Disclosure Letter save to the extent of any fraud or any dishonest, reckless or wilful misconduct by such an employee towards the Seller in this regard.

14.4 If any Warranty is qualified by the expression "to the best of the knowledge, information and belief of the Seller" or "so far as the Seller is aware" or any similar expression that expression is deemed to include a warranty by the Seller that the statement has been made after due enquiry of the persons named below but the Seller will not be deemed to have made enquiry of any other persons and will not be liable for breach of Warranty should a fact or circumstance which would otherwise constitute a breach of Warranty be known to any other person other than those listed below:

Christopher Wootton, Mark Williams, Steven Ward, Michael Leveratt, Gordon Skinner, Clive Porter, Paul Cogan, Philip Powdrill, Robin Graham, Linda Ashman.

15 Environmental

The provisions of schedule 3 shall apply.

16 Limitation on liability

16.1 The Seller's liability under the Warranties is limited in accordance with the provisions of schedule 4.

17 Notices

17.1 All notices (including all other documents) to be given to a party under this Agreement shall be in writing in English and shall be marked for the attention of the person, and delivered by hand or sent by first class prepaid post (or by air mail if to an address outside the United Kingdom) to the address detailed for the party below:

(a) in the case of the Seller:

c/o The N G Bailey Organisation Limited
Denton Hall
Ilkley
LS29 0HH

Attention: The company secretary

(b) in the case of the Buyer:

The S&I Factory Site
Ripley Road
West Bowling
Bradford
BD4 7EH
West Yorkshire

Attention: Don Madison and the company secretary

A party may change the details recorded for it in this clause by notice to the other in accordance with this clause 17 in which case each such change shall be effective 10 Business Days following such notice.

17.2 A notice shall be treated as having been received:

- (a) if delivered by hand between 9.00 am and 5.00 pm on a Business Day when so delivered and if delivered by hand outside such hours, at 9.00am on the next Business Day;
- (b) if sent by first class post at 9.00 am on the second Business Day after posting if posted on a Business Day and at 9.00 am on the third Business Day after posting if not posted on a Business Day; and

- (c) if sent by air mail at 9.00 am on the fifth Business Day after posting if posted on a Business Day and at 9.00 am on the sixth Business Day after posting if not posted on a Business Day.

17.3 In proving that a notice has been given it shall be conclusive evidence to prove that delivery was made, or that the envelope containing the notice was properly addressed and posted (as the case may be).

17.4 E-mailed or faxed notices are not valid for the purposes of this Agreement.

18 Governing law and jurisdiction

18.1 This Agreement is governed by and shall be interpreted in accordance with English law.

18.2 Each party irrevocably submits to the exclusive jurisdiction of the English courts in relation to all matters arising out of or in connection with this Agreement.

19 Assignment and third party rights

19.1 Unless this Agreement expressly states otherwise, no right or obligation arising under it (or any document entered into pursuant to or in connection with it) may be assigned, transferred or otherwise disposed of, in whole or in part, without the prior written agreement of the parties.

19.2 Notwithstanding clause 19.1, the benefit of this Agreement (and/or any document entered into pursuant to or in connection with it) may at any time and on more than one occasion be assigned to any member of the Buyer's Group at that time. However, the assignee shall only be entitled to enforce such benefit whilst it remains a member of the Buyer's Group. Before the assignee ceases to be a member of the Buyer's Group, the Buyer shall procure that the assignee reassigns such benefit to the Buyer (or another member of the Buyer's Group at that time).

19.3 If there is an assignment as permitted by clause 19.2 the amount of loss or damage recoverable by the assignee shall be calculated as if that person had been originally named as that party in this Agreement but shall not exceed the amount which would have applied had such assignment not taken place.

19.4 A party shall immediately give the other party relevant details of any action taken by it in accordance with this clause 19.

19.5 References in this Agreement to a party shall, except where the context requires otherwise, include its successors in title and permitted assigns.

19.6 Unless this Agreement expressly states otherwise:

- (a) a person who is not a party to this Agreement has no right to enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999; and
- (b) if a person who is not a party to this Agreement is stated to have the right to enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999, the parties may vary this Agreement (and any documents entered into pursuant to or in connection with it) without the consent of that person.

20 Buyer's Assurances

- 20.1 The Buyer warrants to the Seller that it has full power to enter into and perform this Agreement and that this Agreement constitutes binding obligations on the Buyer in accordance with its terms and, without prejudice to the generality of the foregoing, the Buyer further warrants that all authorisations, approvals, consents and licences required by the Buyer to permit the Buyer to enter into this Agreement and the arrangements herein contemplated have been unconditionally and irrevocably obtained and are in full force and effect.
- 20.2 The Buyer shall have no claim against the Seller for any breach of Warranty to the extent that Don Madison, Mike Whaley or Randall Baker were actually aware prior to Completion that the Buyer would (but for this clause 20.2) have a claim for breach of that Warranty.

21 Further assurance

Each party shall do and execute, or arrange for the doing and executing of, any other act and document reasonably requested of it by the other party to implement and give full effect to the terms of this Agreement.

22 Business Transfer Agreement

- 22.1 The Buyer agrees to observe and comply with the provisions of the Business Transfer Agreement to the extent that they refer to Switchgear & Instrumentation Properties Limited including, without limitation, under clause 6 of the Business Transfer Agreement.
- 22.2 The Seller agrees with the Buyer that the Buyer shall be entitled to access the Retention Sum (as defined in the Business Transfer Agreement) on the same terms as Inhoco 3210 Limited is entitled to do so under clause 6 of the Business Transfer Agreement.

23 General

- 23.1 **Variation:** No variation of this Agreement shall be effective unless it is in writing and is signed by or on behalf of each of the parties.
- 23.2 **Waiver:** Delay in exercising, or failure to exercise, any right or remedy in connection with this Agreement shall not operate as a waiver of that right or remedy. The waiver of a right to require compliance with any provision of this Agreement in any instance shall not operate as a waiver of any further exercise or enforcement of that right and the waiver of any breach shall not operate as a waiver of any subsequent breach. No waiver in connection with this Agreement shall, in any event, be effective unless it is in writing, refers expressly to this clause, is duly signed by or on behalf of the party granting it and is communicated to the other party in accordance with clause 17.
- 23.3 **Rights cumulative:** Subject to 12 and 23.8, the rights and remedies of the parties in connection with this Agreement are cumulative and, except as expressly stated in this Agreement, are not exclusive of any other rights or remedies provided by law or equity or otherwise. Except as expressly stated in this Agreement (or at law or in equity in the case of rights and remedies provided by law or equity) any right or remedy may be exercised (wholly or partially) from time to time.
- 23.4 **Costs:** Except as otherwise stated in this Agreement each party shall bear its own costs and expenses incurred in connection with the preparation, negotiation, completion and implementation of this Agreement and all ancillary documents.

- 23.5 **Severability:** The parties intend each provision of this Agreement to be severable and distinct from the others. If a provision of this Agreement is held to be illegal, invalid or unenforceable, in whole or in part, the parties intend that the legality, validity and enforceability of the remainder of this Agreement shall not be affected.
- 23.6 **Counterparts:** This Agreement may be entered into in any number of counterparts and by the parties on separate counterparts, all of which taken together shall constitute one and the same instrument.
- 23.7 **Fraud:** Nothing in this Agreement shall have the effect of limiting or restricting any liability of the parties arising as a result of any fraud.
- 23.8 **No Rescission:** Neither party shall have any right to rescind this Agreement.

Executed as a deed by the parties or their duly authorised representatives but not delivered until the date of this Agreement.

Executed as a deed by
Switchgear & Instrumentation Limited
acting by two directors or by a director and its
secretary

) /s/ Mark Andrews
) Director
)
) /s/ Linda Ashman
) Director/Secretary

Executed as a deed by **Switchgear
& Instrumentation Properties Limited**
acting by two directors or by a director and its
secretary

) /s/ Don R. Madison
) Director
)
) /s/ Mark W. Reid
) Director/Secretary

CREDIT AGREEMENT

dated as of June 29, 2005

among

POWELL INDUSTRIES, INC.,

INHOCO 3210 LIMITED,

and

SWITCHGEAR & INSTRUMENTATION PROPERTIES LTD.

collectively, as Borrowers,

and

BANK OF AMERICA, N.A.,

as Agent, Swing Line Lender and L/C Issuer,

and

THE OTHER LENDERS PARTY HERETO

TABLE OF CONTENTS

<u>Section</u>	<u>Page</u>
ARTICLE I. DEFINITIONS AND ACCOUNTING TERMS	1
1.01 Defined Terms	1
1.02 Other Interpretive Provisions	22
1.03 Accounting Terms	23
1.04 Exchange Rates; Currency Equivalents	23
1.05 Additional Alternative Currencies	24
1.06 Change of Currency	24
1.07 Times of Day	25
1.08 Letter of Credit Amounts	25
ARTICLE II. THE COMMITMENTS AND CREDIT EXTENSIONS	25
2.01 Term Facility and Revolving Facility	25
2.02 Borrowings, Conversions and Continuations of Committed Loans	26
2.03 Letters of Credit	28
2.04 Swing Line Loans	35
2.05 Prepayments	38
2.06 Termination or Reduction of Commitments	40
2.07 Repayment of Loans	41
2.08 Interest	41
2.09 Fees	42
2.10 Computation of Interest and Fees	42
2.11 Evidence of Debt	42
2.12 Payments Generally	43
2.13 Sharing of Payments	44
2.14 Security and Guaranties	45
2.15 Debit Account	46
2.16 Increase in Commitments	46
ARTICLE III. TAXES, YIELD PROTECTION AND ILLEGALITY	47
3.01 Taxes	47
3.02 Illegality	49
3.03 Inability to Determine Rates	49
3.04 Increased Cost and Reduced Return; Capital Adequacy; Reserves on Eurocurrency Rate Loans	50
3.05 Funding Losses	51
3.06 Matters Applicable to all Requests for Compensation	51
3.07 Survival	51
ARTICLE IV. CONDITIONS PRECEDENT TO CREDIT EXTENSIONS	52
4.01 Conditions of Initial Credit Extension	52
4.02 Conditions to all Credit Extensions	55
ARTICLE V. REPRESENTATIONS AND WARRANTIES	55
5.01 Existence, Qualification and Power; Compliance with Laws	55
5.02 Authorization; No Contravention	56
5.03 Governmental Authorization; Other Consents	56
5.04 Binding Effect	56
5.05 Financial Statements; No Material Adverse Effect	56

<u>Section</u>		<u>Page</u>
5.06	Litigation	56
5.07	No Default	56
5.08	Ownership of Property; Liens	57
5.09	Environmental Compliance	57
5.10	Insurance	57
5.11	Taxes	57
5.12	ERISA Compliance	57
5.13	Subsidiaries	58
5.14	Margin Regulations; Investment Company Act; Public Utility Holding Company Act	58
5.15	Disclosure	58
5.16	Compliance with Laws	58
5.17	Intellectual Property; Licenses, Etc	58
ARTICLE VI. AFFIRMATIVE COVENANTS		59
6.01	Financial Statements	59
6.02	Certificates; Other Information	59
6.03	Notices	61
6.04	Payment of Obligations	61
6.05	Preservation of Existence, Etc	61
6.06	Maintenance of Properties	61
6.07	Maintenance of Insurance	61
6.08	Compliance with Laws	62
6.09	Books and Records	62
6.10	Inspection Rights	62
6.11	Use of Proceeds	62
6.12	Additional Guarantors	62
ARTICLE VII. NEGATIVE COVENANTS		62
7.01	Liens	62
7.02	Investments	64
7.03	Indebtedness	64
7.04	Fundamental Changes	65
7.05	Dispositions	65
7.06	Restricted Payments	66
7.07	Change in Nature of Business	66
7.08	Transactions with Affiliates	66
7.09	Burdensome Agreements	66
7.10	Use of Proceeds	66
7.11	Financial Covenants	67
ARTICLE VIII. EVENTS OF DEFAULT AND REMEDIES		68
8.01	Events of Default	68
8.02	Remedies Upon Event of Default	70
8.03	Application of Funds	70
ARTICLE IX. ADMINISTRATIVE AGENT		71
9.01	Appointment and Authorization of Agent	71
9.02	Delegation of Duties	71
9.03	Liability of Agent	72
9.04	Reliance by Agent	72

<u>Section</u>		<u>Page</u>
9.05	Notice of Default	72
9.06	Credit Decision; Disclosure of Information by Agent	73
9.07	Indemnification of Agent	73
9.08	Agent in its Individual Capacity	73
9.09	Successor Agent	74
9.10	Agent May File Proofs of Claim	74
9.11	Collateral and Guaranty Matters	75
9.12	Other Agents; Arrangers and Managers	75
ARTICLE X. MISCELLANEOUS		75
10.01	Amendments, Etc	75
10.02	Notices and Other Communications; Facsimile Copies	76
10.03	No Waiver; Cumulative Remedies	78
10.04	Attorney Costs, Expenses and Taxes	78
10.05	Indemnification by Borrower	78
10.06	Payments Set Aside	79
10.07	Successors and Assigns	79
10.08	Confidentiality	82
10.09	Set-off	82
10.10	Interest Rate Limitation	83
10.11	Counterparts	83
10.12	Conflict Provisions	83
10.13	Survival of Representations and Warranties	83
10.14	Severability	83
10.15	Tax Forms	83
10.16	Replacement of Lenders	85
10.17	Governing Law	85
10.18	Waiver of Right to Trial by Jury	86
10.19	Time of the Essence	86
10.20	Joint and Several Liability; Cross-Guaranty	86
10.21	Entire Agreement	87
SIGNATURES		S-1

SCHEDULES

1.01	Mandatory Costs
1.02	Existing Letters of Credit
2.01	Commitments and Applicable Percentages
5.13	Subsidiaries and Other Equity Investments
7.01	Existing Liens
7.03	Existing Indebtedness
10.02	Agent's Office, Certain Addresses for Notices

EXHIBITS

A-1	Revolving Note
A-2	Term Note
B	Guaranty
C-1	Committed Loan Notice
C-2	Swing Line Loan Notice
D	Compliance Certificate
E	Pledge Agreement
F	Assignment Agreement
G	Opinion Matters

CREDIT AGREEMENT

THIS CREDIT AGREEMENT ("**Agreement**") is entered into as of June 29, 2005, among POWELL INDUSTRIES, INC., a Delaware corporation ("**Parent**"), Inhoco 3210 Limited, an entity organized under the laws of England and Wales ("**Inhoco**"), and Switchgear & Instrumentation Properties Limited, an entity organized under the laws of England and Wales ("**SI Properties**") and together with Inhoco, "**UK Borrower**", each lender from time to time party to this Agreement (collectively, "**Lenders**" and individually, a "**Lender**"), and BANK OF AMERICA, N.A., as Agent, Swing Line Lender and L/C Issuer.

A. Parent has requested that Lenders extend credit to Parent in the maximum principal amount of \$22,000,000 in the form of a revolving credit facility.

B. UK Borrower has requested that Lenders extend credit to UK Borrower in the maximum principal amount of £4,000,000 in the form of a revolving credit facility.

C. UK Borrower has requested that Lenders make a single advance term loan to UK Borrower in the amount of £6,000,000.

D. Lenders are willing to extend the revolving credit and make the term loan on the terms and conditions of this Agreement.

In consideration of the mutual covenants and agreements set out in this Agreement, the parties to this Agreement covenant and agree as follows:

ARTICLE I. DEFINITIONS AND ACCOUNTING TERMS

1.01 Defined Terms. As used in this Agreement,

Acquisition means the direct or indirect purchase or acquisition, whether in one or more related transactions, of all or substantially all of the capital stock of any Person or group of Persons or all or substantially all of the assets, liabilities, and business of any Person or group of Persons, or a business unit, division, or group of a Person.

Administrative Questionnaire means an Administrative Questionnaire in a form supplied by Agent.

Affiliate means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified. "**Control**" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "**Controlling**" and "**Controlled**" have meanings correlative thereto. Without limiting the generality of the foregoing, a Person shall be deemed to be Controlled by another Person if such other Person possesses, directly or indirectly, power to vote 10% or more of the securities having ordinary voting power for the election of directors, managing general partners or the equivalent. For purposes of this definition, each of the following are "**Affiliates**" of the others (i) each Guarantor, and (ii) each Borrower.

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

Agent's Office means, with respect to any currency, the Agent's address and, as appropriate, account as set forth on **Schedule 10.02** with respect to such currency, or such other address or account with respect to such currency as the Agent may from time to time notify to the Parent and the Lenders.

Aggregate Commitments means the Commitments of all of the Lenders.

Agreement means this Credit Agreement, and all schedules and exhibits to this Agreement.

Alternative Currency means Sterling and each other currency (other than Dollars) that is approved in accordance with **Section 1.05**.

Alternative Currency Equivalent means, at any time, with respect to any amount denominated in Dollars, the equivalent amount thereof in the applicable Alternative Currency as determined by the Agent or the L/C Issuer, as the case may be, at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date) for the purchase of such Alternative Currency with Dollars.

Alternative Currency Sublimit means, when determined, an amount equal to £4,000,000. The Alternative Currency Sublimit is part of, and not in addition to, the Aggregate Commitments.

Applicable Percentage means, with respect to each Lender at any time, (a) in respect of the Aggregate Commitments, a fraction (expressed as a percentage, carried out to the ninth decimal place), of the Aggregate Commitments represented by such Lender's Commitment at such time. If the commitment of each Lender to make Loans and the obligation of the L/C Issuer to make L/C Credit Extensions have been terminated pursuant to **Section 8.02**, or if the Aggregate Commitments have expired, then the Applicable Percentage of each Lender shall be determined based on the Applicable Percentage of each Lender most recently in effect, giving effect to any subsequent assignments. The initial Applicable Percentage of each Lender is set out opposite the name of such Lender on **Schedule 2.01** or in the Assignment Agreement pursuant to which such Lender becomes a party to this Agreement, as applicable.

Applicable Rate means, except as specified below, the following percentages per annum, based upon the Consolidated Leverage Ratio as set out in the most recent Compliance Certificate received by Agent pursuant to **Section 6.02(b)**:

Pricing Level	Consolidated Leverage Ratio	Eurocurrency Rate +	Base Rate +	Letter of Credit Fee	Commitment Fee
1	<1.25	1.00%	0%	1.00%	0.20%
2	³ 1.25:1.00 but <1.75:1.00	1.25%	0%	1.25%	0.25%
3	³ 1.75:1.00 but <2.25:1.00	1.50%	0%	1.50%	0.25%
4	³ 2.25	1.75%	0.25%	1.75%	0.375%

Any increase or decrease in the Applicable Rate resulting from a change in the Consolidated Leverage Ratio shall become effective as of the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to **Section 6.02(b)**; *provided that*, if a Compliance Certificate is not delivered when due in accordance with such Section, then Pricing Level 4 shall apply as of the first Business Day after the date on which such Compliance Certificate was required to have been delivered until the first Business Day after a Compliance Certificate establishing a lower applicable Pricing Level is delivered pursuant to **Section 6.02(b)**. Notwithstanding the foregoing but subject to the foregoing proviso, the Letter of Credit fee from the Closing Date through the fiscal quarter ending April 30, 2006

shall be determined based on the then applicable Letter of Credit fee *minus* 0.50% and thereafter the Letter of Credit fee shall be determined as set out above. The Applicable Rate in effect on the Closing Date through Agent's receipt of the Compliance Certificate pursuant to **Section 6.02** shall be determined based upon Pricing Level 4.

Applicable Time means, with respect to any borrowings and payments in any Alternative Currency, the local time in the place of settlement for such Alternative Currency as may be determined by the Agent or the L/C Issuer, as the case may be, to be necessary for timely settlement on the relevant date in accordance with normal banking procedures in the place of payment.

Assignment Agreement means an Assignment Agreement substantially in the form of **Exhibit F**.

Attorney Costs means and includes all reasonable fees, expenses and disbursements of any law firm or other external counsel and, if Agent has reasonably determined with respect to any particular legal matter that it will be more cost effective to use internal legal counsel in lieu of external legal counsel and Agent has notified Parent of such determination, then without duplication, Attorney Costs shall include a reasonable allocated cost of internal legal services performed for such particular legal matter and all reasonable expenses and disbursements directly incurred with respect to such matter by internal counsel.

Attributable Indebtedness means, on any date, (a) in respect of any capital lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, and (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease payments under the relevant lease that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease were accounted for as a capital lease.

AutoBorrow Agreement means the AutoBorrow Service Agreement dated on or about October 25, 2001, between Parent and Bank of America, as the same may be amended, restated or otherwise modified from time to time.

Available Revolving Amount means, when determined, an amount equal to the Revolving Committed Amount *minus* the Outstanding Amount of all Revolving Loans, L/C Obligations, and Swing Line Loans.

Availability Period means in respect of the Revolving Facility, the period from the Closing Date to the earliest of (a) the Termination Date, (b) the date of termination of the Aggregate Commitments pursuant to **Section 2.06**, and (c) the date of termination of the commitment of each Lender to make Revolving Loans and of the obligation of the L/C Issuer to make L/C Credit Extensions pursuant to **Section 8.02**.

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

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

Base Rate Committed Loan means a Committed Loan that bears interest based on the Base Rate.

Base Rate Loan means a Loan that bears interest based on the Base Rate. All Base Rate Loans shall be denominated in Dollars.

Bonds shall mean the \$8,000,000.00 Illinois Development Finance Authority Industrial Development Revenue Bonds (Delta-Unibus, Inc. Project) Series 2001.

Borrower means each of Parent, Inhoco and SI Properties, which are collectively, “**Borrowers.**”

Borrowing means a Revolving Borrowing, a Term Borrowing, or a Swing Line Borrowing, as the context may require.

Business Day means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where Agent’s Office with respect to Obligations denominated in Dollars is located and:

(a) if such day relates to any interest rate settings as to a Eurocurrency Rate Loan denominated in Dollars, any fundings, disbursements, settlements and payments in Dollars in respect of any such Eurocurrency Rate Loan, or any other dealings in Dollars to be carried out pursuant to this Agreement in respect of any such Eurocurrency Rate Loan, means any such day on which dealings in deposits in Dollars are conducted by and between banks in the London interbank eurodollar market;

(b) if such day relates to any interest rate settings as to a Eurocurrency Rate Loan denominated in Euro, any fundings, disbursements, settlements and payments in Euro in respect of any such Eurocurrency Rate Loan, or any other dealings in Euro to be carried out pursuant to this Agreement in respect of any such Eurocurrency Rate Loan, means a TARGET Day;

(c) if such day relates to any interest rate settings as to a Eurocurrency Rate Loan denominated in a currency other than Dollars or Euro, means any such day on which dealings in deposits in the relevant currency are conducted by and between banks in the London or other applicable offshore interbank market for such currency; and

(d) if such day relates to any fundings, disbursements, settlements and payments in a currency other than Dollars or Euro in respect of a Eurocurrency Rate Loan denominated in a currency other than Dollars or Euro, or any other dealings in any currency other than Dollars or Euro to be carried out pursuant to this Agreement in respect of any such Eurocurrency Rate Loan (other than any interest rate settings), means any such day on which banks are open for foreign exchange business in the principal financial center of the country of such currency.

Capital Expenditure means for any Person, all expenditures for assets which, in accordance with GAAP, are properly classified as equipment, real property, improvements, fixed assets or similar types of capitalized assets and which would be required to be capitalized and shown on the balance sheet of such person.

Cash Collateralize has the meaning specified in **Section 2.03(g)**.

Cash Equivalents means (a) securities issued or directly and fully guaranteed or insured by the United States of America or any agency or instrumentality thereof having maturities of not more than twelve (12) months from the date of acquisition, (b) U.S. Dollar denominated time deposits and certificates of deposit maturing within one (1) year from the date of acquisition thereof with any Lender or any other financial institution whose short-term senior unsecured debt rating is at least A-1 from S&P

or P-1 from Moody's, (c) Eurocurrency or Euro denominated time deposits and certificates of deposit maturing within 12 months from the date of acquisition thereof with any Lender or any other financial institution whose short-term senior unsecured debt rating is at least A-1 from S&P or P-1 from Moody's, (d) commercial paper or Eurocommercial paper with a rating of at least A-1 from S&P or P-1 from Moody's, (e) repurchase obligations entered into with any Lender or any other financial institution whose short-term senior unsecured debt rating is at least A-1 from S&P or P-1 from Moody's, which are secured by a fully perfected security interest in any obligation of the type described in (a) above and has a market value of the time such repurchase is entered into of not less than 100% of the repurchase obligation of such Lender or such other Person thereunder, (f) marketable direct obligations issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof maturing within twelve (12) months from the date of acquisition thereof, and (g) money market funds which have at least \$1,000,000,000 in assets and which invest primarily in securities of the types described in *clauses (a) through (f) above*.

Change in Law means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority.

Change of Control means, with respect to Parent, an event or series of events by which:

(a) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the *Securities Exchange Act of 1934*, as amended, but excluding (i) any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan, and (ii) Tom Powell and his Affiliates) becomes the "beneficial owner" (as defined in Rules 13d-3 and 13d-5 under the *Securities Exchange Act of 1934*, as amended except that a person or group shall be deemed to have "beneficial ownership" of all securities that such person or group has the right to acquire (such right, an "**option right**"), whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of 25% or more of the equity securities of Parent entitled to vote for members of the board of directors or equivalent governing body of Parent on a fully-diluted basis (and taking into account all such securities that such person or group has the right to acquire pursuant to any option right);

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

(c) any Person or two or more Persons acting in concert (other than Tom Powell and his Affiliates) shall have acquired by contract or otherwise, or shall have entered into a contract or arrangement that, upon consummation thereof, will result in its or their acquisition of the power to exercise, directly or indirectly, a controlling influence over the management or policies of Parent, or control over the equity securities of Parent entitled to vote for members of the board of directors or equivalent governing body of Parent on a fully-diluted basis (and taking into account all such securities that such Person or group has the right to acquire pursuant to any option right) representing 25% or more of the combined voting power of such securities.

Closing Date means the first date all the conditions precedent in **Section 4.01(a)** are satisfied or waived in accordance with **Section 4.01(a)**.

Code means the Internal Revenue Code of 1986.

Collateral is defined in **Section 2.14**.

Commitment means, as to each Lender, its obligation to (a) make Revolving Loans to Borrowers under the Revolving Facility, (b) make Term Loans to UK Borrower under the Term Facility, (c) purchase participations in L/C Obligations, and (d) purchase participations in Swing Line Loans, in an aggregate principal amount at any one time outstanding not to exceed the amount set out opposite such Lender's name on **Schedule 2.01** or in the Assignment Agreement pursuant to which such Lender becomes a party to this Agreement, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

Committed Borrowing means a Revolving Borrowing or a Term Borrowing.

Committed Loan means a Revolving Loan or a Term Loan.

Committed Loan Notice means a notice of (a) in respect of the Revolving Facility, (i) a Revolving Borrowing, (ii) a conversion of Revolving Loans from one Type to the other, or (iii) a continuation of Eurocurrency Rate Revolving Loans, pursuant to **Section 2.02(a)**, or (b) in respect of the Term Facility, (i) the initial Term Borrowing, (ii) a conversion of Term Loans from one Type to the other, or (iii) a continuation of Eurocurrency Rate Term Loans, in each case pursuant to **Section 2.02(a)**, and which, if in writing, shall be substantially in the form of **Exhibit C-1**.

Company or **Companies** means, at any time, Parent and its Subsidiaries.

Compliance Certificate means a certificate substantially in the form of **Exhibit D**.

Consolidated EBITDA means, for any period, for Parent and its Subsidiaries on a consolidated basis, an amount equal to Consolidated Net Income for such period *plus* the following to the extent deducted in calculating such Consolidated Net Income: (a) Consolidated Interest Charges for such period; (b) the amount paid or the provision for federal, state, local and foreign income taxes payable by Parent and its Subsidiaries for such period; and (c) the following non-cash charges deducted in determining such Consolidated Net Income: (i) depreciation and amortization expense; (ii) charges for the write-off or write-down in the book value of goodwill, and (iii) other non-cash charges approved by Agent.

Consolidated Fixed Charge Coverage Ratio means, as of any date of determination, the ratio of (a) the *difference* of (i) Consolidated EBITDA for the period of the four fiscal quarters most recently ended for which Borrowers have delivered Current Financial Statements pursuant to **Section 6.01(a)** or **(b)** minus (ii) cash federal, state, local, and foreign income taxes for Parent and its

Subsidiaries for such period, *minus* actual cash Capital Expenditures paid during such period, to (b) Debt Service.

Consolidated Funded Indebtedness means, as of any date of determination, for Parent and its Subsidiaries on a consolidated basis, the *sum* of (a) the outstanding principal amount of all obligations, whether current or long-term, for borrowed money (including Obligations hereunder) and all obligations evidenced by bonds, debentures, notes, loan agreements or other similar instruments, *plus* (b) all purchase money Indebtedness, *plus* (c) all direct obligations under surety bonds in respect of which demand has been made for performance by the surety, (d) all direct obligations arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, and similar instruments, *plus* (e) all obligations in respect of the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business), *plus* (f) Attributable Indebtedness in respect of capital leases and Synthetic Lease Obligations, *plus* (g) without duplication, all Guarantees with respect to outstanding Indebtedness of the types specified in *clauses (a) through (f)* above of Persons other than Parent or any Subsidiary, and *plus* (h) all Indebtedness of the types referred to in *clauses (a) through (g)* above of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which Parent or a Subsidiary is a general partner or joint venturer, unless such Indebtedness is expressly made non-recourse to Parent or such Subsidiary.

Consolidated Interest Charges means, for any period, for Parent and its Subsidiaries on a consolidated basis, the *sum* of (a) all interest, premium payments, debt discount, fees, charges and related expenses of Parent and its Subsidiaries in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case to the extent treated as interest in accordance with GAAP, and reduced by amounts received pursuant to any interest rate hedging agreements, *plus* (b) the portion of rent expense of Parent and its Subsidiaries with respect to such period under capital leases, if any, that is treated as interest in accordance with GAAP.

Consolidated Leverage Ratio means, as of any date of determination, the *ratio* of (a) Consolidated Funded Indebtedness as of such date to (b) Consolidated EBITDA for the period of the four fiscal quarters most recently ended for which Borrowers have delivered Current Financial Statements pursuant to **Section 6.01(a)** or **(b)**.

Consolidated Net Income means, for any period, for Parent and its Subsidiaries on a consolidated basis, the net income of Parent and its Subsidiaries (excluding extraordinary gains and in each case the tax effects thereon for that period).

Consolidated Tangible Net Worth means, as of any date of determination, for Parent and its Subsidiaries on a consolidated basis, the difference of (a) Shareholders' Equity of Parent and its Subsidiaries on that date *minus* (b) the Intangible Assets of Parent and its Subsidiaries on that date.

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

Control has the meaning specified in the definition of "Affiliate."

Credit Extension means each of the following: (a) a Borrowing; and (b) an L/C Credit Extension.

Current Financial Statements means, when determined, the consolidated financial statements of Parent and its Subsidiaries most recently delivered to Agent under **Section 6.01**.

Debt Service means, when determined, the *sum* of the following, without duplication (a) the principal amount of all Consolidated Funded Indebtedness having a maturity longer than one year (other than the Term Principal Debt) and paid during the most recently completed four fiscal quarters period, *plus* (b) Consolidated Interest Charges paid during the most recently completed four fiscal quarters period, *plus* (c) payments made on the Term Principal Debt pursuant to **Section 2.07(a)** for the most recently completed four fiscal quarters period.

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

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

Default Rate means an interest rate equal to the lesser of (a) the Maximum Rate and (b) the sum of (i) the Base Rate *plus* (ii) the Applicable Rate, if any, applicable to Base Rate Loans *plus* (iii) 2% per annum; *provided that*, with respect to a Eurocurrency Rate Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Rate) otherwise applicable to such Loan *plus* 2% per annum, in each case to the fullest extent permitted by applicable Laws.

Defaulting Lender means any Lender that (a) has failed to fund any portion of the Revolving Loans, the Term Loans, participations in L/C Obligations, or participations in Swing Line Loans required to be funded by it hereunder within 1 Business Day of the date required to be funded by it hereunder, (b) has otherwise failed to pay over to Agent or any other Lender any other amount required to be paid by it hereunder within 1 Business Day of the date when due, unless the subject of a good faith dispute, or (c) has been deemed insolvent or become the subject of a Debtor Relief Law.

Designated Account means the deposit account identified as account no. 2552900284 with Bank of America.

Designated Sublimit means (a) with respect to Parent, \$22,000,000, and (b) with respect to UK Borrower, £4,000,000.

Disposition or **Dispose** means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction) of any property by any Person, including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

Dollar and **\$** mean lawful money of the United States.

Dollar Equivalent means, at any time, (a) with respect to any amount denominated in Dollars, such amount, and (b) with respect to any amount denominated in any Alternative Currency, the equivalent amount thereof in Dollars as determined by the Agent or the L/C Issuer, as the case may be, at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date) for the purchase of Dollars with such Alternative Currency.

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

Eligible Assignee has the meaning specified in **Section 10.07(g)**.

Eligible Cash Equivalents means, at any time, all Cash Equivalents on deposit with Agent or any Lender which are subject to an Agency Account Agreement.

Eligible Stocks means any common or preferred stock which (a) is not subject to statutory or contractual restrictions on sales, transfers or dispositions, (b) is traded on a U.S. national stock exchange or included in the National Market tier of NASDAQ and (c) is issued by a company with a market capitalization, as of the close of the most recent trading day (excluding after hours trading), of at least \$500,000,000, and has, as of the close of the most recent trading day (excluding after hours trading), a per share price of at least \$15.00.

Eminent Domain Event means any Governmental Authority or any Person acting under a Governmental Authority institutes proceedings to condemn, seize or appropriate all or part of any asset of a Company.

Eminent Domain Proceeds means all amounts received by any Company as a result of any Eminent Domain Event.

EMU means the economic and monetary union in accordance with the Treaty of Rome 1957, as amended by the Single European Act 1986, the Maastricht Treaty of 1992 and the Amsterdam Treaty of 1998.

EMU Legislation means the legislative measures of the European Council for the introduction of, changeover to or operation of a single or unified European currency.

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

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

Equity Interests means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any such Equity Interest.

ERISA means the Employee Retirement Income Security Act of 1974.

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

ERISA Event means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by any Borrower or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a

plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by any Borrower or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Plan amendment as a termination under Sections 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; or (f) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Borrower or any ERISA Affiliate.

Euro and **EUR** mean the lawful currency of the Participating Member States introduced in accordance with the EMU Legislation.

Eurocurrency Rate means, for any Interest Period with respect to a Eurocurrency Rate Loan, the rate per annum equal to the British Bankers Association LIBOR Rate (“**BBA LIBOR**”), as published by Reuters (or other commercially available source providing quotations of BBA LIBOR as designated by Agent from time to time) at approximately 11:00 a.m., London time, 2 Business Days prior to the commencement of such Interest Period, for deposits in the relevant currency (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period. If such rate is not available at such time for any reason, then the “Eurocurrency Rate” for such Interest Period shall be the rate per annum determined by Agent to be the rate at which deposits in the relevant currency for delivery on the first day of such Interest Period in Same Day Funds in the approximate amount of the Eurocurrency Rate Loan being made, continued or converted by Bank of America and with a term equivalent to such Interest Period would be offered by Bank of America’s London Branch (or other Bank of America branch or Affiliate) to major banks in the London or other offshore interbank market for such currency at their request at approximately 11:00 a.m. (London time) 2 Business Days prior to the commencement of such Interest Period.

Eurocurrency Rate Loan means a Committed Loan that bears interest at a rate based on the Eurocurrency Rate. Eurocurrency Rate Loans may be denominated in Dollars or in an Alternative Currency. All Committed Loans denominated in an Alternative Currency must be Eurocurrency Rate Loans.

Event of Default has the meaning specified in **Section 8.01**.

Excluded Taxes means, with respect to the Agent, any Lender, the L/C Issuer or any other recipient of any payment to be made by or on account of any obligation of any Borrower hereunder, (a) taxes imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable Lending Office is located, (b) any branch profits taxes imposed by the United States or any similar tax imposed by any other jurisdiction in which such Borrower is located and (c) except as provided in the following sentence, in the case of a Foreign Lender (other than an assignee pursuant to a request by Borrowers under **Section 10.16**), any withholding tax that is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party hereto (or designates a new Lending Office) or is attributable to such Foreign Lender’s failure or inability (other than as a result of a Change in Law) to comply with **Section 3.01(e)**, except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new Lending Office (or assignment), to receive additional amounts from the applicable Borrower with respect to such withholding tax pursuant to **Section 3.01(a)**. Notwithstanding anything to the contrary contained in this definition, “Excluded Taxes”

shall not include any withholding tax imposed at any time on payments made by or on behalf of a Foreign Obligor to any Lender hereunder or under any other Loan Document, *provided* that such Lender shall have complied with the last paragraph of **Section 3.01(e)**.

Existing Letters of Credit means those certain letters of credit described on attached **Schedule 1.02**.

Existing Loan Agreement means that certain Amended and Restated Loan Agreement dated October 25, 2001, between Parent, as borrower, and Bank of America, as lender (as amended).

Federal Funds Rate means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; *provided that* (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to Bank of America on such day on such transactions as determined by Agent.

Fee Letter means letter agreement, dated June 17, 2005, between the Parent and Bank of America.

Fiscal Year means, as to Parent and its Subsidiaries, their fiscal year ending October 31.

Foreign Lender means, with respect to any Borrower, any Lender that is organized under the laws of a jurisdiction other than that in which such Borrower is resident for tax purposes. For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction

Foreign Obligor means a Loan Party that is a Foreign Subsidiary.

Foreign Subsidiary means any Subsidiary that is organized under the laws of a jurisdiction other than the United States, a State thereof or the District of Columbia.

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

Funded Indebtedness means, for any Person, the *sum* of, without duplication, (a) the outstanding principal amount of all obligations, whether current or long-term, for borrowed money and all obligations evidenced by bonds, debentures, notes, loan agreements or other similar instruments, *plus* (b) the outstanding principal amount of all purchase money Indebtedness, *plus* (c) all direct obligations arising under letters of credit, bankers' acceptances, bank guaranties, surety bonds and similar instruments, *plus* (d) all obligations in respect of the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business), *plus* (e) Attributable Indebtedness in respect of capital leases and Synthetic Lease Obligations, *plus* (f) without duplication, all Guarantees with respect to outstanding Indebtedness of the types specified in *clauses (a) through (e)* above of other Persons, and *plus* (g) all Indebtedness of the types referred to in *clauses (a) through (f)* above of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or joint venturer, unless such Indebtedness is expressly made non-recourse to such Person.

GAAP means generally accepted accounting principles in the United States set out in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied.

Governmental Authority means any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, administrative tribunal, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

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

Guarantor means each Subsidiary of Parent and any other Person executing a Guaranty, excluding Foreign Subsidiaries.

Guaranty means a guaranty in favor of Agent, for the ratable benefit of the Lenders, substantially in the form of **Exhibit B**.

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

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

(a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;

(b) all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers’ acceptances, bank guaranties, surety bonds and similar instruments;

(c) net obligations of such Person under any Swap Contract;

(d) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business);

(e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) capital leases and Synthetic Lease Obligations; and

(g) all Guarantees of such Person in respect of any of the foregoing.

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

Indemnified Liabilities has the meaning set out in **Section 10.05**.

Indemnified Taxes means Taxes other than Excluded Taxes.

Indemnitees has the meaning set out in **Section 10.05**.

Initial Financial Statements means the unaudited consolidated balance sheet of Parent and its Subsidiaries for the fiscal quarter ended April 30, 2005, and the related consolidated statements of income or operations, Shareholders' Equity and cash flows for such fiscal year of Parent and its Subsidiaries, including the notes thereto.

Insurance Proceeds means all cash and non-cash proceeds in respect of any insurance policy maintained by any Company under the terms of this Agreement.

Intangible Assets means assets that are considered to be intangible assets under GAAP, including customer lists, goodwill, computer software, copyrights, trade names, trademarks, patents, franchises, licenses, unamortized deferred charges, unamortized debt discount and capitalized research and development costs.

Interest Payment Date means, (a) as to any Loan other than a Base Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date (in respect of the Term Facility) or the Termination Date (in respect of the Revolving Facility), as applicable; *provided that*, if any Interest Period for a Eurocurrency Rate Loan exceeds three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates; and (b) as to any Base Rate Loan (including a Swing Line Loan), the last Business Day of each March, June, September and December and the Maturity Date (in respect of the Term Facility) or the Termination Date (in respect of the Revolving Facility), as applicable.

Interest Period means as to each Eurocurrency Rate Loan, the period commencing on the date such Eurocurrency Rate Loan is disbursed, converted to, or continued as a Eurocurrency Rate Loan and ending on the date one, two, three or six months thereafter, as selected by a Borrower in its Loan Notice, as the case may be; *provided that*:

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

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

(c) no Interest Period shall extend beyond the Termination Date or the Maturity Date, as applicable.

Investment means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of capital stock or other securities of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person, or (c) an Acquisition. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

IP Rights has the meaning set out in **Section 5.18**.

IRS means the United States Internal Revenue Service.

ISP means, with respect to any Letter of Credit, the "International Standby Practices 1998" published by the Institute of International Banking Law & Practice (or such later version thereof as may be in effect at the time of issuance).

Issuer Documents means with respect to any Letter of Credit, the Letter of Credit Application, and any other document, agreement and instrument entered into by the L/C Issuer and any Borrower (or any Subsidiary) or in favor of the L/C Issuer and relating to any such Letter of Credit.

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

L/C Advance means, with respect to each Lender, such Lender's funding of its participation in any L/C Borrowing in accordance with its Applicable Percentage. All L/C Advances shall be denominated in Dollars.

L/C Borrowing means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the date when made or refinanced as a Revolving Borrowing. All L/C Borrowings shall be denominated in Dollars.

L/C Credit Extension means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the renewal or increase of the amount thereof.

L/C Issuer means Bank of America in its capacity as issuer of Letters of Credit hereunder, or any successor issuer of Letters of Credit hereunder.

L/C Obligations means, as at any date of determination, the aggregate undrawn amount of all outstanding Letters of Credit *plus* the aggregate of all Unreimbursed Amounts, including all L/C Borrowings. For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with **Section 1.08**. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

Lender has the meaning specified in the introductory paragraph to this Agreement and, as the context requires, includes the L/C Issuer and the Swing Line Lender.

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

Letter of Credit means any stand-by letter of credit issued hereunder and shall include the Existing Letters of Credit.

Letter of Credit Application means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the L/C Issuer.

Letter of Credit Fee has the meaning specified in **Section 2.03(i)**.

Letter of Credit Sublimit means (a) with respect to Parent, \$22,000,000, and (b) with respect to UK Borrower, £4,000,000. The Letter of Credit Sublimit is part of, and not in addition to, the Revolving Committed Amount.

Lien means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement, and any financing lease having substantially the same economic effect as any of the foregoing).

Liquid Assets means shall mean the following assets owned by a Loan Party (excluding assets of any retirement plan) which (i) are not the subject of any Lien other than a Permitted Lien, or other arrangement with any creditor to have its claim satisfied out of the asset (or proceeds thereof) prior to the general creditors of such Loan Party may be converted to cash by sale or other means within 30 days:

- (a) Cash or Eligible Cash Equivalents;

(b) Demand deposits or interest-bearing time and eurodollar deposits, certificates of deposit or similar banking arrangements held in the United States where either (x) such deposits or other arrangements are held with banks or other financial institutions which have capital and surplus of not less than \$500,000,000 or (y) such deposits are fully FDIC-insured;

(c) Direct obligations of the United States of America in the form of United States Treasury obligations or any governmental agency or instrumentality whose obligations constitute full faith and credit obligations of the United States of America and which are regularly traded on a public market or exchange;

(d) Commercial paper rated P-1 by Moody's Investors Services, Inc. or A-1 by Standard & Poor's Corporation, a division of McGraw Hill, Inc.;

(e) Eligible Stocks, either owned directly by a Loan Party or managed on such Loan Party's behalf by (x) any nationally recognized investment advisor or (y) any investment advisor who or which has assets under management in excess of \$500,000,000;

(f) Mutual funds or money market funds that invest substantially all of their assets in instruments described above in (a), (b), (c), (d), (e) and/or (f) of this definition and which are quoted in either the Wall Street Journal or Barron's; and

(g) securities with maturities of one year or less from the date of acquisition which are issued, insured, or fully guaranteed by any state, commonwealth or territory of the United States or by any political subdivision or taxing authority of such state, commonwealth or territory.

Loan means an extension of credit by a Lender to any Borrower under **Article II** in the form of a Revolving Loan, a Term Loan, or a Swing Line Loan.

Loan Documents means this Agreement, each Note, the Security Documents, each Guaranty, the AutoBorrow Agreement, the Fee Letter, and all Swap Contracts under which any Lender or any Affiliate of any Lender is a party.

Loan Parties means, collectively, each Borrower and each Guarantor.

Mandatory Cost means, with respect to any period, the percentage rate per annum determined in accordance with **Schedule 1.01**.

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

Maturity Date means the earlier of (a) December 31, 2010, or (b) the acceleration of maturity of the Term Facility in accordance with **Section 8** of this Agreement.

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

Net Proceeds means (a) with respect to any Disposition of any asset by any Person, the aggregate amount of cash and non-cash proceeds from such Disposition received by, or paid to or for the account of, such Person, net of customary and reasonable out-of-pocket costs, fees, and expenses (including attorneys' fees), and (b) with respect to the issuance of equity securities, debt securities, subordinated debt, or similar instruments, or the incurrence of Indebtedness, the cash and non-cash proceeds received from such issuance or incurrence, net of attorneys' fees, investment banking fees, accountants fees, underwriting discounts and commissions and other customary fees and expenses actually incurred in connection with such issuance. Non-cash proceeds include any proceeds received by way of deferred payment of principal pursuant to a note, installment receivable, purchase price adjustment receivable, or otherwise, but only as and when received.

Note means, as applicable, a Revolving Note or a Term Note.

Obligations means all advances to, and Indebtedness, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan or Letter of Credit, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

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

Other Taxes means all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

Outstanding Amount means (a) with respect to Committed Loans on any date, the Dollar Equivalent amount of the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Committed Loans, occurring on such date; (b) with respect to Swing Line Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of such Swing Line Loans occurring on such date; and (c) with respect to any L/C Obligations on any date, the amount Dollar Equivalent amount of the aggregate outstanding amount of such L/C Obligations on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursement by any Borrower of Unreimbursed Amounts.

Overnight Rate means, for any day, (a) with respect to any amount denominated in Dollars, the greater of (i) the Federal Funds Rate and (ii) an overnight rate determined by the Agent, the L/C Issuer, or the Swing Line Lender, as the case may be, in accordance with banking industry rules on interbank compensation, and (b) with respect to any amount denominated in an Alternative Currency, the rate of interest per annum at which overnight deposits in the applicable Alternative Currency, in an amount

approximately equal to the amount with respect to which such rate is being determined, would be offered for such day by a branch or Affiliate of Bank of America in the applicable offshore interbank market for such currency to major banks in such interbank market.

Parent is defined in the preamble this Agreement.

Participant has the meaning specified in **Section 10.07(d)**.

Participating Member State means each state so described in any EMU Legislation.

PBGC means the Pension Benefit Guaranty Corporation.

Pension Plan means any “employee pension benefit plan” (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by any Borrower or any ERISA Affiliate or to which any Borrower or any ERISA Affiliate contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time during the immediately preceding six plan years.

Permitted Liens means the Liens permitted under **Section 7.01**.

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

Plan means any “employee benefit plan” (as such term is defined in Section 3(3) of ERISA) established by any Borrower or, with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, any ERISA Affiliate.

Pledge Agreement means each Pledge Agreement in substantially the form of **Exhibit E**.

Register has the meaning set out in **Section 10.07(c)**.

Related Parties means Agent, such Person’s Affiliates and the partners, officers, directors, employees, agents and advisors of such Person and such Person’s Affiliates.

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

Request for Credit Extension means (a) with respect to a Borrowing, conversion or continuation of Revolving Loans or Term Loans, a Loan Notice, (b) with respect to an L/C Credit Extension, a Letter of Credit Application, and (c) with respect to a Swing Line Loan, a Swing Line Loan Notice.

Required Lenders means, as of any date of determination, Lenders having at least 66-2/3% of the Aggregate Commitments or, if the commitment of each Lender to make Loans and the obligation of the L/C Issuer to make L/C Credit Extensions have been terminated pursuant to **Section 8.02**, Lenders holding in the aggregate at least 66-2/3% of the Total Outstandings (with the aggregate amount of each Lender’s risk participation and funded participation in L/C Obligations and Swing Line Loans being deemed “held” by such Lender for purposes of this definition); *provided that*, the Commitment of, and the portion of the Total Outstandings held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

Responsible Officer means the chief executive officer, president, chief financial officer, treasurer of a Loan Party. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

Restricted Payment means any dividend or other distribution (whether in cash, securities or other property) with respect to any capital stock or other equity interest of Parent or any Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such capital stock or other equity interest or of any option, warrant or other right to acquire any such capital stock or other equity interest.

Revaluation Date means (a) with respect to any Loan, each of the following: (i) each date of a Borrowing of a Eurocurrency Rate Loan denominated in an Alternative Currency, (ii) each date of a continuation of a Eurocurrency Rate Loan denominated in an Alternative Currency pursuant to **Section 2.02**, and (iii) such additional dates as the Agent shall determine or the Required Lenders shall require; and (b) with respect to any Letter of Credit, each of the following: (i) each date of issuance of a Letter of Credit denominated in an Alternative Currency, (ii) each date of an amendment of any such Letter of Credit having the effect of increasing the amount thereof (solely with respect to the increased amount), (iii) each date of any payment by the L/C Issuer under any Letter of Credit denominated in an Alternative Currency, (iv) in the case of the Existing Letters of Credit, the date that the conditions precedent in **Section 4.01(c)** are satisfied and (v) such additional dates as Agent or the L/C Issuer shall determine or the Required Lenders shall require. in the amount specified therein.

Revolving Borrowing means a borrowing consisting of simultaneous Revolving Loans of the same Type and, in the case of Eurocurrency Rate Loans, having the same Interest Period made by each of the Lenders pursuant to **Section 2.01**.

Revolving Committed Amount means the total of the Revolving Committed Amount set out on **Schedule 2.01**.

Revolving Facility means the revolving credit facility made available by the Lenders pursuant to **Section 2.01(b)**.

Revolving Loan means a loan by a Lender under the Revolving Facility.

Revolving Note and **Revolving Notes** means, that promissory note substantially in the form of **Exhibit A-1** executed by the applicable Borrower and made payable to a Lender in the original principal amount of such Lender's Applicable Percentage of the Revolving Committed Amount, and in the case of the Swing Line Lender, such amount includes the Swing Line Sublimit.

Revolving Principal Debt means, when determined, the outstanding principal balance of all Revolving Notes.

Same Day Funds means (a) with respect to disbursements and payments in Dollars, immediately available funds, and (b) with respect to disbursements and payments in an Alternative Currency, same day or other funds as may be determined by the Agent or the L/C Issuer, as the case may be, to be customary in the place of disbursement or payment for the settlement of international banking transactions in the relevant Alternative Currency.

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

Security Documents means all Pledge Agreements and all documents executed in connection therewith to create or perfect a Lien on the Collateral.

Shareholders' Equity means, as of any date of determination, consolidated shareholders' equity of Parent and its Subsidiaries as of that date determined in accordance with GAAP.

Special Notice Currency means at any time an Alternative Currency, other than the currency of a country that is a member of the Organization for Economic Cooperation and Development at such time located in North America or Europe.

Spot Rate for a currency means the rate determined by the Agent or the L/C Issuer, as applicable, to be the rate quoted by the Person acting in such capacity as the spot rate for the purchase by such Person of such currency with another currency through its principal foreign exchange trading office at approximately 11:00 a.m. on the date 2 Business Days prior to the date as of which the foreign exchange computation is made; *provided that* the Agent or the L/C Issuer may obtain such spot rate from another financial institution designated by the Agent or the L/C Issuer if the Person acting in such capacity does not have as of the date of determination a spot buying rate for any such currency; and *provided further* that the L/C Issuer may use such spot rate quoted on the date as of which the foreign exchange computation is made in the case of any Letter of Credit denominated in an Alternative Currency.

Sterling and "£" means the lawful currency of the United Kingdom.

Subject Acquisition means the Acquisition by Parent or Inhoco of all of substantially the assets of Switchgear & Instrumentation Limited pursuant to that certain Agreement for the sale and purchase of certain assets and the assumption of certain liabilities of Switchgear & Instrumentation Limited between Inhoco, as buyer, and Switchgear & Instrumentation Limited, as seller.

Subordinated Indebtedness means Indebtedness which is contractually subordinated in right of payment, collection, enforcement and lien rights to the prior payment in full of the Obligation on terms satisfactory to Required Lenders, and includes Indebtedness in the form of subordinated convertible debentures or subordinated promissory notes.

Subsidiary of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references in this Agreement to a "**Subsidiary**" or to "**Subsidiaries**" shall refer to a Subsidiary or Subsidiaries of Borrowers.

Swap Contract means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and

(b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “**Master Agreement**”), including any such obligations or liabilities under any Master Agreement, in each case to the extent any Loan Party is obligated thereon.

Swap Termination Value means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in *clause (a)*, the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

Swing Line means the revolving credit facility made available by the Swing Line Lender pursuant to **Section 2.04**.

Swing Line Borrowing means a borrowing of a Swing Line Loan pursuant to **Section 2.04**.

Swing Line Lender means Bank of America in its capacity as provider of Swing Line Loans, or any successor swing line lender hereunder.

Swing Line Loan has the meaning specified in **Section 2.04(a)**.

Swing Line Loan Notice means a notice of a Swing Line Borrowing pursuant to **Section 2.04(b)**, which, if in writing, shall be substantially in the form of **Exhibit C-2**.

Swing Line Sublimit means an amount equal to the lesser of (a) \$3,000,000, and (b) the Revolving Committed Amount. The Swing Line Sublimit is part of, and not in addition to, the Revolving Committed Amount.

Synthetic Lease Obligation means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property creating obligations that do not appear on the balance sheet of such Person but which, upon the insolvency or bankruptcy of such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

TARGET Day means any day on which the Trans-European Automated Real-Time Gross Settlement Express Transfer (TARGET) payment system (or, if such payment system ceases to be operative, such other payment system (if any) determined by the Agent to be a suitable replacement) is open for the settlement of payments in Euro.

Tax Code means the Internal Revenue Code of 1986.

Taxes means, for any Person, taxes, assessments or other governmental charges or levies imposed upon that Person, its income, or any of its properties, franchises or assets.

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

Term Committed Amount means the total of the Term Committed Amount set out on **Schedule 2.01**.

Term Facility is defined in **Section 2.01(a)**.

Term Loan means a Loan by a Lender under the Term Facility.

Term Note and **Term Notes** means, that promissory note substantially in the form of **Exhibit A-2** executed by UK Borrower and made payable to a Lender in the original principal amount of such Lender's Applicable Percentage of the Term Committed Amount.

Term Principal Debt means, when determined, the outstanding principal balance of all Term Notes.

Termination Date means the earlier of (a) June 30, 2008, or (b) the effective date that the Lenders' commitments to make Revolving Loans and purchase participations in L/C's and Swing Line Loans are otherwise cancelled or terminated in accordance with **Section 8** of this Agreement, or otherwise.

Total Outstandings means the aggregate Outstanding Amount of all Loans and all L/C Obligations.

Type means with respect to a Revolving Loan or the Term Loan, its character as a Base Rate Loan or a Eurocurrency Rate Loan.

UCC means the Uniform Commercial Code, as adopted in Texas and as amended from time to time.

Unfunded Pension Liability means the excess of a Pension Plan's benefit liabilities under Section 4001(a)(16) of ERISA, over the current value of that Pension Plan's assets, determined in accordance with the assumptions used for funding the Pension Plan pursuant to Section 412 of the Code for the applicable plan year.

United States and **U.S.** mean the United States of America.

Unreimbursed Amount has the meaning set out in **Section 2.03(c)(i)**.

1.02 Other Interpretive Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified in this Agreement or in such other Loan Document:

(a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.

(i) The words "**herein**," "**hereto**," "**hereof**" and "**hereunder**" and words of similar import when used in any Loan Document shall refer to such Loan Document as a whole and not to any particular provision thereof.

(ii) Article, Section, Exhibit and Schedule references are to the Loan Document in which such reference appears.

(iii) The term “**including**” is by way of example and not limitation.

(iv) The term “**documents**” includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements and other writings, however evidenced, whether in physical or electronic form.

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

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

1.03 Accounting Terms.

(a) **Generally.** All accounting terms not specifically or completely defined in this Agreement shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Initial Financial Statements and the Current Financial Statements, *except* as otherwise specifically prescribed in this Agreement.

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

1.04 Exchange Rates; Currency Equivalents.

(a) The Agent or the L/C Issuer, as applicable, shall determine the Spot Rates as of each Revaluation Date to be used for calculating Dollar Equivalent amounts of Credit Extensions and Outstanding Amounts denominated in Alternative Currencies. Such Spot Rates shall become effective as of such Revaluation Date and shall be the Spot Rates employed in converting any amounts between the applicable currencies until the next Revaluation Date to occur. Except for purposes of financial statements delivered by Loan Parties hereunder or calculating financial covenants hereunder or except as otherwise provided herein, the applicable amount of any currency (other than Dollars) for purposes of the Loan Documents shall be such Dollar Equivalent amount as so determined by the Agent or the L/C Issuer, as applicable.

(b) Wherever in this Agreement in connection with a Committed Borrowing, conversion, continuation or prepayment of a Eurocurrency Rate Loan or the issuance, amendment or

extension of a Letter of Credit, an amount, such as a required minimum or multiple amount, is expressed in Dollars, but such Committed Borrowing, Eurocurrency Rate Loan or Letter of Credit is denominated in an Alternative Currency, such amount shall be the relevant Alternative Currency Equivalent of such Dollar amount (rounded to the nearest unit of such Alternative Currency, with 0.5 of a unit being rounded upward), as determined by Agent or the L/C Issuer, as the case may be.

1.05 Additional Alternative Currencies.

(a) Borrowers may from time to time request that Eurocurrency Rate Loans be made and/or Letters of Credit be issued in a currency other than those specifically listed in the definition of "Alternative Currency;" *provided that*, such requested currency is a lawful currency (other than Dollars) that is readily available and freely transferable and convertible into Dollars. In the case of any such request with respect to the making of Eurocurrency Rate Loans, such request shall be subject to the approval of the Agent and the Lenders; and in the case of any such request with respect to the issuance of Letters of Credit, such request shall be subject to the approval of the Agent and the L/C Issuer.

(b) Any such request shall be made to the Agent not later than 11:00 a.m., 20 Business Days prior to the date of the desired Credit Extension (or such other time or date as may be agreed by the Agent and, in the case of any such request pertaining to Letters of Credit, the L/C Issuer, in its or their sole discretion). In the case of any such request pertaining to Eurocurrency Rate Loans, the Agent shall promptly notify each Lender thereof; and in the case of any such request pertaining to Letters of Credit, the Agent shall promptly notify the L/C Issuer thereof. Each Lender (in the case of any such request pertaining to Eurocurrency Rate Loans) or the L/C Issuer (in the case of a request pertaining to Letters of Credit) shall notify the Agent, not later than 11:00 a.m., 10 Business Days after receipt of such request whether it consents, in its sole discretion, to the making of Eurocurrency Rate Loans or the issuance of Letters of Credit, as the case may be, in such requested currency.

(c) Any failure by a Lender or the L/C Issuer, as the case may be, to respond to such request within the time period specified in the preceding sentence shall be deemed to be a refusal by such Lender or the L/C Issuer, as the case may be, to permit Eurocurrency Rate Loans to be made or Letters of Credit to be issued in such requested currency. If the Agent and all the Lenders consent to making Eurocurrency Rate Loans in such requested currency, the Agent shall so notify Borrower and such currency shall thereupon be deemed for all purposes to be an Alternative Currency hereunder for purposes of any Committed Borrowings of Eurocurrency Rate Loans; and if the Agent and the L/C Issuer consent to the issuance of Letters of Credit in such requested currency, the Agent shall so notify Borrower and such currency shall thereupon be deemed for all purposes to be an Alternative Currency hereunder for purposes of any Letter of Credit issuances. If the Agent shall fail to obtain consent to any request for an additional currency under this **Section 1.05**, the Agent shall promptly so notify Borrower.

1.06 Change of Currency

(a) Each obligation of the Borrowers to make a payment denominated in the national currency unit of any member state of the European Union that adopts the Euro as its lawful currency after the date hereof shall be redenominated into Euro at the time of such adoption (in accordance with the EMU Legislation). If, in relation to the currency of any such member state, the basis of accrual of interest expressed in this Agreement in respect of that currency shall be inconsistent with any convention or practice in the London interbank market for the basis of

accrual of interest in respect of the Euro, such expressed basis shall be replaced by such convention or practice with effect from the date on which such member state adopts the Euro as its lawful currency; *provided that* if any Committed Borrowing in the currency of such member state is outstanding immediately prior to such date, such replacement shall take effect, with respect to such Committed Borrowing, at the end of the then current Interest Period.

(b) Each provision of this Agreement shall be subject to such reasonable changes of construction as the Agent may from time to time specify to be appropriate to reflect the adoption of the Euro by any member state of the European Union and any relevant market conventions or practices relating to the Euro.

(c) Each provision of this Agreement also shall be subject to such reasonable changes of construction as the Agent may from time to time specify to be appropriate to reflect a change in currency of any other country and any relevant market conventions or practices relating to the change in currency.

1.07 Times of Day. Unless otherwise specified, all references in this Agreement to times of day shall be references to Central time (daylight or standard, as applicable).

1.08 Letter of Credit Amounts. Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the Dollar Equivalent of the stated amount of such Letter of Credit in effect at such time; provided, however, that with respect to any Letter of Credit that, by its terms or the terms of any Issuer Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the Dollar Equivalent of the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

ARTICLE II. THE COMMITMENTS AND CREDIT EXTENSIONS

2.01 Term Facility and Revolving Facility.

(a) **Term Commitment.** Subject to the terms and conditions of this Agreement, on the Closing Date each Lender severally and not jointly agrees to make a Loan to UK Borrower in Sterling in an amount equal to its Applicable Percentage of the Term Committed Amount, in a single Base Rate Loan (subject to conversion to a Eurocurrency Rate Loan pursuant to **Section 2.03**) which when prepaid or repaid may not be reborrowed (the “**Term Facility**”). The Loan under the Term Facility is subject to the following conditions:

(i) The Term Borrowing must occur on the Closing Date which must be a Business Day;

(ii) the Term Borrowing must be in the Term Committed Amount; and

(iii) after giving effect to the Term Loan, (1) the Total Outstandings shall not exceed the Aggregate Commitments, (2) the aggregate Outstanding Amount of the Committed Loans of any Lender, *plus* such Lender’s Applicable Percentage of the Outstanding Amount of all L/C Obligations, *plus* such Lender’s Applicable Percentage of the Outstanding Amount of all Swing Line Loans shall not exceed such Lender’s Commitment, and (3) the Outstanding Amounts of such Lender’s Term Loans may not exceed such Lender’s Applicable Percentage of the Term Committed Amount.

(b) **Revolving Commitment.** Subject to the terms and conditions of this Agreement, each Lender severally agrees to make one or more Revolving Loans to the Borrowers in Dollars or in one or more Alternative Currencies from time to time, on any Business Day during the Availability Period, in an amount not to exceed at any time outstanding the amount of such Lender's Commitment which, subject to the other terms and conditions of this Agreement, Borrowers may borrow under this **Section 2.01**, prepay under **Section 2.05**, and reborrow under this **Section 2.01** (the "**Revolving Facility**"). Lenders' commitments to lend under the Revolving Facility shall expire at 1:00 p.m. on the last Business Day preceding the Termination Date, *provided that*, Borrowers' obligations and Lenders' rights under the Loan Documents shall continue in full force and effect until the Obligation is paid in full. Revolving Loans under the Revolving Facility are subject to the following conditions:

(i) each Revolving Borrowing (unless the remaining Available Revolving Amount is less) must be in an amount not less than \$500,000 or a whole multiple of \$100,000 (if a Base Rate Loan) or \$500,000 or a whole multiple of \$100,000 (if a Eurocurrency Rate Loan) in excess thereof;

(ii) no Revolving Borrowing may exceed the Available Revolving Amount;

(iii) all Revolving Loans made to Parent shall be in Dollars; and

(iv) after giving effect to any Revolving Loan, (1) the Outstanding Amount of all Revolving Loans, L/C Obligations, and Swing Line Loans may not exceed the Revolving Committed Amount, (2) the Total Outstandings shall not exceed the Aggregate Commitments, (3) the aggregate Outstanding Amount of the Committed Loans of any Lender, *plus* such Lender's Applicable Percentage of the Outstanding Amount of all L/C Obligations, *plus* such Lender's Applicable Percentage of the Outstanding Amount of all Swing Line Loans shall not exceed such Lender's Commitment, (4) the aggregate Outstanding Amounts of all Revolving Loans made to UK Borrower shall not exceed its Designated Sublimit, (5) the aggregate Outstanding Amounts of all Revolving Loans made to Parent shall not exceed its Designated Sublimit, (6) the aggregate Outstanding Amount of all Revolving Loans denominated in Alternative Currencies shall not exceed the Alternative Currency Sublimit.

2.02 Borrowings, Conversions and Continuations of Committed Loans.

(a) Each Committed Borrowing, each conversion of Committed Loans from one Type to the other, and each continuation of Eurocurrency Rate Loans shall be made upon Borrower's irrevocable notice to Agent, which may be given by telephone. Each such notice must be received by Agent not later than 11:00 a.m. (i) 3 Business Days prior to the requested date of any Borrowing of, conversion to or continuation of Eurocurrency Rate Loans or of any conversion of Eurocurrency Rate Loans to Base Rate Committed Loans, (ii) 4 Business Days (or 5 Business Days in the case of a Special Notice Currency) prior to the requested date of any Borrowing or continuation of Eurocurrency Rate Loans denominated in Alternative Currencies, and (iii) on the requested date of any Borrowing of Base Rate Committed Loans. Each telephonic notice by Borrower pursuant to this **Section 2.02(a)** must be confirmed promptly by delivery to Agent of a written Committed Loan Notice, appropriately completed and signed by a Responsible Officer of Borrower. Each Borrowing of, conversion to or continuation of Eurocurrency Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof. Except as provided in **Sections 2.03(c)** and **2.04(c)**, each conversion to Base Rate Committed Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof. Each

Committed Loan Notice (whether telephonic or written) shall specify (i) whether Borrower is requesting a Committed Borrowing, a conversion of Committed Loans from one Type to the other, or a continuation of Eurocurrency Rate Loans, (ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Committed Loans to be borrowed, converted or continued, (iv) the Type of Committed Loans to be borrowed or to which existing Committed Loans are to be converted, (v) if applicable, the duration of the Interest Period with respect thereto and , (vi) the currency of the Committed Loan to be borrower. If Borrower fails to specify a Type of Committed Loan in a Committed Loan Notice or if Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable Committed Loans shall be made as, or converted to, Base Rate Loans *provided, however*, that in each case of a failure to timely request a continuation of Committed Loans denominated in an Alternative Currency, such Loans shall be continued as Eurocurrency Rate Loans in their original currency with an Interest Period of one month. Any such automatic conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurocurrency Rate Loans. If Borrower requests a Borrowing of, conversion to, or continuation of Eurocurrency Rate Loans in any such Committed Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month. No Committed Loan may be converted into or continued as a Committed Loan denominated in a different currency, but instead must be prepaid in the original currency of such Committed Loan or reborrowed in other currency.

(b) Following receipt of a Committed Loan Notice, Agent shall promptly notify each Lender of the amount of its Applicable Percentage of the applicable Committed Loans, and if no timely notice of a conversion or continuation is provided by Borrower, Agent shall notify each Lender of the details of any automatic conversion to Base Rate Loans or the continuation of Committed Loans denominated in a currency other than Dollars, in each case described in the preceding subsection. In the case of a Committed Borrowing, each Lender shall make the amount of its Committed Loan available to Agent in Same Day Funds at Agent's Office not later than 1:00 p.m., in the case of any Committed Loan denominated in Dollars, and not later than the Applicable Time specified by the Agent in the case of any Committed Loan in an Alternative Currency, in each case on the Business Day specified in the applicable Committed Loan Notice. Upon satisfaction of the applicable conditions set out in **Sections 4.02** and **4.03** (and, if such Borrowing is the initial Credit Extension, **Section 4.01**), Agent shall make all funds so received available to Borrower in like funds as received by Agent either by (i) crediting the account of Borrower on the books of Bank of America with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) Agent by Borrower; *provided that*, if, on the date the Committed Loan Notice with respect to such Borrowing denominated in Dollars is given by Borrower, there are L/C Borrowings outstanding, then the proceeds of such Borrowing shall be applied, first, to the payment in full of any such L/C Borrowings, and, second, shall be made available to Borrower as provided above.

(c) Except as otherwise provided in this Agreement, a Eurocurrency Rate Loan may be continued or converted only on the last day of an Interest Period for such Eurocurrency Rate Loan. During the existence of a Default, no Loans may be requested as, converted to or continued as Eurocurrency Rate Loans (whether in Dollars or any Alternative Currency) without the consent of the Required Lenders, and the Required Lenders may demand that any or all of the then outstanding Eurocurrency Rate Loans denominated in an Alternative Currency be prepaid, or redenominated in Dollars in the amount of the Dollar Equivalent thereof, on the last day of the then current Interest Period with respect thereto.

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

(e) After giving effect to all Committed Borrowings, all conversions of Committed Loans from one Type to the other, and all continuations of Committed Loans as the same Type, there shall not be more than 5 Interest Periods in effect with respect to Committed Loans.

2.03 Letters of Credit.

(a) The Letter of Credit Commitment.

(i) Subject to the terms and conditions set out in this Agreement, (A) the L/C Issuer agrees, in reliance upon the agreements of the other Lenders set out in this **Section 2.03**, (1) from time to time on any Business Day during the period from the Closing Date until the Termination Date, to issue Letters of Credit denominated in Dollars for the account of Parent, and denominated in Dollars or in one or more Alternative currencies for the account of UK Borrower, and to amend Letters of Credit previously issued by it, in accordance with *clause (b)* below, and (2) to honor drafts under the Letters of Credit; and (B) the Lenders severally agree to participate in Letters of Credit issued for the account of Borrowers and any drawing thereunder; provided that after giving effect to any L/C Extension with respect to any Letter of Credit, (A) the Total Outstandings shall not exceed the Aggregate Commitments, (B) the Outstanding Amount of all Revolving Loans, L/C Obligations, and Swing Line Loans shall not exceed the Revolving Committed Amount, (C) the aggregate Outstanding Amount of the Committed Loans of any Lender, *plus* such Lender's Applicable Percentage of the Outstanding Amount of all L/C Obligations, *plus* such Lender's Applicable Percentage of the Outstanding Amount of all Swing Line Loans would exceed such Lender's Commitment, (D) the aggregate Outstanding Amount of the Revolving Loans of any Lender, *plus* such Lender's Applicable Percentage of the Outstanding Amount of all L/C Obligations, *plus* such Lender's Applicable Percentage of the Outstanding Amount of all Swing Line Loans shall not exceed such Lender's Applicable Percentage of the Revolving Committed Amount, (E) the Outstanding Amount of the L/C Obligations for Parent shall not exceed its Letter of Credit Sublimit, (F) the Outstanding Amount of the L/C Obligations for UK Borrower shall not exceed its Letter of Credit Sublimit. Each request by the Borrowers for the issuance or amendment of a Letter of Credit shall be deemed to be a representation by the Borrowers that the L/C Extension so requested complies with the conditions set forth in the provisos to the preceding sentence. Within the foregoing limits, and subject to the terms and conditions hereof, Borrower's ability to obtain Letters of Credit shall be fully revolving, and accordingly any Borrower may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed. From and after the occurrence of the Closing Date and the satisfaction of all conditions precedent in **Section 4.01(c)**, all Existing Letters of Credit shall be deemed to have been issued pursuant hereto, and shall be subject to and governed by the terms and conditions hereof.

(ii) The L/C Issuer shall not issue any Letter of Credit, if:

(1) the face amount of such requested Letter of Credit is greater than \$1,000,000, and the expiry date would occur after the Termination Date;

(2) the face amount of such requested Letter of Credit is less than \$1,000,000, and the expiry date of such requested Letter of Credit would occur more than 364 days after the Termination Date; and

(3) the face amount of such requested Letter of Credit, collectively with all Borrowers' outstanding Letters of Credit with an expiry date after the Termination Date, exceeds \$3,000,000.

(iii) The L/C Issuer shall not be under any obligation to issue any Letter of Credit if:

(1) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the L/C Issuer from issuing such Letter of Credit, or any Law applicable to the L/C Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the L/C Issuer shall prohibit, or request that the L/C Issuer refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the L/C Issuer with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon the L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which the L/C Issuer in good faith deems material to it;

(2) the issuance of such Letter of Credit would violate one or more policies of the L/C Issuer;

(3) except as otherwise agreed by the Agent and the L/C Issuer, such Letter of Credit is in an initial stated amount less than \$50,000.

(4) except as otherwise agreed by the Agent and the L/C Issuer, such Letter of Credit is to be denominated in a currency other than Dollars or an Alternative Currency;

(5) the L/C Issuer does not as of the issuance date of such requested Letter of Credit issue Letters of Credit in the requested currency;

(6) such Letter of Credit contains any provisions for automatic reinstatement of the stated amount after any drawing thereunder; or

(7) a default of any Lender's obligations to fund under **Section 2.03(c)** exists or any Lender is at such time a Defaulting Lender hereunder, unless the L/C Issuer has entered into satisfactory arrangements with the Borrowers or such Lender to eliminate the L/C Issuer's risk with respect to such Lender.

(iv) The L/C Issuer shall be under no obligation to amend any Letter of Credit if (A) the L/C Issuer would have no obligation at such time to issue such Letter of

Credit in its amended form under the terms hereof, or (B) the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit.

(v) The L/C Issuer shall act on behalf of the Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and the L/C Issuer shall have all of the benefits and immunities (A) provided to the Agent in **Article IX** with respect to any acts taken or omissions suffered by the L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and Issuer Documents pertaining to such Letters of Credit as fully as if the term “Agent” as used in *Article IX* included the L/C Issuer with respect to such acts or omissions, and (B) as additionally provided herein with respect to the L/C Issuer.

(b) Procedures for Issuance and Amendment of Letters of Credit.

(i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of any Borrower delivered to the L/C Issuer (with a copy to Agent) in the form of a Letter of Credit Application, appropriately completed and signed by a Responsible Officer of such Borrower. Such Letter of Credit Application must be received by the L/C Issuer and Agent not later than 11:00 a.m. at least 2 Business Days (or such later date and time as the Agent L/C Issuer may agree in a particular instance in their sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the L/C Issuer: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount thereof; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; and (G) such other matters as the L/C Issuer may require. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the L/C Issuer (A) the Letter of Credit to be amended; (B) the proposed date of amendment thereof (which shall be a Business Day); (C) the nature of the proposed amendment; and (D) such other matters as the L/C Issuer or Agent may require.

(ii) Promptly after receipt of any Letter of Credit Application, the L/C Issuer will confirm with Agent (by telephone or in writing) that Agent has received a copy of such Letter of Credit Application from Borrower and, if not, the L/C Issuer will provide Agent with a copy thereof. Unless L/C Issuer has received written notice from any Lender, the Agent or any Loan Party, at least one Business Day prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one or more applicable conditions contained in Article IV shall not then be satisfied, then, subject to the terms and conditions hereof, the L/C Issuer shall, on the requested date, issue a Letter of Credit for the account of Borrower or enter into the applicable amendment, as the case may be, in each case in accordance with the L/C Issuer’s usual and customary business practices. Immediately upon the issuance of each Letter of Credit, each Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the L/C Issuer a risk participation in such Letter of Credit in an amount equal to the product of such Lender’s Applicable Percentage *times* the amount of such Letter of Credit.

(iii) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the

L/C Issuer will also deliver to Borrower and Agent a true and complete copy of such Letter of Credit or amendment.

(c) Drawings and Reimbursements; Funding of Participations.

(i) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the L/C Issuer shall notify Borrower and Agent thereof. In the case of a Letter of Credit denominated in an Alternative Currency, Borrower shall reimburse L/C Issuer in such Alternative Currency, unless (A) L/C Issuer (at its option) shall have specified in such notice that it will require reimbursement in Dollars, or (B) in the absence of any such requirement for reimbursement in Dollars, Borrower shall have notified the L/C Issuer promptly following receipt of the notice of drawing that Borrower will reimburse the L/C Issuer in Dollars. In the case of any such reimbursement in Dollars of a drawing under a Letter of Credit denominated in an Alternative Currency, the L/C Issuer shall notify Borrower of the Dollar Equivalent of the amount of the drawing promptly following the determination thereof. Not later than 11:00 a.m. on the date of any payment by the L/C Issuer under a Letter of Credit to be reimbursed in Dollars, or the Applicable Time on the date of any payment by the L/C Issuer under a Letter of Credit to be reimbursed in an Alternative Currency (each such date, an “**Honor Date**”), Borrower shall reimburse the L/C Issuer through Agent in an amount equal to the amount of such drawing and in the applicable currency. If Borrower fails to so reimburse the L/C Issuer by such time, Agent shall promptly notify each Lender of the Honor Date, the amount of the unreimbursed drawing (expressed in Dollars in the amount of the Dollar Equivalent thereof in the case of a Letter of Credit denominated in an Alternative Currency) (the “**Unreimbursed Amount**”), and the amount of such Lender’s Applicable Percentage thereof. In such event, Borrower shall be deemed to have requested a Committed Borrowing of Base Rate Loans to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in **Section 2.02** for the principal amount of Base Rate Loans, but subject to the amount of the unutilized portion of the Aggregate Commitments and the conditions set out in **Section 4.03** (other than the delivery of a Committed Loan Notice). Any notice given by the L/C Issuer or Agent pursuant to this **Section 2.03(c)(i)** may be given by telephone if immediately confirmed in writing; *provided that*, the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(ii) Each Lender shall upon any notice pursuant to **Section 2.03(c)(i)** make funds available to Agent for the account of the L/C Issuer, In Dollars, at Agent’s Office for Dollar-denominated payments in an amount equal to its Applicable Percentage of the Unreimbursed Amount not later than 1:00 p.m. on the Business Day specified in such notice by Agent, whereupon, subject to the provisions of **Section 2.03(c)(iii)**, each Lender that so makes funds available shall be deemed to have made a Base Rate Committed Loan to Borrower in such amount. Agent shall remit the funds so received to the L/C Issuer in Dollars.

(iii) With respect to any Unreimbursed Amount that is not fully refinanced by a Committed Borrowing of Base Rate Loans because the conditions set out in **Section 4.03** cannot be satisfied or for any other reason, Borrower shall be deemed to have incurred from the L/C Issuer an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate. In such event,

each Lender's payment to Agent for the account of the L/C Issuer pursuant to **Section 2.03(c)(ii)** shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Lender in satisfaction of its participation obligation under this **Section 2.03**.

(iv) Until each Lender funds its Committed Loan or L/C Advance pursuant to this **Section 2.03(c)** to reimburse the L/C Issuer for any amount drawn under any Letter of Credit, interest in respect of such Lender's Applicable Percentage of such amount shall be solely for the account of the L/C Issuer.

(v) Each Lender's obligation to make Committed Loans or L/C Advances to reimburse the L/C Issuer for amounts drawn under Letters of Credit, as contemplated by this **Section 2.03(c)**, shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any set-off, counterclaim, recoupment, defense or other right which such Lender may have against the L/C Issuer, Borrowers or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; *provided that*, each Lender's obligation to make Committed Loans pursuant to this **Section 2.03(c)** is subject to the conditions set out in **Section 4.03** (other than delivery by Borrower of a Committed Loan Notice). No such making of an L/C Advance shall relieve or otherwise impair the obligation of Borrower to reimburse the L/C Issuer for the amount of any payment made by the L/C Issuer under any Letter of Credit, together with interest as provided in this Agreement.

(vi) If any Lender fails to make available to Agent for the account of the L/C Issuer any amount required to be paid by such Lender pursuant to the foregoing provisions of this **Section 2.03(c)** by the time specified in **Section 2.03(c)(ii)**, the L/C Issuer shall be entitled to recover from such Lender (acting through Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the L/C Issuer at a rate per annum equal to the applicable Overnight Rate from time to time in effect. A certificate of the L/C Issuer submitted to any Lender (through Agent) with respect to any amounts owing under this clause (vi) shall be conclusive absent manifest error.

(d) Repayment of Participations.

(i) At any time after the L/C Issuer has made a payment under any Letter of Credit and has received from any Lender such Lender's L/C Advance in respect of such payment in accordance with **Section 2.03(c)**, if Agent receives for the account of the L/C Issuer any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from Borrower or otherwise, including proceeds of Cash Collateral applied thereto by Agent), Agent will distribute to such Lender its Applicable Percentage thereof (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's L/C Advance was outstanding) in Dollars and in the same funds as those received by Agent.

(ii) If any payment received by Agent for the account of the L/C Issuer pursuant to **Section 2.03(c)(i)** is required to be returned under any of the circumstances described in **Section 10.06** (including pursuant to any settlement entered into by the L/C Issuer in its discretion), each Lender shall pay to Agent for the account of the L/C Issuer its Applicable Percentage thereof on demand of Agent, *plus* interest thereon from the date

of such demand to the date such amount is returned by such Lender, at a rate per annum equal to the applicable Overnight Rate from time to time in effect. The obligations of the Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) **Obligations Absolute.** The obligation of Borrower to reimburse the L/C Issuer for each drawing under each Letter of Credit and to repay each L/C Borrowing shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other agreement or instrument relating thereto;

(ii) the existence of any claim, counterclaim, set-off, defense or other right that Borrower may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the L/C Issuer or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) any payment by the L/C Issuer under such Letter of Credit against presentation of a draft or certificate does not strictly comply with the terms of such Letter of Credit; or any payment made by the L/C Issuer under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law;

(v) any adverse change in the relevant exchange rates or in the availability of the relevant Alternative Currency to the Borrowers or in the relevant currency markets generally; or

(vi) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, Borrower.

Borrower shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with Borrower's instructions or other irregularity, Borrower will immediately notify the L/C Issuer. Borrower shall be conclusively deemed to have waived any such claim against the L/C Issuer and its correspondents unless such notice is given as aforesaid.

(f) **Role of L/C Issuer.** Each Lender and Borrower agree that, in paying any drawing under a Letter of Credit, the L/C Issuer shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit)

or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the L/C Issuer, the Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the L/C Issuer shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Lenders or the Required Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Issuer Document. Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; *provided that*, this assumption is not intended to, and shall not, preclude Borrower's pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the L/C Issuer, the Agent, any of their respective Related Parties, nor any correspondent, participant or assignee of the L/C Issuer, shall be liable or responsible for any of the matters described in clauses (i) through (v) of **Section 2.03(e)**; *provided that*, anything in such clauses to the contrary notwithstanding, Borrower may have a claim against the L/C Issuer, and the L/C Issuer may be liable to Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by Borrower which Borrower proves were caused by the L/C Issuer's willful misconduct or gross negligence or the L/C Issuer's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit. In furtherance and not in limitation of the foregoing, the L/C Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and the L/C Issuer shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason.

(g) **Cash Collateral.** Upon the request of Agent, (i) if the L/C Issuer has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an L/C Borrowing that has not been repaid, or (ii) if, as of the Termination Date, any Letter of Credit is for any reason remain outstanding, Borrower shall, in each case, immediately Cash Collateralize the then Outstanding Amount of all L/C Obligations. In addition, if the Agent notifies Borrower at any time that the Outstanding Amount of all L/C Obligations at such time exceeds 105% of the Letter of Credit Sublimit then in effect, then, within 2 Business Days after receipt of such notice, Borrower shall Cash Collateralize the L/C Obligations in an amount equal to the amount by which the Outstanding Amount of all L/C Obligations exceeds the Letter of Credit Sublimit. The Agent may, at any time and from time to time after the initial deposit of Cash Collateral, request that additional Cash Collateral be provided in order to protect against the results of exchange rate fluctuations. **Sections 2.05** and **8.02(c)** set forth certain additional requirements to deliver Cash Collateral hereunder. For purposes hereof, "**Cash Collateralize**" means to pledge and deposit with or deliver to Agent, for the benefit of the L/C Issuer and the Lenders, as collateral for the L/C Obligations, cash or deposit account balances pursuant to documentation in form and substance satisfactory to Agent and the L/C Issuer (which documents are hereby consented to by the Lenders). Derivatives of such term have corresponding meanings. Borrower hereby grants to Agent, for the benefit of the L/C Issuer and the Lenders, a security interest in all such cash, deposit accounts and all balances therein and all proceeds of the foregoing. Cash collateral shall be maintained in blocked, non-interest bearing deposit accounts at Bank of America.

(h) **Applicability of ISP98 and UCP.** Unless otherwise expressly agreed by the L/C Issuer and Borrower when a Letter of Credit is issued (including any such agreement applicable to an Existing Letter of Credit), (i) the rules of the ISP shall apply to each standby Letter of Credit

and (ii) the rules of the Uniform Customs and Practice for Documentary Credits, as most recently published by the International Chamber of Commerce at the time of issuance shall apply to each commercial Letter of Credit.

(i) **Letter of Credit Fees.** Borrower shall pay to Agent for the account of each Lender in accordance with its Applicable Percentage, in Dollars, a Letter of Credit fee (the “**Letter of Credit Fee**”) for each standby Letter of Credit equal to the Applicable Rate *times* the Dollar Equivalent of the daily amount available to be drawn under such Letter of Credit. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with **Section 1.08**. Letter of Credit Fees shall be (i) computed on a quarterly basis in arrears and (ii) due and payable on the first Business Day after the end of each March, June, September and December, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Termination Date and thereafter on demand. If there is any change in the Applicable Rate during any quarter, the daily amount available to be drawn under each standby Letter of Credit shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect. Notwithstanding anything to the contrary contained herein, upon the request of the Required Lenders, while any Event of Default exists, all Letter of Credit Fees shall accrue at the Default Rate.

(j) **Fronting Fee and Documentary and Processing Charges Payable to L/C Issuer.** Borrower shall pay directly to the L/C Issuer for its own account, in Dollars, a fronting fee with respect to each standby Letter of Credit, at the rate per annum specified in the Fee Letter, computed on the Dollar Equivalent of the daily amount available to be drawn under such Letter of Credit on a quarterly basis in arrears. Such fronting fee shall be due and payable on the tenth Business Day after the end of each March, June, September and December in respect of the most recently-ended quarterly period (or portion thereof, in the case of the first payment), commencing with the first such date to occur after the issuance of such Letter of Credit, on the Termination Date and thereafter on demand. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with **Section 1.08**. In addition, Borrower shall pay directly to the L/C Issuer for its own account, in Dollars, the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of the L/C Issuer relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

(k) **Conflict with Letter of Credit Application.** In the event of any conflict between the terms hereof and the terms of any Letter of Credit Application, the terms hereof shall control.

(l) **Letters of Credit Issued for Subsidiaries.** Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Subsidiary, Parent shall be obligated to reimburse the L/C Issuer hereunder for any and all drawings under such Letter of Credit. Parent hereby acknowledges that the issuance of Letters of Credit for the account of Subsidiaries inures to the benefit of the Parent and its Subsidiaries, and that the Parent’s business derives substantial benefits from the businesses of such Subsidiaries.

2.04 Swing Line Loans.

(a) **The Swing Line.** Subject to the terms and conditions set out in this Agreement, the Swing Line Lender agrees to, in reliance upon the agreements of the other Lenders set forth in this **Section 2.04**, make loans in Dollars (each such loan, a “**Swing Line Loan**”) to Borrower

from time to time on any Business Day during the Availability Period in an aggregate amount not to exceed at any time outstanding the amount of the Swing Line Sublimit, notwithstanding the fact that such Swing Line Loans, when aggregated with the Applicable Percentage of the Outstanding Amount of Revolving Loans and L/C Obligations of the Lender acting as Swing Line Lender, may exceed the amount of such Lender's Applicable Percentage of the Revolving Committed Amount; *provided that*, after giving effect to any Swing Line Loan, (i) the Total Outstandings may not exceed the Aggregate Commitments, (ii) the Outstanding Amount of all Revolving Loans, L/C Obligations, and Swing Line Loans may not exceed the Revolving Committed Amount, (iii) the aggregate Outstanding Amount of the Committed Loans of any Lender, *plus* such Lender's Applicable Percentage of the Outstanding Amount of all L/C Obligations, *plus* such Lender's Applicable Percentage of the Outstanding Amount of all Swing Line Loans shall not exceed such Lender's Commitment, (iv) the aggregate Outstanding Amounts of all Revolving Loans made to UK Borrower shall not exceed its Designated Sublimit, and (v) the aggregate Outstanding Amount of all Revolving Loans made to Parent shall not exceed its Designated Sublimit; and *provided further*, that Borrower shall not use the proceeds of any Swing Line Loan to refinance any outstanding Swing Line Loan. Within the foregoing limits, and subject to the other terms and conditions hereof, Borrower may borrow under this **Section 2.04**, prepay under **Section 2.05**, and reborrow under this **Section 2.04**. Each Swing Line Loan shall be a Base Rate Loan. Immediately upon the making of a Swing Line Loan, each Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Swing Line Lender a risk participation in such Swing Line Loan in an amount equal to the product of such Lender's Applicable Percentage times the amount of such Swing Line Loan.

(b) **Borrowing Procedures.** Each Swing Line Borrowing shall be made upon Borrower's irrevocable notice to the Swing Line Lender and Agent, which may be given by telephone. Each such notice must be received by the Swing Line Lender and Agent not later than 1:00 p.m. on the requested borrowing date, and shall specify (i) the amount to be borrowed, which shall be a minimum of \$500,000 or a greater integral multiple of \$100,000, and (ii) the requested borrowing date, which shall be a Business Day. Each such telephonic notice must be confirmed promptly by delivery to the Swing Line Lender and Agent of a written Swing Line Loan Notice, appropriately completed and signed by a Responsible Officer of Borrower. Promptly after receipt by the Swing Line Lender of any telephonic Swing Line Loan Notice, the Swing Line Lender will confirm with Agent (by telephone or in writing) that Agent has also received such Swing Line Loan Notice and, if not, the Swing Line Lender will notify Agent (by telephone or in writing) of the contents thereof. Unless the Swing Line Lender has received notice (by telephone or in writing) from Agent (including at the request of any Lender) prior to 2:00 p.m. on the date of the proposed Swing Line Borrowing (A) directing the Swing Line Lender not to make such Swing Line Loan as a result of the limitations set out in the proviso to the first sentence of **Section 2.04(a)**, or (B) that one or more of the applicable conditions specified in **Article IV** is not then satisfied, then, subject to the terms and conditions hereof, the Swing Line Lender will, not later than 3:00 p.m. on the borrowing date specified in such Swing Line Loan Notice, make the amount of its Swing Line Loan available to Borrower at its office by (i) crediting the account of Borrower on the books of the Swing Line Lender in Same Day Funds.

(c) **Refinancing of Swing Line Loans.**

(i) The Swing Line Lender at any time in its sole and absolute discretion may request, on behalf of Borrower (which hereby irrevocably authorizes the Swing Line Lender to so request on its behalf), that each Lender make a Base Rate Revolving Loan in an amount equal to such Lender's Applicable Percentage of the amount of Swing Line Loans then outstanding. Such request shall be made in writing (which written request

shall be deemed to be a Committed Loan Notice for purposes hereof) and in accordance with the requirements of **Section 2.02**, without regard to the minimum and multiples specified therein for the principal amount of Base Rate Loans, but subject to the Available Amount and the conditions set out in **Section 4.03**. The Swing Line Lender shall furnish Borrower with a copy of the applicable Committed Loan Notice promptly after delivering such notice to Agent. Each Lender shall make an amount equal to its Applicable Percentage of the amount specified in such Committed Loan Notice available to Agent in Same Day funds for the account of the Swing Line Lender at Agent's Office for Dollar-denominated payments not later than 1:00 p.m. on the day specified in such Committed Loan Notice, whereupon, subject to **Section 2.04(c)(ii)**, each Lender that so makes funds available shall be deemed to have made a Base Rate Revolving Loan to Borrower in such amount. Agent shall remit the funds so received to the Swing Line Lender.

(ii) If for any reason any Swing Line Loan cannot be refinanced by such a Revolving Borrowing in accordance with **Section 2.04(c)(i)**, the request for Base Rate Revolving Loans submitted by the Swing Line Lender as set out in this Agreement shall be deemed to be a request by the Swing Line Lender that each of the Lenders fund its risk participation in the relevant Swing Line Loan and each Lender's payment to Agent for the account of the Swing Line Lender pursuant to **Section 2.04(c)(i)** shall be deemed payment in respect of such participation.

(iii) If any Lender fails to make available to Agent for the account of the Swing Line Lender any amount required to be paid by such Lender pursuant to the foregoing provisions of this **Section 2.04(c)** by the time specified in **Section 2.04(c)(i)**, the Swing Line Lender shall be entitled to recover from such Lender (acting through Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Swing Line Lender at a rate per annum equal to the applicable Overnight Rate from time to time in effect. A certificate of the Swing Line Lender submitted to any Lender (through Agent) with respect to any amounts owing under this *clause (iii)* shall be conclusive absent manifest error.

(iv) Each Lender's obligation to make Revolving Loans or to purchase and fund risk participations in Swing Line Loans pursuant to this **Section 2.04(c)** shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any set-off, counterclaim, recoupment, defense or other right which such Lender may have against the Swing Line Lender, Borrower or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; *provided that*, each Lender's obligation to make Revolving Loans pursuant to this **Section 2.04(c)** is subject to the conditions set out in **Section 4.03**. No such funding of risk participations shall relieve or otherwise impair the obligation of Borrower to repay Swing Line Loans, together with interest as provided in this Agreement.

(d) Repayment of Participations.

(i) At any time after any Lender has purchased and funded a risk participation in a Swing Line Loan, if the Swing Line Lender receives any payment on account of such Swing Line Loan, the Swing Line Lender will distribute to such Lender its Applicable Percentage of such payment (appropriately adjusted, in the case of interest

payments, to reflect the period of time during which such Lender's risk participation was funded) in the same funds as those received by the Swing Line Lender.

(ii) If any payment received by the Swing Line Lender in respect of principal or interest on any Swing Line Loan is required to be returned by the Swing Line Lender under any of the circumstances described in **Section 10.06** (including pursuant to any settlement entered into by the Swing Line Lender in its discretion), each Lender shall pay to the Swing Line Lender its Applicable Percentage thereof on demand of Agent, *plus* interest thereon from the date of such demand to the date such amount is returned, at a rate per annum equal to the applicable Overnight Rate. Agent will make such demand upon the request of the Swing Line Lender. The obligations of the Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) **Interest for Account of Swing Line Lender.** The Swing Line Lender shall be responsible for invoicing Borrower for interest on the Swing Line Loans. Until each Lender funds its Base Rate Revolving Loan or risk participation pursuant to this **Section 2.04** to refinance such Lender's Applicable Percentage of any Swing Line Loan, interest in respect of such Applicable Percentage shall be solely for the account of the Swing Line Lender.

(f) Payments Directly to Swing Line Lender. Borrower shall make all payments of principal and interest in respect of the Swing Line Loans directly to the Swing Line Lender.

2.05 Prepayments.

(a) Borrowers may, upon notice to the Agent, at any time or from time to time voluntarily prepay Committed Loans in whole or in part without premium or penalty; *provided that* (i) such notice must be received by Agent not later than 11:00 a.m. (A) 3 Business Days prior to any date of prepayment of Eurocurrency Rate Loans denominated in Dollars, (B) 4 Business Days (or 5, in the case of prepayment of Loans denominated in Special Notice Currencies) prior to any date of prepayment of Eurocurrency Rate Loans denominated in Alternative Currencies, and (C) on the date of prepayment of Base Rate Committed Loans; (ii) any prepayment of Eurocurrency Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof; (iii) any prepayment of Eurocurrency Rate Loans denominated in Alternative Currencies shall be in a minimum principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof; and (iv) any prepayment of Base Rate Committed Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and the Type(s) of Committed Loans to be prepaid and if Eurocurrency Loans are to be prepaid, the Interest Period(s) of such Loans. Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's Applicable Percentage of such prepayment. If such notice is given by Borrowers, Borrowers shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a Eurocurrency Rate Loan shall be accompanied by all accrued interest thereon, together with any additional amounts required pursuant to **Section 3.05**. Each such prepayment shall be applied to the applicable Committed Loans of the Lenders in accordance with their respective Applicable Percentages.

(b) Borrowers may, upon notice to the Swing Line Lender (with a copy to the Agent), at any time or from time to time, voluntarily prepay Swing Line Loans in whole or in part without premium or penalty; *provided that* (i) such notice must be received by the Swing Line Lender and

the Agent not later than 1:00 p.m. on the date of the prepayment, and (ii) any such prepayment shall be in a minimum principal amount of \$100,000. Each such notice shall specify the date and amount of such prepayment. If such notice is given by Borrowers, Borrowers shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein.

(c) If for any reason the Total Outstandings at any time exceed the Aggregate Commitments then in effect, Borrower shall immediately prepay Loans and/or Cash Collateralize the L/C Obligations in an aggregate amount equal to such excess; *provided that*, Borrower shall not be required to Cash Collateralize the L/C Obligations pursuant to this **Section 2.05(c)** unless after the prepayment in full of the Committed Loans and Swing Line Loans the Total Outstandings exceed the Aggregate Commitments then in effect. The Agent may, at any time and from time to time after the initial deposit of such Cash Collateral, request that additional Cash Collateral be provided in order to protect against the results of further exchange rate fluctuations.

(d) If the Agent notifies Borrowers at any time that the Outstanding Amount of all Loans denominated in Alternative Currencies at any time exceeds the Alternative Currency Sublimit then in effect, then, within 2 Business Days after receipt of such notice, the Borrowers shall prepay Loans in an aggregate amount sufficient to reduce such Outstanding Amount as of such date of payment to an amount not to exceed 100% of the Alternative Currency Sublimit then in effect.

(e) If for any reason the Outstanding Amount of Revolving Loans, L/C Obligations, and Swing Line Loans ever exceeds the Revolving Committed Amount, then, subject to **Section 2.01(c)**, Borrowers shall promptly, and in any event no later than 3 Business Days after written notice from Agent, prepay the Revolving Facility in an amount equal to the excess, together with all accrued and unpaid interest on the principal amount prepaid and any additional amounts required pursuant to **Section 3.05** and/or Cash Collateralize the L/C Obligations; *provided that*, Borrower shall not be required to Cash Collateralize the L/C Obligations pursuant to this **Section 2.05(f)** unless after the prepayment in full of the Revolving Facility the Total Outstandings exceed the Aggregate Commitments then in effect. All such prepayments shall be applied ratably among the Revolving Notes (based on the proportion of each Revolving Note's outstanding principal to the Outstanding Amount of all Revolving Loans).

(f) On the date such amounts are received by, or for the account of, Borrowers (or the applicable Company), or in respect of *clause (vi)* below, on the date specified in **Section 6.02(c)**, the following amounts shall be paid to Agent in the form received with any endorsement or assignment and shall be applied to Outstanding Amount of Term Loans in accordance with this **Section 2.05(g)**:

(i) 100% of the Net Proceeds of any Funded Indebtedness incurred by any Company after the Closing Date, excluding the Obligations;

(ii) 50% of the Net Proceeds from the issuance of any Equity Interest by any Company, excluding Equity Interests issued (A) to officers or employees of any Borrower as part of a compensation agreement, (B) to any current holder of an Equity Interest in any Borrower pursuant to a commitment that became legally enforceable against any Borrower prior to the Closing Date, and (C) in connection with an Acquisition to which Agent has given its prior written consent;

(iii) 100% of the Net Proceeds from the Disposition of any asset of any Company (excluding Dispositions expressly permitted under **Section 7.05**), unless, prior to or within 30 days after the applicable Company's receipt of the proceeds, a Responsible Officer of Parent delivers to Agent a certificate certifying that such proceeds will be used to purchase a replacement asset that is substantially similar to the asset being Disposed of or to acquire another asset useful in such Company's business within 60 days after such Company receives such proceeds;

(iv) 100% of Insurance Proceeds, unless, prior to or within 30 days after the applicable Company's receipt of the Insurance Proceeds, a Responsible Officer of Parent delivers to Agent a certificate certifying that such proceeds will be used to repair, restore or replace the remaining portion of the damaged property or to acquire another asset useful in such Company's business within 180 days after such Company receives such proceeds (or such longer period of time as Agent and Parent agree is reasonable for the replacement of such damaged property);

(v) 100% of Eminent Domain Proceeds, unless, prior to or within 30 days after the applicable Company's receipt of the Eminent Domain Proceeds, a Responsible Officer of Parent delivers to Agent a certificate certifying that such proceeds will be used to repair, restore or replace the remaining portion of the condemned property or to acquire another asset useful in such Company's business within 180 days after such Company receives such proceeds (or such longer period of time as Agent and Parent agree is reasonable for the replacement of such damaged property);

Borrowers shall promptly apply such amounts to prepay the Outstanding Amounts of the Term Loans, together with all accrued and unpaid interest on the principal amount prepaid, until paid in full. All such prepayments shall be applied ratably among the Term Notes (based on the proportion of each Term Note's outstanding principal to the Outstanding Amount of all Term Loans) and then to the scheduled principal payments on each Term Note in the inverse order of their maturity. After the Term Facility has been paid in full, (a) if no Default or Event of Default exists, any excess proceeds shall be delivered to Borrower, and (b) if a Default or Event of Default exists, Borrower shall promptly apply the remaining proceeds to prepay the Outstanding Amounts of the Revolving Loans, together with all accrued and unpaid interest on the principal amount prepaid, until the Revolving Facility is paid in full. All remaining proceeds shall be applied to Cash Collateralize the L/C Obligations, with any excess proceeds being delivered to Borrower any other Person entitled to receive such amounts. If all or part of the proceeds excluded from the mandatory prepayment requirements of this **Section 2.05** in accordance with *clauses (iii), (iv), or (v)* above, are not used as certified within time specified in the applicable certificate, the remaining portion of such proceeds shall immediately be paid to Agent as a mandatory prepayment to be applied in accordance with this **Section 2.05**.

2.06 Termination or Reduction of Commitments. Borrower may, upon notice to Agent, terminate the Aggregate Commitments, or from time to time permanently reduce the Revolving Committed Amount; *provided that* (i) any such notice shall be received by Agent not later than 11:00 a.m. 5 Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of \$5,000,000 or any whole multiple of \$1,000,000 in excess thereof, (iii) Borrower shall not terminate or reduce the Aggregate Commitments if, after giving effect thereto and to any concurrent prepayments hereunder, the Total Outstandings would exceed the Aggregate Commitments, and (iv) if, after giving effect to any reduction of the Revolving Commitment Amount, the Alternative Currency Sublimit, the Letter of Credit Sublimit or the Swing Line Sublimit exceeds the amount of the Revolving Commitment Amount, such Sublimit shall be automatically reduced by the amount of such excess. Agent will promptly notify the Lenders of any such notice of termination or reduction of the

Aggregate Commitments. Any reduction of the Aggregate Commitments shall be applied to the Commitment of each Lender according to its Applicable Percentage. All fees accrued until the effective date of any termination of the Aggregate Commitments shall be paid on the effective date of such termination.

2.07 Repayment of Loans.

(a) UK Borrower shall repay to the Lenders (i) commencing March 31, 2006 and continuing on the last Business Day of each December, March, June, and September, an amount equal to £300,000 in respect of the Term Principal Debt, and (ii) on the Maturity Date, the Term Principal Debt outstanding on such date, together with all accrued and unpaid interest on such principal amount and any additional amounts required pursuant to **Section 3.05**.

(b) Borrowers shall repay to the Lenders on the Termination Date the Revolving Principal Debt outstanding on such date, together with all accrued and unpaid interest on such principal amount and any additional amounts required pursuant to **Section 3.05**.

(c) Borrowers shall repay each Swing Line Loan on the earlier to occur of (i) the date 5 Business Days after such Loan is made and (ii) the Termination Date.

2.08 Interest.

(a) Subject to the provisions of *clause (b)* below, (i) each Eurocurrency Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the lesser of (x) the Eurocurrency Rate for such Interest Period *plus* the Applicable Rate *plus* (in the case of a Eurocurrency Rate Loan of any Lender which is lent from a Lending Office in the United Kingdom or a Participating Member State) the Mandatory Cost; and (y) the Maximum Rate; (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the lesser of (x) the Base Rate *plus* the Applicable Rate and (y) the Maximum Rate; and (iii) each Swing Line Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the lesser of (x) the Base Rate *plus* the Applicable Rate and (y) the Maximum Rate.

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

(ii) If any amount (other than principal of any Loan) payable by any Borrower under any Loan Document is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, then upon the request of the Required Lenders, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(iii) Upon the request of the Required Lenders, while any Event of Default exists, the Borrowers shall pay interest on the principal amount of all outstanding Obligations hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

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

(c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified in this Agreement. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

2.09 Fees. In addition to certain fees described in **Section 2.03 (i)** and **(j)**:

(a) **Commitment Fee.** Borrower shall pay to Agent for the account of each Lender in accordance with its Applicable Percentage, a commitment fee in Dollars equal to the Applicable Rate times the actual daily amount by which the Aggregate Commitments exceed the sum of (i) the Outstanding Amount of Committed Loans and (ii) the Outstanding Amount of L/C Obligations. The commitment fee shall accrue at all times during the Availability Period, including at any time during which one or more of the conditions in **Article IV** is not met, and shall be due and payable quarterly in arrears on the last Business Day of each September, December, March, and June commencing with the first such date to occur after the Closing Date, and on the Maturity Date. The commitment fee shall be calculated quarterly in arrears, and if there is any change in the Applicable Rate during any quarter, the actual daily amount shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect.

(b) **Other Fees.** Borrower shall pay to Agent for its own respective account fees in the amounts and at the times specified in the Fee Letter. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

2.10 Computation of Interest and Fees. All computations of interest for Base Rate Loans when the Base Rate is determined by Bank of America's "prime rate" shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year), or in the case of interest in respect of Committed Loans denominated in Alternative Currencies as to which market practice differs from the foregoing, in accordance with such market practice. Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid; *provided that*, any Loan that is repaid on the same day on which it is made shall, subject to **Section 2.13(a)**, bear interest for one day. Each determination by the Agent of an interest or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

2.11 Evidence of Debt.

(a) The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by Agent in the ordinary course of business. The accounts or records maintained by Agent and each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lenders to Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of Agent in respect of such matters, the

accounts and records of Agent shall control in the absence of manifest error. Upon the request of any Lender made through Agent, Borrower shall execute and deliver to such Lender (through Agent) a Note, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount, currency and maturity of its Loans and payments with respect thereto.

(b) In addition to the accounts and records referred to in *clause (a)*, each Lender and Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Lender of participations in Letters of Credit and Swing Line Loans. In the event of any conflict between the accounts and records maintained by Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of Agent shall control in the absence of manifest error.

2.12 Payments Generally.

(a) General. All payments to be made by Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided in this Agreement and except with respect to principal of and interest on Loans denominated in an Alternative Currency, all payments by Borrower hereunder shall be made to Agent, for the account of the respective Lenders to which such payment is owed, at Agent's Office in Dollars and in Same Day Funds not later than 2:00 p.m. on the date specified in this Agreement. Except as otherwise expressly provided herein, all payments by the Borrowers hereunder with respect to principal and interest on Loans denominated in an Alternative Currency shall be made to the Agent, for the account of the respective Lenders to which such payment is owed, at the applicable Agent's Office in such Alternative Currency and in Same Day Funds not later than the Applicable Time specified by the Agent on the dates specified herein. Without limiting the generality of the foregoing, the Agent may require that any payments due under this Agreement be made in the United States. If, for any reason, any Borrower is prohibited by any Law from making any required payment hereunder in an Alternative Currency, such Borrower shall make such payment in Dollars in the Dollar Equivalent of the Alternative Currency payment amount. Agent will promptly distribute to each Lender its Applicable Percentage (or other applicable share as provided in this Agreement) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by Agent (i) after 2:00 p.m., in the case of payments in Dollars, or (ii) after the Applicable Time specified by the Agent in the case of payments in an Alternative Currency, shall in each case be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue.

(b) Funding by Lenders; Presumption by Agent. (i) Unless Agent shall have received notice from a Lender prior to the proposed date of any Committed Borrowing of Eurocurrency Rate Loans (or, in the case of any Committed Borrowing of Base Rate Loans, prior to 12:00 noon on the date of such Committed Borrowing) that such Lender will not make available to the Agent such Lender's share of such Committed Borrowing, Agent may assume that such Lender has made such share available on such date in accordance with **Section 2.02** (or, in the case of a Committed Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by **Section 2.02**) and may, in reliance upon such assumption, make available to the applicable Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Committed Borrowing available to the Agent, then the applicable Lender and the applicable Borrower severally agree to pay to the Agent forthwith on demand such corresponding amount in Same Day Funds with interest thereon, for each day from and including the date such amount is made available to such Borrower to but excluding the date of payment to Agent, at (A) in the case of a payment to be made by such

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

(ii) **Payments by Borrowers; Presumptions by Agent.** Unless Agent shall have received notice from a Borrower prior to the date on which any payment is due to Agent for the account of the Lenders or the L/C Issuer hereunder that such Borrower will not make such payment, Agent may assume that such Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the L/C Issuer, as the case may be, the amount due. In such event, if such Borrower has not in fact made such payment, then each of the Lenders or the L/C Issuer, as the case may be, severally agrees to repay to Agent forthwith on demand the amount so distributed to such Lender or the L/C Issuer, in Same Day Funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to Agent, at the Overnight Rate.

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

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

(d) **Obligations of Lenders Several.** The obligations of the Lenders hereunder to make Committed Loans and to fund participations in Letters of Credit and Swing Line Loans and to make payments pursuant to **Section 10.04(c)** are several and not joint. The failure of any Lender to make any Committed Loan, to fund any such participation or to make any payment under **Section 10.04(c)** on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Committed Loan or purchase its participation or to make its payment under **Section 10.04(c)**.

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

2.13 Sharing of Payments. If, other than as expressly provided elsewhere in this Agreement, any Lender shall obtain payment in respect of principal of or interest on the Committed Loans made by it, or the participations in L/C Obligations or in Swing Line Loans held by it resulting in such Lender's receiving payment of a proportion of the aggregate amount of such Committed Loans or participations and accrued interest thereon greater than its pro rata share thereof as provided herein, then the Lender receiving such greater proportion shall (a) notify Agent of such fact, and (b) purchase from the other

Lenders such participations in the Committed Loans and subparticipations in the L/C Obligations or Swing Line Loans held by it resulting in such Lender's receiving payment of a proportion of the aggregate amount of such Committed Loans or participations and accrued interest thereon greater than its pro rata share thereof as provided herein, then the Lender receiving such greater proportion shall (a) notify Agent of such fact, and (b) purchase (for cash at face value) participations in the Committed Loans and subparticipations in L/C Obligations and Swing Line Loans of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Committed Loans and other amounts owing them, *provided that*:

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

(ii) the provisions of this Section shall not be construed to apply to (x) any payment made by a Borrower pursuant to and in accordance with the express terms of this Agreement or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Committed Loans or subparticipations in L/C Obligations or Swing Line Loans to any assignee or participant, other than to Borrower or any Subsidiary thereof (as to which the provisions of this Section shall apply).

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

2.14 Security and Guaranties.

(a) Collateral. The complete payment and performance of the Obligation shall be secured by all of the items and types of property (collectively, the "**Collateral**") described as (a) collateral in the Security Documents. Borrower shall and shall cause each of its Subsidiaries to execute all applicable Security Documents necessary to pledge all of the Collateral it owns. Borrower shall and shall cause each of its Subsidiaries to pledge to Agent for the ratable benefit of Lenders (i) 100% of the voting capital stock (or similar equity interest) of each of its Domestic Subsidiaries directly owed such Loan Party, and (ii) 66% (or 100% of such Non-Domestic Subsidiary is not a "foreign controlled corporation" under the Tax Code) of the voting capital stock (or similar equity interest) of each non-Domestic Subsidiary, in each case within 10 Business Days after such Subsidiary is created or acquired.

(b) Financing Statements. Parent shall, and shall cause each of its Domestic Subsidiaries that has executed a Pledge Agreement to authorize financing statements, continuation statements, or termination statements, or take other action reasonably requested by Agent relating to the Collateral, including any Lien search required by Agent.

(c) Guaranties. Parent shall cause each Domestic Subsidiary to guarantee the complete payment and performance of the Obligations (including the Term Loans, the Revolving Loans, LC Obligations, LC Borrowings, and all Swap Contracts) to which any Lender is a party) by executing and delivering a Guaranty to Lender. Parent shall cause each new Domestic Subsidiary to guarantee the complete payment and performance of the Obligations (including the Term

Loans, the Revolving Loan, LC Borrowings and any Swap Contract) by executing and delivering to Agent a Guaranty within 10 Business Days after such Subsidiary is created or acquired.

2.15 Debit Account. Borrower authorizes Agent to effect the payment of sums due by Borrower under this Agreement by means of debiting the Designated Account. This authorization shall not affect the obligation of Borrower to pay such sums when due, without notice, if there are insufficient funds in such account to make such payment in full on the due date thereof, or if Agent fails to debit such account.

2.16 Increase in Commitments.

(a) Provided there exists no Default, upon notice to Agent (which shall promptly notify the Lenders) at any time prior to June 30, 2006, the Borrowers may on a one-time basis without payment of an underwriting fee to Agent, request an increase in the Aggregate Commitments under the Revolving Committed Amount by an amount not exceeding \$8,000,000. At the time of sending such notice, the Borrowers (in consultation with Agent) shall specify the time period within which each Lender is requested to respond (which shall in no event be less than 10 Business Days from the date of delivery of such notice to the Lenders).

(b) Each Lender shall notify Agent within such time period whether or not it agrees to increase its Commitment and, if so, whether by an amount equal to, greater than, or less than its Applicable Percentage of such requested increase. Any Lender not responding within such time period shall be deemed to have declined to increase its Commitment.

(c) The Agent shall notify the Borrowers and each Lender of the Lenders' responses to each request made hereunder. To achieve the full amount of a requested increase, the Borrowers may also invite additional Eligible Assignees to become Lenders pursuant to a joinder agreement in form and substance satisfactory to Agent and its counsel. There shall be no fee for increasing the Revolving Committed Amount under this **Section 2.16** other than payment of Agent's requisite Attorney Costs incurred in connection with documentation of such increase pursuant to this **Section 2.16**.

(d) If the Aggregate Commitments are increased in accordance with this **Section 2.16**, Agent and the Borrowers shall determine the effective date of such increase (the "**Increase Effective Date**") and the final allocation of such increase. Agent and the Borrowers shall promptly notify the Lenders of the final allocation of such increase and the Increase Effective Date.

(e) As a condition precedent to such increase, the Borrowers shall deliver to Agent a certificate of each Loan Party dated as of the Increase Effective Date (in sufficient copies for each Lender) signed by a Responsible Officer of such Loan Party (i) certifying and attaching the resolutions adopted by such Loan Party approving or consenting to such increase, and, (ii) certifying that, before and after giving effect to such increase, (A) the representations and warranties contained in **Article V** are true and correct on and as of the Increase Effective Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date, and except that for purposes of this **Section 2.16**, the representations and warranties contained in subsections (a) and (b) of **Section 5.05** shall be deemed to refer to the most recent statements furnished pursuant to *clauses (a) and (b)*, respectively, of **Section 6.01**, and (B) no Default exists. Borrowers shall prepay any Loans outstanding on the Increase Effective Date (and pay any additional amounts required pursuant to **Section 3.05**) to the extent necessary to keep the outstanding Loans ratable with any

revised Applicable Percentages arising from any nonratable increase in the Commitments under this **Section 2.16**.

(f) This **Section 2.16** shall supercede any provisions in **Sections 2.13** and **10.01** to the contrary.

ARTICLE III. TAXES, YIELD PROTECTION AND ILLEGALITY

3.01 Taxes.

(a) Payments Free of Taxes. Any and all payments by or on account of any obligation of the respective Borrowers hereunder or under any Loan Document shall be made free and clear of and without deduction for any Indemnified Taxes or Other Taxes, *provided that* if any Borrower shall be required by any Laws to deduct any Indemnified Taxes (including Other Taxes) from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section), each of Agent and such Lender receives an amount equal to the sum it would have received had no such deductions been made, and (ii) such Borrower shall make such deductions, and (iii) Borrower shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(b) Payment of Other Taxes by Borrowers. Without limiting the provisions of *subsection (a)* above, each Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) Indemnification by Borrowers. Each Borrower shall indemnify Agent, each Lender and LC Issuer, within 10 days after demand therefor, for the full amount of any Indemnified Taxes and Other Taxes (including any Indemnified Taxes or Other Taxes imposed or asserted on or attributable to the amounts payable under this Section) paid by Agent and such Lender of the LC Issuer, as the case may be, and any penalties, interest or reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to a Borrower by a Lender or the L/C Issuer (with a copy of Agent), or by Agent on its own behalf or on behalf of a Lender or the L/C Issuer, shall be conclusive absent manifest error.

(d) Evidence of Payments. As soon as practicable after any payment of Indemnified Taxes or Other Taxes by any Borrower to a Governmental Authority, such Borrower shall deliver to Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to Agent.

(e) Status of Lenders. Any Foreign Lender that is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which a Borrower is resident for tax purposes, or any treaty to which such jurisdiction is a party, with respect to payments hereunder or under any other Loan Document shall deliver to Parent (with a copy to Agent), at the time or times prescribed by applicable law or reasonably requested by Parent or Agent, such properly completed and executed documentation prescribed by applicable law as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if requested by Parent or Agent, shall deliver such other documentation prescribed by

applicable law or reasonably requested by Parent or Agent as will enable Parent or Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements.

Without limiting the generality of the foregoing, in the event that a Borrower is resident for tax purposes in the United States, any Foreign Lender shall deliver to Parent and Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the request of Parent or Agent, but only if such Foreign Lender is legally entitled to do so), whichever of the following is applicable:

(i) duly completed copies of Internal Revenue Service Form W-8BEN claiming eligibility for benefits of an income tax treaty to which the United States is a party,

(ii) (ii) duly completed copies of Internal Revenue Service Form W-8ECI,

(iii) (iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under section 881(c) of the Code, (x) a certificate to the effect that such Foreign Lender is not (A) a “bank” within the meaning of section 881(c)(3)(A) of the Code, (B) a “10 percent shareholder” of the applicable Borrower within the meaning of section 881(c)(3)(B) of the Code, or (C) a “controlled foreign corporation” described in section 881(c)(3)(C) of the Code and (y) duly completed copies of Internal Revenue Service Form W-8BEN, or

(iv) (iv) any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in United States Federal withholding tax duly completed together with such supplementary documentation as may be prescribed by applicable law to permit Parent to determine the withholding or deduction required to be made.

Without limiting the obligations of the Lenders set forth above regarding delivery of certain forms and documents to establish each Lender’s status for U.S. withholding tax purposes, each Lender agrees promptly to deliver to Agent or Parent, as Agent or Parent shall reasonably request, on or prior to the Closing Date, and in a timely fashion thereafter, such other documents and forms required by any relevant taxing authorities under the Laws of any other jurisdiction, duly executed and completed by such Lender, as are required under such Laws to confirm such Lender’s entitlement to any available exemption from, or reduction of, applicable withholding taxes in respect of all payments to be made to such Lender outside of the U.S. by the Borrowers pursuant to this Agreement or otherwise to establish such Lender’s status for withholding tax purposes in such other jurisdiction. Each Lender shall promptly (i) notify Agent of any change in circumstances which would modify or render invalid any such claimed exemption or reduction, and (ii) take such steps as shall not be materially disadvantageous to it, in the reasonable judgment of such Lender, and as may be reasonably necessary (including the re-designation of its Lending Office) to avoid any requirement of applicable Laws of any such jurisdiction that any Borrower make any deduction or withholding for taxes from amounts payable to such Lender. Additionally, each of the Borrowers shall promptly deliver to Agent or any Lender, as Agent or such Lender shall reasonably request, on or prior to the Closing Date, and in a timely fashion thereafter, such documents and forms required by any relevant taxing authorities under the Laws of any jurisdiction, duly executed and completed by such Borrower, as are required to be furnished by such Lender or Agent under

such Laws in connection with any payment by Agent or any Lender of Taxes or Other Taxes, or otherwise in connection with the Loan Documents, with respect to such jurisdiction.

(f) Treatment of Certain Refunds. If Agent, any Lender or the L/C Issuer determines, in its sole discretion, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by any Borrower or with respect to which any Borrower has paid additional amounts pursuant to this Section, it shall pay to such Borrower an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by such Borrower under this Section with respect to the Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of Agent, such Lender or the L/C Issuer, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), *provided that* each Borrower, upon the request of Agent, such Lender or the L/C Issuer, agrees to repay the amount paid over to such Borrower (*plus* any penalties, interest or other charges imposed by the relevant Governmental Authority) to Agent, such Lender or the L/C Issuer in the event Agent, such Lender or the L/C Issuer is required to repay such refund to such Governmental Authority. This subsection shall not be construed to require Agent, any Lender or the L/C Issuer to make available its tax returns (or any other information relating to its taxes that it deems confidential) to any Borrower or any other Person.

3.02 Illegality. If any Lender determines that any Law adopted or amended after the Closing Date has made it unlawful, or that any Governmental Authority has asserted after the Closing Date that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Eurocurrency Rate Loans, or to determine or charge interest rates based upon the Eurocurrency Rate, then, on notice thereof by such Lender to Borrower through Agent, any obligation of such Lender to make or continue Eurocurrency Rate Loans (whether denominated in Dollars or in Alternative Currency) or to convert Base Rate Committed Loans to Eurocurrency Rate Loans shall be suspended until such Lender notifies Agent and Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, Borrower shall, upon demand from such Lender (with a copy to Agent), prepay or, if applicable, convert all Eurocurrency Rate Loans of such Lender to Base Rate Loans, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurocurrency Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurocurrency Rate Loans. Upon any such prepayment or conversion, Borrower shall also pay accrued interest on the amount so prepaid or converted. Each Lender agrees to designate a different Lending Office if such designation will avoid the need for such notice and will not, in the good faith judgment of such Lender, otherwise be materially disadvantageous to such Lender.

3.03 Inability to Determine Rates. If the Required Lenders determine that for any reason in connection with any request for a Eurocurrency Rate Loan or a conversion to or continuation thereof that (a) deposits (whether in Dollars or an Alternative Currency) are not being offered to banks in the applicable offshore interbank market for such currency for the applicable amount and Interest Period of such Eurocurrency Rate Loan, (b) adequate and reasonable means do not exist for determining the Eurocurrency Rate for any requested Interest Period with respect to a proposed Eurocurrency Rate Loan (whether denominated in Dollars or an Alternative Currency), or (c) the Eurocurrency Rate for any requested Interest Period with respect to a proposed Eurocurrency Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Eurocurrency Rate Loan, Agent will promptly so notify Borrowers and each Lender. Thereafter, the obligation of the Lenders to make or maintain Eurocurrency Rate Loans in the affected currency or currencies shall be suspended until Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, Borrowers may revoke any pending request for a Borrowing of, conversion to or continuation of Eurocurrency Rate Loans in the affected currency or currencies or, failing that, will be deemed to have converted such request into a request for a Committed Borrowing of Base Rate Loans in the amount specified therein.

3.04 Increased Cost and Reduced Return; Capital Adequacy; Reserves on Eurocurrency Rate Loans.

(a) If any Lender determines that as a result of the introduction of or any change in or in the interpretation of any Law after the Closing Date, or such Lender's compliance therewith, there shall be any increase in the cost to such Lender of agreeing to make or making, funding or maintaining Eurocurrency Rate Loans or (as the case may be) issuing or participating in Letters of Credit, or a reduction in the amount received or receivable by such Lender in connection with any of the foregoing (excluding for purposes of this *clause (a)* any such increased costs or reduction in amount resulting from (i) Taxes or Other Taxes (as to which **Section 3.01** shall govern), (ii) changes in the basis of taxation of overall net income or overall gross income by the United States or any foreign jurisdiction or any political subdivision of either thereof under the Laws of which such Lender is organized or has its Lending Office, and (iii) reserve requirements contemplated by **Section 3.04(c)**), then from time to time upon demand of such Lender (with a copy of such demand to Agent), Borrower shall pay to such Lender such additional amounts as will compensate such Lender for such increased cost or reduction.

(b) If any Lender determines that the introduction of any Law regarding capital adequacy or any change therein or in the interpretation thereof after the Closing Date, or compliance by such Lender (or its Lending Office) therewith, has the effect of reducing the rate of return on the capital of such Lender or any corporation controlling such Lender as a consequence of such Lender's obligations hereunder (taking into consideration its policies with respect to capital adequacy and such Lender's desired return on capital), then from time to time upon demand of such Lender (with a copy of such demand to Agent), Borrower shall pay to such Lender such additional amounts as will compensate such Lender for such reduction.

(c) Borrower shall pay to each Lender, as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits (currently known as "Eurocurrency liabilities"), additional interest on the unpaid principal amount of each Eurocurrency Rate Loan equal to the actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive absent manifest error), which shall be due and payable on each date on which interest is payable on such Loan; *provided that*, Borrower shall have received at least 15 days' prior notice (with a copy to Agent) of such additional interest from such Lender. If a Lender fails to give notice 15 days prior to the relevant Interest Payment Date, such additional interest shall be due and payable 15 days from receipt of such notice.

(d) Each Lender and L/C Issuer agrees that, as promptly as practicable after the officer of such Lender or L/S Issuer responsible for administering the Loans or Letters of Credit of such Lender or L/C Issuer, as the case may be, becomes aware of the occurrence of an event or the existence of a condition that would entitle such Lender or L/C Issuer to receive payments under **Section 3.04(a), (b) or (c)**, it will, to the extent not inconsistent with the internal policies of such Lender or L/C Issuer and any applicable legal or regulatory restrictions, use reasonable efforts (i) to make, issue, fund or maintain the Commitments of such Lender or the affected Loans or Letters of Credit of such Lender or L/C Issuer through another lending or letter of credit office of such Lender or L/C Issuer, or (ii) take such other measures as such Lender or L/C Issuer may deem reasonable, if as a result thereof the additional amounts which would otherwise be required to be paid to such Lender or L/C Issuer pursuant to **Section 3.04(a), (b) or (c)** would be materially reduced and if, as determined by such Lender or L/C Issuer in its sole discretion, the making, issuing, funding or maintaining of such Commitments or Loans or Letters of Credit through such other lending or letter of credit office or in accordance with such other measures, as the case may

be, would not otherwise materially adversely affect such Commitments or Loans or Letters of Credit or would not be otherwise disadvantageous to the interests of such Lender or L/C Issuer; *provided that*, such Lender or L/C Issuer will not be obligated to utilize such other lending or letter of credit office pursuant to this **Section 3.04(d)** unless Borrower agrees to pay all incremental expenses incurred by such Lender or L/C Issuer as a result of utilizing such other lending or letter of credit office described in clause (i) above. A certificate as to the amount of any such expenses payable by Borrower pursuant to this **Section 3.04(d)** (setting forth in reasonable detail the basis for requesting such amount) submitted by such Lender or L/C Issuer to Borrower (with a copy to the Agent) shall be conclusive absent manifest error.

3.05 Funding Losses. Upon demand of any Lender (with a copy to Agent) from time to time, each Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any Loan other than a Base Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise); or

(b) any failure by any Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan other than a Base Rate Loan on the date or in the amount notified by any Borrower; or

(c) any assignment of a Eurocurrency Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by Borrower pursuant to **Section 10.16**;

including any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. Each Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

For purposes of calculating amounts payable by Borrowers to the Lenders under this **Section 3.05**, each Lender shall be deemed to have funded each Eurocurrency Rate Loan made by it at the Eurocurrency Rate for such Loan by a matching deposit or other borrowing in the London interbank eurodollar market for a comparable amount and for a comparable period, whether or not such Eurocurrency Rate Loan was in fact so funded.

3.06 Matters Applicable to all Requests for Compensation.

(a) A certificate of Agent or any Lender claiming compensation under this **Article III** and setting forth the additional amount or amounts to be paid to it hereunder shall be conclusive in the absence of manifest error. In determining such amount, Agent or such Lender may use any reasonable averaging and attribution methods.

(b) Upon any Lender's making a claim for compensation under **Section 3.01** or **3.04** or of illegality under **3.02**, Borrowers may replace such Lender in accordance with **Section 10.16**.

3.07 Survival. All of Borrowers' obligations under this **Article III** shall survive termination of the Aggregate Commitments and repayment of all other Obligations hereunder.

ARTICLE IV.
CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

4.01 Conditions of Initial Credit Extension.

(a) The obligation of each Lender to make its initial Credit Extension to UK Borrower under the Term Facility hereunder is subject to satisfaction of the following conditions precedent:

(i) Agent's receipt of the following, each of which shall be originals, facsimiles or portable document format copies (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of Borrowers, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form, content and detail satisfactory to Agent and its legal counsel:

(1) executed counterparts of this Agreement sufficient in number for distribution to Agent, each Lender and Borrowers;

(2) Term Note executed by UK Borrower in favor of each Lender requesting such a Note;

(3) Guaranties executed by all of Parent's Domestic Subsidiaries;

(4) Pledge Agreement executed by Parent with respect to all of the equity interests it owns in its Domestic Subsidiaries;

(5) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as Agent reasonably may require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party;

(6) such documents and certifications as Agent reasonably may require to evidence that each Loan Party is duly organized or formed, and that each Loan Party is validly existing, in good standing and qualified to engage in business in each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect;

(7) within 5 Business Days after the Closing Date, an opinion of Winstead, Sechrest & Minick, P.C., counsel to the Loan Parties, addressed to Agent and each Lender, substantially in the form of *Exhibit G*;

(8) such other assurances, certificates, documents, consents, opinions, or information as Agent, the L/C Issuer, the Swing Line Lender or the Required Lenders reasonably may require;

(9) a certificate signed by a Responsible Officer of Borrowers certifying (A) that the conditions specified in **Sections 4.02(a)** and **(b)** have been

satisfied, and (B) that there has been no event or circumstance since the date of the Initial Financial Statements that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect; and

(10) evidence that all conditions precedent to consummation of the Subject Acquisition have been satisfied or waived in writing other than the funding of the portion of the purchase price provided by the initial Credit Extension hereunder and that the Subject Acquisition will be consummated on terms acceptable to Agent.

(ii) Agent shall have received such other information regarding the Loan Parties, and their respective assets, liabilities, organization, capital structure, financial statements as it reasonably may request, in each case in form, content and detail satisfactory to Agent.

(iii) Any fees required to be paid on or before the Closing Date shall have been paid.

(iv) Unless waived by Agent, Borrowers shall have paid all Attorney Costs of Agent to the extent invoiced prior to or on the Closing Date, *plus* such additional amounts of Attorney Costs as shall constitute its reasonable estimate of Attorney Costs incurred or to be incurred by it through the closing proceedings, *provided that*, such estimate shall not thereafter preclude a final settling of accounts between Borrowers and Agent.

(b) The obligation of each Lender to make its initial Credit Extension to UK Borrower under the Revolving Facility hereunder is subject to satisfaction of the following conditions precedent:

(i) satisfaction of the conditions precedent set forth in *subsection (a)* above;

(ii) funding of the Term Loan to UK Borrower in the Term Committed Amount on the Closing Date;

(iii) a Revolving Note executed by each Borrower in favor of each Lender requesting such a Note.

(c) The obligation of each Lender to make its initial Credit Extension to Parent under the Revolving Facility hereunder (and the Existing Letters of Credit becoming Credit Extensions under the terms of this Agreement), are subject to satisfaction of the following conditions precedent:

(i) Agent's receipt of the following, each of which shall be originals, facsimiles or portable document format copies (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of Borrowers, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form, content and detail satisfactory to Agent and its legal counsel:

(1) satisfaction of the conditions precedent set forth in *subsections (a) and (b)* above;

(2) all Security Documents executed by Borrowers in favor of Agent;

(3) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as Agent reasonably may require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party;

(4) such documents and certifications as Agent reasonably may require to evidence that each Loan Party is duly organized or formed, and that each Loan Party is validly existing, in good standing and qualified to engage in business in each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect;

(5) an opinion of Winstead, Sechrest & Minick, P.C., counsel to the Loan Parties, addressed to Agent and each Lender, substantially in the form of *Exhibit G*;

(6) such other assurances, certificates, documents, consents, opinions, or information as Agent, the L/C Issuer, the Swing Line Lender or the Required Lenders reasonably may require.

(7) a certificate signed by a Responsible Officer of Parent certifying (A) that the conditions specified in **Sections 4.02(a)** and **(b)** have been satisfied, and (B) that there has been no event or circumstance since the date of the Initial Financial Statements that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect;

(8) evidence that all insurance required to be maintained pursuant to the Loan Documents has been obtained and is in effect;

(9) such other assurances, certificates, documents, consents, opinions, or information as Agent, the L/C Issuer, the Swing Line Lender or the Required Lenders reasonably may require.

(ii) Agent shall have received such other information regarding the Loan Parties, and their respective assets, liabilities, organization, capital structure, financial statements as it reasonably may request, in each case in form, content and detail satisfactory to Agent.

(iii) Any fees required to be paid on or before the date of such initial Credit Extension to Parent shall have been paid.

(iv) Unless waived by Agent, Borrowers shall have paid all Attorney Costs of Agent to the extent invoiced prior to or on the date of such initial Credit Extension to Parent, *plus* such additional amounts of Attorney Costs as shall constitute its reasonable estimate of Attorney Costs incurred or to be incurred by it through the closing

proceedings, *provided that*, such estimate shall not thereafter preclude a final settling of accounts between Borrowers and Agent.

(v) Termination of the Existing Loan Agreement.

4.02 Conditions to all Credit Extensions. The obligation of each Lender to honor any Request for Credit Extension (other than a Committed Loan Notice requesting only a conversion of Committed Loans to the other Type, or a continuation of Eurocurrency Rate Loans) is subject to the following conditions precedent:

(a) The representations and warranties of Borrowers and each other Loan Party contained in **Article V** or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects on and as of the date of such Credit Extension, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date, and except that for purposes of this **Section 4.02**, the representations and warranties contained in *clauses (a) and (b) of Section 5.05* shall be deemed to refer to the most recent statements furnished pursuant to *clauses (a) and (b)*, respectively, of **Section 6.01**.

(b) No Default shall exist, or would result from such proposed Credit Extension or the application of the proceeds thereof.

(c) Agent and, if applicable, the L/C Issuer or the Swing Line Lender shall have received a Request for Credit Extension in accordance with the requirements hereof.

(d) In the case of a Credit Extension to be denominated in an Alternative Currency, there shall not have occurred any change in national or international financial, political or economic conditions or currency exchange rates or exchange controls which in the reasonable opinion of the Agent, the Required Lenders (in the case of any Loans to be denominated in an Alternative Currency) or the L/C Issuer (in the case of any Letter of Credit to be denominated in an Alternative Currency) would make it impracticable for such Credit Extension to be denominated in the relevant Alternative Currency.

Each Request for Credit Extension (other than a Committed Loan Notice requesting only a conversion of Committed Loans to the other Type or a continuation of Eurocurrency Rate Loans) submitted by each Borrower shall be deemed to be a representation and warranty that the conditions specified in **Sections 4.02(a) and (b)** have been satisfied on and as of the date of the applicable Credit Extension.

ARTICLE V. REPRESENTATIONS AND WARRANTIES

Each Borrower represents and warrants to Agent and the Lenders that:

5.01 Existence, Qualification and Power; Compliance with Laws. Each Loan Party (a) is a corporation duly incorporated, validly existing and in good standing under the Laws of the jurisdiction of its incorporation, (b) has all requisite power and authority and all requisite governmental licenses, permits, authorizations, consents and approvals to (i) own its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party, (c) is duly qualified and is licensed and in good standing under the Laws of each jurisdiction where its

ownership, lease or operation of properties or the conduct of its business requires such qualification or license, and (d) is in compliance with all Laws; except in each case referred to in *clause (b)(i), (c) or (d)*, to the extent that failure to do so would not reasonably be expected to have a Material Adverse Effect.

5.02 Authorization; No Contravention. The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is party, have been duly authorized by all necessary corporate action, and do not (a) contravene the terms of any of such Person's Organization Documents; (b) conflict with or result in any breach or contravention of, or the creation of any Lien under, (i) any Contractual Obligation to which such Person is a party or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (c) violate any Law.

5.03 Governmental Authorization; Other Consents. No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document.

5.04 Binding Effect. This Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Loan Party that is party thereto. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, except to the extent that the enforceability thereof may be limited by applicable Debtor Relief Laws affecting creditors' rights generally and by equitable principles of law (regardless of whether enforcement is sought in equity or at law).

5.05 Financial Statements; No Material Adverse Effect.

(a) The Initial Financial Statements (i) fairly present the financial condition of Parent and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (ii) show all material indebtedness and other material liabilities, direct or contingent, of Parent and its Subsidiaries as of the date thereof, including liabilities for Taxes, material commitments and Indebtedness.

(b) Since the date of the Initial Financial Statements, except for the transactions contemplated by this Agreement, there has been no event or circumstance, either individually or in the aggregate, that has had or would reasonably be expected to have a Material Adverse Effect.

5.06 Litigation. There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of each Borrower after due and diligent investigation, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, by or against parent or any of its Subsidiaries or against any of their properties or revenues that (a) purport to affect or pertain to this Agreement or any other Loan Document, or any of the transactions contemplated hereby, or (b) either individually or in the aggregate, if determined adversely, would reasonably be expected to have a Material Adverse Effect.

5.07 No Default. Neither Parent nor any Subsidiary is in default under or with respect to any Contractual Obligation that would, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

5.08 Ownership of Property; Liens. Parent and each Subsidiary has good record and marketable title in fee simple to, or valid leasehold interests in, all real property necessary or used in the ordinary conduct of its business, except for such defects in title as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The property of Parent and its Subsidiaries is subject to no Liens, other than Liens permitted by *Section 7.01*.

5.09 Environmental Compliance. Parent and its Subsidiaries conduct in the ordinary course of business a review of the effect of existing Environmental Laws and claims alleging potential liability or responsibility for violation of any Environmental Law on their respective businesses, operations and properties, and as a result thereof each Borrower has concluded that neither Parent nor any Subsidiary of Parent has any liability or responsibility under any claim for violation of any Environmental Law that would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

5.10 Insurance. The properties of Parent and its Subsidiaries are insured with financially sound and reputable insurance companies that are not Affiliates of any Borrower, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where Parent or the applicable Subsidiary operates.

5.11 Taxes. Parent and its Subsidiaries have filed all Federal, state and other material tax returns and reports required to be filed, and have paid all taxes, assessments, fees and other governmental charges shown thereon to be due and has paid all other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP. There is no proposed tax assessment against Parent or any Subsidiary that would, if made, have a Material Adverse Effect.

5.12 ERISA Compliance.

(a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal or state Laws. Each Plan that is intended to qualify under Section 401(a) of the Code has received a favorable determination letter from the IRS or an application for such a letter is currently being processed by the IRS with respect thereto and, to the best knowledge of each Borrower, nothing has occurred which would prevent, or cause the loss of, such qualification. Parent and each ERISA Affiliate have made all required contributions to each Plan subject to Section 412 of the Code, and no application for a funding waiver or an extension of any amortization period pursuant to Section 412 of the Code has been made with respect to any Plan.

(b) There are no pending or, to the best knowledge of each Borrower, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could be reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) (i) No ERISA Event has occurred or is reasonably expected to occur; (ii) no Pension Plan has any Unfunded Pension Liability; (iii) neither Parent nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Pension Plan (other than premiums due and not delinquent under Section 4007 of ERISA); (iv) neither Parent nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would

result in such liability) under Sections 4201 or 4243 of ERISA with respect to a Multiemployer Plan; and (v) neither Parent nor any ERISA Affiliate has engaged in a transaction that could be subject to Sections 4069 or 4212(c) of ERISA.

(d) Each employee benefit plan, policy, scheme or program that is subject to the Laws of any foreign jurisdiction is in compliance of all applicable Laws.

5.13 Subsidiaries. As of the Closing Date and at all times thereafter, Borrowers have no Subsidiaries other than those specifically disclosed in Part (a) of **Schedule 5.13** and has no equity investments in any other corporation or entity other than those specifically disclosed in Part (b) of **Schedule 5.13**.

5.14 Margin Regulations; Investment Company Act; Public Utility Holding Company Act.

(a) No Borrower is engaged and will not engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock.

(b) Neither Parent nor or any Subsidiary of Parent (i) is a “**holding company**,” or a “**subsidiary company**” of a “**holding company**,” or an “**affiliate**” of a “**holding company**” or of a “**subsidiary company**” of a “**holding company**,” within the meaning of the Public Utility Holding Company Act of 1935, or (ii) is or is required to be registered as an “investment company” under the Investment Company Act of 1940.

5.15 Disclosure. Each Borrower has disclosed to Agent and the Lenders all agreements, instruments and corporate or other restrictions to which it or any of its Subsidiaries is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. No report, financial statement, certificate or other information furnished (whether in writing or orally) by or on behalf of any Loan Party to Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder (as modified or supplemented by other information so furnished) taken as a whole contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided that*, with respect to projected financial information, each Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time, it being understood that projections are subject to uncertainties and contingencies beyond the control of the Loan Parties and that no assurance can be given that such projections will be realized.

5.16 Compliance with Laws. Parent and each Subsidiary is in compliance in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

5.17 Intellectual Property; Licenses, Etc. Except to the extent it would not reasonably be expected to have a Material Adverse Effect, Parent and its Subsidiaries own, or possess the right to use, all of the trademarks, service marks, trade names, copyrights, patents, patent rights, franchises, licenses and other intellectual property rights (collectively, “**IP Rights**”) that are reasonably necessary for the

operation of their respective businesses, without conflict with the rights of any other Person. To the best knowledge of each Borrower, no slogan or other advertising device, product, process, method, substance, part or other material now employed, or now contemplated to be employed, by Borrower or any Subsidiary infringes upon any rights held by any other Person. No claim or litigation regarding any of the foregoing is pending or, to the best knowledge of Borrower, threatened, which, either individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

ARTICLE VI. AFFIRMATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding, each Borrower shall, and shall (except in the case of the covenants set out in **Sections 6.01, 6.02, 6.03 and 6.11**) cause each Subsidiary to:

6.01 Financial Statements. Deliver to Agent and each Lender, in form and detail satisfactory to Agent:

(a) as soon as available, but in any event within 120 days after the end of each fiscal year of Parent, a consolidated and consolidating balance sheet of Parent and its Subsidiaries as at the end of such fiscal year, and the related consolidated and consolidating statements of income or operations, Shareholders' Equity and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, audited and accompanied by a report and opinion of an independent certified public accountant of nationally recognized standing reasonably acceptable to the Agent, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit; and

(b) as soon as available, but in any event within 45 days after the end of each fiscal quarter of each fiscal year of Parent, a consolidated and consolidating balance sheet of Parent and its Subsidiaries as at the end of such fiscal quarter, and the related consolidated and consolidating statements of income or operations, Shareholders' Equity and cash flows for such fiscal quarter and for the portion of Parent's fiscal year then ended, setting forth in each case in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail and certified by a Responsible Officer of Parent as fairly presenting the financial condition, results of operations, Shareholders' Equity and cash flows of Parent and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes.

As to any information contained in materials furnished pursuant to **Section 6.02(d)**, Borrowers shall not be separately required to furnish such information under *clause (a)* or *(b)* above, but the foregoing shall not be in derogation of the obligation of Borrowers to furnish the information and materials described in *clauses (a)* and *(b)* above at the times specified therein.

6.02 Certificates; Other Information. Deliver to Agent and each Lender, in form and detail satisfactory to Agent:

(a) concurrently with the delivery of the Current Financial Statements referred to in **Section 6.01(a)**, a certificate of its independent certified public accountants certifying such financial statements and stating that in making the examination necessary therefor no knowledge

was obtained of any Default or Event of Default or, if any such Default or Event of Default shall exist, stating the nature and status of such event;

(b) concurrently with the delivery of the Current Financial Statements referred to in **Sections 6.01(a) and (b)** a duly completed Compliance Certificate signed by a Responsible Officer of Borrower;

(c) as soon as practicable and in any event within 30 days after the end of the first fiscal quarter of each year (commencing with the fiscal quarter ending January 31, 2006), an operating budget and projected financial statements for the next succeeding Fiscal Year (including a statement of underlying assumptions) for the Companies on a consolidated basis in the same format as the Current Financial Statements provided under **Section 6.01(a)**.

(d) promptly after any request by Agent or any Lender, copies of any detailed audit reports, management letters or recommendations submitted to the board of directors (or the audit committee of the board of directors) of Parent by independent accountants in connection with the accounts or books of Parent or any Subsidiary, or any audit of any of them;

(e) promptly after the same are available, copies of each (if any) annual report, proxy or financial statement or other report or communication sent to the stockholders of Parent, and copies of all annual, regular, periodic and special reports and registration statements which Borrowers may file or be required to file with the SEC under Section 13 or 15(d) of the *Securities Exchange Act of 1934*, as amended, and not otherwise required to be delivered to Agent pursuant to this Agreement; and

(f) promptly, such additional information regarding the business, financial or corporate affairs of Parent or any Subsidiary, Plan or Foreign Plan or any other governmental filings related thereto or compliance with the terms of the Loan Documents, as Agent or any Lender may from time to time reasonably request.

Documents required to be delivered pursuant to **Section 6.01(a), (b) or (c)** or **Section 6.02(d)** (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which Borrower posts such documents, or provides a link thereto on Borrower's website on the Internet at the website address listed on **Schedule 10.02**; or (ii) on which such documents are posted on Borrower's behalf on IntraLinks/IntraAgency or another relevant website, if any, to which each Lender and Agent have access (whether a commercial, third-party website or whether sponsored by Agent); *provided that*: (i) Borrower shall deliver paper copies of such documents to Agent or any Lender that requests Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by Agent or such Lender and (ii) Borrower shall notify (which may be by facsimile or electronic mail) Agent and each Lender of the posting of any such documents and provide to Agent by electronic mail electronic versions (*i.e.*, soft copies) of such documents. Notwithstanding anything contained in this Agreement, in every instance Borrower shall be required to provide paper copies of the Compliance Certificates required by **Section 6.02(b)** to Agent and each of the Lenders. Except for such Compliance Certificates, Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by Borrower with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

6.03 Notices. Promptly notify Agent and each Lender:

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

(b) of any matter that has resulted or, if adversely determined, would reasonably be expected to result in a Material Adverse Effect, including (i) breach or non-performance of, or any default under, a Contractual Obligation of Parent or any Subsidiary; (ii) any dispute, litigation, investigation, proceeding or suspension between Parent or any Subsidiary and any Governmental Authority; or (iii) the commencement of, or any material development in, any litigation or proceeding affecting Parent or any Subsidiary, including pursuant to any applicable Environmental Laws;

(c) of the occurrence of an ERISA Event that would reasonably be expected to result in a Material Adverse Effect which notice shall be provided within 10 Business Days of Borrower's actual knowledge of such an ERISA Event; and

(d) of any material change in accounting policies or financial reporting practices by Parent or any Subsidiary of Parent.

Each notice pursuant to this Section shall be accompanied by a statement of a Responsible Officer of Parent setting forth details of the occurrence referred to therein and stating what action Borrowers have taken and propose to take with respect thereto. Each notice pursuant to **Section 6.03(a)** shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

6.04 Payment of Obligations. Pay and discharge as the same shall become due and payable, all its obligations and liabilities, including (a) all taxes, assessments and governmental charges or levies upon it or its properties, unless the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by Borrower or such Subsidiary; (b) all lawful claims which, if due and unpaid, would by law become a Lien upon its property (other than Permitted Liens); and (c) all Indebtedness, as and when due and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such Indebtedness.

6.05 Preservation of Existence, Etc. (a) Preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization except in a transaction permitted by **Section 7.04** or **7.05**; (b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) preserve or renew all of its registered patents, trademarks, trade names and service marks, the non-preservation of which could reasonably be expected to have a Material Adverse Effect.

6.06 Maintenance of Properties. (a) Maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear excepted; (b) make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) use the standard of care typical in the industry in the operation and maintenance of its facilities.

6.07 Maintenance of Insurance. Maintain with financially sound and reputable insurance companies that are not Affiliates of Borrower, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar

business, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons and providing for not less than 30 days' prior notice to Agent of termination, lapse or cancellation of such insurance.

6.08 Compliance with Laws. Comply in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (a) such requirement of Law or order, write, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted; or (b) the failure to comply therewith would not reasonably be expected to have a Material Adverse Effect.

6.09 Books and Records. (a) Maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP (or, with respect to any non-Domestic Subsidiary, the equivalent) consistently applied shall be made of all financial transactions and matters involving the assets and business of Parent or such Subsidiary, as the case may be; and (b) maintain such books of record and account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over Parent or such Subsidiary, as the case may be.

6.10 Inspection Rights. Permit representatives and independent contractors of Agent to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof (other than materials protected by attorney client privilege or that a Loan Party may not disclose without violation of a confidentiality obligation binding on it) or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants, all at the expense of Borrower and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to Borrower; *provided that*, when an Event of Default exists Agent or any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of Borrower at any time during normal business hours and without advance notice.

6.11 Use of Proceeds. Use the proceeds of the Credit Extensions (a) to fund a portion of the Subject Acquisition, and (b) for working capital and other general corporate purposes not in contravention of any Law or of any Loan Document.

6.12 Additional Guarantors. Notify Agent at the time that any Person becomes a Domestic Subsidiary or a non-Domestic Subsidiary, and promptly thereafter (and in any event within 10 days), cause any Person that becomes a Domestic Subsidiary to (a) become a Guarantor by executing and delivering to Agent a counterpart of the Guaranty or such other document as Agent shall deem appropriate for such purpose, and (b) deliver to Agent documents of the types referred to in *clauses (iii) and (iv) of Section 4.01(a)* and favorable opinions of counsel to such Person (which shall cover, among other things, the legality, validity, binding effect and enforceability of the documentation referred to in *clause (a)*), all in substantially the same form, content and scope as the documentation delivered pursuant to **Section 4.01(a)** on the Closing Date and otherwise reasonably satisfactory to Agent.

ARTICLE VII. NEGATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding, no Borrower shall, nor shall it permit any Subsidiary to, directly or indirectly:

7.01 Liens. Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following:

- (a) Liens pursuant to any Loan Document;
- (b) Liens existing on the date hereof and listed on **Schedule 7.01** and any renewals or extensions thereof; *provided that*, the property covered thereby is not increased and any renewal, refinancing, refunding or extension of the obligations secured or benefited thereby is permitted by **Section 7.03(b)**;
- (c) Liens for Taxes not yet due or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;
- (d) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other like Liens arising in the ordinary course of business which are not overdue for a period of more than 30 days or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person;
- (e) pledges or deposits in the ordinary course of business in connection with workers' compensation, unemployment insurance and other social security legislation, other than any Lien imposed by ERISA;
- (f) deposits to secure the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations, surety bonds (other than bonds related to judgments or litigation), performance bonds and other obligations of a like nature incurred in the ordinary course of business;
- (g) easements, rights-of-way, restrictions, rights of lessors of leased properties, and other similar encumbrances affecting real property which, in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Person;
- (h) Liens securing judgments for the payment of money not constituting an Event of Default under **Section 8.01(h)** or securing appeal or other surety bonds related to such judgments;
- (i) Liens securing Indebtedness permitted under **Section 7.03(e)**; *provided that*, (i) such Liens do not at any time encumber any property other than the property financed by such Indebtedness and (ii) the Indebtedness secured thereby does not exceed the cost or fair market value, whichever is lower, of the property being acquired on the date of acquisition;
- (j) leases and subleases of real property granted to others not interfering in any material respect with the business of any Company; *provided that*, such lessees shall, at Agent's request, execute a subordination, non-disturbance and attornment agreement in favor of, and acceptable to, Agent for the ratable benefit of Lenders;
- (k) any interest of title of a lessor under, and Liens arising under UCC financing statements (or equivalent filings, registrations or agreements in foreign jurisdictions) relating to leases permitted by any Loan Document; and
- (l) subject to any applicable Agency Account Agreement, normal and customary rights of setoff on deposits of cash in favor of banks and other depository institutions.

7.02 Investments. Make any Investments, except:

- (a) Investments held by Parent or its Subsidiaries in the form of Liquid Assets;
- (b) advances to officers, directors and employees of Parent and Subsidiaries in an amount not to exceed \$250,000 in the aggregate at any time outstanding, for travel, entertainment, relocation and analogous ordinary business purposes;
- (c) Investments of any Borrower in any wholly-owned Subsidiary and any Investments by a wholly-owned Subsidiary of Borrower in another wholly-owned Subsidiary;
- (d) Investments of Borrowers in any non-wholly-owned Subsidiary in existence as of the Closing Date to the extent that such Investments do not exceed \$1,000,000 in the aggregate in any Fiscal Year;
- (e) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, prepaid expenses or deposits made to any Loan Party in the ordinary course of business;
- (f) Guarantees permitted by **Section 7.03**; and
- (g) Investments consisting of stock, obligations, securities or other property received by a Company in its reasonable credit judgment in settlement of accounts receivable (created in the ordinary course of business) from bankrupt obligors; and
- (h) Acquisitions by Parent and its Subsidiaries not to exceed \$10,000,000 in the aggregate in any fiscal year.

7.03 Indebtedness. Create, incur, assume or suffer to exist any Indebtedness, except:

- (a) Indebtedness under the Loan Documents;
- (b) Indebtedness outstanding on the date hereof and listed on **Schedule 7.03** and any refinancings, refundings, renewals or extensions thereof; *provided that*, the amount of such Indebtedness is not increased at the time of such refinancing, refunding, renewal or extension except by an amount equal to a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such refinancing and by an amount equal to any existing commitments unutilized thereunder; *provided further that*, Indebtedness subordinated to the Obligations may not be refinanced except on subordination terms at least as favorable to the Lenders and no more restrictive on Borrower than the subordinated Indebtedness being refinanced, and in an amount not less than the amount outstanding at the time of refinancing;
- (c) Guarantees of Borrower or any Subsidiary in respect of Indebtedness otherwise permitted hereunder of Borrower or any wholly-owned Subsidiary, *provided that*, non-Domestic Subsidiaries may not guaranty or otherwise provide credit support for any Indebtedness;
- (d) obligations (contingent or otherwise) of Borrower or any Subsidiary existing or arising under any Swap Contract, *provided that* (i) such obligations are (or were) entered into by such Person in the ordinary course of business for the purpose of directly mitigating risks associated with liabilities, commitments, investments, assets, or property held or reasonably

anticipated by such Person, or changes in the value of securities issued by such Person, and not for purposes of speculation or taking a “market view;” and (ii) such Swap Contract does not contain any provision exonerating the non-defaulting party from its obligation to make payments on outstanding transactions to the defaulting party;

(e) Indebtedness to insurance companies or their Affiliates incurred to finance premiums on policies provided by such insurance companies (and the amount thereof limited to such purpose) in the ordinary course of business;

(f) Indebtedness under the Bonds;

(g) other Indebtedness not included in the preceding clauses *provided that*, the aggregate amount of all such Indebtedness for Parent and its Subsidiaries at any one time outstanding shall not exceed \$5,000,000; and

(h) Indebtedness under the Existing Loan Agreement until terminated.

7.04 Fundamental Changes. Merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, except that, so long as no Default or Event of Default exists or would result therefrom:

(a) any Subsidiary may merge with (i) Borrower; *provided that*, Borrower shall be the continuing or surviving Person, or (ii) any one or more other Subsidiaries; *provided that*, when any Guarantor is merging with another Subsidiary, such Guarantor shall be the continuing or surviving Person; and

(b) any Subsidiary may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to Borrower or to another Subsidiary; *provided that*, if the transferor in such a transaction is a Guarantor or has otherwise executed Security Documents, then the transferee must either be Borrower or a Guarantor.

7.05 Dispositions. Make any Disposition or enter into any agreement to make any Disposition except:

(a) Dispositions of obsolete or worn out property, whether now owned or hereafter acquired, in the ordinary course of business;

(b) Dispositions of inventory, rental equipment and/or rental inventory in the ordinary course of business;

(c) Dispositions of equipment or real property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such Disposition are reasonably promptly applied to the purchase price of such replacement property;

(d) Dispositions of property by any Subsidiary to Borrower or to another Loan Party; *provided that*, if the transferor of such property is a Loan Party, the transferee thereof must either be a Loan Party;

(e) Dispositions of assets with a book value up to \$1,000,000 in the aggregate in any Fiscal Year; and

(f) Dispositions permitted by **Section 7.04** or **7.06**,

provided that, any Disposition under **Sections 7.05(b)**, **(c)** and **(e)** shall be for fair market value.

7.06 Restricted Payments. Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except that:

(a) each Subsidiary may make Restricted Payments to Borrower and to wholly-owned Subsidiaries (and, in the case of a Restricted Payment by a non-wholly-owned Subsidiary, to Borrower and any Subsidiary and to each other owner of capital stock or other equity interests of such Subsidiary on a pro rata basis based on their relative ownership interests);

(b) Borrower and each Subsidiary may declare and make dividend payments or other distributions payable solely in the common stock or other common equity interests of such Person; and

(c) Borrower and each Subsidiary may purchase, redeem or otherwise acquire shares of its common stock or other common equity interests or warrants or options to acquire any such shares with the proceeds received from the substantially concurrent issue of new shares of its common stock or other common equity interests.

7.07 Change in Nature of Business. Engage in any material line of business substantially different from those lines of business conducted by Parent and its Subsidiaries on the date hereof or any business substantially related or incidental thereto.

7.08 Transactions with Affiliates. Except for transactions contemplated by this Agreement, enter into any transaction of any kind with any Affiliate of Borrower, whether or not in the ordinary course of business, other than on fair and reasonable terms substantially as favorable to Borrower or such Subsidiary as would be obtainable by Borrower or such Subsidiary at the time in a comparable arm's length transaction with a Person other than an Affiliate.

7.09 Burdensome Agreements. Enter into any Contractual Obligation (other than this Agreement or any other Loan Document) that (a) limits the ability (i) of any Subsidiary to make Restricted Payments to Borrower or any Guarantor or to otherwise transfer property to Borrower or any Guarantor, (ii) of any Subsidiary to Guarantee the Indebtedness of Borrower or (iii) of Borrower or any Subsidiary to create, incur, assume or suffer to exist Liens on property of such Person; *provided that*, this *clause (iii)* shall not prohibit any negative pledge incurred or provided in favor of any holder of Indebtedness permitted under **Section 7.03(e)** solely to the extent any such negative pledge relates to the property financed by such Indebtedness; or (b) requires the grant of a Lien to secure an obligation of such Person if a Lien is granted to secure another obligation of such Person.

7.10 Use of Proceeds. Use the proceeds of any Credit Extension, whether directly or indirectly, and whether immediately, incidentally or ultimately, for any purpose other than as set out in **Section 6.11** or to purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund Indebtedness originally incurred for such purpose.

7.11 Financial Covenants.

(a) **Minimum Liquidity.** Permit Liquid Assets, as of the last day of each fiscal quarter occurring during the period from the Closing Date through April 30, 2006, to be less than \$20,000,000.

(b) **Minimum EBITDA.** Permit Consolidated EBITDA for each fiscal quarter period set out below to be less than the corresponding amount set out below:

Period	Minimum Consolidated EBITDA
Quarter Ending July 31, 2005	\$ 2,500,000
Quarter Ending October 31, 2005	\$ 2,500,000
Quarter Ending January 31, 2006	\$ 2,500,000

(c) **Minimum Tangible Net Worth.** Permit Consolidated Tangible Net Worth as of the end of each fiscal quarter to be less than the *sum* of (i) \$130,000,000 *plus* (ii) an amount equal to 50% of the Consolidated Net Income for each Fiscal Year after the Closing Date (with no deduction for a net loss in any such fiscal quarter or Fiscal Year), *plus* (iii) an amount equal to 100% of the aggregate increases in Shareholders' Equity of Parent and its Subsidiaries after the date hereof by reason of the issuance and sale of any Equity Interests of Parent or any Subsidiary (other than issuances to Parent or a wholly-owned Subsidiary), including upon any conversion of debt securities of Parent into such capital stock or other equity interests.

(d) **Minimum Fixed Charge Coverage Ratio.** Permit the Consolidated Fixed Charge Coverage Ratio at any time, to be less than the ratio set out below for the applicable period:

Period Ending	Minimum Consolidated Fixed Charge Coverage Ratio
April 30, 2006 and thereafter	1.25:1.00

(e) **Maximum Leverage Ratio.** Permit the Consolidated Leverage Ratio at any time to be greater than the ratio set out below for the applicable period:

Period Ending	Maximum Consolidated Leverage Ratio
April 30, 2006 and thereafter	2.75: 1.00

(f) **Capital Expenditures.** Make or become legally obligated to make any expenditure in respect of the purchase or other acquisition of any fixed or capital asset (excluding normal replacements and maintenance which are properly charged to current operations), except for capital expenditures in the ordinary course of business not exceeding, in the aggregate for Parent and its Subsidiaries, for the most recently completed four fiscal quarters ending on each quarterly date below, the amount set forth opposite such period:

Period Ending	Maximum Capital Expenditures
Quarter Ending July 31, 2005	\$ 6,000,000
Quarter Ending October 31, 2005	\$ 6,000,000
Quarter Ending January 31, 2006	\$ 6,000,000

ARTICLE VIII. EVENTS OF DEFAULT AND REMEDIES

8.01 Events of Default. Any of the following shall constitute an Event of Default:

(a) **Non-Payment.** Any Borrower or any other Loan Party fails to pay (i) when and as required to be paid in this Agreement, any amount of principal of any Loan or any L/C Obligation, or (ii) within 3 days after the same becomes due, any interest on any Loan or on any L/C Obligation, or any commitment or other fee due hereunder, or (iii) within 5 Business Days after the same becomes due, any other amount payable hereunder or under any other Loan Document; or

(b) **Specific Covenants.** Any Borrower fails to perform or observe any term, covenant or agreement contained in any of **Section 2.05(d)**, or **(f)**, **2.16, 6.03, 6.05, 6.10, 6.11 7.01, 7.04, 7.05, 7.06, or 7.11**; or

(c) **Other Defaults.** Any Loan Party fails to perform or observe any other covenant or agreement (not specified in *clause (a)* or *(b)* above) contained in any Loan Document on its part to be performed or observed (subject to applicable grace or cure periods, if any) and such failure continues for 30 days, or if an "Event of Default" occurs under, and as defined in, such other Loan Document; or

(d) **Representations and Warranties.** Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of any Borrower or any other Loan Party in this Agreement, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be incorrect or misleading when made or deemed made; or

(e) **Cross-Default.** (i) Parent or any Subsidiary (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness or Guarantee (other than Indebtedness hereunder and Indebtedness under Swap Contracts) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than the \$1,000,000, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness or Guarantee or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness in an amount of more than \$1,000,000 to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness in an amount of more than \$1,000,000 to be made, prior to its stated maturity, or such Guarantee to become payable or cash collateral in respect thereof to be demanded in an amount of more than \$1,000,000; or (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which Parent or any

Subsidiary is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which Borrower or any Subsidiary is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by Parent or such Subsidiary as a result thereof is greater than the \$500,000; or

(f) **Insolvency Proceedings, Etc.** Any Loan Party or any of its Subsidiaries institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for 60 calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for 60 calendar days, or an order for relief is entered in any such proceeding; or

(g) **Inability to Pay Debts; Attachment.** (i) Parent or any Subsidiary becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person and is not released, vacated or fully bonded within 30 days after its issue or levy; or

(h) **Judgments.** There is entered against Parent or any Subsidiary (i) a final judgment or order for the payment of money in an aggregate amount exceeding the \$1,000,000 ((x) to the extent not covered by independent third-party insurance as to which the insurer does not dispute coverage, or (y) with respect to the claim by a Company employee that is in pending arbitration on the Closing Date, and for which Parent has made a reserve of \$900,000, to the extent in excess of such reserve), or (ii) any one or more non-monetary final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) such judgment or order is not paid, bonded or otherwise discharged within 30 days of entry thereof or enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of 10 consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; or

(i) **ERISA.** (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of Borrower to the Pension Plan, Multiemployer Plan, the PBGC or a participant in an aggregate amount that reasonably would result in a Material Adverse Effect. or (ii) Borrower or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount that reasonably would result in a Material Adverse Effect; or

(j) **Invalidity of Loan Documents.** Any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party or any other Person contests in any manner the validity or enforceability of any Loan Document; or any Loan Party denies that it has any or further liability or obligation under any Loan Document, or purports to revoke, terminate or rescind any Loan Document; or

(k) **Change of Control.** Any Change of Control with respect to Parent shall have occurred.

(l) **Material Adverse Effect.** A Material Adverse Effect shall have occurred.

8.02 Remedies Upon Event of Default. If any Event of Default occurs and is continuing, Agent shall, at the request of, or may, with the consent of, the Required Lenders, take any or all of the following actions:

(a) declare the commitment of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions to be terminated, whereupon such commitments and obligation shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by Borrower;

(c) require that Borrower Cash Collateralize the L/C Obligations (in an amount equal to the then Outstanding Amount thereof); and

(d) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents or applicable law;

provided that, upon the occurrence of an actual or deemed entry of an order for relief with respect to Borrower under the Bankruptcy Code of the United States, the obligation of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, and the obligation of Borrower to Cash Collateralize the L/C Obligations as aforesaid shall automatically become effective, in each case without further act of Agent or any Lender.

8.03 Application of Funds. After the exercise of remedies provided for in **Section 8.02** (or after the Loans have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as set out in the proviso to **Section 8.02**), any amounts received on account of the Obligations, including without limitation, all obligations under all Swap Contracts to which any Lender or any Affiliate of any Lender is a party, shall be applied by Agent in the following order:

(a) first, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including Attorney Costs and amounts payable under **Article III**) and the amounts due under any Swap Contract payable to Agent in its capacity as such;

(b) second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal and interest) payable to the Lenders (including Attorney Costs and amounts payable under **Article III**), ratably among them in proportion to the amounts described in this *clause (b)* payable to them;

(c) third, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans and L/C Borrowings, ratably among the Lenders in proportion to the respective amounts described in this *clause (c)* payable to them;

(d) fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans and L/C Borrowings, ratably among the Lenders in proportion to the respective amounts described in this *clause (d)* held by them;

(e) fifth, to Agent for the account of the L/C Issuer, to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit; and

(f) last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to Borrower or as otherwise required by Law.

Subject to **Section 2.03(c)**, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to *clause (f)* above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, or paid to Borrower in the order set out above.

ARTICLE IX. ADMINISTRATIVE AGENT

9.01 Appointment and Authorization of Agent.

(a) Each Lender hereby irrevocably appoints, designates and authorizes Agent to take such action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary contained elsewhere in this Agreement or in any other Loan Document, Agent shall not have any duties or responsibilities, except those expressly set out in this Agreement, nor shall Agent have or be deemed to have any fiduciary relationship with any Lender or participant, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against Agent. Without limiting the generality of the foregoing sentence, the use of the term “agent” in this Agreement and in the other Loan Documents with reference to Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

(b) The L/C Issuer shall act on behalf of the Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and the L/C Issuer shall have all of the benefits and immunities (i) provided to Agent in this **Article IX** with respect to any acts taken or omissions suffered by the L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and the applications and agreements for letters of credit pertaining to such Letters of Credit as fully as if the term “**Agent**” as used in this **Article IX** and in the definition of “**Agent-Related Person**” included the L/C Issuer with respect to such acts or omissions, and (ii) (together with the duties and obligations) as additionally provided in this Agreement with respect to the L/C Issuer.

9.02 Delegation of Duties. Agent may execute any of its duties under this Agreement or any other Loan Document by or through agents, employees or attorneys-in-fact and shall be entitled to advice of counsel and other consultants or experts concerning all matters pertaining to such duties. Agent shall

not be responsible for the negligence or misconduct of any agent or attorney-in-fact that it selects in the absence of gross negligence or willful misconduct.

9.03 Liability of Agent. No Agent-Related Person shall (a) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (except for its own gross negligence or willful misconduct in connection with its duties expressly set out in this Agreement), or (b) be responsible in any manner to any Lender or participant for any recital, statement, representation or warranty made by any Loan Party or any officer thereof, contained in this Agreement or in any other Loan Document, or in any certificate, report, statement or other document referred to or provided for in, or received by Agent under or in connection with, this Agreement or any other Loan Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document, or for any failure of any Loan Party or any other party to any Loan Document to perform its obligations hereunder or thereunder. No Agent-Related Person shall be under any obligation to any Lender or participant to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of any Loan Party or any Affiliate thereof.

9.04 Reliance by Agent.

(a) Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, communication, signature, resolution, representation, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex or telephone message, electronic mail message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to any Loan Party), independent accountants and other experts selected by Agent. Agent shall be fully justified in failing or refusing to take any action under any Loan Document unless it shall first receive such advice or concurrence of the Required Lenders as it deems appropriate and, if it so requests, it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of the Required Lenders (or such greater number of Lenders as may be expressly required hereby in any instance) and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders.

(b) For purposes of determining compliance with the conditions specified in **Section 4.01**, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

9.05 Notice of Default. Agent shall not be deemed to have knowledge or notice of the occurrence of any Default, except with respect to defaults in the payment of principal, interest and fees required to be paid to Agent for the account of the Lenders, unless Agent shall have received written notice from a Lender or Borrower referring to this Agreement, describing such Default and stating that such notice is a **“notice of default.”** Agent will notify the Lenders of its receipt of any such notice. Agent shall take such action with respect to such Default as may be directed by the Required Lenders in accordance with **Article VIII**; *provided that*, unless and until Agent has received any such direction,

Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default as it shall deem advisable or in the best interest of the Lenders.

9.06 Credit Decision; Disclosure of Information by Agent. Each Lender acknowledges that no Agent-Related Person has made any representation or warranty to it, and that no act by Agent hereafter taken, including any consent to and acceptance of any assignment or review of the affairs of any Loan Party or any Affiliate thereof, shall be deemed to constitute any representation or warranty by any Agent-Related Person to any Lender as to any matter, including whether Agent-Related Persons have disclosed material information in their possession. Each Lender represents to Agent that it has, independently and without reliance upon any Agent-Related Person and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of the Loan Parties and their respective Subsidiaries, and all applicable bank or other regulatory Laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to Borrower hereunder. Each Lender also represents that it will, independently and without reliance upon any Agent-Related Person and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of Borrower. Except for notices, reports and other documents expressly required to be furnished to the Lenders by Agent in this Agreement, Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any of the Loan Parties or any of their respective Affiliates which may come into the possession of any Agent-Related Person.

9.07 Indemnification of Agent. Whether or not the transactions contemplated hereby are consummated, the Lenders shall indemnify upon demand each Agent-Related Person (to the extent not reimbursed by or on behalf of any Loan Party and without limiting the obligation of any Loan Party to do so), pro rata, and hold harmless each Agent-Related Person from and against any and all Indemnified Liabilities incurred by it; *provided that*, no Lender shall be liable for the payment to any Agent-Related Person of any portion of such Indemnified Liabilities to the extent determined in a final, nonappealable judgment by a court of competent jurisdiction to have resulted from such Agent-Related Person's own gross negligence or willful misconduct; *provided that*, no action taken in accordance with the directions of the Required Lenders shall be deemed to constitute gross negligence or willful misconduct for purposes of this Section. Without limitation of the foregoing, each Lender shall reimburse Agent upon demand for its ratable share of any costs or out-of-pocket expenses (including Attorney Costs) incurred by Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document, or any document contemplated by or referred to in this Agreement, to the extent that Agent is not reimbursed for such expenses by or on behalf of Borrower. The undertaking in this Section shall survive termination of the Aggregate Commitments, the payment of all other Obligations and the resignation of Agent.

9.08 Agent in its Individual Capacity. Bank of America and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, acquire equity interests in and generally engage in any kind of banking, trust, financial advisory, underwriting or other business with each of the Loan Parties and their respective Affiliates as though Bank of America were not Agent or the L/C Issuer hereunder and without notice to or consent of the Lenders. The Lenders acknowledge that, pursuant to such activities, Bank of America or its Affiliates may receive information regarding any Loan Party or its Affiliates (including information that may be subject to confidentiality obligations in favor of such Loan Party or such Affiliate) and acknowledge that Agent shall be under no obligation to provide such

information to them. With respect to its Loans, Bank of America shall have the same rights and powers under this Agreement as any other Lender and may exercise such rights and powers as though it were not Agent or the L/C Issuer, and the terms “Lender” and “Lenders” include Bank of America in its individual capacity.

9.09 Successor Agent. Agent may resign as Agent upon 30 days’ notice to the Lenders (such resignation to become effective as specified below); *provided that*, any such resignation by Bank of America shall also constitute its resignation as L/C Issuer and Swing Line Lender. If Agent resigns under this Agreement, the Required Lenders shall appoint from among the Lenders a successor administrative agent for the Lenders. If no successor administrative agent is appointed prior to the effective date of the resignation of Agent, Agent may appoint, after consulting with the Lenders and Borrower, a successor administrative agent from among the Lenders. In either case, the successor administrative agent shall be consented to by Borrower at all times other than during the existence of an Event of Default (which consent of Borrower shall not be unreasonably withheld or delayed). Upon the acceptance of its appointment as successor administrative agent hereunder, the resignation of the Agent shall become effective and the Person acting as such successor administrative agent shall succeed to all the rights, powers and duties of the retiring Agent, L/C Issuer and Swing Line Lender and the respective terms “Agent,” “L/C Issuer” and “Swing Line Lender” shall mean such successor administrative agent, Letter of Credit issuer and Swing Line Lender, and the retiring Agent’s appointment, powers and duties as Agent shall be terminated and the retiring L/C Issuer’s and Swing Line Lender’s rights, powers and duties as such shall be terminated, without any other or further act or deed on the part of such retiring L/C Issuer or Swing Line Lender or any other Lender, other than the obligation of the successor L/C Issuer to issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or to make other arrangements satisfactory to the retiring L/C Issuer to effectively assume the obligations of the retiring L/C Issuer with respect to such Letters of Credit. After any retiring Agent’s resignation hereunder as Agent, the provisions of this **Article IX** and **Sections 10.04** and **10.05** shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent under this Agreement. If no successor administrative agent has accepted appointment as Agent by the date which is 30 days following a retiring Agent’s notice of resignation, the retiring Agent’s resignation shall nevertheless thereupon become effective and the Lenders shall perform all of the duties of Agent hereunder until such time, if any, as the Required Lenders appoint a successor agent as provided for above.

9.10 Agent May File Proofs of Claim. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Loan Party, Agent (irrespective of whether the principal of any Loan or L/C Obligation shall then be due and payable as in this Agreement expressed or by declaration or otherwise and irrespective of whether Agent shall have made any demand on Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and Agent and their respective agents and counsel and all other amounts due the Lenders and Agent under **Sections 2.03(i)** and **(j)**, **2.10** and **10.04**) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to Agent and, in the event that Agent shall consent to the making of such payments directly to the Lenders, to pay to Agent any amount due for the reasonable compensation, expenses, disbursements and advances of Agent and its agents and counsel, and any other amounts due Agent under **Sections 2.10** and **10.04**.

Nothing contained in this Agreement shall be deemed to authorize Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize Agent to vote in respect of the claim of any Lender in any such proceeding.

9.11 Collateral and Guaranty Matters. The Lenders irrevocably authorize Agent, at its option and in its discretion,

(a) to release any Lien on any property granted to or held by Agent under any Loan Document (i) upon termination of the Aggregate Commitments and payment in full of all Obligations (other than contingent indemnification obligations) and the expiration or termination of all Letters of Credit, (ii) that is sold or to be sold as part of or in connection with any sale permitted hereunder or under any other Loan Document, or (iii) subject to **Section 10.01**, if approved, authorized or ratified in writing by the Required Lenders;

(b) to subordinate any Lien on any property granted to or held by Agent under any Loan Document to the holder of any Lien on such property that is permitted by **Section 7.01(i)**; and

(c) to release any Guarantor from its obligations under the Guaranty if such Person ceases to be a Subsidiary as a result of a transaction permitted hereunder.

Upon request by Agent at any time, the Required Lenders will confirm in writing Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty pursuant to this **Section 9.11**.

9.12 Other Agents; Arrangers and Managers. None of the Lenders or other Persons identified on the facing page or signature pages of this Agreement as a "syndication agent," "documentation agent," "co-agent," "book manager," "lead manager," "arranger," "lead arranger" or "co-arranger" shall have any right, power, obligation, liability, responsibility or duty under this Agreement other than, in the case of such Lenders, those applicable to all Lenders as such. Without limiting the foregoing, none of the Lenders or other Persons so identified shall have or be deemed to have any fiduciary relationship with any Lender. Each Lender acknowledges that it has not relied, and will not rely, on any of the Lenders or other Persons so identified in deciding to enter into this Agreement or in taking or not taking action hereunder.

ARTICLE X. MISCELLANEOUS

10.01 Amendments, Etc. No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by Borrower or any other Loan Party therefrom, shall be effective unless in writing and signed by the Required Lenders and Borrower or the applicable Loan Party, as the case may be, and acknowledged by Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; *provided that*, no such amendment, waiver or consent shall:

(a) waive any condition set out in **Section 4.01(a), (b) or (c)** without the written consent of each Lender;

(b) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to **Section 8.02**) without the written consent of such Lender;

(c) postpone any date fixed by this Agreement or any other Loan Document for any payment or mandatory prepayment of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under any other Loan Document without the written consent of each Lender directly affected thereby;

(d) reduce the principal of, or the rate of interest specified in this Agreement on, any Loan or L/C Borrowing, or (subject to the proviso to this **Section 10.01(d)**) any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender directly affected thereby; *provided that*, only the consent of the Required Lenders shall be necessary (A) to amend the definition of “Default Rate” or to waive any obligation of Borrower to pay interest at the Default Rate or (B) to amend any financial covenant hereunder (or any defined term used therein) even if the effect of such amendment would be to reduce the rate of interest on any Loan or L/C Borrowing or to reduce any fee payable hereunder;

(e) change **Section 2.13** or **Section 8.03** in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender;

(f) amend **Section 1.06** or the definition of “Alternative Currency” without the written consent of each Lender;

(g) change any provision of this Section or the definition of “Required Lenders” or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender;

(h) except as provided in **Section 9.11**, release any Guarantor from the Guaranty, or release all or a material part of the Collateral, without the written consent of each Lender;

and, *provided further that* (i) no amendment, waiver or consent shall, unless in writing and signed by the L/C Issuer in addition to the Lenders required above, affect the rights or duties of the L/C Issuer under this Agreement or any Letter of Credit Application relating to any Letter of Credit issued or to be issued by it; (ii) no amendment, waiver or consent shall, unless in writing and signed by the Swing Line Lender in addition to the Lenders required above, affect the rights or duties of the Swing Line Lender under this Agreement; (iii) no amendment, waiver or consent shall, unless in writing and signed by Agent in addition to the Lenders required above, affect the rights or duties of Agent under this Agreement or any other Loan Document; and (iv) the Syndication Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto. Notwithstanding anything to the contrary in this Agreement, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that the Commitment of such Lender may not be increased or extended without the consent of such Lender.

10.02 Notices and Other Communications; Facsimile Copies.

(a) **General.** Unless otherwise expressly provided in this Agreement, all notices and other communications provided for hereunder shall be in writing (including by facsimile)

transmission). All such written notices shall be mailed, faxed or delivered to the applicable address, facsimile number or (subject to *clause (c)* below) electronic mail address, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to Borrower, Agent, the L/C Issuer or the Swing Line Lender, to the address, facsimile number, electronic mail address or telephone number specified for such Person on **Schedule 10.02** or to such other address, facsimile number, electronic mail address or telephone number as shall be designated by such party in a notice to the other parties; and

(ii) if to any other Lender, to the address, facsimile number, electronic mail address or telephone number specified in its Administrative Questionnaire or to such other address, facsimile number, electronic mail address or telephone number as shall be designated by such party in a notice to Borrower, Agent, the L/C Issuer and the Swing Line Lender.

All such notices and other communications shall be deemed to be given or made upon the earlier to occur of (i) actual receipt by the relevant party to this Agreement and (ii) (A) if delivered by hand or by courier, when signed for by or on behalf of the relevant party to this Agreement; (B) if delivered by mail, 4 Business Days after deposit in the mails, postage prepaid; (C) if delivered by facsimile, when sent and receipt has been confirmed by telephone; and (D) if delivered by electronic mail (which form of delivery is subject to the provisions of *clause (c)* below), when delivered; *provided that*, notices and other communications to Agent, the L/C Issuer and the Swing Line Lender pursuant to **Article II** shall not be effective until actually received by such Person. In no event shall a voicemail message be effective as a notice, communication or confirmation hereunder.

(b) **Effectiveness of Facsimile Documents and Signatures.** Loan Documents may be transmitted and/or signed by facsimile. The effectiveness of any such documents and signatures shall, subject to applicable Law, have the same force and effect as manually-signed originals and shall be binding on all Loan Parties, Agent and the Lenders. Agent may also require that any such documents and signatures be confirmed by a manually-signed original thereof; *provided that*, the failure to request or deliver the same shall not limit the effectiveness of any facsimile document or signature.

(c) **Limited Use of Electronic Mail.** Electronic mail and Internet and intranet websites may be used only to distribute routine communications, such as financial statements and other information as provided in **Section 6.02**, and to distribute Loan Documents for execution by the parties thereto, and may not be used for any other purpose.

(d) **Reliance by Agent and Lenders.** Agent and the Lenders shall be entitled to rely and act upon any notices (including telephonic Committed Loan Notices and Swing Line Loan Notices) purportedly given by or on behalf of Borrower even if (i) such notices were not made in a manner specified in this Agreement, were incomplete or were not preceded or followed by any other form of notice specified in this Agreement, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. Borrower shall indemnify each Agent-Related Person and each Lender from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of Borrower. All telephonic notices to and other communications with Agent may be recorded by Agent, and each of the parties to this Agreement hereby consents to such recording.

10.03 No Waiver; Cumulative Remedies. No failure by any Lender or Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges in this Agreement provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

10.04 Attorney Costs, Expenses and Taxes. Borrower agrees (a) to pay directly to the provided thereof or reimburse Agent for reasonable out-of-pocket costs and expenses incurred in connection with the development, preparation, negotiation and execution of this Agreement and the other Loan Documents and any amendment, waiver, consent or other modification of the provisions hereof and thereof (whether or not the transactions contemplated hereby or thereby are consummated), and the consummation and administration of the transactions contemplated hereby and thereby, including all Attorney Costs, and (b) to pay or reimburse Agent and each Lender for all costs and expenses incurred in connection with the enforcement, attempted enforcement, or preservation of any rights or remedies under this Agreement or the other Loan Documents (including all such costs and expenses incurred during any “workout” or restructuring in respect of the Obligations and during any legal proceeding, including any proceeding under any Debtor Relief Law), including all Attorney Costs. The foregoing costs and expenses shall include all reasonable out-of-pocket search, filing, recording, title insurance and appraisal charges and fees and taxes related thereto, and other reasonable out-of-pocket expenses incurred by Agent and the cost of independent public accountants and other outside experts retained by Agent or any Lender. All amounts due under this **Section 10.04** shall be payable within 30 days after demand therefor. The agreements in this Section shall survive the termination of the Aggregate Commitments and repayment of all other Obligations.

10.05 Indemnification by Borrower. Whether or not the transactions contemplated hereby are consummated, Borrower shall indemnify and hold harmless each Agent-Related Person, each Lender and their respective Affiliates, directors, officers, employees, counsel, agents and attorneys-in-fact (collectively the “**Indemnitees**”) from and against any and all liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses and disbursements (including Attorney Costs) of any kind or nature whatsoever (subject to the provisions of **Section 3.01** with respect to Taxes, Other Taxes and Excluded Taxes) which may at any time be imposed on, incurred by or asserted against any such Indemnitee in any way relating to or arising out of or in connection with (a) the execution, delivery, enforcement, performance or administration of any Loan Document or any other agreement, letter or instrument delivered in connection with the transactions contemplated thereby or the consummation of the transactions contemplated thereby, (b) any Commitment, Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (c) any actual or alleged presence or release of Hazardous Materials on or from any property currently or formerly owned or operated by Borrower, any Subsidiary or any other Loan Party, or any Environmental Liability related in any way to Borrower, any Subsidiary or any other Loan Party, or (d) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory (including any investigation of, preparation for, or defense of any pending or threatened claim, investigation, litigation or proceeding) and regardless of whether any Indemnitee is a party thereto (all the foregoing, collectively, the “**Indemnified Liabilities**”), in all cases, whether or not caused by or arising, in whole or in part, out of the negligence of the Indemnitee; *provided that*, such indemnity shall not, as to any Indemnitee, be available to the extent that such liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses or disbursements are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee. No Indemnitee shall be liable for any damages arising from the

use by others of any information or other materials obtained through IntraLinks or other similar information transmission systems in connection with this Agreement, (so long as such Indemnitee has not breached its obligations under **Section 10.08**) nor shall any Indemnitee have any liability for any indirect or consequential damages relating to this Agreement or any other Loan Document or arising out of its activities in connection herewith or therewith (whether before or after the Closing Date). All amounts due under this **Section 10.05** shall be payable within 30 days after demand therefor. The agreements in this Section shall survive the resignation of Agent, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations.

10.06 Payments Set Aside. To the extent that any payment by or on behalf of Borrower is made to Agent or any Lender, or Agent or any Lender exercises its right of set-off, and such payment or the proceeds of such set-off or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such set-off had not occurred, and (b) each Lender severally agrees to pay to Agent upon demand its applicable share of any amount so recovered from or repaid by Agent, *plus* interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect.

10.07 Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective successors and assigns permitted hereby, except that Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of *clause (b)* of this **Section 10.07**, (ii) by way of participation in accordance with the provisions of *clause (d)* of this **Section 10.07**, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of *clause (f)* of this **Section 10.07**, or (iv) to an SPC in accordance with the provisions of *clause (h)* of this **Section 10.07** (and any other attempted assignment or transfer by any party to this Agreement shall be null and void); *provided that*, no such assignment, participation or transfer shall, without the consent of the Borrower, require any Company to file a registration statement with the SEC or apply to qualify such assignment, participation or other transfer under the securities law of any state. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties to this Agreement, their respective successors and assigns permitted hereby, Participants to the extent provided in *clause (d)* of this **Section 10.07** and, to the extent expressly contemplated hereby, the Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans (including for purposes of this *clause (b)*, participations in L/C Obligations and in Swing Line Loans) at the time owing to it); *provided that* (i) except in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to it or in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund (as defined in *clause (g)* of this **Section 10.07**) with respect to a Lender, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) subject to each such assignment, determined as of the date the Assignment Agreement with respect to such assignment is delivered to Agent or, if "Trade Date" is specified in the

Assignment Agreement, as of the Trade Date, shall not be less than \$5,000,000 unless each of Agent and, so long as no Event of Default has occurred and is continuing, Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed); (ii) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitment assigned, except that this clause (ii) shall not apply to rights in respect of Swing Line Loans; (iii) any assignment of a Commitment must be approved by Agent, the L/C Issuer and the Swing Line Lender unless the Person that is the proposed assignee is itself a Lender (whether or not the proposed assignee would otherwise qualify as an Eligible Assignee); and (iv) the parties to each assignment shall execute and deliver to Agent an Assignment Agreement, together with a processing and recordation fee of \$5,000. Subject to acceptance and recording thereof by Agent pursuant to *clause (c)* of this **Section 10.07**, from and after the effective date specified in each Assignment Agreement, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment Agreement, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment Agreement, be released from its obligations under this Agreement (and, in the case of an Assignment Agreement covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party to this Agreement but shall continue to be entitled to the benefits of **Sections 3.01, 3.04, 3.05, 10.04 and 10.05** with respect to facts and circumstances occurring prior to the effective date of such assignment). Upon request, Borrower (at its expense) shall execute and deliver a Note to the assignee Lender and, if applicable, the assigning Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this *clause (b)* shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with *clause (d)* of this **Section 10.07**.

(c) Agent, acting solely for this purpose as an agent of Borrower, shall maintain at Agent's Office a copy of each Assignment Agreement delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of the Loans and L/C Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive, and Borrower, Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Any Lender may at any time, without the consent of, or notice to, Borrower or Agent, sell participations to any Person (other than a natural person or Borrower or any of Borrower's Affiliates or Subsidiaries) (each, a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans (including such Lender's participations in L/C Obligations and/or Swing Line Loans) owing to it); *provided that* (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties to this Agreement for the performance of such obligations and (iii) Borrower, Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; *provided that*, such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to **Section 10.01** that directly affects such Participant. Subject to *clause (e)* of this

Section, Borrower agrees that each Participant shall be entitled to the benefits of **Sections 3.01, 3.04 and 3.05** to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to *clause (b)* of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of **Section 10.09** as though it were a Lender, *provided* such Participant agrees to be subject to **Section 2.14** as though it were a Lender.

(e) A Participant shall not be entitled to receive any greater payment under **Section 3.01** or **3.04** than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with Borrower's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of **Section 3.01** unless Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of Borrower, to comply and complies with **Section 10.15** as though it were a Lender.

(f) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; *provided that*, no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party to this Agreement.

(g) As used in this Agreement, the following terms have the following meanings:

"Eligible Assignee" means (a) a Lender; (b) an Affiliate of a Lender; (c) an Approved Fund; and (d) any other Person (other than a natural person) approved by (i) Agent, the L/C Issuer and the Swing Line Lender, and (ii) unless an Event of Default has occurred and is continuing, Borrower (each such approval not to be unreasonably withheld or delayed); *provided that*, notwithstanding the foregoing, "Eligible Assignee" shall not include Borrower or any of Borrower's Affiliates or Subsidiaries.

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

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

(h) Notwithstanding anything to the contrary contained in this Agreement, if at any time Bank of America assigns all of its Commitment and Loans pursuant to *clause (b)* above, Bank of America may, (i) upon 30 days' notice to Borrower and the Lenders, resign as L/C Issuer and/or (ii) upon 30 days' notice to Borrower, resign as Swing Line Lender. In the event of any such resignation as L/C Issuer or Swing Line Lender, Borrower shall be entitled to appoint from among the Lenders a successor L/C Issuer or Swing Line Lender hereunder; *provided that*, no failure by Borrower to appoint any such successor shall affect the resignation of Bank of America as L/C Issuer or Swing Line Lender, as the case may be. If Bank of America resigns as L/C Issuer, it shall retain all the rights and obligations of the L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Lenders to make Base Rate Committed Loans or fund risk participations in Unreimbursed Amounts pursuant to **Section 2.03(c)**). If Bank of America resigns as Swing Line Lender, it shall retain all the rights of the Swing Line Lender provided for hereunder with respect to Swing Line Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders

to make Base Rate Committed Loans or fund risk participations in outstanding Swing Line Loans pursuant to **Section 2.04(c)**.

10.08 Confidentiality. Each of Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors, in connection with matters relating to the credit relationship with the Loan Parties and/or the administration of the Loan Documents (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any Eligible Assignee of or Participant in, or any prospective Eligible Assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to Borrower and its obligations, (g) with the consent of Borrower or (h) to the extent such Information (x) becomes publicly available other than as a result of a breach of this **Section 10.08** or (y) becomes available to Agent or any Lender on a nonconfidential basis from a source other than Borrower. For purposes of this **Section 10.08**, **"Information"** means all information received from any Loan Party relating to any Loan Party or any of their respective businesses, other than any such information that is available to Agent or any Lender on a nonconfidential basis prior to disclosure by any Loan Party; *provided that*, in the case of information received from a Loan Party after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information. Notwithstanding anything in this Agreement to the contrary, **"Information"** shall not include, and Agent and each Lender may disclose without limitation of any kind, any information with respect to the **"tax treatment"** and **"tax structure"** (in each case, within the meaning of Treasury Regulation Section 1.6011-4) of the transactions contemplated hereby and all materials of any kind (including opinions or other tax analyses) that are provided to Agent or such Lender relating to such tax treatment and tax structure; *provided that*, with respect to any document or similar item that in either case contains information concerning the tax treatment or tax structure of the transaction as well as other information, this sentence shall only apply to such portions of the document or similar item that relate to the tax treatment or tax structure of the Loans, Letters of Credit and transactions contemplated hereby. In addition, Agent may disclose to any agency or organization that assigns standard identification numbers to loan facilities such basic information describing the facilities provided hereunder as is necessary to assign unique identifiers (and, if requested, supply a copy of this Agreement), it being understood that the Person to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to make available to the public only such Information as such person normally makes available in the course of its business of assigning identification numbers.

10.09 Set-off. In addition to any rights and remedies of the Lenders provided by law, upon the occurrence and during the continuance of any Event of Default, each Lender is authorized at any time and from time to time, without prior notice to Borrower or any other Loan Party, any such notice being waived by Borrower (on its own behalf and on behalf of each Loan Party) to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held by, and other indebtedness at any time owing by, such Lender to or for the credit or the

account of the respective Loan Parties against any and all Obligations owing to such Lender hereunder or under any other Loan Document, now or hereafter existing, irrespective of whether or not Agent or such Lender shall have made demand under this Agreement or any other Loan Document and although such Obligations may be contingent or unmatured or denominated in a currency different from that of the applicable deposit or indebtedness. Each Lender agrees promptly to notify Borrower and Agent after any such set-off and application made by such Lender; *provided that*, the failure to give such notice shall not affect the validity of such set-off and application.

10.10 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the “**Maximum Rate**”). If Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to Borrower. In determining whether the interest contracted for, charged, or received by Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

10.11 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

10.12 Conflict Provisions. In the event of any conflict between the provisions of this Agreement and those of any other Loan Document, the provisions of this Agreement shall control; *provided that*, the inclusion of supplemental rights or remedies in favor of Agent or the Lenders in any other Loan Document shall not be deemed a conflict with this Agreement. Each Loan Document was drafted with the joint participation of the respective parties thereto and shall be construed neither against nor in favor of any party, but rather in accordance with the fair meaning thereof.

10.13 Survival of Representations and Warranties. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant to this Agreement or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by Agent and each Lender, regardless of any investigation made by Agent or any Lender or on their behalf and notwithstanding that Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding.

10.14 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

10.15 Tax Forms.

(a) Each Lender that is not a “United States person” within the meaning of Section 7701(a)(30) of the Code (a “**Foreign Lender**”) shall deliver to Agent, prior to receipt of any payment subject to withholding under the Code (or upon accepting an assignment of an

interest in this Agreement), two duly signed completed copies of either IRS Form W-8BEN or any successor thereto (relating to such Foreign Lender and entitling it to an exemption from, or reduction of, withholding tax on all payments to be made to such Foreign Lender by Borrower pursuant to this Agreement) or IRS Form W-8ECI or any successor thereto (relating to all payments to be made to such Foreign Lender by Borrower pursuant to this Agreement) or such other evidence satisfactory to Borrower and Agent that such Foreign Lender is entitled to an exemption from, or reduction of, U.S. withholding tax, including any exemption pursuant to Section 881(c) of the Code. Thereafter and from time to time, each such Foreign Lender shall (i) promptly submit to Agent such additional duly completed and signed copies of one of such forms (or such successor forms as shall be adopted from time to time by the relevant United States taxing authorities) as may then be available under then current United States laws and regulations to avoid, or such evidence as is satisfactory to Borrower and Agent of any available exemption from or reduction of, United States withholding taxes in respect of all payments to be made to such Foreign Lender by Borrower pursuant to this Agreement, (ii) promptly notify Agent of any change in circumstances which would modify or render invalid any claimed exemption or reduction, and (iii) take such steps as shall not be materially disadvantageous to it, in the reasonable judgment of such Lender, and as may be reasonably necessary (including the re-designation of its Lending Office) to avoid any requirement of applicable Laws that Borrower make any deduction or withholding for taxes from amounts payable to such Foreign Lender.

(b) Each Foreign Lender, to the extent it does not act or ceases to act for its own account with respect to any portion of any sums paid or payable to such Lender under any of the Loan Documents (for example, in the case of a typical participation by such Lender), shall deliver to Agent on the date when such Foreign Lender ceases to act for its own account with respect to any portion of any such sums paid or payable, and at such other times as may be necessary in the determination of Agent (in the reasonable exercise of its discretion), (i) two duly signed completed copies of the forms or statements required to be provided by such Lender as set out above, to establish the portion of any such sums paid or payable with respect to which such Lender acts for its own account that is not subject to U.S. withholding tax, and (ii) two duly signed completed copies of IRS Form W-8IMY (or any successor thereto), together with any information such Lender chooses to transmit with such form, and any other certificate or statement of exemption required under the Code, to establish that such Lender is not acting for its own account with respect to a portion of any such sums payable to such Lender.

(c) Borrower shall not be required to pay any additional amount to any Foreign Lender under **Section 3.01** (i) with respect to any Taxes required to be deducted or withheld on the basis of the information, certificates or statements of exemption such Lender transmits with an IRS Form W-8IMY pursuant to this **Section 10.15(c)** or (ii) if such Lender shall have failed to satisfy the foregoing provisions of this **Section 10.15(c)**; *provided that*, if such Lender shall have satisfied the requirement of this **Section 10.15(c)** on the date such Lender became a Lender or ceased to act for its own account with respect to any payment under any of the Loan Documents, nothing in this **Section 10.15(c)** shall relieve Borrower of its obligation to pay any amounts pursuant to **Section 3.01** in the event that, as a result of any change in any applicable law, treaty or governmental rule, regulation or order, or any change in the interpretation, administration or application thereof, such Lender is no longer properly entitled to deliver forms, certificates or other evidence at a subsequent date establishing the fact that such Lender or other Person for the account of which such Lender receives any sums payable under any of the Loan Documents is not subject to withholding or is subject to withholding at a reduced rate.

(d) Agent may, without reduction, withhold any Taxes required to be deducted and withheld from any payment under any of the Loan Documents with respect to which Borrower is not required to pay additional amounts under this **Section 10.15(d)**.

(e) Upon the request of Agent, each Lender that is a “United States person” within the meaning of Section 7701(a)(30) of the Code shall deliver to Agent two duly signed completed copies of IRS Form W-9. If such Lender fails to deliver such forms, then Agent may withhold from any interest payment to such Lender an amount equivalent to the applicable back-up withholding tax imposed by the Code, without reduction.

(f) If any Governmental Authority asserts that Agent did not properly withhold or backup withhold, as the case may be, any tax or other amount from payments made to or for the account of any Lender, such Lender shall indemnify Agent therefor, including all penalties and interest, any taxes imposed by any jurisdiction on the amounts payable to Agent under this Section, and costs and expenses (including Attorney Costs) of Agent. The obligation of the Lenders under this Section shall survive the termination of the Aggregate Commitments, repayment of all other Obligations hereunder and the resignation of Agent.

10.16 Replacement of Lenders. Under any circumstances set out in this Agreement providing that Borrower shall have the right to replace a Lender as a party to this Agreement, Borrower may, upon notice to such Lender and Agent, replace such Lender by causing such Lender to assign its Commitment (with the assignment fee to be paid by Borrower in such instance) pursuant to **Section 10.07(b)** to one or more other Lenders or Eligible Assignees procured by Borrower; *provided that*, if Borrower elects to exercise such right with respect to any Lender pursuant to **Section 3.06(b)**, it shall be obligated to replace all Lenders that have made similar requests for compensation pursuant to **Section 3.01** or **3.04** or of illegality pursuant to **Section 3.02**. Borrower shall (a) pay in full all principal, interest, fees and other amounts owing to such Lender through the date of replacement (including any amounts payable pursuant to **Section 3.05**), (b) provide appropriate assurances and indemnities (which may include letters of credit) to the L/C Issuer and the Swing Line Lender as each may reasonably require with respect to any continuing obligation to fund participation interests in any L/C Obligations or any Swing Line Loans then outstanding, and (c) release such Lender from its obligations under the Loan Documents. Any Lender being replaced shall execute and deliver an Assignment Agreement with respect to such Lender’s Commitment and outstanding Loans and participations in L/C Obligations and Swing Line Loans.

10.17 Governing Law.

(a) THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF TEXAS APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE; *PROVIDED THAT*, THE AGENT AND EACH LENDER SHALL RETAIN ALL RIGHTS ARISING UNDER FEDERAL LAW.

(b) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT MAY BE BROUGHT IN THE COURTS OF THE STATE OF TEXAS SITTING IN HOUSTON OR OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF SUCH STATE, AND BY EXECUTION AND DELIVERY OF THIS AGREEMENT, BORROWERS, THE AGENT AND EACH LENDER CONSENTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, TO THE NON-EXCLUSIVE JURISDICTION OF THOSE COURTS. BORROWERS, THE AGENT AND EACH LENDER IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF *FORUM*

NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY ACTION OR PROCEEDING IN SUCH JURISDICTION IN RESPECT OF ANY LOAN DOCUMENT OR OTHER DOCUMENT RELATED THERETO. BORROWERS, THE AGENT AND EACH LENDER WAIVES PERSONAL SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER PROCESS, WHICH MAY BE MADE BY ANY OTHER MEANS PERMITTED BY THE LAW OF SUCH STATE.

10.18 Waiver of Right to Trial by Jury. EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER ANY LOAN DOCUMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO ANY LOAN DOCUMENT, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER FOUNDED IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE SIGNATORIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

10.19 Time of the Essence. Time is of the essence of the Loan Documents.

10.20 Joint and Several Liability; Cross-Guaranty.

(a) Notwithstanding anything herein to the contrary, Parent hereunder shall be liable to Lenders and their respective successors and assigns for the full and prompt payment and performance of all of the Obligations; *provided that*, the maximum amount of Parent's liability hereunder is limited, to the extent, if any, required so that its liability is not subject to avoidance under any Debtor Relief Law.

(b) Parent hereby absolutely and unconditionally guarantees to Lenders and their respective successors and assigns, the full and prompt payment (whether at stated maturity, by acceleration or otherwise) and performance of, all Obligations owed or hereafter owing Lenders by each other Borrower. Parent agrees that its guaranty obligations hereunder are continuing guaranties of payment and performance and not of collection, that its obligations under this **Section 10.20** shall not be discharged until payment and performance, in full, of the Obligations have occurred, and that its obligations under this **Section 10.20** shall be absolute and unconditional, irrespective of, and unaffected by,

(i) the genuineness, validity, regularity, enforceability or any future amendment of, or change in, this Agreement, any other Loan Document or any other agreement, document or instrument to which any Borrower is or may become a party;

(ii) the absence of any action to enforce this Agreement (including this **Section 10.20**) or any other Loan Document or the waiver or consent by Lenders with respect to any of the provisions thereof;

(iii) the existence, value or condition of, or failure to perfect its Lien against, any security for the Obligations or any action, or the absence of any action, by Lenders in respect thereof (including the release of any such security);

(iv) the insolvency of any Borrower or any other obligor; or

(c) any other action or circumstances that might otherwise.

10.21 Entire Agreement. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT AMONG THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES.

[Signatures appear on following pages.]

IN WITNESS WHEREOF, the parties to this Agreement have caused this Agreement to be duly executed as of the date first above written.

BORROWERS:

POWELL INDUSTRIES, INC.

By: /s/ Don Madison
 Don Madison
 Vice President, Secretary and Treasurer

INHOCO 3210 LIMITED

By: /s/ Don Madison
Name: Don Madison
Title: Director

SWITCHGEAR & INSTRUMENTATION PROPERTIES LIMITED

By: /s/ Don Madison
Name: Don Madison
Title: Director

BANK OF AMERICA, N.A., as Agent

By: /s/ Daniel J. Lintner

Daniel J. Lintner

Senior Vice President

BANK OF AMERICA, N.A., as a Lender L/C Issuer and Swing Line
Lender

By: /s/ Daniel J. Lintner

Daniel J. Lintner

Senior Vice President

**FOR IMMEDIATE RELEASE**

Contacts: Don R. Madison, CFO
Powell Industries, Inc.
713-947-4422

Ken Dennard/ksdennard@drg-e.com
Karen Roan/kcroan@drg-e.com
DRG&E/713-529-6600

**POWELL INDUSTRIES ANNOUNCES THE ACQUISITION OF
SWITCHGEAR & INSTRUMENTATION LTD.**

Conference call to discuss this transaction scheduled for Friday, July 8 at 11:00 a.m. EDT

HOUSTON — JULY 5, 2005 — Powell Industries, Inc. (NASDAQ: POWL), a leading manufacturer of equipment and systems for the management and control of electrical energy and other critical processes, today announced that it has completed the acquisition of UK-based Switchgear & Instrumentation Limited (S&I), a division of NG Bailey Organisation Limited (NGBO), for \$18.4 million in cash, which comprises the fixed assets of the business and select working capital. The transaction will be financed with a portion of Powell's existing cash and bank debt.

"We are extremely pleased that we are able to make this acquisition. Based on the markets that S&I serves and the technologies deployed, we believe it is an excellent fit," stated Thomas W. Powell, chairman and chief executive officer of Powell. "This acquisition is a part of our overall strategy to position Powell as the leader in meeting the highly customized needs of clients wherever they are located and to move with our customers in an increasingly global economy. S&I is a dominant supplier to the international oil, gas and petrochemical sectors and to UK-based EPC (Engineering Procurement and Contracting) firms, where brand recognition and product knowledge are critical. S&I has a proven capability to supply fully integrated systems solutions and project management to customers with highly complex and specific requirements in all operating environments.

"Powell's focus is on customers with large, complex, customized projects, and when it comes to managing their electrical equipment needs, we deal with the requirements of these major multinational companies under ANSI (American National Standards Institution) electrical specifications. S&I's emphasis is on these same customers and their IEC (International

Electrotechnical Commission) specification needs. In fact, a major customer in S&I's current backlog is also one of our largest clients. This acquisition will allow us to support major multinational firms that have complex projects around the world and over time develop much broader relationships with them," continued Mr. Powell.

S&I is the UK's leading supplier of medium and low voltage switchgear, intelligent motor control systems and power distribution solutions to a wide range of process industries, including oil, gas, petrochemical, power generation and distribution, heavy industry, pharmaceuticals and water and wastewater treatment. Driven by the highly complex requirements of its target markets, in particular the oil, gas and petrochemical sectors, S&I's intelligent solutions offer the most flexible and technically advanced production, control and monitoring functions available. Like Powell, S&I has had a commitment to research and development and has achieved significant growth as a result of its continued focus on R&D and the ensuing expansion of its range of products and integrated solutions. Additionally, as Powell has with its power control rooms, S&I has modular design expertise and offers leading modular solutions for large and complex projects in the switchgear market.

S&I has a 12,000 square meter manufacturing facility in Bradford UK, a dedicated sales presence in the UK and approximately 300 employees. It has operated as a stand-alone business within NGBO and despite ongoing investment in S&I in terms of management, research and development and operational infrastructure, the business has remained non-core to the parent company for a number of years. Over 90 percent of the parent company's revenues relate to the provision of mechanical and electrical contracting and maintenance services to the UK construction industry. The decision to sell S&I after over 40 years of ownership was triggered by the recent refinement of the future direction, strategy and priorities of NGBO.

The company expects minimal impact from the acquisition in the current fiscal year ending October 31, 2005. However, the acquisition is expected to be accretive in the first full year of ownership. The incremental impact of the acquisition in the first 12 months is expected to result in revenues of \$45 to 50 million and earnings of \$0.14 to 0.19 per diluted share. Powell's financial advisor on this acquisition was Hayes Novus.

Partly in connection with the acquisition and partly to expand its financing capacity, Powell also announced that it has entered into a credit agreement with Bank of America, N.A. as administrative agent and with certain other financial institutions, expanding and replacing its existing facility with Bank of America. The credit agreement is a senior credit facility extending a \$22,000,000 revolving line of credit to Powell and a £4,000,000 (\$7.4 million) revolving line of credit and a £6,000,000 (\$11.1 million) single advance term loan to Powell's UK subsidiaries.

The obligations are secured by the stock of Powell's subsidiaries. The loans to Powell's UK subsidiaries have been made in part to fund the UK acquisition and in part to provide local currency working capital and letter of credit facilities. The credit facility expires on June 30, 2008.

CONFERENCE CALL

Since management is traveling back from the UK, they will host a conference call on Friday, July 8, 2005 at 11:00 a.m. EDT (10:00 CDT) to discuss this acquisition. To participate in the call, dial (303) 262-2140 and ask for the Powell Industries call at least 10 minutes prior to the start time, or access it live over the Internet by logging onto the web at <http://www.powellind.com>. To listen to the live call on the web, please visit the website at least fifteen minutes before the call begins to register, download and install any necessary audio software. A replay of the call will be available approximately two hours after the live broadcast ends and will be accessible until July 15, 2005. To access the replay, dial (303) 590-3000 using a passcode of 11034000. For those who cannot listen to the live webcast, an archive will be available shortly after the call and will remain available for approximately 30 days at <http://www.powellind.com>.

Powell Industries, Inc., headquartered in Houston, TX, designs, manufactures and services equipment and systems for the management and control of electrical energy and other critical processes. Powell provides products and services to the transportation, environmental, industrial and utility industries. For more information, please visit www.powellind.com.

Any forward-looking statements in the preceding paragraphs of this release are made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. Investors are cautioned that such forward-looking statements involve risks and uncertainty in that actual results may differ materially from those projected in the forward-looking statements. In the course of operations, we are subject to certain risk factors, including but not limited to competition and competitive pressures, sensitivity to general economic and industrial conditions, international political and economic risks, availability and price of raw materials and execution of business strategy. For further information, please refer to the Company's filings with the Securities and Exchange Commission, copies of which are available from the Company without charge.

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