

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549

FORM 10-K

(Mark One)

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

For the Fiscal Year Ended December 31, 2019

OR

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

For the Transition Period from to

Commission File Number 001-33117

**GLOBALSTAR, INC.**

(Exact Name of Registrant as Specified in Its Charter)

**Delaware**

(State or Other Jurisdiction of  
Incorporation or Organization)

**41-2116508**

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

**1351 Holiday Square Blvd.**

**Covington, Louisiana 70433**

(Address of Principal Executive Offices)

Registrant's Telephone Number, Including Area Code **(985) 335-1500**

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

Title of each class	Trading Symbol	Name of exchange on which registered
<b>Common Stock, par value \$0.0001 per share</b>	<b>GSAT</b>	<b>NYSE American</b>

Securities registered pursuant to section 12(g) of the Act:

**None**

Indicate by check mark if the registrant is a well-known seasoned issuer as defined in Rule 405 of the Securities Act.

Yes  No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act.

Yes  No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes  No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files).

Yes  No

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

Large accelerated filer

Non-accelerated filer

Accelerated filer

Smaller reporting company

Emerging growth company

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

Indicate by check mark whether the registrant is a shell company (as defined by Rule 12b-2 of the Exchange Act)

Yes  No

The aggregate market value of the registrant's common stock held by non-affiliates at June 30, 2019, the last business day of the registrant's most recently completed second fiscal quarter, was approximately \$292.3 million.

As of February 21, 2020, 1,665,377,204 shares of voting common stock were outstanding, and no shares of nonvoting common stock were authorized or outstanding. Unless the context otherwise requires, references to common stock in this Report mean registrant's voting common stock.

#### **DOCUMENTS INCORPORATED BY REFERENCE**

Portions of the registrant's Proxy Statement for the 2020 Annual Meeting of Stockholders are incorporated by reference in Part III of this Report.

FORM 10-K

For the Fiscal Year Ended December 31, 2019

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## PART I

### Forward-Looking Statements

Certain statements contained in or incorporated by reference into this Annual Report on Form 10-K (the "Report"), other than purely historical information, including, but not limited to, estimates, projections, statements relating to our business plans, objectives and expected operating results, and the assumptions upon which those statements are based, are forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. These forward-looking statements generally are identified by the words "believe," "project," "expect," "anticipate," "estimate," "intend," "strategy," "plan," "may," "should," "will," "would," "will be," "will continue," "will likely result," and similar expressions, although not all forward-looking statements contain these identifying words. These forward-looking statements are based on current expectations and assumptions that are subject to risks and uncertainties which may cause actual results to differ materially from the forward-looking statements. Forward-looking statements, such as the statements regarding our ability to develop and expand our business (including our ability to monetize our spectrum rights), our anticipated capital spending, our ability to manage costs, our ability to exploit and respond to technological innovation, the effects of laws and regulations (including tax laws and regulations) and legal and regulatory changes (including regulation related to the use of our spectrum), the opportunities for strategic business combinations and the effects of consolidation in our industry on us and our competitors, our anticipated future revenues, our anticipated financial resources, our expectations about the future operational performance of our satellites (including their projected operational lives), the expected strength of and growth prospects for our existing customers and the markets that we serve, commercial acceptance of new products, problems relating to the ground-based facilities operated by us or by independent gateway operators, worldwide economic, geopolitical and business conditions and risks associated with doing business on a global basis and other statements contained in this Report regarding matters that are not historical facts, involve predictions. Risks and uncertainties that could cause or contribute to such differences include, without limitation, those in Item 1A. Risk Factors of this Report. We do not intend, and undertake no obligation, to update any of our forward-looking statements after the date of this Report to reflect actual results or future events or circumstances.

### Item 1. Business

#### Mobile Satellite Services Business

Globalstar, Inc. ("we," "us" or the "Company") provides Mobile Satellite Services ("MSS") including voice and data communications services globally via satellite. We offer these services over our network of in-orbit satellites and our active ground stations ("gateways"), which we refer to collectively as the Globalstar System. In addition to supporting Internet of Things ("IoT") data transmissions in a variety of applications, we provide reliable connectivity in areas not served or underserved by terrestrial wireless and wireline networks and in circumstances where terrestrial networks are not operational due to natural or man-made disasters. By providing wireless communications services across the globe, we meet our customers' increasing desire for connectivity.

#### *Satellite Network*

Our constellation of Low Earth Orbit ("LEO") satellites includes second-generation satellites, which were launched and placed into service during the years 2010 through 2013 after a \$1.1 billion investment, and certain first-generation satellites, which are currently being used as in-orbit spares. We designed our second-generation satellites to last twice as long in space, have 40% greater capacity and be built at a significantly lower cost compared to our first-generation satellites. We achieved this longer life by increasing the solar array and battery capacity, using a larger fuel tank, adding redundancy for key satellite equipment, and improving radiation specifications and additional lot level testing for all susceptible electronic components, in order to account for the accumulated dosage of radiation encountered during a 15-year mission at the operational altitude of the satellites. The second-generation satellites use passive S-band antennas on the body of the spacecraft providing additional shielding for the active amplifiers which are located inside the spacecraft, unlike the first-generation amplifiers that were located on the outside as part of the active antenna array. Each satellite has a high degree of on-board subsystem redundancy, an on-board fault detection system and isolation and recovery for safe and quick risk mitigation.

We believe that we provide the best voice quality amount our peer group (which is backed by customer input) due to the specific design of the Globalstar System. We define a successful level of service for our customers by their ability to make uninterrupted calls of average duration for a system-wide average number of minutes per month. Our goal is to provide service levels and call or message success rates equal to or better than our MSS competitors so our products and services are attractive to potential customers. We define voice quality as the ability to easily hear, recognize and understand callers with imperceptible delay in the transmission. By this measure, we believe that our system outperforms geostationary ("GEO") satellites used by some of our competitors. GEO satellite signals must travel approximately 42,000 additional miles on average, which introduces considerable delay and signal degradation to GEO calls. For our competitors using cross-linked satellite architectures, which require multiple inter-satellite connections to complete a call, signal degradation and delay can result in lower call quality as compared to that experienced over the Globalstar System.

We designed our second-generation ground network to provide our customers with enhanced services featuring speeds up to 72 kbps as well as increased capacity, when combined with our next-generation products. The second-generation ground network is an Internet protocol multimedia subsystem ("IMS") based solution providing such industry standard services as voice, internet, email and short message services ("SMS").

#### *Ground Network*

Our satellites communicate with a network of 22 gateways, each of which serves an area of approximately 700,000 to 1,000,000 square miles. We have designed the planes in which our satellites orbit so that usually at least one satellite is visible from any point on the Earth's surface between the latitudes 70° north and 70° south. A gateway must be within line-of-sight of a satellite and the satellite must be within line-of-sight of the subscriber to provide services. We have positioned our gateways to provide coverage for most of the Earth's land and human population. We own 14 of these gateways and the rest are owned by independent gateway operators ("IGOs"). We own and operate gateways in the United States, Canada, Venezuela, Argentina, Puerto Rico, France, Brazil, Singapore and Botswana.

Each of our gateways has multiple antennas that communicate with our satellites and pass calls seamlessly between antenna beams and satellites as the satellites traverse the gateways, thereby reflecting the signals from our users' terminals to our gateways. Once a satellite acquires a signal from an end-user, the Globalstar System authenticates the user and establishes the voice or data channel to complete the call to the public switched telephone network ("PSTN"), a cellular or another wireless network or the internet (for a data call including Commercial IoT).

We believe that our terrestrial gateways provide a number of advantages over the in-orbit switching used by our main competitor, including better call quality, reduced call latency and convenient, localized phone numbers for inbound and outbound calling. We also believe that our network's design enables faster and more cost-effective system maintenance and upgrades because the system's software and much of its hardware are located on the ground. Our multiple gateways allow us to reconfigure our system quickly to extend another gateway's coverage to make up for lost coverage from a disabled gateway or to handle increased call capacity resulting from surges in demand.

Our ground network includes both our first-generation and second-generation ground equipment. Both our first-generation and second-generation ground network use Qualcomm's patented CDMA technology to permit communication to multiple satellites. Patented receivers in our handsets track the pilot channel and signaling channel as well as three additional communications channels simultaneously. Compared to other satellite and network architectures, we offer superior call clarity with virtually no discernible delay. Our system architecture provides full frequency re-use. This maximizes satellite diversity (which maximizes quality) and network capacity as we can reuse the assigned spectrum in every satellite beam in every satellite. In addition, we have developed a non-Qualcomm proprietary technology for our SPOT and Commercial IoT services.

Our second-generation ground network was developed in partnership with Hughes Network Systems, LLC ("Hughes") and Ericsson, Inc. ("Ericsson"). Hughes designed, supplied and implemented the Radio Access Network ("RAN") network equipment and software upgrades for installation at a number of our gateways. Hughes also provided the satellite interface chips to be used in our various second-generation devices. Ericsson developed, implemented, and installed our ground interface, or core network, system at our gateways. The second-generation Ericsson core links our Hughes RANs to the PSTN, cellular networks and Internet. We have additional second-generation RANs that are not yet deployed. We will select locations for further deployment based on coverage optimization, which may include additional gateway acquisitions.

We currently provide the following communications services, which are available only with equipment designed to work on our network:

- two-way voice communication and data transmissions using mobile or fixed devices, including our GSP-1700 phone, two generations of our Sat-Fi<sup>®</sup>, the Sat-Fi<sup>®</sup> Remote Antenna Station, and other fixed and data-only devices ("Duplex");
- one-way or two-way communication and data transmissions using mobile devices, including our SPOT family of products, such as SPOT X<sup>®</sup>, SPOT Gen3<sup>®</sup> and SPOT Trace<sup>®</sup>, that transmit messages and the location of the device ("SPOT"); and
- one-way data transmissions using a mobile or fixed device that transmits its location and other information to a central monitoring station, including our commercial IoT products, such as our battery- and solar-powered SmartOne, STX-3 and STINGR ("Commercial IoT").

We compete aggressively on price. We offer a range of price-competitive products to the industrial, governmental and consumer markets. We expect to retain our position as a cost-effective, high-quality leader in the MSS industry.

As technological advancements are made, we continue to explore opportunities to develop new products and provide new services over our network to meet the needs of our existing and prospective customers. We are currently pursuing initiatives that we expect to expand our satellite communications business by effectively leveraging our network capabilities and distribution relationships. Among our current initiatives are the following: the development of a two-way reference design and board to expand our Commercial IoT offerings; various connectivity solutions for the automotive market; derivatives of our Sat-Fi2<sup>®</sup> device, one specifically designed for the maritime industry and another for fixed installation outside of cellular range; and a miniaturized satellite-based animal tracking device.

#### *Customers*

The specialized needs of our global customers span many industries. As of December 31, 2019, we had approximately 775,000 subscribers worldwide, principally within the following markets: recreation and personal; government; public safety and disaster relief; oil and gas; maritime and fishing; natural resources, mining and forestry; construction; utilities; and transportation. Our system is able to offer our customers cost-effective communications solutions completely independent of cellular coverage. Although traditional users of wireless telephony and broadband data services have access to these services in developed locations, our customers often operate, travel or live in remote regions or regions with under-developed telecommunications infrastructure where these services are not readily available or are not provided on a reliable basis.

Our top revenue-generating markets in the United States and Canada are government (including federal, state and local agencies), public safety and disaster relief, oil and gas, recreation and personal telecommunications. Over the past several years, the portion of our customers using Commercial IoT devices has increased significantly, and we expect this trend to continue. No one customer was responsible for more than 10% of our revenue in 2019, 2018 or 2017.

#### Duplex Two-Way Voice and Data Products

##### *Mobile Voice and Data Satellite Communications Services and Equipment*

We provide mobile voice and data services to a wide variety of commercial, government and individual customers for remote business continuity, recreational usage, safety, emergency preparedness and response and other applications. We offer our services for use only with equipment designed to work on our network. Subscribers typically pay an initial activation fee, a monthly usage fee for a fixed or unlimited number of minutes and fees for additional services such as voicemail, call forwarding, short messaging, email, data compression and internet access. Extra fees may also apply for non-voice services, roaming and long-distance. We regularly monitor our service offerings in accordance with customer demands and market changes and offer pricing plans such as bundled minutes, annual plans and unlimited plans.

In February 2020, we entered into an agreement (i) providing for a potential customer to pay us for non-recurring engineering (NRE) services in connection with the assessment of a potential service utilizing certain of our assets and capacity, and (ii) setting forth the primary terms for the potential development and operation of the service (the "Terms Agreement"). The Terms Agreement does not provide for material payments to us or impose material obligations on us unless, among other things, we and the potential customer have achieved certain technical milestones. The Terms Agreement includes certain binding protective provisions, including an exclusivity provision not affecting current services, access rights related to the affected assets, certain information rights and certain provisions for future financings. The Terms Agreement may be terminated by the customer at any time in its sole discretion.

We offer the GSP-1700 phone, which includes a user-friendly color LCD screen and a variety of accessories. We believe that the GSP-1700 is among the smallest, lightest and least-expensive satellite phones. We are the only MSS provider using Qualcomm Incorporated's ("Qualcomm") patented CDMA technology, which we believe provides superior voice quality when compared to competitors' handsets. We no longer manufacture the GSP-1700 phone. Instead, we sell refurbished GSP-1700 phones to new subscribers through our existing distribution channels. These phones are generally obtained through a buyback program that we have in place to purchase devices from deactivated subscribers, or subscribers that have upgraded to our Sat-Fi<sup>®</sup> device, in order to address demand for handsets.

We offer another voice and data solution, Sat-Fi2<sup>®</sup>, which is the next-generation model of our original Sat-Fi<sup>®</sup>. Sat-Fi2<sup>®</sup> is the first product to operate using our second-generation ground infrastructure, resulting in higher data speeds, enhanced applications and improved performance. With Sat-Fi2<sup>®</sup>, our customers can use their Wi-Fi-enabled smartphones and tablets to send and receive communications via the Globalstar System when traveling beyond cellular coverage, achieving a level of seamless connectivity not offered before. We believe Sat-Fi2<sup>®</sup> is superior to other competitors' products released to date, providing the fastest, most affordable mobile satellite data speeds and the clearest voice communications in the MSS industry. Through a convenient smartphone app that enables connectivity between Wi-Fi-enabled devices and Sat-Fi<sup>®</sup> satellite hot spots, subscribers in range of a Sat-Fi2<sup>®</sup> device can easily send and receive email and SMS messages and make voice calls from their own device at any time. We believe Sat-Fi2<sup>®</sup> represents a major step forward towards seamlessly integrating our mobile satellite capabilities into the communications services that people use on a daily basis.

#### *Fixed Voice and Data Satellite Communications Services and Equipment*

Among other places, we provide fixed voice and data services in rural villages, at remote industrial, commercial and residential sites and on ships at sea. In 2019, we introduced the Sat-Fi2<sup>®</sup> Remote Antenna Station ("RAS"), which expands the capabilities of our Sat-Fi2<sup>®</sup> satellite hotspot by incorporating a highly efficient remote antenna. The RAS enables hotspot use in any vehicle, vessel or distant building and is easily connected to a fixed power source for seamless connectivity via the Globalstar System.

Fixed voice and data satellite communications services are an attractive alternative to mobile satellite communications services in environments where multiple users will access the services within a defined geographic area and cellular or ground phone service is not available. Our fixed units also may be mounted on vehicles, barges and construction equipment and benefit from the ability to have higher gain antennas. Our fixed voice and data service plans are similar to our mobile voice and data plans and offer similar flexibility.

#### *Satellite Data Modem Services and Equipment*

In addition to data utilization through fixed and mobile services described above, we offer data-only services through Duplex devices with two-way transmission capabilities. Duplex asset-tracking applications enable customers to directly control their remote assets and perform complex monitoring activities. We offer asynchronous and packet data service in all of our Duplex territories. Customers can use our products to access the internet, corporate virtual private networks and other customer-specific data centers. Our satellite data modems can be activated under any of our current pricing plans. Customers can access satellite data modems in every Duplex region we serve. We provide store-and-forward capabilities to customers who do not require real-time transmission and reception of data. Additionally, we offer a data acceleration and compression service to the satellite data modem market. This service increases web-browsing, email and other data transmission speeds without any special equipment or hardware.

#### *Product Distribution*

Our sales group is responsible for conducting direct sales with key accounts and for managing indirect agent, dealer and reseller relationships in assigned territories in the countries in which we operate. Our typical dealer is a communications services business-to-business equipment retailer. We offer competitive service and equipment commissions to our network of dealers to encourage sales.

The reseller channel for Duplex equipment and service is comprised primarily of communications equipment retailers and commercial communications equipment rental companies that retain and bill clients directly, outside of our billing system. Many of our resellers specialize in niche vertical markets where high-use customers are concentrated. We have sales arrangements with major resellers to market our services, including some value-added resellers that integrate our products into their proprietary end products or applications.

In addition to buying through our distribution managers, agents, dealers and resellers, customers can place orders through our existing sales force and through our direct e-commerce website.

### SPOT Consumer Retail Products

The SPOT product family has initiated approximately 7,000 rescues since its launch in 2007. Averaging nearly two rescues per day, SPOT delivers affordable and reliable satellite-based connectivity and real-time GPS tracking to hundreds of thousands of users, completely independent of cellular coverage. We are not aware of any other competitive offering that can match the life-saving record of our SPOT family of products. As we continue to innovate and grow the SPOT family of products, we are committed to providing affordable, life-saving products to an expanding target market of millions of people globally.

We differentiate ourselves from other MSS providers by offering affordable, high-utility mobile satellite products that appeal to both businesses and the mainstream consumer market. We believe that we are the only vertically-integrated mobile satellite company. Our vertical integration results in decreased pre-production costs, greater quality assurance and shorter time to market for our retail consumer products.

#### *SPOT Satellite GPS Messenger*

We began commercial sales of the first SPOT products and services when we introduced the SPOT Personal Tracker in 2007. We continue to innovate this product and have released another three generations of our SPOT Satellite GPS Messenger to the market. The most recent generations of SPOT devices which we currently sell include SPOT Gen3<sup>®</sup> and SPOT X<sup>®</sup>. Compared to earlier generations of our SPOT Satellite GPS Messenger, SPOT Gen3<sup>®</sup> offers enhanced functionality with more tracking features, improved battery performance and more power options, including rechargeable and USB direct-line power. The product also enables users to transmit messages to a specific preprogrammed email address, phone or data device, including requests for assistance and “SOS” messages in the event of an emergency.

SPOT X<sup>®</sup>, which was launched in May 2018, is our first two-way SPOT Satellite GPS Messenger with keyboard functionality allowing subscribers to send and receive SMS messages and improved tracking and SOS functions. An upgraded version of SPOT X<sup>®</sup> was launched in September 2019 with enhanced performance and features, including the flexibility to use the SPOT X<sup>®</sup> device to connect to a smartphone via Bluetooth<sup>®</sup> wireless technology through the SPOT X<sup>®</sup> app to send and receive satellite messages.

We target our SPOT Satellite GPS Messenger to recreational and commercial markets that require personal tracking, emergency location and messaging solutions that operate beyond the reach of terrestrial wireless and wireline coverage. Using our network and web-based mapping software, this device provides consumers with the ability to trace a path geographically or map the location of individuals or equipment. SPOT Satellite GPS Messenger products and services are available virtually everywhere through our product distribution channels and our direct e-commerce website.

#### *SPOT Trace<sup>®</sup>*

SPOT Trace<sup>®</sup> is a cost-effective, anti-theft and asset-tracking device. SPOT Trace<sup>®</sup> ensures cars, motorcycles, boats, ATVs, snowmobiles and other valuable assets are where they need to be, notifying owners via email or text anytime movement is detected, using 100% satellite technology to provide location-based messaging and emergency notification for on or off the grid communications.

#### *Product Distribution*

We distribute and sell our SPOT products through a variety of distribution channels. We have distribution relationships with a number of "Big Box" retailers and other similar distribution channels, including Amazon, Bass Pro Shops, Cabela's, Fry's Electronics, REI, Sportsman's Warehouse, Academy, and West Marine. We also sell SPOT products and services directly using our existing sales force and through our direct e-commerce website, [www.findmespot.com](http://www.findmespot.com), as well as through certain of our IGOs.



## Commercial IoT One-Way Transmission Products

Commercial IoT service is currently a one-way data service from an IoT device over the Globalstar System that can be used to track and monitor assets. Our subscribers use our Commercial IoT devices for a host of applications: to track assets, such as cargo containers and rail cars; to monitor utility meters; and to monitor oil and gas assets. At the heart of the Commercial IoT service is a demodulator and RF interface, called an appliqué, which is located at a gateway and an application server in our facilities. The appliqué-equipped gateways provide coverage over vast areas of the globe. The small size of the devices makes them attractive for use in tracking asset shipments, monitoring unattended remote assets, trailer tracking and mobile security. Current users include various governmental agencies, including the Federal Emergency Management Agency (“FEMA”), the U.S. Army, the U.S. Air Force, the National Oceanic and Atmospheric Administration (“NOAA”), the U.S. Forest Service and the U.K. Ministry of Defence, as well as other organizations, including BP, Shell and The Salvation Army.

We designed our Commercial IoT service to address demand in the market for a small and cost-effective solution for sending data, such as geographic coordinates, from assets or individuals in remote locations to a central monitoring station. Customers realize an efficiency advantage from tracking assets on a single global system as compared to several regional systems.

### *Satellite Transmitter Chipsets*

We offer small satellite transmitter chipsets, such as the STX-3 and STINGR, which enable an integrator’s products to access our Commercial IoT network. We have sales arrangements with major resellers to market our IoT services, including some value-added resellers that integrate our STX-3 and STINGR into their proprietary solutions designed to meet certain specialized niche market applications. The STX3 provides additional opportunities to integrate satellite connectivity into products used for vehicle and asset tracking, remote data reporting and data logger reporting that have limited size requirements. Affordable pricing, low power consumption and its small size make the STX3 a highly efficient device ready for integration in a wide variety of applications. The STINGR, or Satellite Transmitter Integrated GPS Receiver, significantly reduces the design effort required to help customers build compact and efficient satellite communications devices. The module includes a high-performance GPS receiver as well as an on-board dual band antenna which greatly simplifies the effort of integrating satellite communications into a tracking or monitoring device.

### *SmartOne Asset Managers*

We also offer complete products that utilize the STX-3 and STINGR transmitter chipsets. Our Commercial IoT units, including the enterprise-grade SmartOne family of asset-ready tracking units, are used worldwide by industrial, commercial and government customers. These products provide cost-effective, low-power, ultra-reliable, secure monitoring that help solve a variety of security applications and asset tracking challenges. Partnering with existing third party technology providers, we are developing IoT products to connect existing and new users and accelerate deployment of an expanded Globalstar IoT product suite.

Launched in March 2018, our SmartOne Solar™ device was the first of these products. It is solar-powered and supports similar functionality to our SmartOne suite of products without the need to recharge batteries or line power the device over an expected life of up to ten years. These features will result in a longer field life than existing devices. Solar-powered devices also take advantage of our network's ability to support multiple billions of daily transmissions. The SmartOne Solar™ also has unparalleled safety and environmental certifications including ATEX, IECEx, North America (NEC & CEC), IP68/69K, and HERO.

### *Product Distribution*

The reseller channel for Commercial IoT equipment and service is comprised primarily of value-added resellers and commercial communications equipment companies that retain and bill clients directly, outside of our billing system. Many of our resellers specialize in niche vertical markets where high-use customers are concentrated. We expect that demand for our Commercial IoT products and services will increase as more applications are developed and deployed that utilize our technology.

We are also developing Commercial IoT products that support two-way communications allowing for both tracking and control of assets in our coverage footprint.

## Independent Gateway Operators

Our wholesale operations encompass primarily bulk sales of wholesale minutes to IGOs around the globe. IGOs maintain their own subscriber bases that are mostly exclusive to us and promote their own service plans. The IGO system allows us to expand in regions that hold significant growth potential but are harder to serve without sufficient operational scale or where local regulatory requirements do not permit us to operate directly.

Currently, 8 of the 22 gateways in our network are owned and operated by unaffiliated companies, some of whom operate more than one gateway. Except for Globalstar Asia Pacific, our joint venture in South Korea in which we hold a 49% equity interest, we have no financial interest in these IGOs and conduct business with them through arms' length contracts for wholesale minutes of service.

Set forth below is a list of IGOs as of December 31, 2019:

Location	Gateway	Independent Gateway Operators
Australia	Dubbo	Pivotel Group PTY Limited
Australia	Mount Isa	Pivotel Group PTY Limited
Australia	Meekatharra	Pivotel Group PTY Limited
South Korea	Yeo Ju	Globalstar Asia Pacific
Russia	Khabarovsk	GlobalTel
Russia	Moscow	GlobalTel
Russia	Novosibirsk	GlobalTel
Turkey	Ogulbey	Globalstar Avrasya

During 2019, we purchased certain assets and related government authorizations from the owner of our IGO in Argentina. We are now currently in the process of upgrading this Globalstar-owned gateway to second-generation technology. In 2019, jointly with our IGO in Mexico, we decided to shut down the gateway and agreed that Globalstar would operate a new gateway at a more optimal location. Coverage continues through other Globalstar-owed gateway locations. Accordingly, both of these previously IGO-owned gateways were removed from the table above as of December 31, 2019.

## Other Services

We also provide engineering services to assist our commercial and government customers in developing new applications related to our system and to engineer and install new gateways that use our system. These services include hardware and software designs to develop specific applications operating over our network, as well as the installation of gateways and antennas.

## Spectrum and Regulatory Structure

We benefit from a world-wide allocation of radio frequency spectrum in the international radio frequency tables administered by the International Telecommunications Union ("ITU"). Access to this globally harmonized spectrum enables us to design satellites, networks and terrestrial infrastructure enhancements more cost effectively because the products and services can be deployed and sold worldwide. In addition, this broad spectrum assignment enhances our ability to capitalize on existing and emerging wireless and broadband applications.

### *First-Generation Constellation*

In the United States, the Federal Communications Commission ("FCC") has authorized us to operate our first-generation satellites in 25.225 MHz of radio spectrum comprising two blocks of non-contiguous radio frequencies in the 1.6/2.4 GHz band commonly referred to as the "Big LEO" Spectrum Band. Specifically, the FCC has authorized us to operate between 1610-1618.725 MHz for "Uplink" communications from mobile earth terminals to our satellites and between 2483.5-2500 MHz for "Downlink" communications from our satellites to our mobile earth terminals. The FCC has also authorized us to operate our four domestic gateways with our first-generation satellites in the 5091-5250 and 6875-7055 MHz bands.

Three of our subsidiaries hold our FCC licenses. Globalstar Licensee LLC holds our MSS license. GUSA Licensee LLC (“GUSA”) is authorized by the FCC to distribute mobile and fixed subscriber terminals and to operate gateways in the United States. GUSA holds the licenses for our gateways in Texas, Florida and Alaska. Another subsidiary, GCL Licensee LLC (“GCL”), holds an FCC license to operate a gateway in Puerto Rico. GCL is also subject to regulation by the Puerto Rican Telecommunications Regulatory Board.

Our prior Non-Geostationary Satellite Orbit (“NGSO”) satellite constellation license issued by the FCC is valid until October 2024. This license applies only to our continued use of our first-generation satellites.

#### *Second-Generation Constellation*

We licensed and registered our second-generation satellites in France. We also obtained all authorizations necessary from the FCC to operate our domestic gateways with our second-generation satellites. In accordance with our authorization to operate the second-generation satellites, we completed the enhancements to the existing gateway operations in Aussaguel, France to include satellite operations and control functions. We have redundant satellite operation control facilities in Covington, Louisiana, Milpitas, California and Aussaguel, France.

The frequency assignments filed on the behalf of Globalstar by the French National Frequencies Agency (“ANFR”), with the ITU in 2009, have been recorded in the Master international Frequency Register (MIFR). This recording of the Globalstar frequency assignments in the MIFR provides international recognition of these assignments and facilitates the use of these assignments while the frequency coordination process with the two remaining systems is completed.

#### *Terrestrial Authority for Globalstar's Licensed 2.4 GHz Spectrum*

In December 2016, the FCC unanimously adopted a Report and Order permitting us to seek modification of our existing MSS licenses to provide terrestrial broadband services over 11.5 MHz of our licensed Mobile Satellite Services spectrum at 2483.5 to 2495 MHz throughout the United States of America and its Territories. In August 2017, the FCC modified Globalstar's MSS licenses, granting us authority to provide terrestrial broadband services over a portion of our satellite spectrum. Specifically, the FCC modified Globalstar's space station authorization and our blanket mobile earth station license to permit a network using 11.5 MHz of our authorized Big LEO mobile-satellite service spectrum. We will need to comply with certain conditions in order to provide terrestrial broadband service, including obtaining FCC certifications for our equipment that will utilize this spectrum authority.

We believe our MSS spectrum position provides potential for harmonized terrestrial authority across many international regulatory domains and have been seeking approvals in various international jurisdictions. To date, we have received terrestrial authorizations in certain countries. We expect this global effort to continue for the foreseeable future while we seek additional terrestrial approvals to internationally harmonize our S-band spectrum across the entire 16.5 MHz authority for terrestrial mobile broadband services.

We expect our terrestrial authority will allow future partners to develop high-density dedicated networks using the TD-LTE protocol for private LTE networks as well as the densification of cellular networks. We believe that our offering has competitive advantages over other conventional commercial spectrum allocations. Such other allocations must meet minimum population coverage requirements, which effectively prohibit the exclusive use of most carrier spectrum for dedicated small cell deployments. In addition, low frequency carrier spectrum is not physically well suited to high-density small cell topologies, and mmWave spectrum is subject to range and attenuation limitations. We believe that our licensed 2.4 GHz band holds physical, regulatory and ecosystem qualities that distinguishes it from other current and anticipated allocations, and that it is well positioned to balance favorable range, capacity and attenuation characteristics.

In December 2018, we were successful in obtaining approval to create a new defined band class, Band 53, from the Third Generation Partnership Project (3GPP) for our 2.4 GHz terrestrial spectrum. This new band class provides a pathway for our terrestrial spectrum to be integrated into handset and infrastructure ecosystems. Additional follow-on 3GPP specifications and approvals are expected in the future.

#### *National Regulation of Service Providers*

In order to operate gateways, applicable laws and regulations require the IGOs and our affiliates in each country to obtain a license or licenses from that country's telecommunications regulatory authority. In addition, the gateway operator must enter into appropriate interconnection and financial settlement agreements with local and interexchange telecommunications providers. All gateways operated by us or the IGOs are licensed by the appropriate regulatory authority.

Our subscriber equipment generally must be type certified in countries in which it is sold or leased. The manufacturers of the equipment and our affiliates or IGOs are jointly responsible for securing type certification. We have received type certification in multiple countries for each of our products.

## **Industry**

We compete in the MSS sector of the global communications industry. MSS operators provide voice and data services using a network of one or more satellites and associated ground facilities. Mobile satellite services are usually complementary to, and interconnected with, other forms of terrestrial communications services and infrastructure and are intended to respond to users' desires for connectivity at all times and locations. Customers typically use satellite voice and data communications in situations where existing terrestrial wireline and wireless communications networks are impaired or do not exist.

Worldwide, government organizations, military, natural disaster aid associations, event-driven response agencies and corporate security teams depend on mobile and fixed voice and data communications services on a regular basis. Businesses with global operations require communications services when operating in remote locations around the world. MSS users span the forestry, maritime, government, oil and gas, mining, leisure, emergency services, construction and transportation sectors, among others.

Over the past two decades, the global MSS market has experienced significant growth. Increasingly, better-tailored, improved technology products and services are creating new channels of demand for mobile satellite services. Growth in demand for mobile satellite voice services is driven by the declining cost of these services, the diminishing size and lower cost of the handsets, as well as heightened demand by governments, businesses and individuals for ubiquitous global voice and data coverage. Growth in mobile satellite data services is driven by the rollout of new applications requiring higher bandwidth, as well as low-cost data collection and asset-tracking devices and technological improvements permitting integration of mobile satellite services over smartphones and other Wi-Fi enabled devices.

Communications industry sectors that are relevant to our business include:

- MSS, which provide customers with connectivity to mobile and fixed devices using a network of satellites and ground facilities;
- fixed satellite services, which use geostationary satellites to provide customers with voice and broadband communications links between fixed points on the earth's surface; and
- terrestrial services, which use a terrestrial network to provide wireless or wireline connectivity and are complementary to satellite services.

Within the major satellite sectors, fixed and MSS operators differ significantly from each other. Fixed satellite services providers, such as Intelsat Ltd., Eutelsat Communications and SES S.A., and aperture terminal companies, such as Hughes and Gilat Satellite Networks, are characterized by large, often stationary or "fixed," ground terminals that send and receive high-bandwidth signals to and from the satellite network for video and high speed data customers and international telephone markets. On the other hand, MSS providers, such as Globalstar, Inmarsat PLC ("Inmarsat") and Iridium Communications Inc. ("Iridium"), focus more on voice and data services (including data services which track the location of remote assets such as shipping containers), where mobility or small-sized terminals are essential. As mobile satellite terminals begin to offer higher bandwidth to support a wider range of applications, we expect MSS operators will increasingly compete with fixed satellite services operators.

LEO systems reduce transmission delay compared to a geosynchronous system due to the shorter distance signals have to travel. In addition, LEO systems are less prone to signal blockage and, consequently, we believe provide a better overall quality of service.

## **Competition**

The global communications industry is highly competitive. We currently face substantial competition from other service providers that offer a range of mobile and fixed communications options. Our most direct competition comes from other global MSS providers. Our two largest global competitors are Inmarsat and Iridium. We compete primarily on the basis of coverage, quality, portability and pricing of services and products. In recent years, advancements in technology have also encouraged non-traditional companies to enter the market and request consideration from the FCC and international regulators for authority to provide satellite communication services through a variety of constellations.

Inmarsat owns and operates a fleet of geostationary satellites. Due to its multiple-satellite geostationary system, Inmarsat's coverage area extends to and covers most bodies of water more completely than our system. Accordingly, Inmarsat is the leading provider of satellite communications services to the maritime sector. Inmarsat also offers global land-based and aeronautical communications services. We compete with Inmarsat in several key areas, particularly in our maritime markets. Inmarsat markets mobile handsets designed to compete with both Iridium's mobile handset service and our GSP-1700 handset service.

Iridium owns and operates a fleet of low earth orbit satellites that provide global coverage. Iridium provides voice and data communications to businesses, United States and foreign governments, non-governmental organizations and consumers. Iridium markets products and services that are similar to those marketed by us. Additionally, Garmin's inReach devices provide two-way tracking with SOS capabilities, Honeywell Global Tracking has a personal tracking unit that enables a smartphone with satellite tracking and messaging capabilities and Somewear has a satellite hotspot; these products work on Iridium's satellite network.

We compete with regional mobile satellite communications services in several markets. In these cases, our competitors serve customers who require regional, not global, mobile voice and data services, so our competitors present a viable alternative to our services. All of these competitors operate geostationary satellites. Our principal regional MSS competitor in the Middle East and Africa is Thuraya.

In some of our markets, such as rural telephony, we compete directly or indirectly with very small aperture terminal ("VSAT") operators that offer communications services through private networks using very small aperture terminals or hybrid systems to target business users. VSAT operators have become increasingly competitive due to technological advances that have resulted in smaller, more flexible and cheaper terminals.

We compete indirectly with terrestrial wireline ("landline") and wireless communications networks. We provide service in areas that are inadequately covered by these ground systems. To the extent that terrestrial communications companies invest in underdeveloped areas, we will face increased competition in those areas.

Our SPOT products compete indirectly with Personal Locator Beacons ("PLB"s). A variety of manufacturers offer PLBs to industry specifications.

Our industry has significant barriers to entry, including the cost and difficulty associated with obtaining spectrum licenses and successfully building and launching a satellite network. In addition to cost, there is a significant amount of lead-time associated with obtaining the required licenses, designing and building the satellite constellation and synchronizing the network technology.

#### **United States International Traffic in Arms Regulations and United States Export Administration Regulations**

The United States International Traffic in Arms regulations under the United States Arms Export Control Act authorize the President of the United States to control the export and import of articles and services that can be used in the production of arms. The President has delegated this authority to the U.S. Department of State, Directorate of Defense Trade Controls. United States Export Administration Regulations enforced by the United States Bureau of Industry and Security, as well as regulations enforced by the United States Office of Foreign Assets Control regulate the export of certain products, services, and associated technical data. Among other things, these regulations limit the ability to export certain articles and related technical data to certain nations. Some information involved in the performance of our operations falls within the scope of these regulations. As a result, we may have to obtain an export authorization or restrict access to that information by international companies that are our vendors or service providers. We have received and expect to continue to receive export licenses for covered articles and technical data shared with approved parties outside the United States. We also are subject to restrictions related to transactions with persons subject to United States or foreign sanctions. These regulations, enforced by the United States Office of Foreign Assets Control, limit our ability to offer services and equipment to certain parties or in certain areas.

#### **Environmental Matters**

We are subject to various laws and regulations relating to the protection of the environment and human health and safety (including those governing the management, storage and disposal of hazardous materials). Some of our operations require continuous power supply. As a result, current and historical operations at our ground facilities, including our gateways, include storing fuels and batteries, which may contain hazardous materials, to power back-up generators. As an owner or operator of property and in connection with our current and historical operations, we could incur significant costs, including cleanup costs, fines, sanctions and third-party claims, as a result of violations of or in connection with liabilities under environmental laws and regulations.

## Foreign Operations

We supply services and products to a number of foreign customers. Although most of our sales are denominated in U.S. dollars, we are exposed to currency risk for sales in Canada, Europe, Brazil and various other countries. In 2019, approximately 31% of our sales were generated in foreign countries, which generally are denominated in local currencies. See Note 2: Revenue in the Consolidated Financial Statements for additional information regarding revenue by country. For more information about our exposure to risks related to foreign locations, see Item 1A: Risk Factors - *We face special risks by doing business in international markets and developing markets, including currency and expropriation risks, which could increase our costs or reduce our revenues in these areas.*

## Intellectual Property

We hold various U.S. and foreign patents and patents pending that expire between 2020 and 2035. These patents cover many aspects of our satellite system, our global network and our user terminals. In recent years, we have reduced our foreign filings and decided to allow some previously granted foreign patents to lapse based on (a) the relative significance of the patent, (b) our assessment of the likelihood that someone would infringe in the foreign country, and (c) the probability that we could or would enforce the patent in light of the expense of filing and maintaining the foreign patent which, in some countries, is quite substantial. We continue to maintain all of the patents in the United States, Canada and Europe that we believe are important to our business. Our intellectual property is pledged as security for our obligations under our senior secured credit facility agreement (the "Facility Agreement") and second lien credit facility agreement (the "Second Lien Term Loan Facility").

## Employees

As of December 31, 2019, we had 336 employees, 24 of whom were located in Brazil and subject to collective bargaining agreements. We consider our relationship with our employees to be good.

## Seasonality

Usage on the network and, to some extent, sales are subject to seasonal and situational changes. April through October are typically our peak months for service revenues and equipment sales. We also experience event-driven revenue fluctuations in our business. Most notably, emergencies, natural disasters and other sizable projects where satellite-based communications devices are the only solution may generate an increase in revenue. In the consumer area, SPOT devices sales are influenced by outdoor and leisure activity opportunities, as well as our promotional efforts.

## Services and Equipment

Sales of services accounted for approximately 86%, 85% and 87% of our total revenues for 2019, 2018, and 2017, respectively. We also sell the related voice and data equipment to our customers, which accounted for approximately 14%, 15% and 13% of our total revenues for 2019, 2018, and 2017, respectively.

## Additional Information

We file annual, quarterly and current reports, proxy statements and other information with the Securities and Exchange Commission (the "SEC"). The SEC maintains an internet site that contains annual, quarterly and current reports, proxy and information statements and other information that issuers (including Globalstar) file electronically with the SEC. Our electronic SEC filings are available to the public at the SEC's internet site, [www.sec.gov](http://www.sec.gov).

We make available free of charge financial information, news releases, SEC filings, including our annual report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and amendments to these reports on our website at [www.globalstar.com](http://www.globalstar.com) as soon as reasonably practical after we electronically file such material with, or furnish it to, the SEC. The documents available on, and the contents of, our website are not incorporated by reference into this Report.

## Item 1A. Risk Factors

You should carefully consider the risks described below, as well as all of the information in this Report and all of the other reports we file from time to time with the SEC, in evaluating and understanding us and our business. Additional risks not presently known or that we currently deem immaterial may also impact our business operations and the risks identified in this Report may adversely affect our business in ways we do not currently anticipate. Our business, financial condition or results of operations could be materially adversely affected by any of these risks.

## ***Risks Related to Our Business***

**The implementation of our business plan and our ability to generate income from operations assume we are able to maintain a healthy constellation and ground network capable of providing commercially acceptable levels of coverage and service quality, which are contingent on a number of factors.**

Our products and services are subject to the risks inherent in relying on a large-scale, complex telecommunications system employing advanced technology. Any disruption to our satellites, services, information systems or telecommunications infrastructure could result in degrading or disrupting services to our customers for an indeterminate period of time.

Since we launched our first satellites in the 1990's, most of our first-generation satellites have been retired or have failed in orbit, and we expect the remaining first-generation satellites to be retired or fail in the future. Although we designed our second-generation satellites to provide commercial service over a 15-year life, we can provide no assurance as to whether any or all of them will continue in operation for their full 15-year design life. Satellites utilize highly complex technology and operate in the harsh environment of space and therefore are subject to significant operational risks while in orbit.

Further, our satellites may experience temporary outages or otherwise may not be fully functioning at any given time. There are some remote tools we use to remedy certain types of problems affecting the performance of our satellites, but the physical repair of satellites in space is not feasible. We do not insure our satellites against in-orbit failures after an initial period of six months, whether the failures are caused by internal or external factors. In-orbit failure may result from various causes, including component failure, solar array failures, telemetry transmitter failures, loss of power or fuel, inability to control positioning of the satellite, solar or other astronomical events, including solar radiation and flares, and collision with space debris or other satellites. These failures are commonly referred to as anomalies. Some of our satellites have had malfunctions and other anomalies in the past and may have anomalies in the future. Further, from time to time we move and relocate satellites within our constellation to improve coverage and service quality. Satellite repositioning may increase the risk of collision or damage to our satellites and may result in degraded service during the repositioning. Although we do not incur any direct cash costs related to the failure of a satellite, if a satellite fails, we record an impairment charge in our statement of operations to reduce the remaining net book value of that satellite, if any, to zero, and any such impairment charges could depress our net income (or increase our net loss) for the period in which the failure occurs. Additionally, human operators may execute improper implementation commands that may negatively impact a satellite's performance.

Prior to 2014 our ability to generate revenue and cash flow was impacted adversely by our inability to offer commercially acceptable levels of Duplex service due to the degradation of our first-generation constellation. As a result, we improved the design of our second-generation constellation to last twice as long in space and have 40% greater capacity compared to our first-generation constellation. Despite working closely with satellite manufacturers to determine the causes of anomalies and mitigate them in second-generation satellites and to provide for intrasatellite redundancies for certain critical components to minimize or eliminate service disruptions in the event of failure, anomalies are likely to be experienced in the future, whether due to the types of anomalies described above or arising from the failure of other systems or components, and intrasatellite redundancy may not be available upon the occurrence of such anomalies. There can be no assurance that, in these cases, it will be possible to restore normal operations. Where service cannot be restored, the failure could cause the satellite to have less capacity available for service, to suffer performance degradation or to cease operating prematurely, either in whole or in part. We cannot guarantee that we could successfully develop and implement a solution to these anomalies.

In order to maintain commercially acceptable service long-term, we must obtain and launch additional satellites from time to time. We cannot provide any assurance that negotiations with satellite manufacturers will be successful or at commercially reasonable prices.

Our ground stations required upgrades to enable us to integrate our second-generation technology and services. We entered into various contracts to upgrade our ground network. During 2016 we completed this work according to the Hughes and Ericsson contracts. In connection with the 2018 launch of Sat-Fi2<sup>®</sup>, the first device to operate on our upgraded ground network, we placed into service the portion of the next-generation ground component (including associated developed technology and software upgrades), which represented the gateways capable of supporting commercial traffic at that time. Certain other gateways around the world have since been placed into service and others are expected to be placed into service in the coming months. The installation of RANs at additional sites outside the scope of the core Hughes contract will occur over time, and the completion of these upgrades may not be successful.

**If we experience operational disruptions with respect to our gateways or operations center, we may not be able to provide service to our customers.**

Our satellite network traffic is supported by 22 gateways distributed around the globe. We operate our satellite constellation from our Network Operations Control Centers at three locations (France, California and Louisiana) to provide geo-redundancy and ongoing coverage. Our gateway facilities are subject to the risk of significant malfunctions or catastrophic loss due to unanticipated events and would be difficult to replace or repair and could require substantial lead-time to do so. In North America, we have implemented contingency coverage which allows neighboring gateways to provide services in the event of a gateway failure. Material changes in the operation of these facilities may be subject to prior FCC approval, and the FCC might not give such approval or may subject the approval to other conditions that could be unfavorable to our business. Our gateways and operations centers may also experience service shutdowns or periods of reduced service in the future as a result of equipment failure, delays in deliveries or regulatory issues. Any such failure would impede our ability to provide service to our customers, which could have a material impact on our business.

**The actual orbital lives of our satellites may be shorter than we anticipate, and we may be required to reduce available capacity on our satellite network prior to the end of their orbital lives.**

We anticipate that our second-generation satellites will have 15 year orbital lives. A number of factors will affect the actual commercial service lives of each satellite, including:

- the amount of propellant used in maintaining the satellite's orbital location or relocating the satellite to a new orbital location (and, for a newly-launched satellite, the amount of propellant used during orbit raising following launch);
- the durability and quality of its construction;
- the performance of its components;
- hazards and conditions in space such as solar flares and space debris;
- operational considerations, including operational failures and other anomalies; and
- changes in technology which may make all or a portion of our satellite fleet obsolete.

It is possible that the actual orbital lives of one or more of our existing satellites may also be shorter than originally anticipated. Further, it is possible that the total available payload capacity of a satellite may need to be reduced prior to the satellite reaching its end-of-orbital life. We periodically review the expected orbital life of each of our satellites using current engineering data. A reduction in the orbital life of any of our satellites could result in a reduction of the revenues generated by that satellite, the recognition of an impairment loss and an acceleration of capital expenditures. Reducing the available payload capacity prior to the end of a satellite's orbital life, if required, would reduce our revenues from the satellite. The potential impact on our revenues from a reduction in the orbital life of one or more satellites may vary depending on the satellite's orbital location as well as the type of device and service a customer is using.

**Replacing a satellite upon the end of its service life will require us to make significant expenditures.**

To ensure no disruption in our business and to prevent loss of customers, we may be required to commence a multi-year process to construct and launch replacement satellites prior to the expected end of service life of the satellites then in orbit. There can be no assurance that we will have sufficient cash, cash flow or be able to obtain third-party or shareholder financing to fund such expenditures on favorable terms, if at all. Should we not have sufficient funds available to replace our satellites, it could have a material adverse effect on our results of operations, business prospects and financial condition.

**The implementation of our business plan depends on increased demand for wireless communications services via satellite (including IoT applications) and via terrestrial mobile broadband networks, both for our existing services and products and for new services and products. If demand does not increase, our revenues and profitability may not increase as we expect.**

Demand for wireless communication services may not grow, or may decrease, either generally or in particular geographic markets, for particular types of services or during particular time periods. A lack of demand could impair our ability to sell our services and develop and successfully market new services, could exert downward pressure on prices, or both. This, in turn, could decrease our revenues and profitability and adversely affect our ability to increase our revenues and profitability over time.

We plan to introduce additional Duplex, SPOT and Commercial IoT products and services as well as low-power terrestrial mobile broadband services. However, we cannot predict with certainty the potential longer-term demand for these products and services or the extent to which we will be able to meet demand. Our business plan assumes we will grow our subscriber base. If we are not able to do so, it may adversely impact our business prospects.



The success of our business plan will depend on a number of factors, including but not limited to:

- our ability to maintain the health, capacity and control of our satellites;
- our ability to maintain the health of our ground network;
- our ability to influence the level of market acceptance and demand for our products and services;
- our ability to introduce new products and services that meet this market demand;
- our ability to retain current customers and obtain new customers;
- our ability to obtain additional business using our existing and future spectrum authority both in the United States and internationally;
- our ability to control the costs of developing an integrated network providing related products and services, as well as our future terrestrial mobile broadband services;
- our ability to market successfully our Duplex, SPOT and Commercial IoT products and services;
- our ability to develop and deploy innovative network management techniques to permit mobile devices to transition between satellite and terrestrial modes;
- our ability to sell our current inventory;
- the cost and availability of user equipment that operates on our network;
- the effectiveness of our competitors in developing and offering similar products and services and in persuading our customers to switch service providers;
- our ability to successfully predict market trends;
- our ability to hire and retain qualified executives, managers and employees;
- our ability to provide attractive service offerings at competitive prices to our target markets; and
- our ability to raise additional capital on acceptable terms when required.

**We incurred operating losses in the past three years and we are likely to continue incurring such losses.**

We incurred operating losses of \$64.0 million, \$47.4 million and \$68.4 million in 2019, 2018, and 2017, respectively. These losses resulted, in part, from depreciation expense related to our second-generation satellites, which we placed into service in 2010, 2011 and 2013, and ground infrastructure, which we began to place into service in 2018. We designed our second-generation network to have a 15-year life, and we expect that we will continue to recognize high levels of depreciation expense commensurate with its estimated useful life.

**Rapid and significant technological changes in the satellite communications industry may impair our competitive position and require us to make significant capital expenditures, which may require additional capital that has not been arranged.**

The space and communications industries are subject to rapid advances and innovations in technology. New technology could render our system obsolete or less competitive by satisfying consumer demand in more attractive ways or through the introduction of incompatible standards. Particular technological developments that could adversely affect us include the deployment by our competitors of new satellites with greater power, greater flexibility, greater efficiency or greater capabilities, as well as continuing improvements in terrestrial wireless technologies. We must continue to commit to make significant capital expenditures to keep up with technological changes and remain competitive. Customer acceptance of the services and products that we offer will continually be affected by the technology in our product and service offerings relative to competitive offerings. New technologies may be protected by patents and therefore may not be available to us. We expect to face competition in the future from companies using new technologies and new satellite systems.

The hardware and software we utilize in operating our first-generation gateways were designed and manufactured over 20 years ago and portions have deteriorated. This original equipment may become less reliable as it ages and will be more difficult and expensive to service. It may be difficult or impossible to obtain all necessary replacement parts for the hardware before the new equipment and software is fully deployed. Some of the hardware and software we use in operating our gateways are significantly customized and tailored to meet our requirements and specifications and could be difficult and expensive to service, upgrade or replace. Although we maintain inventories of some spare parts, it nonetheless may be difficult, expensive or impossible to obtain replacement parts for our hardware due to a limited number of parts being manufactured to our requirements and specifications. In addition, our business plan contemplates updating or replacing some of the hardware and software in our network as technology advances, but the complexity of our requirements and specifications may present us with technical and operational challenges that complicate or otherwise make it expensive or infeasible to carry out such upgrades and replacements. If we are not able to suitably service, upgrade or replace our equipment, it could harm our ability to provide our services and generate revenue.

**Our business is capital intensive. We may not be able to raise adequate capital to finance our business strategies, or we may be able to do so only on terms that significantly restrict our ability to operate our business.**

Implementation of our business strategy requires a substantial outlay of capital. As we pursue business strategies and seek to respond to developments in our business and opportunities and trends in our industry, our actual capital expenditures may differ from our expected capital expenditures. There can be no assurance that we will be able to satisfy our capital requirements in the future. In addition, if one of our satellites failed unexpectedly, there can be no assurance of insurance recovery for our losses or the timing thereof, and we may need to obtain additional financing to replace the satellite. If we determine that we need to obtain additional funds through external financing and are unable to do so, we may be prevented from fully implementing our business strategy.

**We have substantial contractual obligations, which may require additional capital, the terms of which have not been arranged. The terms of our Facility Agreement could complicate raising additional capital.**

As of December 31, 2019, our current sources of liquidity include cash on hand (\$7.6 million), restricted cash (\$0.6 million) and future cash flows from operations. We also have non-current restricted cash (\$50.9 million), which consists primarily of a debt service reserve account, which is pledged to secure all of our obligations under the Facility Agreement. This account will be used towards the final scheduled principal payment due upon maturity. Our operating expenses for the twelve-month period ended December 31, 2019 were \$195.8 million.

Our short-term and long-term liquidity requirements include primarily paying our debt service obligations and funding our operating costs. We cannot provide assurance that we will not experience a liquidity shortfall in the short or long-term.

Restrictions in our Facility Agreement and our Second Lien Term Loan Facility limit the types of financings we may undertake and our discretion over the use of net cash proceeds from certain future financings. See Note 6: Long-Term Debt and Other Financing Arrangements in our Consolidated Financial Statements in Part II, Item 8 of this Report for further discussion of our debt agreements. We cannot assure you that we will be able to obtain additional financing when required on reasonable terms or at all. If we cannot obtain it in a timely manner, we may be unable to execute our business plan and fulfill our financial commitments.

**If we do not develop, acquire and maintain proprietary information and intellectual property rights, it could limit the growth of our business and reduce our market share.**

Our business depends on technical knowledge, and we base our business plan in part on our ability to keep up with new technological developments and incorporate them in our products and services. We own or have the right to use our patents, work products, inventions, designs, software, systems and similar know-how. Our proprietary information may be disclosed to others, or others may independently develop similar information, systems and know-how. Protection of our information, systems and know-how may result in litigation, the cost of which could be substantial. Third parties may assert claims that our products or services infringe on their proprietary rights. Any such claims, if made, may prevent or limit our sales of products or services or increase our costs.

We license much of the software we require to support critical gateway operations from third parties, such as Hughes, Ericsson and Qualcomm. This software was developed or customized specifically for our use. We also license technical information for the design, manufacture and sale of our products. This intellectual property is essential to our ability to continue to operate our constellation and sell our products and services. We also license software to support customer service functions, such as billing, from third parties that developed or customized it specifically for our use. If the third-party licensors cease to support and service our software, or our licenses are no longer available on commercially reasonable terms, it might be difficult, expensive or impossible for us to obtain such services from alternative vendors. Replacing such software could be difficult, time consuming and expensive. This might require us to obtain substitute technology with lower quality or performance standards or at a greater cost.

**Others may claim that our products violate their patent or intellectual property rights, which could be costly and disruptive to us.**

We operate in an industry fraught with significant intellectual property litigation. Intellectual property infringement claims or litigation may be brought against us. Defending intellectual property suits is both costly and time-consuming and, even if ultimately successful, may divert management's attention from other business concerns. An adverse determination in litigation to which we may become a party could, among other things:

- subject us to significant liabilities to third parties, including treble damages;
- require disputed rights to be licensed from a third party for royalties that may be substantial;
- require us to cease using technology that is important to our business; or
- prohibit us from selling some or all of our products or offering some or all of our services.

**We have a limited supply of Duplex handsets and rely on a limited number of key vendors for timely supply of equipment and services. If our key vendors fail to provide equipment and services to us, we may face difficulties in finding alternative sources, which would adversely impact our operations.**

We have a limited quantity of our Duplex handsets in inventory and have not contracted with a manufacturer to produce additional phone inventory. We have a "buy-back" program with former customers and we have seen meaningful success re-offering refurbished handsets into the market in an effort to mitigate the lack of new handset inventory. However, the number of devices received from the "buy-back" may not be sufficient to meet our customers' demand. Additionally, in some cases we contract with manufacturers to provide us with other equipment inventory for the devices we sell. If these manufacturers do not take on or fulfill future orders or fail to perform under our current contracts, we may be unable to continue producing and selling this equipment to customers at a reasonable cost to us, or there may be delays in production and decreases in sales.

**Lack of availability of components from the electronics industry, required in our retail products, gateways and satellites could delay or adversely impact our operations.**

We rely upon the availability of components, materials and component parts from the electronics industry. The electronics industry is subject to occasional shortages in parts availability depending on fluctuations in supply and demand. Industry shortages may result in delayed shipments of materials or increased prices, or both. As a consequence, elements of our operation which use electronic parts, such as our retail products, gateways and satellites, could be subject to disruptions, cost increases or both.

**We face special risks by doing business in international markets and developing markets, including currency and expropriation risks, which could increase our costs or reduce our revenues in these areas.**

Although our most economically important geographic markets currently are the United States and Canada, we have substantial markets for our mobile satellite services in, and our business plan includes, developing countries or regions that are underserved by existing telecommunications systems, such as rural Brazil, Central America, Argentina and Africa. Developing countries are more likely than industrialized countries to experience market, currency and interest rate fluctuations and high inflation. In addition, these countries present risks relating to government policy, price, wage and exchange controls, social instability, expropriation and other adverse economic, political and diplomatic conditions.

Conducting operations outside the United States involves numerous special risks and expanding our international operations would increase these risks. These risks include, but are not limited to:

- difficulties in penetrating new markets due to established and entrenched competitors;
- difficulties in developing products and services that are tailored to the needs of local customers;
- lack of local acceptance or knowledge of our products and services;
- lack of recognition of our products and services;
- unavailability of or difficulties in establishing relationships with distributors;
- significant investments, including the development and deployment of dedicated, physical gateways in countries that require them to connect the traffic coming to and from their territory;
- instability of international economies and governments;
- changes in laws and policies affecting trade and investment in other jurisdictions;
- noncompliance with the Foreign Corrupt Practices Act ("FCPA"), the UK Bribery Act, sanctions laws and export controls;
- exposure to varying legal standards in other jurisdictions, including intellectual property protection and other similar laws and regulations;
- difficulties in obtaining required regulatory authorizations;
- difficulties in enforcing legal rights in other jurisdictions;
- variations in local domestic ownership requirements;
- requirements that operational activities be performed in-country;
- changing and conflicting national and local regulatory requirements; and
- uncertainty in foreign currency exchange rates and exchange controls.

These risks could affect our ability to compete successfully and expand internationally. To the extent that the prices for our products and services are denominated in U.S. dollars, any appreciation of the U.S. dollar against other currencies will increase the cost of our products and services to our international customers and, as a result, may reduce the competitiveness of our international offerings and make it more difficult for us to grow internationally. Limited availability of U.S. currency in some local markets or governmental controls on the export of currency may prevent our customers from making payments in U.S. dollars or delay the availability of payment due to foreign bank currency processing and controls.

Our operations involve transactions in a variety of currencies. Sales denominated in foreign currencies involve primarily the Canadian dollar, the euro and the Brazilian real. Accordingly, our operating results may be significantly affected by fluctuations in the exchange rates for these currencies. Approximately 31% and 30% of our total revenue was to customers primarily located in Canada, Europe, Central America, and South America during 2019 and 2018, respectively. Our results of operations for 2019 and 2018 included net gains of approximately \$0.1 million and net losses of \$3.1 million, respectively, on foreign currency transactions. We may be unable to offset unfavorable currency movements as they adversely affect our revenue and expenses. Our inability to do so could have a substantial negative impact on our operating results and cash flows.

**Our global operations expose us to trade and economic sanctions, other restrictions, liabilities and exposure to penalties imposed by the United States, the European Union and other governments and organizations.**

The U.S. Departments of Justice, Commerce, State and Treasury and other federal agencies and authorities have a broad range of civil and criminal penalties they may seek to impose against corporations and individuals for violations of economic sanctions laws, export control laws, FCPA and other federal statutes and regulations, including those established by the Office of Foreign Assets Control ("OFAC"). Under these laws and regulations, as well as other anti-corruption laws, anti-money-laundering laws, export control laws, customs laws, sanctions laws and other laws governing our operations, various government agencies require export licenses. They may seek to impose modifications to business practices, including cessation of business activities in sanctioned countries or with sanctioned persons or entities and modifications to compliance programs, which may increase compliance costs, and may subject us to fines, penalties and other sanctions. A violation of these laws or regulations could adversely impact our business, results of operations and financial condition.

Although we have implemented policies and procedures in these areas, we cannot assure you that our policies and procedures are sufficient or that directors, officers, employees, representatives, distributors, consultants, IGOs, dealers and resellers, joint venture partners, independent agents, vendors, customers or subscribers have not engaged and will not engage in conduct for which we may be held responsible. We cannot assure you that our business partners have not engaged and will not engage in conduct that could materially affect their ability to perform their contractual obligations to us or result in us being held liable for such conduct. Violations of the FCPA, OFAC restrictions or other export control, anti-corruption, anti-money-laundering and anti-terrorism laws or regulations may result in severe criminal or civil sanctions, and we may be subject to other liabilities, which could have a material adverse effect on our business, financial condition, cash flows and results of operations.

**The United Kingdom and European Union are important markets to our business. The uncertainty surrounding the United Kingdom's decision to leave the European Union could adversely impact our business, results of operations and financial condition.**

We sell our products and services in the United Kingdom (the "UK") and throughout Europe. In particular, the United Kingdom is the largest market in Europe for our SPOT product family. On June 23, 2016, the UK voted in an advisory referendum for the UK to leave the European Union (the "EU") and, subsequently, on March 29, 2017, the UK government began the formal process of leaving the EU. The UK withdrew from the EU on January 31, 2020. The exit process (commonly referred to as "Brexit") will involve the negotiation of new trade and other agreements.

Brexit creates legal, regulatory, and economic uncertainty that could have a negative impact on our business. If the UK changes the regulatory structure for telecommunications products, it is possible that we would not be able to comply or compliance would become cost prohibitive. Similarly, post-Brexit trade agreements could impose import taxes or other expenses on our products, which may increase the price of our products sold in the UK.

We also face currency exchange risk as a result of Brexit. Although most of our sales are denominated in U.S. dollars, we also receive payments in international currencies, including the pound and the euro. We therefore incur currency translation risk when currency values fluctuate and the U.S. dollar is strong relative to other currencies. Furthermore, a strong U.S. dollar increases the price of our products in international markets, which could reduce demand in those markets for our products.

The future consequences of Brexit are unknown at this time, but Brexit has created legal, regulatory, and currency risk that may have a materially adverse impact on our business. Furthermore, this uncertainty could negatively impact the economies of other countries in which we operate.

**We face intense competition in all of our markets, which could result in a loss of customers, lower revenues and difficulty entering new markets.**

*Satellite-based Competitors*

There are currently at least three other MSS operators providing services similar to ours on a global or regional basis: Iridium, Thuraya and Inmarsat. ORBCOMM Inc. is also a competitor in the Machine-to-Machine and IoT market. The provision of satellite-based products and services is subject to downward price pressure when the capacity exceeds demand or as new competitors enter the marketplace with competitive pricing strategies. We also face competition with respect to network coverage and market share in specialized industries, such as maritime and governmental.

Other providers of satellite-based products could introduce their own products similar to our SPOT, Commercial IoT or Duplex products, which may materially adversely affect our business plan and sales volume. In addition, we may face competition from new competitors or new technologies. Many companies target the same customers, and we may not be able to successfully retain our existing customers or attract new customers. As a result we may not grow our customer base and revenue.

#### *Terrestrial Competitors*

In addition to our satellite-based competitors, terrestrial wireless voice and data service providers are continuing to expand into rural and remote areas, particularly in less developed countries. They provide the same general types of services and products that we provide through our satellite-based system. Many of these companies have greater resources, more name recognition and newer technologies than we do. Industry consolidation could adversely affect us by increasing the scale or scope of our competitors and thereby making it more difficult for us to compete. We could lose market share and revenue as a result of increasing competition from land-based communication service providers.

Although satellite communications services and ground-based communications services are not identical, the two compete in similar markets with similar services. Consumers may perceive cellular voice communication products and services as cheaper and more convenient than satellite-based products and services.

#### *Terrestrial Broadband Network Competitors*

We also expect to compete with a number of other satellite companies that plan to develop terrestrial networks that utilize their MSS spectrum. DISH Network received FCC approval to offer terrestrial wireless services over the MSS spectrum that previously belonged to TerreStar and ICO Global. Further, Ligado Networks (formerly LightSquared) continues to seek final FCC approval to build out a wireless network utilizing its MSS spectrum. Any of these competitors could deploy terrestrial mobile broadband networks before we do, could combine with existing terrestrial networks that provide them with greater financial or operational flexibility than we have or could offer wireless services, including mobile broadband services, that customers prefer over ours.

#### **We have a substantial amount of indebtedness, which may adversely affect our cash flow and our ability to operate our business, including our ability to incur additional indebtedness.**

As of December 31, 2019, the principal balance of our debt obligations was \$528.4 million, consisting of \$190.4 million under the Facility Agreement, \$201.5 million under the Second Lien Term Loan Facility, \$135.1 million outstanding under the Loan Agreement with Thermo and \$1.4 million under the 8.00% Convertible Senior Notes Issued in 2013 (the "2013 8.00% Notes"). Our significant indebtedness could have several consequences. It could increase our vulnerability to adverse economic, industry or competitive developments by dictating that a substantial portion of cash flow from operations be dedicated to the payment of principal and interest on our indebtedness and therefore reducing our ability to use our cash flow to fund our operations, capital expenditures, return of capital to shareholders, and future business opportunities. Our indebtedness could restrict us from making strategic acquisitions by limiting our ability to obtain additional financing for working capital, capital expenditures, product development, debt service requirements, acquisitions and general corporate and other purposes. Our indebtedness could restrict us from paying dividends to our shareholders. It could limit our flexibility in planning for, or reacting to, changes in our business or industry, placing us at a competitive disadvantage compared to competitors who are not as highly leveraged as us and who, therefore, may be able to take advantage of opportunities that our leverage prevents us from exploiting. Additionally, even though our current debt agreements place limits on our ability to incur additional debt, in the future we may incur additional debt which could further exacerbate these risks.

#### **Restrictive covenants in our debt agreements may limit our operating and financial flexibility and our inability to comply with these covenants could have significant implications.**

Our Facility Agreement and Second Lien Term Loan Facility contain a number of significant restrictions and covenants. See Note 6: Long-Term Debt and Other Financing Arrangements in our Consolidated Financial Statements in Part II, Item 8 of this Report for further discussion of our debt covenants. Complying with these restrictive covenants, including financial and non-financial covenants in our Facility Agreement and Second Lien Term Loan Facility, as well as those that may be contained in any agreements governing future indebtedness, may impair our ability to finance our operations or capital needs or to take advantage of favorable business opportunities. Our facility agreements include a limitation on expenditures in connection with spectrum rights of \$20 million, which may prohibit us from making certain expenditures that we consider accretive to our business and would otherwise make. Our ability to comply with these covenants will depend on our future performance, which may be affected by events beyond our control. Our failure to comply with these covenants would be an event of default. An event of default under the Facility Agreement or the Second Lien Term Loan Facility would permit the lenders to accelerate the indebtedness under these agreements. That acceleration would permit holders of our obligations under other agreements that contain cross-acceleration provisions to accelerate our obligations to them. See Part II, Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations – *Liquidity and Capital Resources* of this Report for further discussion.

**Pursuing strategic transactions may cause us to incur additional costs, obligations and risks.**

We may pursue acquisitions, mergers, joint ventures, partnerships or other strategic transactions on an opportunistic basis. We may face costs and risks arising from any such transactions. These may include legal, operational, financial and other costs and risks. For instance, in 2018, we incurred approximately \$11.2 million in costs for consultants and other advisors related to the now-terminated merger (and related litigation) discussed in Note 12: Related Party Transactions and Note 10: Contingencies to our Consolidated Financial Statements in Part II, Item 8 of this Report.

In addition, if we choose to engage in any major business combination or similar strategic transaction, we may require significant external financing in connection with the transaction. Depending on market conditions, investor perceptions of us, and other factors, we may not be able to obtain capital on acceptable terms, in acceptable amounts or at appropriate times to implement any such transaction. Our Facility Agreement and other debt obligations contain covenants which limit our ability to engage in specified forms of capital transactions without lender consent, which may be impossible to obtain. Any such financing, if obtained, may further dilute our existing stockholders.

**Our networks and those of our third-party service providers and customers may be vulnerable to unauthorized or unlawful access. Our use of personal information could give rise to costs and liabilities arising from developing data privacy laws.**

Our network and those of our third-party service providers and our customers may be vulnerable to unauthorized access, attacks, malware, data breaches and other security problems. Persons who circumvent security measures could wrongfully obtain or use information from such networks or cause interruptions, delays or malfunctions in our operations. A data breach or network disruption could harm our reputation, cause demand for our products and services to fall or compromise our ability to pursue our business plans. A number of significant, widespread security breaches compromised companies and governmental agencies. In some cases, these breaches originated from outside the United States. We may be required to expend significant resources to protect against the threat of security breaches or to alleviate problems, including reputational harm and litigation, caused by any breaches. In addition, our customer contracts may not adequately protect us against liability to third parties with whom our customers conduct business.

We collect and store data, including our customers' personal information. In jurisdictions around the world, personal information is increasingly becoming the subject of extensive legislation and regulations to protect consumers' privacy and security, including the EU's General Data Protection Regulation that became effective in 2018. The interpretation of privacy and data protection laws and regulations regarding the collection, storage, transmission, use and disclosure of such information in some jurisdictions is unclear and ever evolving. These laws may be interpreted and applied differently from country to country and in a manner that is not consistent with our current data protection practices. Complying with these varying international requirements could cause us to incur additional costs or change our business practices. Our services are accessible in many foreign jurisdictions, and some of these jurisdictions may claim that we are required to comply with their laws, even where we have no local entity, employees or infrastructure. We could be forced to incur significant expenses if we were required to modify our products, services or existing security and privacy procedures in order to comply with new or expanded regulations across numerous jurisdictions. In addition, we could face liability to end users alleging that their personal information is not collected, stored, transmitted, used or disclosed appropriately or in accordance with our privacy policies or applicable laws, including claims and litigation resulting from such allegations. Any failure on our part to protect information pursuant to applicable regulations could result in a loss of user confidence, reputation and customers, which could materially impact our results of operations and cash flows.

**Due to fluctuations in the insurance market, we may be unable to obtain and maintain our insurance coverages, and the insurance we obtain may not cover all risks we undertake. As a result, we may incur material uninsured or under-insured losses.**

The price, terms and availability of insurance have fluctuated significantly since we began offering commercial satellite services. The cost of obtaining insurance can vary as a result of either satellite failures or general conditions in the insurance industry. Rising premiums on insurance policies could increase our costs. In addition to higher premiums, insurance policies may provide for higher deductibles, shorter coverage periods and additional policy exclusions. Our insurance could become more expensive and difficult to maintain and may not be available in the future on commercially reasonable terms, if at all. Our failure to maintain sufficient insurance could also create an event of default under our debt agreements. Our insurance may not adequately cover losses incurred arising from claims brought against us or otherwise, which could be material.

*Product Liability Insurance and Product Replacement or Recall Costs*

We are subject to product liability and product recall claims if any of our products and services are alleged to have caused injury to persons or damage to property. If any of our products prove to be defective, we may need to recall and redesign them. In addition, any claim or product recall that results in significant adverse publicity may negatively affect our business, financial condition or results of operations. We do not maintain any product recall insurance, so any product recall we are required to initiate could have a significant impact on our financial position, results of operations or cash flows. We investigate potential quality issues as part of our ongoing effort to deliver quality products to our customers.

Because consumers may use SPOT products and services in isolated or dangerous locations, users of our devices who suffer injury or death may seek to assert claims against us alleging failure of the device to facilitate timely emergency response. We cannot assure investors that any legal disclaimers will be effective or insurance coverage will be sufficient to protect us from material losses.

#### *General Liability Insurance In-Orbit Exposures*

Our liability policy, covers amounts up to €70 million per occurrence (with a €70 million annual limit) that we and other specified parties may become liable to pay for bodily injury and property damages to third parties related to processing, maintaining and operating our satellite constellation. Our current policy has a one-year term, which expires in October 2020. Our current in-orbit liability insurance policy contains, and we expect any future policies would likewise contain, specified exclusions and material change limitations customary in the industry. These exclusions may relate to, among other things, losses resulting from in-orbit collisions, acts of war, insurrection, terrorism or military action, government confiscation, strikes, riots, civil commotions, labor disturbances, sabotage, unauthorized use of the satellites and nuclear or radioactive contamination, as well as claims directly or indirectly occasioned as a result of noise, pollution, electrical and electromagnetic interference or interference with the use of property.

Our in-orbit insurance does not cover losses that might arise as a result of a satellite failure, other operational problems affecting our constellation, or damage resulting from de-orbiting a satellite. As a result, a failure of one or more of our satellites or the occurrence of equipment failures, collision damage, or other related problems that may result during the de-orbiting process could constitute an uninsured loss and could materially harm our financial condition.

#### **Our satellites may collide with space debris which could adversely affect the performance of our constellation.**

Our ability to maneuver our satellites to avoid potential collisions with space debris is limited by, among other factors, uncertainties and inaccuracies in the projected orbit location of, and predicted conjunctions with, debris objects tracked and cataloged by the U.S. government. Some space debris is too small to be tracked, and therefore its orbital location is completely unknown. Debris that cannot be tracked is still large enough to potentially cause severe damage to or failure of one of our satellites should a collision occur. If our constellation experiences satellite collisions with space debris, our service could be impaired. Any such collision could potentially expose us to significant losses.

#### **We operate in many tax jurisdictions, and changes in tax rates or adverse results of tax examinations could materially increase our costs.**

We operate in various U.S. and foreign tax jurisdictions. The process of determining our anticipated tax liabilities involves many calculations and estimates which are inherently complex. Our tax obligations are subject to review and possible challenge by the taxing authorities of these jurisdictions, such as the ongoing income tax return audit being conducted by the Canada Revenue Agency of our Canadian subsidiary. If taxing authorities were to successfully challenge our current tax positions, or if we changed the manner in which we conduct certain activities, we could become subject to material, unanticipated tax liabilities. We may also become subject to additional tax liabilities as a result of changes to tax laws in any of our applicable tax jurisdictions, which in certain circumstances could have a retroactive effect.

#### **Our revenues are subject to changes in global economic conditions and consumer sentiment and regarding discretionary spending.**

Financial markets are uncertain and could adversely impact global economic conditions. These conditions could lead to reduced consumer spending, especially for discretionary travel and related products. A substantial portion of the potential addressable market for our consumer retail products and services relates to recreational users, such as mountain climbers, campers, kayakers, sport fishermen and wilderness hikers. These potential customers may reduce their recreational activities or discretionary spending due to economic conditions, which could adversely affect our business, financial condition, results of operations and liquidity.

#### **We are exposed to trade credit risk in the ordinary course of our business activities.**

We are exposed to risk of loss in the event of nonperformance by our customers of their obligations to us. Some of our customers may be highly leveraged or subject to their own operating and regulatory risks. Many of our customers finance their activities through cash flow from operations, the incurrence of debt or the issuance of equity. From time to time, credit is less available and available on more restrictive terms. The combination of reduction of cash flow resulting from declines in commodity prices and the lack of availability of debt or equity financing may result in a significant reduction in our customers' liquidity and ability to make payments or perform on their obligations to us. Even if our credit review and analysis mechanisms work properly, we may experience financial losses in our dealings with other parties. Any increase in the nonpayment or nonperformance by our customers could reduce our cash flows.

To illustrate, our Commercial IoT business is heavily concentrated in the oil and gas industry and was negatively impacted by the downturn in this industry in recent years. As an example, our largest customer during 2018 and 2019 is a reseller to oil and gas companies. A high-volume customer not performing its trade obligations to us could adversely affect our cash flow and financial condition. Concentrations of customers in certain industries may further increase trade credit risk to our business if certain experience a similar economic downturn.

**Our variable rate indebtedness subjects us to interest rate risk, which could cause our debt service obligations to increase significantly.**

Our obligations under our Facility Agreement bear interest at a variable rate. As a result, an increase in interest rates could result in a substantial increase in interest expense.

Additionally, in July 2017, the Financial Conduct Authority in the United Kingdom ("FCA") announced that the Libor rate would be phased out and financial institutions would no longer need to make Libor submissions after 2021. Our Facility Agreement provides for a fallback rate in the event Libor is unable to be determined. At this time, we cannot provide assurance of the impact this Libor phase out will have on our financial statements and internal processes.

**The loss of skilled management and personnel could impair our operations.**

Our performance is substantially dependent on the performance and institutional knowledge of our senior management and key scientific and technical personnel. Further, we depend on the ability to attract talented employees to maintain consistent performance of our management, scientific and technical teams and the succession of institutional knowledge. Losing the services of any member of our senior management, scientific or technical staff or the inability to attract key employees may significantly delay or prevent the achievement of business objectives and could have a material adverse effect on our business, operating results and financial condition.

**A natural disaster could diminish our ability to provide communications service.**

Natural disasters could damage or destroy our ground stations and disrupt service to our customers. In addition, the collateral effects of disasters such as flooding may impair, damage or destroy our ground equipment. If a natural disaster were to impair, damage or destroy any of our ground facilities, we may be rendered unable to provide service to our customers in the affected area, either temporarily or indefinitely. Even if our gateways are not affected by natural disasters, our service could be disrupted if a natural disaster damages the public switch telephone network, terrestrial wireless networks or our ability to connect to the public switch telephone network or terrestrial wireless networks. Additionally, there are inherent dangers and risk associated with our satellite operations, including the risk of increased radiation. Any such failures or service disruptions could harm our business and results of operations.

**We have been in the past from time to time, and may be in the future, subject to litigation and investigations that could have a substantial, adverse impact on our business.**

From time to time we are subject to litigation, including claims related to our business activities, such as the securities claim, or Action, described in Note 10: Contingencies in our Consolidated Financial Statements in Part II, Item 8 of this Report. We have also been in the past from time to time, and may be in the future, subject to investigations by regulators and governmental agencies, including from the United States Department of the Treasury's Office of Foreign Assets Control, the United States Department of Commerce, Bureau of Industry and Security and the United States Immigration and Customs Enforcement. Irrespective of their merits, litigation and investigations may be both lengthy and disruptive to our operations and could cause significant expenditure and diversion of management attention. In our opinion there is no pending litigation, investigation, dispute or claim that could have a material adverse effect on our financial condition, results of operations or liquidity. However, we may be wrong in this assessment. Additionally, in the future we may become subject to additional litigation that could have a material adverse effect on our financial position and operating results, on the trading price of our securities and on our ability to access capital markets.

**Wireless devices' radio frequency emissions are the subject of regulation and litigation concerning their environmental effects, which includes alleged health and safety risks. As a result, we may be subject to new regulations, demand for our services may decrease, and we could face liability based on alleged health risks.**

There has been adverse publicity concerning alleged health risks associated with radio frequency transmissions from portable hand-held telephones that have transmitting antennas. Lawsuits have been filed against participants in the wireless communications industry alleging a number of adverse health consequences, including cancer, as a result of wireless phone usage. Other claims allege consumer harm from failures to disclose information about radio frequency emissions or aspects of the regulatory regimes governing those emissions. Although we have not been party to any such lawsuits, we may be exposed to such litigation in the future. Courts or governmental agencies could determine that we do not comply with applicable standards for radio frequency emissions and power or that there is valid scientific evidence that use of our devices poses a health risk. Any such finding could reduce our revenue and profitability and expose us and other communications service providers or device sellers to litigation, which, even if frivolous or unsuccessful, could be costly to defend.



If consumers' health concerns over radio frequency emissions increase, they may be discouraged from using wireless handsets. Further, government authorities might increase regulation of wireless handsets as a result of health concerns. Any actual or perceived risk from radio frequency emissions could reduce the number of our subscribers and demand for our products and services.

### ***Risks Related to Government Regulations***

**Our business is subject to extensive government regulation, which mandates how we may operate our business and may increase our cost of providing services, slow our expansion into new markets and subject our services to additional competitive pressures.**

Our ownership and operation of an MSS system are subject to significant regulation in the United States by the FCC and in foreign jurisdictions by similar authorities. Additionally, our use of our licensed spectrum globally is subject to coordination by the ITU. Our second-generation constellation has been licensed and registered in France. The rules and regulations of the FCC or these foreign authorities may change and may not continue to permit our operations as currently conducted or as we plan to conduct them. Further, certain foreign jurisdictions may decide to allow additional uses within our ITU-allocation of spectrum that may be incompatible with our continued provision of MSS.

Failure to provide services in accordance with the terms of our licenses or failure to operate our satellites, ground stations, or other terrestrial facilities (including those necessary to provide ancillary terrestrial component "ATC" services) as required by our licenses and applicable government regulations could result in the imposition of government sanctions against us, up to and including cancellation of our licenses.

Our system requires regulatory authorization in each of the markets in which we or the IGOs provide service. We and the IGOs may not be able to obtain or retain all regulatory approvals needed for operations. Regulatory changes, such as those resulting from judicial decisions or adoption of treaties, legislation or regulation in countries where we operate or intend to operate, may also significantly affect our business. Because regulations in each country are different, we may not be aware if some of the IGOs and/or persons with which we or they do business do not hold the requisite licenses and approvals.

Our current regulatory approvals could now be, or could become, insufficient in the view of foreign regulatory authorities. Furthermore, any additional necessary approvals may not be granted on a timely basis, or at all, in all jurisdictions in which we wish to offer services, and applicable restrictions in those jurisdictions could become unduly burdensome.

Our operations are subject to certain regulations of the United States State Department's Directorate of Defense Trade Controls (the export of satellites and related technical data), United States Treasury Department's Office of Foreign Assets Control (financial transactions and transactions with sanctioned persons or countries) and the United States Commerce Department's Bureau of Industry and Security (export of satellites and related technical data, our gateways and phones) and as well as other similar foreign regulations. These U.S. and foreign obligations and regulations may limit or delay our ability to offer products and services in a particular country. We may be required to provide U.S. and some foreign government law enforcement and security agencies with call interception services and related government assistance, in respect of which we face legal obligations and restrictions in various jurisdictions. These regulations may limit or delay our ability to operate in a particular country or engage in transactions with certain parties and may impose significant compliance costs. As new laws and regulations are issued, we may be required to modify our business plans or operations. If we fail to comply with these regulations in any country, we could be subject to sanctions that could affect, materially and adversely, our ability to operate in that country. Failure to obtain the authorizations necessary to use our assigned radio frequency spectrum and to distribute our products in certain countries could have a material adverse effect on our ability to generate revenue and on our overall competitive position.

**Spectrum values historically have been volatile, and may again be volatile in the future, which could cause the value of our business to fluctuate.**

Our business plan includes forming strategic partnerships to maximize the use and value of our spectrum, network assets and combined service offerings in the United States and internationally. Value that we may be able to realize from these partnerships will depend in part on the value ascribed to our spectrum. Historically, valuations of spectrum in other frequency bands have been volatile, and we cannot predict the future value that we may be able to realize for our spectrum and other assets. In addition, to the extent that the FCC makes additional spectrum available or promotes the more flexible use or greater availability (e.g., via spectrum leasing or new spectrum sales) of existing satellite or terrestrial spectrum allocations, the availability of such additional spectrum could reduce the value that we are able to realize for our spectrum.

**Our business plan to use our licensed MSS spectrum to provide terrestrial wireless services depends upon action by third parties, which we cannot control.**

Our business plan includes utilizing our licensed MSS spectrum to provide terrestrial wireless services, including mobile broadband applications, around the world. In support of these plans, in December 2016, the FCC adopted a Report and Order establishing rules permitting us to offer such services. In August 2017, the FCC modified Globalstar's MSS licenses, granting it authority to provide terrestrial broadband services over approximately 11.5 MHz of its satellite spectrum at 2483.5 MHz to 2495.0 MHz. Globalstar's MSS licenses, including its terrestrial authority, are valid through various specified terms, which we will seek to renew. In addition, we will need to comply with certain conditions in order to provide terrestrial broadband service under our MSS licenses, including obtaining FCC certifications for our equipment that will utilize this spectrum authority. We are seeking similar approvals in various foreign jurisdictions, including applying for licenses and commencing due diligence efforts. We cannot guarantee that such efforts will be successful.

We have entered into agreements with multiple third parties to develop an ecosystem of radios and devices using our terrestrially authorized spectrum. These third parties intend to use our terrestrially authorized spectrum to offer wireless services to their respective customers. Our anticipated future revenues and profitability is dependent upon the commercial success of their offerings. Further, we can provide no assurance that we can obtain authorizations to use our MSS spectrum for terrestrial wireless services in all countries, or any specific country. Nor can we provide any assurance that any particular country will not license the terrestrial use of our MSS spectrum to a third party without our consent.

**Other future regulatory decisions could reduce our existing spectrum allocation or impose additional spectrum sharing agreements on us, which could adversely affect our services and operations.**

Under the FCC's plan for MSS in our frequency bands, we must share frequencies in the United States with other licensed MSS operators. To date, there are no other authorized CDMA-based MSS operators and no pending applications for authorization. However, the FCC or other regulatory authorities may require us to share spectrum with other systems that are not currently licensed by the United States or any other jurisdiction. On February 11, 2013, Iridium filed its own petition for rulemaking seeking to have the FCC reallocate 2.725 MHz of "Big LEO" spectrum from 1616-1618.725 MHz for Iridium's exclusive use. Subsequently, Iridium modified its petition, requesting the ability to share additional spectrum licensed to Globalstar at 1616-1618.725 MHz. On November 1, 2017, Iridium withdrew its petition for rulemaking without prejudice. There can be no assurance, however, that Iridium will not file a similar petition for rulemaking in the future that requests either the redesignation of some amount of our 1.6 GHz spectrum for Iridium's exclusive use or the sharing of additional spectrum licensed to us. An adverse result in this proceeding could materially affect our ability to provide both one-way and two-way mobile satellite services.

We registered our second-generation constellation with the ITU through France rather than the United States. The French radio frequency spectrum regulatory agency, ANFR, submitted the technical papers filing to the ITU on our behalf in July 2009. As with the first-generation constellation, the ITU requires us to coordinate our spectrum assignments with other administrators and operators that use any portion of our spectrum frequency bands. We are actively engaged in but cannot predict how long the coordination process will take; however, we are able to use the frequencies during the coordination process in accordance with our national licenses.

In March 2014, the FCC adopted an order related to the 5 GHz band which, among other things, expanded the use of unlicensed terrestrial mobile broadband services within our C-band Forward Link (Earth Station to Satellite), which operates at 5091-5250 MHz. As part of this order, the FCC adopted certain technical requirements for the expanded unlicensed use within our licensed spectrum which were intended to protect our services from harmful interference. However, since the FCC order has been adopted, we have identified a noticeable increase in the ambient level of interference in the 5 GHz band. Although this increase does not currently affect the quality of our service to customers, should the noise floor rise above a certain level, we could experience a significant reduction in our satellite downlink capacity, resulting in degradation of quality of our service to customers. In May 2018, we petitioned the FCC to open a Notice of Inquiry to assess the potential future effects of continuing to allow unlicensed use of the 5 GHz band. We cannot assure you that the FCC will take any action in response to our Notice of Inquiry. Furthermore, other regulatory jurisdictions internationally may also consider similar expanded unlicensed use in the 5 GHz band that may have a significant adverse impact on our ability to provide mobile satellite services.

**If the FCC revokes, modifies or fails to renew or amend our licenses, our ability to operate may be curtailed.**

We hold FCC licenses for the operation of certain of our satellites, our U.S. gateways and other ground facilities and our mobile earth terminals that are subject to revocation if we fail to satisfy specified conditions or meet prescribed milestones. The FCC licenses are also subject to modification by the FCC. There can be no assurance that the FCC will renew the FCC licenses we hold. If the FCC revokes, modifies or fails to renew or amend any FCC licenses we hold, or if we fail to satisfy any of the conditions of our respective FCC licenses, then we may not be able to continue to provide mobile satellite communications services, which would have a material adverse effect on our business and operations.

**If our French regulator, or any other regulator, revokes, modifies or fails to renew or amend our licenses, our ability to operate may be curtailed.**

We hold licenses issued by, and subject to the continued regulatory jurisdiction of, the French Ministry for the Economy, Industry and Employment, French Ministry in charge of Space Activities ("MESR") and ARCEP, the French independent administrative authority of post and electronic communications regulations, for the operation of our second-generation satellites. These licenses are subject to revocation if we fail to satisfy specified conditions or meet prescribed milestones. These licenses are also subject to modification by the French regulators. There can be no assurance that the French regulators will renew the licenses we hold. If MESR, ARCEP or other French regulators revoke, modify or fail to renew or amend the licenses we hold or if we fail to satisfy any of the conditions of our respective French licenses, then we may not be able to continue to provide mobile satellite communications services, which would have a material adverse effect on our business and operations.

Furthermore, if we operate in any country without a valid license, we could face regulatory fines and criminal sanctions. We hold certain licenses in each country where our ground infrastructure is located. If we fail to maintain such licenses within any particular country, we may not be able to continue to operate the ground infrastructure located within that country, which could prevent us from continuing to provide mobile satellite communications services within that region. For example, ANATEL, the national telecommunications agency of Brazil, imposed a fine against us because we operated our gateway stations in Brazil without a valid license while we were working to renew such license. In October 2018, this matter was referred to the Brazil federal authorities, who are currently performing an investigation concerning the action of certain employees. We cannot predict the outcome of this investigation at this time, but the investigation and any potential penalties is limited to the certain employees being investigated.

**Changes in international trade regulations and other risks associated with foreign trade could adversely affect our sourcing from foreign manufacturers.**

We source our products from both domestic and foreign contract manufacturers, the largest concentration of which being in China. The adoption of regulations related to the importation of products, including quotas, duties, taxes and other charges or restrictions on imported goods, and changes in U.S. customs procedures could result in an increase in the cost of our products. Recently, the U.S. imposed increased tariffs on certain imports from China, including several of our products, resulting in lower gross margin on impacted products. The current tariffs could increase or expand to additional categories of products not currently covered. We cannot predict how any future tariffs or other trade restrictions will impact our business, but further trade restrictions on our products may result in further reductions to gross margin.

Additionally, delays in goods clearing customs or the disruption of international transportation lines used by us could result in our inability to deliver goods to customers in a timely manner or the loss of sales altogether. Current or future social and environmental regulations or critical issues, such as those relating to the sourcing of conflict minerals from the Democratic Republic of the Congo or the need to eliminate environmentally sensitive materials from our products, could restrict the supply of components and materials used in production and increase our costs. Any delay or interruption to our manufacturing process or in shipping our products could result in lost revenue, which would adversely affect our business, financial condition or results of operations.

***Risks Related to Our Common Stock***

**Our common stock is traded on the NYSE American but could be delisted in the future, which may impair our ability to raise capital.**

Our common stock is listed on the NYSE American under the symbol "GSAT." Broker-dealers may be less willing or able to sell and/or make a market in our common stock if it were delisted, which may make it more difficult for shareholders to dispose of, or to obtain accurate quotations for the price of, our common stock. Removal of our common stock from listing on the NYSE American may also make it more difficult for us to raise capital through the sale of our securities.

Additionally, if our common stock is not listed on a U.S. national stock exchange or approved for quotation and trading on a national automated dealer quotation system or established automated over-the-counter trading market, then holders of our 2013 8.00% Notes would have the option to require us to repurchase the notes, which we may lack sufficient financial resources to do.

**Restrictive covenants in our Facility Agreement do not allow us to pay dividends on our common stock for the foreseeable future, which may affect the market for our shares.**

We do not expect to pay cash dividends on our common stock. Our Facility Agreement currently prohibits the payment of cash dividends. Any future dividend payments are within the discretion of our board of directors and will depend on, among other things, our results of operations, working capital requirements, capital expenditure requirements, financial condition, contractual restrictions, business opportunities, anticipated cash needs, provisions of applicable law and other factors that our board of directors may deem relevant. We may not generate sufficient cash from operations in the future to pay dividends on our common stock. Our inability to pay dividends may limit the market for our shares.

**The market price of our common stock is volatile, and there is a limited market for our shares.**

The trading price of our common stock is subject to wide fluctuations. Factors affecting the trading price of our common stock may include, but are not limited to:

- actual or anticipated variations in our operating results;
- failure in the performance of our current or future satellites;
- changes in financial estimates by research analysts, or any failure by us to meet or exceed any such estimates, or changes in the recommendations of any research analysts that elect to follow our common stock or the common stock of our competitors;
- actual or anticipated changes in economic, political or market conditions, such as recessions or international currency fluctuations;
- actual or anticipated changes in the regulatory environment affecting our industry;
- actual or anticipated sales of common stock by our controlling stockholder or others;
- changes in the market valuations of our industry peers; and
- announcement by us or our competitors of significant acquisitions, strategic partnerships, divestitures, joint ventures or other strategic initiatives.

The trading price of our common stock may also decline in reaction to events that affect other companies in our industry even if these events do not directly affect us. Our stockholders may be unable to resell their shares of our common stock at or above the initial purchase price. Additionally, because we are a controlled company, there is a limited market for our common stock, and we cannot assure our stockholders that a trading market will further develop or persist. In periods of low trading volume, sales of significant amounts of shares of our common stock in the public market could lower the market price of our stock.

**The future issuance of additional shares of our common stock could cause dilution of ownership interests and adversely affect our stock price.**

We may issue our previously authorized and unissued securities, resulting in the dilution of the ownership interests of our current stockholders. We are authorized to issue 1.9 billion shares of common stock and 100 million shares of preferred stock. As of December 31, 2019, approximately 1.5 billion shares of common stock were issued and outstanding. As of December 31, 2019, there were 535.5 million shares available for future issuance (of which 100 million are designated as preferred), of which approximately 233.4 million shares were contingently issuable upon the exercise of stock options, the conversion of convertible notes and the vesting of restricted stock awards. On February 19, 2020, Thermo converted the entire principal amount outstanding under its 2009 Loan Agreement resulting in the issuance of 200.1 million shares of common stock; these shares were included in the contingently issuable count as of December 31, 2019. We may issue additional shares of our common stock or other securities that are convertible into, or exercisable for, common stock for raising capital or other business purposes. Future sales of substantial amounts of common stock, or the perception that such sales could occur, may have a material adverse effect on the price of our common stock.

**We have issued and may issue shares of preferred stock or debt securities with greater rights than our common stock.**

Our certificate of incorporation authorizes our board of directors to issue one or more series of preferred stock and set the terms of the preferred stock without seeking any further approval from holders of our common stock. Currently, there are 100 million shares of preferred stock authorized. Any preferred stock that is issued may rank ahead of our common stock in terms of dividends, priorities and liquidation premiums and have preferential voting rights to those held by the holders of our common stock.

**If persons engage in short sales of our common stock, the price of our common stock may decline.**

Selling short is a technique used by a stockholder to take advantage of an anticipated decline in the price of a security. A significant number of short sales or a large volume of other sales within a relatively short period of time can create downward pressure on the market price of a security. Further sales of common stock could cause even greater declines in the price of our common stock due to the number of additional shares available in the market, which could encourage short sales that could further undermine the value of our common stock. Holders of our securities could, therefore, experience a decline in the value of their investment as a result of short sales of our common stock.

**Provisions in our charter documents, debt agreements and Delaware corporate law may discourage takeovers, which could affect the rights of holders of our common stock and convertible notes.**

Provisions of Delaware law and our amended and restated certificate of incorporation, amended and restated bylaws and our debt agreements could hamper a third party's acquisition of us or discourage a third party from attempting to acquire control of us. These provisions include:

- the election of our Minority Directors by a plurality of the vote of our stockholders other than Thermo;
- the requirement that (i) any extraordinary corporate transaction, such as a merger, reorganization or liquidation, involving us or any of our subsidiaries and (ii) any sale or transfer of a material amount of assets of Globalstar or any sale or transfer of assets of any of our subsidiaries which are material to us has to be approved by the Strategic Review Committee until such time as Thermo no longer beneficially owns at least 45% of our common stock;
- the ability of our board of directors to issue preferred stock with voting rights or with rights senior to those of the common stock without any further vote or action by the holders of our common stock;
- the division of our board of directors into three separate classes serving staggered three-year terms;
- the fact that if Thermo does not own a majority of our outstanding capital stock entitled to vote in the election of directors, our directors will be able to be removed for cause only with the affirmative vote of the holders of at least 66 2/3% of the outstanding shares of capital stock entitled to vote in the election of directors;
- prohibitions, at such time when Thermo does not own a majority of our outstanding capital stock entitled to vote in the election of directors, on our stockholders acting by written consent;
- prohibitions on our stockholders calling special meetings of stockholders or filling vacancies on our board of directors;
- the requirement, at such time when Thermo does not own a majority of our outstanding capital stock entitled to vote in the election of directors, that our stockholders must obtain a super-majority vote to amend or repeal our amended and restated certificate of incorporation or bylaws;
- change of control provisions in our Facility Agreement and Second Lien Term Loan Facility, which provide that a change of control will constitute an event of default and, unless waived by the lenders, will result in the acceleration of the maturity of all indebtedness under that agreement;
- change of control provisions relating to our 2013 8.00% Notes, which provide that a change of control will permit holders of those notes to demand immediate repayment; and
- change of control provisions in our 2006 Equity Incentive Plan, which provide that a change of control may accelerate the vesting of all outstanding stock options, stock appreciation rights and restricted stock.

We also are subject to Section 203 of the Delaware General Corporation Law, which, subject to certain exceptions, prohibits us from engaging in any business combination with any interested stockholder, as defined in that section, for a period of three years following the date on which that stockholder became an interested stockholder. This provision does not apply to Thermo, which became our principal stockholder prior to our initial public offering.

These provisions also could make it more difficult for our stockholders to take certain corporate actions, and could limit the price that investors might be willing to pay in the future for shares of our common stock.

**We are controlled by Thermo, whose interests may conflict with yours.**

As of December 31, 2019, Thermo owned approximately 58% of our outstanding common stock; additionally, Thermo owns convertible notes and warrants that may be converted into additional shares of common stock. As previously disclosed, in February 2020, Thermo converted the entire principal amount outstanding due under its 2009 Loan Agreement resulting in the issuance of 200.1 million shares of voting common stock; this issuance increased Thermo's ownership of common stock to approximately 63%. Although extraordinary corporate transactions, material sales of assets and certain transactions with related parties must be approved by the Strategic Review Committee, to the extent these and other matters are also subject to a vote of our shareholders, Thermo is able to control such vote. These matters include the election of certain members of our board of directors and numerous other matters, including changes of control and other significant corporate transactions, so long as these transactions are not between Thermo and Globalstar and until such time as Thermo shall no longer be the beneficial owner of 45% or more of our outstanding common stock.

We have depended substantially on Thermo to provide capital to finance our business. In 2006 and 2007, Thermo purchased an aggregate of \$200 million of common stock at prices substantially above market. On December 17, 2007, Thermo assumed all of the obligations and was assigned all of the rights (other than indemnification rights) of the administrative agent and the lenders under our amended and restated credit agreement. To fulfill the conditions precedent to our Facility Agreement, in 2009, Thermo converted the loans outstanding under the credit agreement into equity and terminated the credit agreement. In addition, Thermo and its affiliates deposited \$60.0 million in a contingent equity account to fulfill a condition precedent for borrowing under the Facility Agreement, purchased \$20.0 million of our 5.0% Notes, which were subsequently converted into shares of common stock in 2013, purchased \$11.4 million of our 2013 8.00% Notes, which were subsequently converted into shares of common stock, loaned us \$37.5 million to fund our debt service reserve account under the Facility Agreement and funded a total of \$65.0 million during 2013 pursuant to the terms of the Equity Commitment, Restructuring and Consent Agreement, the Common Stock Purchase Agreement and the Common Stock Purchase and Option Agreement. In June 2017, Thermo purchased \$33.0 million of our common stock to provide funds required by our lenders to obtain an amendment to our Facility Agreement. In October 2017 and December 2018, Thermo purchased \$43.3 million and \$49.3 million, respectively, of our common stock in connection with our public stock offerings. In July 2019, Thermo loaned us \$53.8 million in a Subordinated Loan Agreement with other unaffiliated lenders. In November 2019, the Subordinated Loan Agreement was paid in full with proceeds from the Second Lien Term Loan Facility, in which Thermo contributed an additional \$41.3 million for a total principal loan amount of \$95.1 million in the Second Lien Term Loan Facility.

Thermo is controlled by James Monroe III, our Executive Chairman. Through Thermo, Mr. Monroe holds equity interests in, and serves as an executive officer or director of, a diverse group of privately-owned businesses not otherwise related to us. We reimburse Thermo and Mr. Monroe for certain third party, documented, out-of-pocket expenses they incur in connection with our business.

The interests of Thermo may conflict with the interests of our other stockholders. Thermo may take actions it believes will benefit its equity investment in us or loans to us even though such actions might not be in your best interests as a holder of our common stock.

**Item 1B. Unresolved Staff Comments**

Not Applicable

## Item 2. Properties

As of December 31, 2019, our principal headquarters are located in Covington, Louisiana. We own or lease the facilities described in the following table (in approximate square feet):

Location	Country	Square Feet	Facility Use	Owned/Leased
Covington, Louisiana	USA	69,365	Corporate Offices	Leased
Milpitas, California	USA	12,375	Satellite and Ground Control Center	Leased
Managua	Nicaragua	10,900	Gateway	Owned
Clifton, Texas	USA	10,000	Gateway	Owned
Los Velasquez, Edo Miranda	Venezuela	9,700	Gateway	Owned
Mississauga, Ontario	Canada	9,502	Canada Office	Leased
Sebring, Florida	USA	12,375	Gateway	Leased
Aussaguel	France	7,502	Satellite Control Center and Gateway	Leased
Smith Falls, Ontario	Canada	6,500	Gateway	Owned
High River, Alberta	Canada	6,500	Gateway	Owned
Barrio of Las Palmas, Cabo Rojo	Puerto Rico	6,000	Gateway	Owned
Wasilla, Alaska	USA	5,000	Gateway	Owned
Seletar Satellite Earth Station	Singapore	4,500	Gateway	Leased
Petrolina	Brazil	2,500	Gateway	Owned
Rio de Janeiro	Brazil	2,120	Brazil Office	Leased
Gaborone	Botswana	2,000	Gateway	Leased
Manaus	Brazil	1,900	Gateway	Owned
Presidente Prudente	Brazil	1,300	Gateway	Owned
Dublin	Ireland	1,280	Ireland Office	Leased
Panama City	Panama	1,100	Panama Office	Leased
Bosque Alegre, Argentina	Argentina	862	Gateway	Owned
Gaborone	Botswana	270	Botswana Office	Leased

Our owned properties in Clifton, Texas and Wasilla, Alaska are encumbered by liens in favor of the administrative agents under our Facility Agreement and Second Lien Term Loan Facility for the benefit of the lenders thereunder. See Part II, Item 7. *Management's Discussion and Analysis of Financial Condition and Results of Operations - Liquidity and Capital Resources - Contractual Obligations and Commitments* in this Report.

## Item 3. Legal Proceedings

For a description of our material legal and regulatory proceedings and settlements, see Note 10: Contingencies in our Consolidated Financial Statements in Part II, Item 8 of this Report.

## Item 4. Mine Safety Disclosures

Not Applicable

## **PART II**

### **Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities**

#### *Common Stock Information*

Our common stock trades on the NYSE American under the symbol "GSAT".

As of February 21, 2020, 1,665,377,204 shares of our common stock were outstanding, held by 221 holders of record. The number of holders of record is based upon the actual number of holders registered at such date and does not include holders of shares in street name or persons, partnerships, associates, corporations or other entities in security position listings maintained by depositories.

#### *Dividend Information*

We have never declared or paid any cash dividends on our common stock. Our Facility Agreement and Second Lien Term Loan Facility prohibit us from paying dividends. We currently intend to retain any future earnings and do not expect to pay any dividends in the foreseeable future. See Note 6: Long-Term Debt and Other Financing Arrangements in our Consolidated Financial Statements for further discussion.



## Item 6. Selected Financial Data

The following table presents our selected consolidated financial data for the periods indicated. We derived the historical data from our audited Consolidated Financial Statements.

You should read the data set forth below together with our Consolidated Financial Statements and the related notes thereto included in Part II, Item 8 of this Report and the discussion in Part II, Item 7. *Management's Discussion and Analysis of Financial Condition and Results of Operations* in this Report.

On January 1, 2019, we adopted Accounting Standards Codification ("ASC") Topic 842, "Leases" ("ASC 842"). We adopted this standard using the modified retrospective method and, as such, prior period amounts reflected in the tables and discussion below have not been adjusted.

On January 1, 2018, we adopted Accounting Standards Codification ("ASC") Topic 606, "Revenue from Contracts with Customers" ("ASC 606"). We adopted this standard using the modified retrospective method and, as such, prior period amounts reflected in the tables and discussion below have not been adjusted.

(in thousands)	December 31,				
	2019	2018	2017	2016	2015
<b>Statement of Operations Data (year ended):</b>					
Revenue	\$ 131,718	\$ 130,113	\$ 112,660	\$ 96,861	\$ 90,490
Operating loss	(64,046)	(47,379)	(68,446)	(63,253)	(66,604)
Other income (expense)	79,915	40,988	(20,438)	(75,936)	140,318
Income (loss) before income taxes	15,869	(6,391)	(88,884)	(139,189)	73,714
Net income (loss)	15,324	(6,516)	(89,074)	(132,646)	72,322
Net income (loss) per share - basic	0.01	(0.01)	(0.08)	(0.12)	0.07
Net income (loss) per share - diluted	(0.07)	(0.01)	(0.08)	(0.12)	(0.08)
<b>Balance Sheet Data (end of period):</b>					
Cash and cash equivalents	7,606	15,212	41,644	10,230	7,476
Property and equipment, net	799,914	882,695	971,119	1,039,719	1,077,560
Total assets	965,590	1,045,482	1,129,265	1,132,614	1,175,015
Current maturities of long-term debt	—	96,249	79,215	75,755	32,835
Long-term debt, less current maturities	464,176	367,202	434,651	500,524	548,286
Stockholders' equity	407,343	358,945	291,224	161,819	237,131

During the third quarter of 2019, we identified a misapplication of GAAP in the previously reported calculation of net income (loss) attributable to common stockholders in the numerator of diluted EPS for certain prior periods. The correction of this calculation had no impact on net income (loss), retained deficit or any other financial statement line items. For comparative purposes, prior period calculations of diluted EPS have been adjusted to conform to current period presentation, as necessary, throughout this filing.

## Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

The following discussion and analysis should be read in conjunction with our Consolidated Financial Statements and applicable notes to our Consolidated Financial Statements and other information included elsewhere in this Report, including risk factors disclosed in Part I, Item IA. Risk Factors. The following information contains forward-looking statements, which are subject to risks and uncertainties. Should one or more of these risks or uncertainties materialize, our actual results may differ from those expressed or implied by the forward-looking statements. See "Forward-Looking Statements" at the beginning of this Report.

## Performance Indicators

Our management reviews and analyzes several key performance indicators in order to manage our business and assess the quality and potential variability of our earnings and cash flows. These key performance indicators include:

- total revenue, which is an indicator of our overall business growth;
- subscriber growth and churn rate, which are both indicators of the satisfaction of our customers;
- average monthly revenue per user, or ARPU, which is an indicator of our pricing and ability to obtain effectively long-term, high-value customers. We calculate ARPU separately for each type of our Duplex, Commercial IoT, SPOT and IGO revenue;
- operating income and adjusted EBITDA, both of which are indicators of our financial performance; and
- capital expenditures, which are an indicator of future revenue growth potential and cash requirements.

## Comparison of the Results of Operations for the years ended December 31, 2019 and 2018

### Revenue:

During the twelve months ended December 31, 2019, total revenue increased \$1.6 million to \$131.7 million from \$130.1 million in 2018. This increase was impacted by an out-of-period adjustment of \$3.9 million during the third quarter of 2019 related to a change in the calculation of the estimated impact from the initial adoption of ASC 606. Excluding this adjustment, total revenue decreased \$2.3 million from 2018. This decrease was due primarily to a \$1.6 million decrease in service revenue, driven by fewer Duplex subscribers as well as lower revenue recognized from government contracts. These items were offset by increases in Commercial IoT subscribers and ARPU as well as Duplex ARPU. Revenue generated from subscriber equipment sales decreased \$0.7 million, which resulted primarily from lower volume and pricing of Duplex and SPOT units sold.

The following table sets forth amounts and percentages of our revenue by type of service (dollars in thousands).

	Year Ended December 31, 2019		Year Ended December 31, 2018	
	Revenue	% of Total Revenue	Revenue	% of Total Revenue
<b>Service Revenue:</b>				
Duplex <sup>(1)</sup>	\$ 39,794	31%	\$ 41,223	32%
SPOT	50,461	40%	52,363	40%
Commercial IoT	16,972	13%	13,459	10%
IGO	497	—%	932	1%
Other	1,777	1%	3,112	2%
<b>Total Service Revenue</b>	<b>\$ 109,501</b>	<b>85%</b>	<b>\$ 111,089</b>	<b>85%</b>

<sup>(1)</sup> As previously disclosed, we recorded an out-of-period adjustment of \$3.9 million during 2019 as a result of a change in the estimated impact of ASC 606. This adjustment, which increased Duplex service revenue, is excluded from Duplex service revenue in the table above. The percentage of total revenue calculations also exclude this adjustment.

The following table sets forth amounts and percentages of our revenue generated from equipment sales (dollars in thousands).

	Year Ended December 31, 2019		Year Ended December 31, 2018	
	Revenue	% of Total Revenue	Revenue	% of Total Revenue
<b>Equipment Revenue:</b>				
Duplex	\$ 1,325	1%	\$ 2,021	2%
SPOT	7,617	6%	8,425	6%
Commercial IoT	9,300	8%	8,444	7%
Other	90	—%	134	—%
<b>Total Equipment Revenue</b>	<b>\$ 18,332</b>	<b>15%</b>	<b>\$ 19,024</b>	<b>15%</b>

The following table sets forth our average number of subscribers and ARPU by type of revenue.

	December 31,	
	2019	2018
<b>Average number of subscribers for the year ended:</b>		
Duplex	56,856	65,501
SPOT	281,584	291,289
Commercial IoT	399,960	354,678
IGO	26,553	31,537
Other	928	1,140
<b>Total</b>	<b>765,881</b>	<b>744,145</b>

**ARPU (monthly):**

Duplex <sup>(1)</sup>	\$ 58.33	\$ 52.45
SPOT	14.93	14.98
Commercial IoT	3.54	3.16
IGO	1.56	2.46

<sup>(1)</sup> As previously disclosed, we recorded an out-of-period adjustment of \$3.9 million during 2019 as a result of a change in the estimated impact of ASC 606. This adjustment, which increased Duplex service revenue, is excluded from Duplex ARPU in the table above. When the out-of-period adjustment is included in the calculation, ARPU for the twelve months ended December 31, 2019 is \$64.02.

The numbers reported in the above table are subject to immaterial rounding inherent in calculating averages.

During the twelve months ended December 31, 2019, gross Duplex and SPOT subscriber additions were 9,516 and 70,471, respectively. During 2018, gross Duplex and SPOT subscriber additions were 11,589 and 69,607, respectively. Duplex gross subscriber additions were higher in 2018 as we experienced higher demand due to lower service plan prices in effect and higher availability of inventory. SPOT gross subscriber activations increased slightly from 2018 to 2019 due primarily to sales of SPOT X<sup>®</sup>, despite a high volume of sales from its launch in May 2018; the increase in SPOT X<sup>®</sup> activations was offset by lower activations of other SPOT products. Because our Commercial IoT subscribers are able to activate and deactivate their units several times during the year, gross Commercial IoT subscriber additions are not considered to be a meaningful metric.

We count "subscribers" based on the number of devices that are subject to agreements that entitle them to use our voice or data communications services rather than the number of persons or entities who own or lease those devices.

Other service revenue includes revenue generated primarily from sources which are not subscriber driven, such as engineering services. Accordingly, we do not present ARPU for other service revenue in the table above.

## Service Revenue

As discussed above, we recorded a one-time out-of-period adjustment of \$3.9 million during the third quarter of 2019, which increased Duplex service revenue. Excluding this adjustment, Duplex service revenue decreased 3% in 2019 driven by a decrease in average subscribers offset partially by an increase in ARPU. The decrease in average subscribers was due to lower gross activations resulting from fewer equipment sales over the last twelve months as well as normal churn in the subscriber base. We have various initiatives underway to drive higher Duplex activations. We released an improved Sat-Fi2<sup>®</sup> device during September 2019 as well as a derivative product, the Sat-Fi2<sup>®</sup> Remote Antenna Station ("RAS"), during October 2019 to expand the use cases for the Sat-Fi2<sup>®</sup> device. Further development efforts are underway to launch additional derivative products of this device. As shown in the table above, excluding the one-time adjustment during 2019, ARPU increased 11% due to rate plan changes from previous periods that have now been rolled out to most of the subscriber base.

SPOT service revenue decreased 4% in 2019 due primarily to a 3% decrease in average subscribers. During 2019, the Company deactivated approximately 10,000 nonpaying customers, particularly in Latin America, and approximately 5,000 customers due to inadvertent credit card processing issues resulting from a change in merchant service processors. Excluding this involuntary churn, ending SPOT subscribers would have been in line with 2018 and average subscribers would have decreased 1%. ARPU remained relatively flat for 2019 compared to 2018; however, it was impacted by the timing and amount of certain transactions during 2018 that did not recur during 2019, including primarily incremental revenue recorded during the second quarter of 2018 of \$0.4 million related to the collection of a customer account that was previously treated as uncollectible.

Commercial IoT service revenue increased 26% in 2019 due to increases in both ARPU and average subscribers. Higher ARPU contributed \$1.8 million to the increase in service revenue from 2018. The increase in ARPU was driven in part by higher usage and a more favorable blend of rate plans in place during 2019. Higher average subscribers contributed \$1.7 million to the increase in Commercial IoT service revenue from 2018. The increase in average subscribers was driven by higher Commercial IoT equipment sales during the last twelve months, primarily due to continued success with our SmartOne family of asset tracking units.

Other service revenue decreased \$1.3 million, or 42%, in 2019. Lower revenue generated from government contracts due to regulatory delays represented nearly all of the decline.

## Subscriber Equipment Sales

Revenue from Duplex equipment sales decreased \$0.7 million, or 35%, in 2019. The decline in revenue was driven primarily by a lower sales volume of Duplex accessories as well as fixed devices and data modems due to the availability of these first-generation products. In April 2018, we released a second-generation Duplex device, Sat-Fi2<sup>®</sup>. Based on initial customer feedback, we slowly released this product into the market as we focused on optimizing functionality, performance and usability; therefore, sales of this device have been lower than expected. We released an improved Sat-Fi2<sup>®</sup> device during the third quarter of 2019 and a Sat-Fi2<sup>®</sup> RAS device in October 2019. Development efforts are underway to launch further derivative products of the Sat-Fi2<sup>®</sup> device.

Revenue from SPOT equipment sales decreased \$0.8 million, or 10%, in 2019. The decrease was driven by lower volume and pricing of certain SPOT products. The impact due to pricing was driven by more aggressive discounts and promotions offered during 2019; these promotions are expected to contribute to higher activations and service revenue in future periods. The impact due to a lower sales volume was due primarily to fewer sales of our SPOT Gen3<sup>®</sup> device, which was driven by various factors, including higher service pricing in effect during most of 2019 and the success of SPOT X<sup>®</sup>. Sales of our SPOT X<sup>®</sup> device, our first two-way SPOT product, increased year over year and are sold at a higher price than our other SPOT products, positively impacting revenue from SPOT equipment sales.

Revenue from Commercial IoT equipment sales increased \$0.9 million, or 10%, in 2019. Volume for almost all Commercial IoT devices increased from 2018 to 2019; however, for certain products, the revenue contribution was flat due to pricing. The increase in revenue from Commercial IoT equipment sales is attributable primarily to sales of our new SmartOne Solar<sup>™</sup>.

## Operating Expenses:

Total operating expenses increased \$18.3 million, or 10%, to \$195.8 million in 2019 from \$177.5 million in 2018. As discussed further below, the increase in total operating expenses was driven primarily by a \$20.5 million revision to our contract termination charge with Thales during 2018 that reduced operating expenses in 2018 and did not recur in 2019. Increases in depreciation, amortization and accretion expense, higher cost of subscriber equipment sales and reductions in the value of both long-lived assets and inventory also contributed to higher operating expenses. Offsetting these increases were lower marketing, general and administrative costs.

### *Cost of Services*

Cost of services decreased \$0.1 million, or less than 1%, to \$37.5 million in 2019 from \$37.6 million in 2018. The decrease was driven by a decrease in vendor support costs for our ground network of \$0.9 million. Lower research and development costs of \$0.2 million associated with the timing and scope of product development initiatives also contributed to the decrease. These decreases were offset by higher personnel costs of \$1.0 million, due to the timing and scope of capital projects.

### *Cost of Subscriber Equipment Sales*

Cost of subscriber equipment sales increased by \$1.4 million, or 10%, to \$15.8 million in 2019 from \$14.4 million in 2018.

In September 2019, U.S Customs and Border Protection ("CBP") issued a ruling related to the classification of certain of our core products imported from China. This classification, which carries 25% tariffs upon import, is inconsistent with the classification we previously used based on external legal advice. As a result of the CBP ruling, during 2019 we have expensed \$1.2 million in tariffs for products sold since July 2018. We plan on filing a protest against this ruling to challenge the classification and reduce the amounts owed but cannot provide any assurance that we may be successful in achieving a favorable outcome. Excluding the \$1.2 million increase in cost of equipment sales due to the China tariff ruling, the remaining fluctuation is generally consistent with the changes in revenue generated from subscriber equipment sales during the respective periods.

### *Cost of Subscriber Equipment Sales - Reduction in the Value of Inventory*

During 2019, we wrote down the value of inventory by \$0.4 million after adjusting for changes in the net realizable value of gateway spare parts due to excess. A similar inventory reserve was not required during 2018.

### *Marketing, General and Administrative*

Marketing, general and administrative expenses decreased \$10.2 million, or 18%, to \$45.2 million in 2019 from \$55.4 million in 2018.

2018 included costs to support the now-terminated merger and associated litigation (see Note 10: Contingencies for further discussion); these costs did not recur at the same level in 2019, resulting in a decrease in costs of \$13.0 million, including a gain of \$1.7 million for an insurance recovery (previously treated as a contingent gain) related to this shareholder litigation. We also had a decrease in stock based compensation of \$1.3 million driven by additional grants to certain employees during the fourth quarter of 2018, including the modification of certain stock awards resulting from the departure of four members of the Board of Directors in December 2018. Offsetting these expense reductions was the write-off of \$3.1 million of previously-capitalized financing costs associated with our initial efforts to refinance our debt obligations through the issuance of a new first lien facility. This write-off was made during the third and fourth quarters of 2019 following the amendment of our existing Facility Agreement and closing of our Second Lien Term Loan Facility in November 2019. Occupancy costs also increased \$1.2 million, resulting primarily from our move into a new headquarters location in February 2019. As a result of this relocation, our annual rent expense, including associated taxes and other operating costs, has increased; the estimated annualized impact of these higher occupancy costs is \$1.5 million. Other smaller items contributed to the remaining change.

### *Reduction in the Value of Long-Lived Assets*

During 2019, we recorded a reduction in the carrying value of long-lived assets of \$1.1 million resulting from the change in classification from held and used to held for sale of our former gateway location in Nicaragua. We reduced the carrying value to the lower of cost or fair value less estimated cost to sell during the fourth quarter of 2019.

### *Revision to Contract Termination Charge*

In May 2018, the statute of limitations for Thales to enforce the arbitration award pursuant to the Federal Arbitration Act expired. Accordingly, we believe that payment of the contract termination charge is not probable, and we removed this liability from our consolidated balance sheet during the second quarter of 2018, resulting in a reduction in operating expenses of €17.5 million, or \$20.5 million. See Note 9: Contingencies in our Consolidated Financial Statements in our 2018 Annual Report on Form 10-K for further discussion.

### *Depreciation, Amortization and Accretion*

Depreciation, amortization, and accretion expense increased \$5.4 million to \$95.8 million in 2019 compared to \$90.4 million in 2018. This increase was due primarily to placing our next-generation ground infrastructure into service during 2018. Since April 1, 2018, we have placed into service approximately \$220.4 million of construction in progress (including capitalized interest) associated with our next-generation ground infrastructure. The costs placed into service represent primarily the gateways capable of supporting commercial traffic from Sat-Fi2<sup>®</sup>, the first device to work on our upgraded network. We expect depreciation expense for these assets to be approximately \$3.7 million per quarter for an estimated life of fifteen years.

### **Other Income (Expense):**

#### *Interest Income and Expense*

Interest income and expense, net, increased \$18.9 million to expense of \$62.5 million for 2019 compared to expense of \$43.6 million for 2018. This increase was driven by an increase in gross interest costs of \$12.5 million as well as a reduction to capitalized interest of \$6.6 million (which increases interest expense). These increases were partially offset by higher interest income of \$0.2 million earned on our restricted cash account.

The increase in gross interest costs was impacted by a few items, including \$4.5 million of interest (including \$0.5 million of amortization of deferred financing costs) associated with the Subordinated Loan Agreement that we entered into in June 2019 (which was repaid in November 2019), \$2.9 million of interest (including \$0.3 million of accretion of debt discount and amortization of deferred financing costs) associated with the Second Lien Term Loan Facility that we entered into in November 2019 and \$2.2 million of interest (including \$0.4 million of accretion of debt discount) driven by a higher principal balance outstanding on our Loan Agreement with Thermo. Amortization related to the Facility Agreement also increased interest expense by \$5.4 million, including primarily the write-off of a portion of remaining deferred financing costs resulting from the modification of the Facility Agreement in November 2019. Offsetting these increases was a decrease of \$2.3 million in interest for our Facility Agreement driven by a lower principal amount outstanding and other interest costs of \$0.2 million.

#### *Derivative Gain*

We recorded derivative gains of \$145.1 million and \$81.1 million in 2019 and 2018, respectively. We recognize gains or losses due to the change in the value of certain embedded features within our debt instruments that require standalone derivative accounting. Although fluctuation in our stock price is a significant cause for the change in value of these derivative instruments, other inputs impact the value including stock price volatility, discount rate, maturity date, probabilities of conversion and change of control, the base conversion rate and changes in the principal amount of notes outstanding. During 2019, the derivative gains were recognized primarily due to the assumed high probability of conversion of the Loan Agreement with Thermo in early 2020, which decreases the value of our derivative liabilities. See Note 8: Fair Value Measurements to our Consolidated Financial Statements for further discussion of the computation of the fair value of our derivatives.

#### *Gain on Legal Settlement*

In May 2018, we concluded the settlement of a business economic loss claim in which we received proceeds of \$7.4 million, net of legal fees. We received the two installments of \$3.7 million in each of January 2019 and 2020. During the second quarter of 2018, we recorded \$6.8 million, the present value of such proceeds, as other income in our consolidated statement of operations. During the second quarter of 2019, in connection with a follow-on settlement related to this matter, we received additional proceeds of \$0.1 million and recorded the gross amount of these proceeds as other income in our consolidated statement of operations. See Note 10: Contingencies to our Consolidated Financial Statements for further discussion.

## *Other*

Other expense decreased to \$2.8 million in 2019 compared to \$3.3 million in 2018. Changes in other income (expense) are due primarily to foreign currency gains and losses recognized during the respective periods given the significant financial statement items we have denominated in foreign currencies, including primarily the Brazilian real, euro and Canadian dollar. Total foreign currency losses were \$3.1 million in 2018 compared to gains of \$0.1 million in 2019. Offsetting this decrease were \$2.1 million in legal and other adviser costs incurred related to the modification of our Facility Agreement during 2019 (see Note 6: Long-Term Debt and Other Financing Arrangements for further discussion), which were recorded to non-operating expense under applicable accounting guidance. We also record the non-operating components of net periodic benefit cost to other income (loss), which increased \$0.5 million from 2018 to 2019 due primarily to the settlement of a portion of our pension liability related to terminated vested employees in December 2019.

## *Income Tax Expense*

Income tax expense increased \$0.4 million to \$0.5 million in 2019 compared to \$0.1 million in 2018. During 2019, we recorded a deferred state tax liability with an offsetting expense of \$0.4 million related to net operating loss limitations on deferred tax balances in certain states within the United States.

## **Comparison of the Results of Operations for the years ended December 31, 2018 and 2017**

Discussion of the results of operations for the years ended December 31, 2018 and 2017 can be found in the Globalstar Annual Report on Form 10-K for the year ended December 31, 2018, as filed with the SEC on February 28, 2019.

## Liquidity and Capital Resources

Our principal liquidity requirements include paying our debt service obligations and funding our operating costs, including certain contractual obligations discussed in the "Contractual Obligations and Commitments" section below. Our principal sources of liquidity include cash on hand, restricted cash and cash flows from operations.

### Cash Flows for the years ended December 31, 2019, 2018 and 2017

The following table shows our cash flows from operating, investing and financing activities (in thousands):

Statements of Cash Flows	Year Ended December 31,		
	2019	2018	2017
Net cash provided by operating activities	\$ 3,048	\$ 5,920	\$ 13,857
Net cash used in investing activities	(11,491)	(17,401)	(20,776)
Net cash provided by (used in) financing activities	(7,923)	(18,196)	63,790
Effect of exchange rate changes on cash, cash equivalents and restricted cash	4	(112)	195
Net increase (decrease) in cash, cash equivalents and restricted cash	\$ (16,362)	\$ (29,789)	\$ 57,066

#### Cash Flows Provided by Operating Activities

Net cash provided by operations includes primarily cash receipts from subscribers related to the purchase of equipment and satellite voice and data services. We use cash in operating activities primarily for personnel costs, inventory purchases and other general corporate expenditures. Net cash provided by operating activities was \$3.0 million during 2019 compared to \$5.9 million during 2018. This decrease was due primarily to lower net income after adjusting for non-cash items. Lower net income was driven by: 1) higher interest expense driven by a lower amount of cash interest capitalized during 2019 as well as higher gross interest payments due to the payment of accrued interest on the Subordinated Loan Agreement in November 2019, 2) costs associated with efforts to refinance our debt obligations, including a) the write-off of financing costs for the issuance of new first-lien debt that was ultimately not pursued, as well as third-party costs to support the modification of our Facility Agreement and b) the write-off of a portion of remaining deferred financing costs resulting from the partial paydown of the Facility Agreement, and 3) the higher cost of goods sold for tariffs resulting from a recent ruling on the classification of certain of our products. Offsetting the decrease due to lower net income were favorable working capital changes, including primarily the timing of prepaid and other assets as well as other non-current liabilities.

Net cash provided by operating activities was \$5.9 million during 2018 compared to \$13.9 million during 2017. This decrease was due to unfavorable changes in certain operating assets and liabilities, primarily resulting from the timing of prepaid assets. These unfavorable changes were offset by higher net income, after adjusting for non-cash items, driven in part by price increases for our Duplex and SPOT subscribers, coupled with higher Commercial IoT and SPOT equipment sales.

#### Cash Flows Used in Investing Activities

Net cash used in investing activities was \$11.5 million during 2019 compared to \$17.4 million during 2018. This decrease was due primarily to a reduction in the amount of cash interest capitalized of \$2.9 million. As previously disclosed, our construction in progress balance has decreased significantly since 2018, specifically related to our ground network; therefore, the amount of interest eligible to be capitalized is lower. Also contributing to the variance in cash used in investing activities were fewer property and equipment purchases related to our ground network and product development, including software and other back-office efforts.

Net cash used in investing activities was \$17.4 million during 2018 compared to \$20.8 million during 2017. This decrease was driven by lower second-generation network additions in 2018 as we substantially completed the deployment of our next-generation ground infrastructure. This decrease was offset partially by higher property and equipment additions during 2018 as we incurred costs to bring our newly developed products into production, including software and other back-office efforts.



### *Cash Flows Provided (Used in) by Financing Activities*

Net cash used in financing activities was \$7.9 million in 2019 compared to \$18.2 million in 2018. In June 2019, we entered into a \$62.0 million Subordinated Loan Agreement, the proceeds from which were used in part to pay principal of \$47.4 million towards our Facility Agreement. In November 2019, we completed a broad refinancing, which included the issuance of a \$193.0 million Second Lien Term Loan Facility. The proceeds, net of a \$6.0 million, or 3% OID, combined with cash on hand and restricted cash were used to prepay a portion of our Facility Agreement of \$151.6 million. Proceeds from the Second Lien Term Loan Facility were also used to pay off the entire balance of the Subordinated Loan Agreement of \$62.0 million plus accrued interest of \$4.0 million. We incurred \$6.2 million in debt financing costs associated with the November 2019 refinancing. Additionally, we issued warrants to purchase shares of our common stock to each of the Second Lien Term Loan Facility lenders. In December 2019, Thermo exercised 9.5 million warrants resulting in cash proceeds to us of \$3.6 million.

Net cash used in financing activities was \$18.2 million in 2018 compared to cash provided by financing activities of \$63.8 million in 2017. The change in financing activities was driven primarily by lower cash proceeds from equity financings in 2018, resulting in a decline of cash provided to us of \$100.9 million, offset partially by lower debt service payments due primarily by the payment of a \$20.8 million debt restructuring fee in 2017 that did not recur in 2018.

### **Overview**

As of December 31, 2019, we held cash and cash equivalents of \$7.6 million and restricted cash of \$51.5 million, consisting of the balance in our debt service reserve account under our Facility Agreement. The Facility Agreement restricts the use of these funds to making principal and interest payments under the Facility Agreement. See below for further discussion. As of December 31, 2018, we held cash and cash equivalents of \$15.2 million and had \$60.3 million in restricted cash.

The carrying amount of our long-term debt outstanding was \$464.2 million at December 31, 2019, compared to current and long-term debt of \$96.2 million and \$367.2 million, respectively, at December 31, 2018. The current portion of our debt represents primarily principal payments under our Facility Agreement scheduled to occur within 12 months of the balance sheet date. We had no current debt outstanding at December 31, 2019 following the amendment to the principal amortization schedule in our Facility Agreement in November 2019.

The \$0.8 million increase in the carrying amount of our total debt balance was due to the following: 1) the issuance of the Second Lien Term Loan Facility in November 2019; the carrying value of the Second Lien Term Loan Facility was \$166.0 million at December 31, 2019, which includes PIK interest of \$2.5 million and is net of a \$35.4 million debt discount, 2) a higher carrying value of the Loan Agreement with Thermo due to interest accruing on that debt and accretion of the debt discount of \$19.5 million, and 3) a higher carrying value of the Facility Agreement due to accretion and a partial write-off of debt financing costs of \$14.2 million following the Facility Agreement amendment. This increase in our total debt balance was offset partially by principal payments of \$199.0 million of the Facility Agreement, including \$24.6 million using proceeds from the debt service reserve account and cash on hand in November 2019, and \$174.5 million using proceeds from the Subordinated Loan Agreement and Second Lien Term Loan Facility.

### **Indebtedness and Available Credit**

#### *Facility Agreement*

In 2009, we entered into the Facility Agreement, which was amended and restated in July 2013, August 2015, June 2017 and November 2019. The Facility Agreement is scheduled to mature in December 2022.

Our indebtedness under the Facility Agreement bears interest at a floating rate of LIBOR plus 4.25% through June 2020, increasing by an additional 0.5% each year thereafter to a maximum rate of LIBOR plus 5.75%. Interest on the Facility Agreement is payable semi-annual in arrears in June and December of each calendar year. Ninety-five percent of our obligations under the Facility Agreement are guaranteed by Bpifrance Assurance Export S.A.S. ("BPIFAE") (formerly COFACE). Our obligations under the Facility Agreement are guaranteed on a senior secured basis by all of our domestic subsidiaries and are secured by a first priority lien on substantially all of our assets and our domestic subsidiaries (other than their FCC licenses), including patents and trademarks, 100% of the equity of our domestic subsidiaries and 65% of the equity of certain foreign subsidiaries.

The Facility Agreement contains customary events of default and requires that we satisfy various financial and non-financial covenants. The compliance calculations of the financial covenants of the Facility Agreement permit us to include certain cash funds we receive from the issuance of our common stock and/or subordinated indebtedness. We refer to these funds as "Equity Cure Contributions". If we violate any covenants and are unable to obtain a sufficient Equity Cure Contribution or a waiver, or

are unable to make payments to satisfy our debt obligations under the Facility Agreement and are unable to obtain a waiver, we would be in default under the Facility Agreement, and the lenders could accelerate payment of the indebtedness. As of December 31, 2019, we were in compliance with respect to the covenants of the Facility Agreement.

The Facility Agreement requires that we maintain a debt service reserve account that is pledged to secure our obligations under the Facility Agreement. As part of the amendment to the Facility Agreement in November 2019, the required balance in the debt service reserve account is now fixed. As of December 31, 2019, the balance in the debt service reserve account was approximately \$51.5 million, of which \$50.9 million is classified as non-current restricted cash on our consolidated balance sheet as it will be used towards the final scheduled payment due upon maturity of the Facility Agreement in December 2022. The remaining balance of \$0.6 million is classified as current and represents the portion of the debt service reserve account in excess of the required balance. We expect to receive this amount from our lenders during the next twelve months.

In November 2019, we amended and restated the Facility Agreement and entered into a Fourth Global Amendment and Restatement Agreement (the "2019 GARA"). The 2019 GARA, among other things, revised the remaining principal amortization schedule to reflect, in part, a \$151.6 million prepayment (using primarily the proceeds from the Second Lien Term Loan Facility discussed below); reduced the required balance in the debt service reserve account; required us to raise no less than \$45.0 million of equity prior to March 31, 2021 via the cash exercise of outstanding warrants to be applied towards the principal payment due on June 30, 2021; reset financial covenant levels; and extended our ability to make Equity Cure Contributions through the maturity date.

See Note 6: Long-Term Debt and Other Financing Arrangements to our Consolidated Financial Statements for further discussion of the Facility Agreement.

#### *Subordinated Loan Agreement*

On July 2, 2019, we entered into a Subordinated Loan Agreement (the "Subordinated Loan Agreement"), effective as of June 28, 2019, with Thermo Funding Company LLC (an affiliated entity to Thermo, as previously defined in this filing), and certain other unaffiliated parties (together with Thermo, the "Lenders"). Under the Subordinated Loan Agreement, we borrowed \$62.0 million from the Lenders on June 28, 2019 for the primary purpose of funding the June 30, 2019 scheduled payment of interest and principal under our Facility Agreement and maintaining compliance with the financial covenants thereunder. The proceeds from the Subordinated Loan Agreement qualified as an Equity Cure Contribution under the Facility Agreement. The Subordinated Loan Agreement accrued interest at 15% per annum, which was capitalized and added to the outstanding principal in lieu of cash payments. Prior to repayment, the Subordinated Loan Agreement had accrued a total of \$4.0 million. In November 2019, the Subordinated Loan Agreement was paid in full from a portion of the proceeds from the Second Lien Term Loan Facility (see further discussion below). There were no unamortized deferred financing costs on the repayment debt.

#### *Second Lien Term Loan Facility*

In November 2019, we entered into a \$199.0 million Second Lien Term Loan Facility with Thermo, EchoStar Corporation and certain other unaffiliated lenders. The Second Lien Term Loan Facility is scheduled to mature in November 2025. The loans under the Second Lien Term Loan Facility bear interest at a blended rate of 13.5% per annum to be paid-in-kind (or in cash at our option, subject to restrictions in the Facility Agreement). The cash proceeds from this loan were net of a 3% original issue discount.

As additional consideration for the loan, we issued the lenders warrants to purchase 124.5 million shares of common stock an exercise price of \$0.38 per share. These warrants expire on March 31, 2021. In December 2019, Thermo exercised 9.5 million warrants resulting in cash proceeds of \$3.6 million to the Company.

A portion of the proceeds from the Second Lien Term Loan Facility was used to repay all of our obligations under the Subordinated Loan Agreement. The remaining proceeds of the Second Lien Term Loan Facility were used towards the prepayment of scheduled principal payments under the Facility Agreement.

The Second Lien Term Loan Facility contains customary events of default and requires us to satisfy various financial and non-financial covenants. As of December 31, 2019, we were in compliance with all the covenants of the Second Lien Term Loan Facility.

See Note 6: Long-Term Debt and Other Financing Arrangements in our Consolidated Financial Statements for further discussion of the Second Lien Term Loan Facility.

## Thermo Loan Agreement

We have an amended and restated loan agreement with Thermo (the “Loan Agreement”). Our obligations to Thermo under the Loan Agreement are subordinated to all of our obligations under the Facility Agreement and the Second Lien Term Loan Facility. The Loan Agreement is convertible into shares of common stock at a conversion price of \$0.69 (as adjusted) per share of common stock. Amounts outstanding under the Loan Agreement accrue interest at 12% per annum, which we capitalize and add to the outstanding principal in lieu of cash payments. As of December 31, 2019, the principal amount outstanding was \$135.1 million, including \$91.6 million of interest that had accrued since 2009 under the Loan Agreement.

Principal and interest under the Loan Agreement become due and payable six months after the obligations under the Facility Agreement have been paid in full; however, the November 2019 Finance Documents (including the amended and restated Facility Agreement and the Second Lien Term Loan Facility) permit the conversion of all amounts outstanding under the Loan Agreement by June 30, 2022, or earlier if there is a change in control or any acceleration of the maturity of the loans under the Facility Agreement or Second Lien Term Loan Facility occurs. In connection with the November 2019 refinancing, Thermo committed to convert the total principal balance outstanding under the Loan Agreement by March 31, 2020; on February 19, 2020, Thermo converted the entire principal balance outstanding resulting in the issuance of 200.1 million shares of common stock.

See Note 6: Long-Term Debt and Other Financing Arrangements in our Consolidated Financial Statements for further discussion of the Thermo Loan Agreement.

## 8.00% Convertible Senior Notes Issued in 2013

Our 2013 8.00% Notes are convertible into shares of our common stock at a conversion price of \$0.69 (as adjusted) per share of common stock. As of December 31, 2019, the principal amount outstanding of the 2013 8.00% Notes was \$1.4 million. The 2013 8.00% Notes will mature on April 1, 2028, subject to various call and put features. Interest on the 2013 8.00% Notes is payable semi-annually in arrears on April 1 and October 1 of each year. We pay interest in cash at a rate of 5.75% per annum and by issuing additional 2013 8.00% Notes at a rate of 2.25% per annum.

A holder of 2013 8.00% Notes has the right, at the holder’s option, to require us to purchase some or all of the 2013 8.00% Notes on April 1, 2023 at a price equal to the principal amount of the 2013 8.00% Notes to be purchased plus accrued and unpaid interest.

The indenture governing the 2013 8.00% Notes provides for customary events of default. As of December 31, 2019, we were in compliance with the terms of the 2013 8.00% Notes and the Indenture.

See Note 6: Long-Term Debt and Other Financing Arrangements in our Consolidated Financial Statements for further discussion of the 2013 8.00% Notes.

## Contractual Obligations and Commitments

Contractual obligations at December 31, 2019 are as follows (in thousands):

<b>Contractual Obligations:</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>2024</b>	<b>Thereafter</b>	<b>Total</b>
Debt obligations (1)	\$ 137,642	\$ 60,565	\$ 129,520	\$ 1,525	\$ —	\$ 446,618	\$ 775,870
Interest on long-term debt (2)	13,032	12,418	9,387	43	—	—	34,880
Network purchase obligations (3)	4,850	4,850	4,850	—	—	—	14,550
Inventory purchase obligations (4)	7,025	—	—	—	—	—	7,025
Operating lease obligations	3,045	2,462	2,345	2,372	2,373	11,122	23,719
Pension obligations	1,023	1,024	1,041	1,026	1,037	5,101	10,252
<b>Total (6)</b>	<b>\$ 166,617</b>	<b>\$ 81,319</b>	<b>\$ 147,143</b>	<b>\$ 4,966</b>	<b>\$ 3,410</b>	<b>\$ 462,841</b>	<b>\$ 866,296</b>

(1) These amounts include principal and payment in kind interest payments.

Interest on the Loan Agreement with Thermo accrues at 12% per annum and is capitalized and added to the total outstanding principal in lieu of cash payments. Principal and interest under the Loan Agreement with Thermo was due and payable in June 2023. Thermo converted the principal amount outstanding under the Loan Agreement into shares of common stock on February 19, 2020; therefore, we show this payment in 2020.

In connection with the 2019 GARA, we were required to sweep excess cash in January 2020, measured as of December 31, 2019. The total payment of \$0.3 million was calculated according to the Facility Agreement and is shown in the table above in 2020. This payment reduced the next principal payment under the Facility Agreement, which is scheduled for June 2021.

Interest on the 2013 8.00% Notes is payable semi-annually in cash at a rate of 5.75% per annum and in additional notes at a rate of 2.25% per annum. The maturity date of the 2013 8.00% Notes is April 1, 2028; however, the holders of these notes can require us to purchase any or all of the notes at par in cash on April 1, 2023. For purposes of this schedule, we show these notes as due in 2023 because of this put option.

Interest on the Second Lien Term Loan Facility accrues interest at a blended rate of 13.5% per annum and is capitalized and added to the total outstanding principal in lieu of cash payments. Principal and interest under the Second Lien Term Loan Facility become due and payable in November 2025.

See Note 6: Long-Term Debt and Other Financing Arrangements in our Consolidated Financial Statements for further discussion of these debt arrangements.

- (2) Amounts include projected interest payments to be made in cash. Debt outstanding under our Facility Agreement bears interest at a floating rate and, accordingly, we estimated our interest costs in future periods. Amounts also include projected cash interest to be paid on the 2013 8.00% Notes through April 1, 2023 (see further discussion above).
- (3) We have purchase commitments with certain vendors related to the procurement, deployment and maintenance of our second-generation network. We intend to continue to purchase maintenance and warranties for our second-generation network. However, there is no contractual obligation at this time for future annual payments; therefore, we have excluded maintenance and warranty payments for these contracts in the table above.

Amounts in the table above include the minimum purchase commitment of LEO tracking antennas. Additionally, in connection with this contract, we are obligated to incur additional costs for auxiliary equipment at each installation site as well as costs for installing the antennas at each of our gateways; these amounts are not included in the table above as we can perform some of the work internally or through other vendors. The additional installation costs above and beyond the minimum purchase commitment are approximately \$1.0 million in each of 2020, 2021 and 2022.

See Note 9: Commitments in our Consolidated Financial Statements for discussion on our contractual commitments.

- (4) Amounts include obligations for non-cancelable purchase orders for inventory as of December 31, 2019. This amount is reflected in 2020 based on current forecasted equipment sales.

#### **Off-Balance Sheet Transactions**

We have no material off-balance sheet transactions.

#### **Recently Issued Accounting Pronouncements**

For a discussion of recent accounting guidance and the expected impact that the guidance could have on our Consolidated Financial Statements, see Note 1: Summary of Significant Accounting Policies in our Consolidated Financial Statements.

#### **Critical Accounting Policies and Estimates**

Our discussion and analysis of our financial condition and results of operations are based on our Consolidated Financial Statements, which have been prepared in accordance with accounting principles generally accepted in the United States. The preparation of these financial statements requires us to make estimates and assumptions that affect the amounts reported in our Consolidated Financial Statements and accompanying notes. Note 1: Summary of Significant Accounting Policies in our Consolidated Financial Statements contains a description of the accounting policies used in the preparation of our financial statements as well as the consideration of recently issued accounting standards and the estimated impact these standards will have on our financial statements. We evaluate our estimates on an ongoing basis, including those related to revenue recognition; property and equipment; income taxes; and derivative instruments. We base our estimates on historical experience and on various other assumptions that we believe are reasonable under the circumstances. Actual amounts could differ significantly from these estimates under different assumptions and conditions.

We define a critical accounting policy or estimate as one that is both important to our financial condition and results of operations and requires us to make difficult, subjective or complex judgments or estimates about matters that are uncertain. We believe that the following are the critical accounting policies and estimates used in the preparation of our Consolidated Financial Statements. In addition, there are other items within our Consolidated Financial Statements that require estimates but are not deemed critical as defined in this paragraph.

### ***Revenue Recognition***

Our primary types of revenue include (i) service revenue from two-way voice communication and data transmissions and one-way data transmissions between a mobile or fixed device and (ii) subscriber equipment revenue from the sale of fixed and mobile devices as well as other products and accessories. Additionally, we generate revenue by providing engineering and support services to certain customers.

Unless otherwise disclosed, service revenue is recognized over a period of time (consistent with the customer's receipt and consumption of the benefits of our performance) and revenue from the sale of subscriber equipment is recognized at a point in time (consistent with the transfer of risks and rewards of ownership of the hardware). We record customer payments received in advance of the corresponding service period as deferred revenue. We provide Duplex, SPOT and Commercial IoT services directly to customers and indirectly through resellers and IGOs. Credits granted to customers are expensed or charged against revenue or accounts receivable over the remaining term of the customer contract. Subscriber acquisition costs primarily include dealer and internal sales commissions and certain other costs, including but not limited to, promotional costs, cooperative marketing credits and shipping and fulfillment costs. We capitalize incremental costs to obtain a contract to the extent we expect to recover them; these costs include internal and external initial activation commissions. All other subscriber acquisitions costs are expensed at the time of the related sale.

#### ***Duplex Service Revenue***

We recognize revenue for monthly access fees in the period services are rendered. Access fees represent the minimum monthly charge for each line of service based on its associated rate plan. We also recognize revenue for airtime minutes and data in excess of the monthly access fees in the period such minutes or data are used. Under certain annual plans whereby a customer prepays for a predetermined amount of minutes and data, revenue is recognized consistent with the customer's expected pattern of usage based on historical experience because we believe that this method most accurately depicts the satisfaction of our obligation to the customer. For annual plans where the customer is charged an annual fee to access our system, we recognize revenue on a straight-line basis over the term of the plan.

#### ***SPOT Service Revenue***

We sell SPOT services as monthly, annual or multi-year plans and recognize revenue on a straight-line basis over the service term, beginning when the service is activated by the customer.

#### ***Commercial IoT Service Revenue***

We sell Commercial IoT services as monthly, annual or multi-year plans and recognize revenue ratably over the service term or as service is used, beginning when the service is activated by the customer.

#### ***IGO Service Revenue***

We earn a portion of our revenues through the sale of airtime minutes or data on a wholesale basis to IGOs. Revenue from services provided to IGOs is recognized based upon airtime minutes or data packages used by customers of the IGO and in accordance with contractual fee arrangements.

#### ***Other Service Revenue***

We provide certain engineering services to assist customers in developing new applications related to our system. We generally recognize the revenues associated with these services when the services are rendered and our obligation to the customer is satisfied.

## *Equipment Revenue*

Subscriber equipment revenue represents the sale of fixed and mobile user terminals, SPOT and Commercial IoT products, and accessories to these products. We recognize revenue upon shipment provided control has transferred to the customer. We sell equipment designed to work on our network through various channels.

## *Multiple-Element Arrangement Contracts*

At times, we sell subscriber equipment through multiple-element arrangement contracts with services. When we sell subscriber equipment and services in bundled arrangements and determine that we have separate performance obligations, we allocate the bundled contract price among the various performance obligations based on relative stand-alone selling prices at contract inception of the distinct goods or services underlying each performance obligation and recognizes them when, or as, each performance obligation is satisfied.

## ***Property and Equipment***

We capitalize costs associated with the design, manufacture, test and launch of our low earth orbit satellites. We track capitalized costs associated with our satellites by fixed asset category and allocate them to each asset as it comes into service. For assets that are sold or retired, including satellites that are de-orbited and no longer providing services, we remove the estimated cost and accumulated depreciation. We recognize a loss from an in-orbit failure of a satellite equal to its net book value, if any, in the period it is determined that the satellite is not recoverable.

We depreciate satellites over their estimated useful lives, beginning on the date each satellite is placed into service. We evaluate the appropriateness of estimated depreciable lives assigned to our property and equipment and revise such lives to the extent warranted by changing facts and circumstances.

We capitalize costs associated with the design, manufacture and test of our ground stations and other capital assets. We track capitalized costs associated with our ground stations and other capital assets by fixed asset category and allocate them to each asset as it comes into service.

We review the carrying value of our assets for impairment whenever events or changes in circumstances indicate that the recorded value may not be recoverable. We look to current and future undiscounted cash flows, excluding financing costs, as primary indicators of recoverability. If we determine that impairment exists, we calculate any related impairment loss based on fair value.

## ***Income Taxes***

We use the asset and liability method of accounting for income taxes. This method takes into account the differences between financial statement treatment and tax treatment of certain transactions. We recognize deferred tax assets and liabilities for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax basis. We measure deferred tax assets and liabilities using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. Our deferred tax calculation requires us to make certain estimates about our future operations. Changes in state, federal and foreign tax laws, as well as changes in our financial condition or the carrying value of existing assets and liabilities, could affect these estimates. We recognize the effect of a change in tax rates as income or expense in the period that the rate is enacted; however, as we have a full valuation allowance on our deferred tax assets, there is no impact to the consolidated statements of operations and balance sheets.

GAAP requires us to assess whether it is more likely than not that we will be able to realize some or all of our deferred tax assets. If we cannot determine that deferred tax assets are more likely than not to be recoverable, GAAP requires us to provide a valuation allowance against those assets. This assessment takes into account factors including: (a) the nature, frequency, and severity of current and cumulative financial reporting losses; (b) sources of estimated future taxable income; and (c) tax planning strategies. We must weigh heavily a pattern of recent financial reporting losses as a source of negative evidence when determining our ability to realize deferred tax assets. Projections of estimated future taxable income exclusive of reversing temporary differences are a source of positive evidence only when the projections are combined with a history of recent profitable operations and can be reasonably estimated. Otherwise, GAAP requires that we consider projections inherently subjective and generally insufficient to overcome negative evidence that includes cumulative losses in recent years. If necessary and available, we would implement tax planning strategies to accelerate taxable amounts to utilize expiring carryforwards. These strategies would be a source of additional positive evidence supporting the realization of deferred tax assets.

## **Derivative Instruments**

We recognize all derivative instruments as either assets or liabilities on the balance sheet at their respective fair values. We record recognized gains or losses on derivative instruments in the consolidated statements of operations.

We estimate the fair values of our derivative financial instruments using various techniques that are considered to be consistent with the objective of measuring fair values. In selecting the appropriate technique, we consider, among other factors, the nature of the instrument, the market risks that embody it and the expected means of settlement. There are various features embedded in our debt instruments that require bifurcation from the debt host. For the conversion options and the contingent put features in the Loan Agreement with Thermo and the 2013 8.00% Notes, we use a Monte Carlo simulation model to determine fair value. For the mandatory prepayments in the Second Lien Term Loan Facility, we use a probability weighted discounted cash flow model to determine fair value. Valuations derived from these models are subject to ongoing internal and external verification and review. Estimating fair values of derivative financial instruments requires the development of significant and subjective estimates that may, and are likely to, change over the duration of the instrument with related changes in internal and external market factors. Our financial position and results of operations may vary materially from quarter-to-quarter based on conditions other than our operating revenues and expenses.

### **Item 7A. Quantitative and Qualitative Disclosures About Market Risk**

Our services and products are sold, distributed or available in over 120 countries. Our international sales are denominated primarily in Canadian dollars, Brazilian reais and euros. In some cases, insufficient supplies of U.S. currency may require us to accept payment in other foreign currencies. We reduce our currency exchange risk from revenues in currencies other than the U.S. dollar by requiring payment in U.S. dollars whenever possible and purchasing foreign currencies on the spot market when rates are favorable. We currently do not purchase hedging instruments to hedge foreign currencies. We are obligated to enter into currency hedges with the lenders to the Facility Agreement no later than 90 days after any fiscal quarter during which more than 25% of revenues is denominated in a single currency other than U.S. or Canadian dollars. Otherwise, we cannot enter into hedging agreements other than interest rate cap agreements or other hedges described above without the consent of the agent for the Facility Agreement, and with that consent the counterparties may only be the lenders to the Facility Agreement.

We also have operations in Venezuela and Argentina; both countries are considered to have highly inflationary economies. We continue to monitor the significant uncertainty surrounding current Venezuelan and Argentinian exchange mechanisms. Operations in these countries are not considered significant to our consolidated operations.

Our interest rate risk arises from our variable rate debt under our Facility Agreement, under which loans bear interest at a floating rate based on the LIBOR. We have \$190.4 million in principal outstanding under the Facility Agreement. A 1.0% change in interest rates would result in a change to interest expense of approximately \$1.9 million annually.

See Note 8: Fair Value Measurements in our Consolidated Financial Statements for discussion of our financial assets and liabilities measured at fair market value and the market factors affecting changes in fair market value of each.

## Item 8. Financial Statements and Supplementary Data

### INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

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## Report of Independent Registered Public Accounting Firm

To the Stockholders and the Board of Directors of Globalstar, Inc.  
Covington, Louisiana

### Opinions on the Financial Statements and Internal Control Over Financial Reporting

We have audited the accompanying consolidated balance sheets of Globalstar, Inc. (the "Company") as of December 31, 2019 and 2018, the related consolidated statements of operations, comprehensive income (loss), stockholders' equity, and cash flows for each of the years in the three-year period ended December 31, 2019, and the related notes (collectively referred to as the "financial statements"). We also have audited the Company's internal control over financial reporting as of December 31, 2019, based on criteria established in Internal Control - Integrated Framework: (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the Company as of December 31, 2019 and 2018, and the results of its operations and its cash flows for each of the years in the three-year period ended December 31, 2019 in conformity with accounting principles generally accepted in the United States of America. Also in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2019, based on criteria established in Internal Control - Integrated Framework: (2013) issued by COSO.

### Basis for Opinions

The Company's management is responsible for these financial statements, for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Item 9A - *Management's Annual Report on Internal Control over Financial Reporting*. Our responsibility is to express an opinion on the Company's financial statements and an opinion on the Company's internal control over financial reporting based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) ("PCAOB") and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud, and whether effective internal control over financial reporting was maintained in all material respects.

Our audits of the financial statements included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, and as well as evaluating the overall presentation of the financial statements. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audits also included performing such other procedures as we considered necessary in the circumstances. We believe that our audits provide a reasonable basis for our opinions.

### Definition and Limitations of Internal Control Over Financial Reporting

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ Crowe LLP

We have served as the Company's auditor since 2006.

Oak Brook, Illinois  
February 28, 2020

**GLOBALSTAR, INC.**  
**CONSOLIDATED BALANCE SHEETS**  
(In thousands, except par value and share data)

	December 31,	
	2019	2018
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 7,606	\$ 15,212
Restricted cash	622	60,278
Accounts receivable, net of allowance of \$2,952 and \$3,382, respectively	21,760	19,327
Inventory	16,341	14,274
Prepaid expenses and other current assets	16,931	13,410
Total current assets	63,260	122,501
Property and equipment, net	799,914	882,695
Restricted Cash	50,900	—
Operating lease right of use assets, net	15,871	—
Intangible and other assets, net of accumulated amortization of \$9,009 and \$7,930, respectively	35,645	40,286
Total assets	\$ 965,590	\$ 1,045,482
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Current portion of long-term debt	\$ —	\$ 96,249
Accounts payable	8,015	6,995
Accrued expenses	24,874	23,085
Payables to affiliates	261	656
Derivative liabilities	—	757
Deferred revenue	29,910	31,938
Total current liabilities	63,060	159,680
Long-term debt, less current portion	464,176	367,202
Lease Liabilities	14,747	—
Employee benefit obligations	4,128	4,489
Derivative liabilities	3,792	146,108
Deferred revenue	5,273	5,692
Other non-current liabilities	3,071	3,366
Total non-current liabilities	495,187	526,857
Commitments and contingent liabilities (Notes 9 and 10)		
Stockholders' equity:		
Preferred Stock of \$0.0001 par value; 100,000,000 shares authorized and none issued and outstanding at December 31, 2019 and 2018, respectively	—	—
Series A Preferred Convertible Stock of \$0.0001 par value; one share authorized and none issued and outstanding at December 31, 2019 and 2018, respectively	—	—
Voting Common Stock of \$0.0001 par value; 1,900,000,000 shares authorized and 1,464,544,144 shares issued and outstanding at December 31, 2019; 1,500,000,000 shares authorized and 1,446,783,645 shares issued and outstanding at December 31, 2018	146	145
Nonvoting Common Stock of \$0.0001 par value; no shares authorized and none issued and outstanding at December 31, 2019; 400,000,000 shares authorized and none issued and outstanding at December 31, 2018	—	—
Additional paid-in capital	1,970,047	1,937,364
Accumulated other comprehensive loss	(3,449)	(3,839)
Retained deficit	(1,559,401)	(1,574,725)
Total stockholders' equity	407,343	358,945
Total liabilities and stockholders' equity	\$ 965,590	\$ 1,045,482

See accompanying notes to Consolidated Financial Statements.

**GLOBALSTAR, INC.**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**  
(In thousands, except per share data)

	Year Ended December 31,		
	2019	2018	2017
Revenue:			
Service revenue	\$ 113,386	\$ 111,089	\$ 98,473
Subscriber equipment sales	18,332	19,024	14,187
Total revenue	<u>131,718</u>	<u>130,113</u>	<u>112,660</u>
Operating expenses:			
Cost of services (exclusive of depreciation, amortization and accretion shown separately below)	37,456	37,648	37,022
Cost of subscriber equipment sales	15,763	14,441	9,944
Cost of subscriber equipment sales - reduction in the value of inventory	416	—	843
Marketing, general and administrative	45,233	55,443	38,759
Reduction in the value of long-lived assets	1,124	—	17,040
Revision to contract termination charge	—	(20,478)	—
Depreciation, amortization and accretion	95,772	90,438	77,498
Total operating expenses	<u>195,764</u>	<u>177,492</u>	<u>181,106</u>
Loss from operations	<u>(64,046)</u>	<u>(47,379)</u>	<u>(68,446)</u>
Other income (expense):			
Loss on extinguishment of debt	—	—	(6,306)
Gain on equity issuance	—	—	2,670
Interest income and expense, net of amounts capitalized	(62,464)	(43,612)	(34,771)
Derivative gain	145,073	81,120	21,182
Gain on legal settlement	120	6,779	—
Other	(2,814)	(3,299)	(3,213)
Total other income (expense)	<u>79,915</u>	<u>40,988</u>	<u>(20,438)</u>
Income (loss) before income taxes	15,869	(6,391)	(88,884)
Income tax expense	545	125	190
Net income (loss)	<u>\$ 15,324</u>	<u>\$ (6,516)</u>	<u>\$ (89,074)</u>
Net income (loss) per common share:			
Basic	\$ 0.01	\$ (0.01)	\$ (0.08)
Diluted	(0.07)	(0.01)	(0.08)
Weighted-average shares outstanding:			
Basic	1,450,768	1,269,548	1,166,581
Diluted	1,655,191	1,269,548	1,166,581

See accompanying notes to Consolidated Financial Statements.

**GLOBALSTAR, INC.**  
**CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)**  
(In thousands)

	Year Ended December 31,		
	2019	2018	2017
Net income (loss)	\$ 15,324	\$ (6,516)	\$ (89,074)
Other comprehensive income (loss):			
Defined benefit pension plan liability adjustment	1,097	(64)	384
Net foreign currency translation adjustment	(707)	3,164	(1,945)
Total other comprehensive income (loss)	390	3,100	(1,561)
Total comprehensive income (loss)	<u>\$ 15,714</u>	<u>\$ (3,416)</u>	<u>\$ (90,635)</u>

See accompanying notes to Consolidated Financial Statements.

**GLOBALSTAR, INC.**  
**CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY**  
(In thousands)

	Common Shares	Common Stock Amount	Additional Paid-In Capital	Accumulated Other Comprehensive Income (Loss)	Retained Deficit	Total
Balances – December 31, 2016	1,106,611	\$ 110	\$ 1,649,315	\$ (5,378)	\$ (1,482,228)	\$ 161,819
Issuances (forfeitures) of restricted stock awards, stock for employee stock option exercises and recognition of stock-based compensation	3,190	1	4,111	—	—	4,112
Contribution of services	—	—	548	—	—	548
Issuance and recognition of stock-based compensation of employee stock purchase plan	775	—	1,151	—	—	1,151
Issuance of stock to Terrapin	8,867	1	11,999	—	—	12,000
Issuance of stock to Thermo from exercise of warrants	24,571	2	243	—	—	245
Issuance of stock to Thermo for equity financing	17,838	2	32,998	—	—	33,000
Common stock issued in connection with conversions of 2013 8.00% Notes	26,411	3	53,614	—	—	53,617
Issuance of stock for legal settlement	321	—	453	—	—	453
Issuance of stock for public offering	73,365	7	114,986	—	—	114,993
Stock offering issuance costs	—	—	(300)	—	—	(300)
Investment in business	—	—	221	—	—	221
Other comprehensive loss	—	—	—	(1,561)	—	(1,561)
Net loss	—	—	—	—	(89,074)	(89,074)
Balances – December 31, 2017	1,261,949	\$ 126	\$ 1,869,339	\$ (6,939)	\$ (1,571,302)	\$ 291,224
Issuances (forfeitures) of restricted stock awards, stock for employee stock option exercises and recognition of stock-based compensation	11,892	2	7,726	—	—	7,728
Contribution of services	—	—	428	—	—	428
Issuance and recognition of stock-based compensation of employee stock purchase plan	1,514	—	1,047	—	—	1,047
Issuance of stock for public offering	171,429	17	59,083	—	—	59,100
Stock offering issuance costs	—	—	(259)	—	—	(259)
Other comprehensive income	—	—	—	3,100	—	3,100
Impact of adoption of ASC 606	—	—	—	—	3,093	3,093
Net loss	—	—	—	—	(6,516)	(6,516)
Balances – December 31, 2018	1,446,784	\$ 145	\$ 1,937,364	\$ (3,839)	\$ (1,574,725)	\$ 358,945
Issuances (forfeitures) of restricted stock awards, stock for employee stock option exercises and recognition of stock-based compensation	6,003	—	4,118	—	—	4,118
Contribution of services	—	—	338	—	—	338
Issuance and recognition of stock-based compensation of employee stock purchase plan	2,257	—	1,096	—	—	1,096
Stock offering issuance costs	—	—	(195)	—	—	(195)
Investment in business	—	—	155	—	—	155
Fair value of warrants issued in connection with Second Lien Term Loan Facility	—	—	23,562	—	—	23,562
Issuance of stock for warrant exercises	9,500	1	3,609	—	—	3,610
Other comprehensive income	—	—	—	390	—	390
Net income	—	—	—	—	15,324	15,324
Balances – December 31, 2019	1,464,544	\$ 146	\$ 1,970,047	\$ (3,449)	\$ (1,559,401)	\$ 407,343

See accompanying notes to Consolidated Financial Statements.

**GLOBALSTAR, INC.**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(In thousands)

	Year Ended December 31,		
	2019	2018	2017
Cash flows provided by (used in) operating activities:			
Net income (loss)	\$ 15,324	\$ (6,516)	\$ (89,074)
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:			
Depreciation, amortization, and accretion	95,772	90,438	77,498
Change in fair value of derivative assets and liabilities	(145,073)	(81,120)	(21,182)
Stock-based compensation expense	5,700	6,995	5,088
Amortization of deferred financing costs	15,896	8,690	8,096
Reduction in the value of long-lived assets and inventory	1,540	—	17,883
Provision for bad debts	1,747	1,398	1,256
Non-cash interest and accretion expense	21,453	14,541	11,043
Loss on extinguishment of debt	—	—	6,306
Change in fair value related to equity issuance	—	—	(2,670)
Revision to contract termination charge	—	(20,478)	—
Change to estimated impact upon adoption of ASC 606	(3,885)	—	—
Unrealized foreign currency (gain) loss	(192)	3,057	2,159
Other, net	598	919	(260)
Changes in operating assets and liabilities:			
Accounts receivable	(4,299)	(3,792)	(2,983)
Inventory	(1,664)	(486)	50
Prepaid expenses and other current assets	(421)	(7,926)	(2,504)
Other assets	864	(3,794)	(699)
Accounts payable and accrued expenses	(173)	3,979	(1,114)
Payables to affiliates	(395)	431	(84)
Other non-current liabilities	359	(1,394)	105
Deferred revenue	(103)	978	4,943
Net cash provided by operating activities	3,048	5,920	13,857
Cash flows used in investing activities:			
Second-generation network costs (including interest)	(3,342)	(7,032)	(11,910)
Property and equipment additions	(4,594)	(7,349)	(5,525)
Purchase of intangible assets	(3,555)	(3,020)	(3,341)
Net cash used in investing activities	(11,491)	(17,401)	(20,776)
Cash flows provided by (used in) financing activities:			
Principal payments of the Facility Agreement	(199,029)	(77,866)	(75,755)
Net proceeds from common stock offering and exercise of warrants	4,282	59,100	114,993
Proceeds from Thermo Common Stock Purchase Agreement	—	—	33,000
Payment of debt restructuring fee	—	—	(20,795)
Payment of financing costs	(6,166)	(276)	(654)
Proceeds from Subordinated Loan Agreement	62,000	—	—
Payoff of Subordinated Loan Agreement	(62,000)	—	—
Proceeds from Second Lien Term Loan Facility	192,990	—	—
Proceeds from issuance of stock to Terrapin	—	—	12,000
Proceeds from issuance of common stock and exercise of options and warrants	—	846	1,001
Net cash provided by (used in) financing activities	(7,923)	(18,196)	63,790
Effect of exchange rate changes on cash, cash equivalents and restricted cash	4	(112)	195
Net increase (decrease) in cash, cash equivalents and restricted cash	(16,362)	(29,789)	57,066
Cash, cash equivalents and restricted cash, beginning of period	75,490	105,279	48,213
Cash, cash equivalents and restricted cash, end of period	\$ 59,128	\$ 75,490	\$ 105,279

	As of December 31,		
	2019	2018	2017
Reconciliation of cash, cash equivalents and restricted cash			
Cash and cash equivalents	\$ 7,606	\$ 15,212	\$ 41,644
Restricted cash (See Note 6 for further discussion on restrictions)	51,522	60,278	63,635
Total cash, cash equivalents and restricted cash shown in the statement of cash flows	\$ 59,128	\$ 75,490	\$ 105,279

Supplemental disclosure of cash flow information:

Cash paid for:						
Interest	\$	27,353	\$	25,867	\$	24,075
Income taxes		45		155		115

	Year Ended December 31,					
	2019	2018	2017			
Supplemental disclosure of non-cash financing and investing activities:						
Increase in capitalized accrued interest for second-generation network costs	\$	434	\$	2,093	\$	4,317
Fair value of warrants issued with Second Lien Term Loan Facility		23,562		—		—
Capitalized accretion of debt discount and amortization of prepaid financing costs		501		1,898		5,089
Issuance of common stock for legal settlement		—		—		453
Principal amount of debt converted into common stock		—		—		15,986
Reduction of debt discount and issuance costs due to note conversions		—		—		1,194
Fair value of common stock issued upon conversion of debt		—		—		53,614
Reduction in derivative liability due to conversion of debt		—		—		32,000

See accompanying notes to Consolidated Financial Statements.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

**Business**

Globalstar, Inc. ("Globalstar" or the "Company") was formed as a Delaware limited liability company in November 2003 and was converted into a Delaware corporation on March 17, 2006. Globalstar provides Mobile Satellite Services ("MSS") including voice and data communications services through its global satellite network. Thermo Companies, through commonly controlled affiliates, (collectively, "Thermo"), is the principal owner and largest stockholder of Globalstar. The Company's Executive Chairman of the Board controls Thermo. Two other members of the Company's Board of Directors are also directors, officers or minority equity owners of various Thermo entities.

The Company's satellite communications business, by providing critical mobile communications to subscribers, serves principally the following markets: recreation and personal; government; public safety and disaster relief; oil and gas; maritime and fishing; natural resources, mining and forestry; construction; utilities; and transportation.

Globalstar currently provides the following communications services via satellite which are available only with equipment designed to work on the Globalstar network:

- two-way voice communication and data transmissions using mobile or fixed devices, including the GSP-1700 phone, two generations of our Sat-Fi<sup>®</sup>, the Sat-Fi<sup>®</sup> Remote Antenna Station, and other fixed and data-only devices ("Duplex");
- one-way or two-way communication and data transmissions using mobile devices, including the SPOT family of products, such as SPOT X<sup>®</sup>, SPOT Gen3<sup>®</sup> and SPOT Trace<sup>®</sup>, that transmit messages and the location of the device ("SPOT"); and
- one-way data transmissions using a mobile or fixed device that transmits its location and other information to a central monitoring station, including commercial IoT products, such as the battery- and solar-powered SmartOne, STX-3 and STINGR ("Commercial IoT").

Globalstar provides Duplex, SPOT and Commercial IoT products and services to customers directly and through a variety of independent agents, dealers and resellers, and independent gateway operators ("IGOs").

**Use of Estimates in Preparation of Financial Statements**

The preparation of Consolidated Financial Statements in conformity with accounting principles generally accepted in the United States of America ("U.S. GAAP") requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from estimates. Certain reclassifications have been made to prior year Consolidated Financial Statements to conform to current year presentation. The Company evaluates estimates on an ongoing basis. Significant estimates include the value of derivative instruments, the allowance for doubtful accounts, the net realizable value of inventory, the useful life and value of property and equipment, the value of stock-based compensation, and income taxes.

**Principles of Consolidation**

The Consolidated Financial Statements include the accounts of Globalstar and all its subsidiaries. All significant intercompany transactions and balances have been eliminated in the consolidation.

**Cash and Cash Equivalents**

Cash and cash equivalents consist of cash on hand and highly liquid investments with original maturities of three months or less.



### Restricted Cash

Restricted cash is comprised of funds held in escrow by the agent for the Company's senior secured facility agreement (the "Facility Agreement") to secure the Company's principal and interest payment obligations related to its Facility Agreement. Restricted cash is classified as either a current or non-current asset on the Company's Consolidated Balance Sheet based on when these funds are expected to be used to pay principal and interest due under the Facility Agreement.

### Concentration of Credit Risk

Financial instruments that potentially subject the Company to significant concentrations of credit risk consist principally of cash and cash equivalents and restricted cash. Cash and cash equivalents and restricted cash consist primarily of highly liquid short-term investments deposited with financial institutions that are of high credit quality.

### Accounts and Notes Receivable

Receivables are recorded when the right to consideration from the customer becomes unconditional, which is generally upon billing or upon satisfaction of a performance obligation, whichever is earlier. Accounts receivable are uncollateralized, without interest, and consist primarily of receivables from the sale of Globalstar services and equipment. For service customers, payment is generally due within thirty days of the invoice date and for equipment customers, payment is generally due within thirty to sixty days of the invoice date, or, for some customers, may be made in advance of shipment.

The Company performs ongoing credit evaluations of its customers and impairs receivable balances by recording specific allowances for bad debts based on factors such as current trends, the length of time the receivables are past due and historical collection experience. Accounts receivable are considered past due in accordance with the contractual terms of the arrangements. Accounts receivable balances that are determined likely to be uncollectible are included in the allowance for doubtful accounts. After attempts to collect a receivable have failed, the receivable is written off against the allowance.

Effective January 1, 2020, the Company adopted ASU No. 2016-13, *Credit Losses, Measurement of Credit Losses on Financial Instruments*. The consolidated financial statements, including related disclosures, will reflect this adoption in prospective financial periods.

The following is a summary of the activity in the allowance for doubtful accounts (in thousands):

	Year Ended December 31,		
	2019	2018	2017
Balance at beginning of period	\$ 3,382	\$ 3,610	\$ 3,966
Provision, net of recoveries	1,747	1,398	1,256
Write-offs and other adjustments	(2,177)	(1,626)	(1,612)
Balance at end of period	<u>\$ 2,952</u>	<u>\$ 3,382</u>	<u>\$ 3,610</u>

### Inventory

Inventory consists primarily of purchased products, including subscriber equipment devices which work on the Company's network, of approximately \$12.0 million and \$8.6 million as of December 31, 2019 and 2018, respectively, as well as ground infrastructure assets expected to be used as spare parts of approximately \$4.3 million and \$5.7 million as of December 31, 2019 and 2018, respectively. Inventory is stated at the lower of cost and net realizable value. Cost is computed using the first-in, first-out (FIFO) method. Inventory write downs are measured as the difference between the cost of inventory and the net realizable value and are recorded as a cost of subscriber equipment sales - reduction in the value of inventory in the Company's Consolidated Financial Statements. At the point of any inventory write down to net realizable value, a new, lower cost basis for that inventory is established, and any subsequent changes in facts and circumstances do not result in the restoration of the former cost basis or increase in that newly established cost basis. Product sales and returns from the previous 12 months and future demand forecasts are reviewed and excess and obsolete inventory is written off.

For the years ended December 31, 2019 and 2017, the Company wrote down the value of inventory by \$0.4 million and \$0.8 million, respectively, after adjusting for changes in net realizable value. In 2019, the Company reduced the carrying value of gateway spare parts due to excess hardware parts. In 2017, the carrying value of certain products, particularly in international locations, was higher than the net realizable value; additionally, the Company recorded a reduction in the value of prepaid inventory

due to design changes for products under development. During the year ended December 31, 2018, no write down of inventory was required.

### ***Property and Equipment***

The Globalstar System includes costs for the design, manufacture, test and launch of a constellation of low earth orbit satellites (the “Space Component”), and primary and backup control centers and gateways (the “Ground Component”). Property and equipment is stated at cost, net of accumulated depreciation.

Costs associated with the design, manufacture, test and launch of the Company’s Space and Ground Components are capitalized. Capitalized costs associated with the Company’s Space Component, Ground Component, and other assets are tracked by fixed asset category and are allocated to each asset as it comes into service. When a second-generation satellite was incorporated into the second-generation constellation, the Company began depreciation on the date the satellite was placed into service, which was the point that the satellite reached its orbital altitude, over its estimated depreciable life.

The Company capitalizes interest costs associated with the costs of assets in progress. Capitalized interest is added to the cost of the underlying asset and is amortized over the depreciable life of the asset after it is placed into service. As the Company’s construction in progress decreases, the Company capitalizes less interest, resulting in a higher amount of net interest expense recognized under U.S. GAAP.

Depreciation is provided using the straight-line method over the estimated useful lives of the respective assets as follows:

- Space Component - 15 years from the commencement of service
- Ground Component - Up to 15 years from commencement of service
- Software, Facilities & Equipment - 3 to 10 years
- Buildings - 18 years
- Leasehold Improvements - Shorter of lease term or the estimated useful lives of the improvements

The Company evaluates and revises the estimated depreciable lives assigned to property and equipment based on changes in facts and circumstances. When changes are made to estimated useful lives, the remaining carrying amounts are depreciated prospectively over the remaining useful lives.

For assets that are sold or retired, including satellites that are de-orbited and no longer providing services, the estimated cost and accumulated depreciation is removed from property and equipment.

The Company assesses the impairment of long-lived assets when indicators of impairment are present. Recoverability of assets is measured by comparing the carrying amounts of the assets to the estimated future undiscounted cash flows, excluding financing costs. If the Company determines that an impairment exists, any related impairment loss is estimated based on fair values.

Assets held for sale are carried at the lower of cost or fair value less estimated cost to sell; these assets are generally classified as current on the Company's consolidated balance sheets as the disposal of these assets is expected within one year. As of December 31, 2019, the Company had approximately \$0.5 million of assets classified as held for sale due to the anticipated disposal of its former gateway location in Nicaragua. The change in classification from held and used to held for sale resulted in an impairment for long-lived assets of \$1.1 million, which was recorded during 2019 in the Company's consolidated statement of operations.

### ***Leases***

The Company has operating and finance leases for facilities and equipment throughout the United States and around the world, including corporate offices, satellite control centers, ground control centers, gateways and certain equipment.

Upon inception of a contract, the Company evaluates if the contract, or part of the contract, contains a lease. A lease conveys the right to control the use of an identified asset for a period of time in exchange for consideration. Leases include both a right-of-use asset and a lease liability. The right-of-use asset represents the Company's right to use the underlying asset in the lease. Certain initial direct costs associated with consummating a lease are included in the initial measurement of the right-of-use asset. The right-of-use asset also includes prepaid lease payments and lease incentives. The lease liability represents the present value of the remaining lease payments discounted using the implicit rate in the lease on the lease commencement date. For leases in which the implicit rate is not readily determinable, an estimated incremental borrowing rate is used, which represents a rate of interest that the Company would pay to borrow on a collateralized basis over a similar term. The Company has elected to combine lease and nonlease components, if applicable. As of December 31, 2019, there are no leases not yet commenced that create significant rights and obligations.

For operating leases, the Company records lease expense on a straight-line basis over the lease term in either marketing, general and administrative expense or cost of services, depending on the nature of the underlying asset. For finance leases, the Company records the amortization of the right-of-use asset through depreciation, amortization and accretion expense and records the interest expense on the lease liability through interest expense, net, using the effective interest method.

Variable lease payments are payments made to a lessor due to changes in circumstances occurring after the commencement date. Variable lease payments dependent upon an index or rate are included in the measurement of the lease liability; all other variable lease payments are not included in the measurement of the lease liability and recognized when incurred. Variable lease payments excluded from the measurement of the lease liability are uncommon and, when incurred, are immaterial for the Company.

The Company's leases have remaining lease terms of less than 1 year to 12 years. Lease terms include renewal or termination options that the Company is reasonably certain to exercise. For leases with a term of twelve months or less, the Company does not record a right-of-use asset and associated lease liability on its condensed consolidated balance sheet.

The Company reviews the carrying value of its right-of-use assets for impairment whenever events or changes in circumstances indicate that the recorded value may not be recoverable. Recoverability of assets is measured by comparing the carrying amounts of the assets to the estimated future undiscounted cash flows, excluding financing costs. If the Company determines that an impairment exists, any related impairment loss is estimated based on fair values.

#### ***Derivative Instruments***

The Company has financing arrangements that are hybrid instruments that contain embedded derivative features. Derivative instruments are recognized as either assets or liabilities in the consolidated balance sheets and are measured at fair value with gains or losses recognized in earnings. The Company determines the fair value of derivative instruments based on available market data using appropriate valuation models.

#### ***Deferred Financing Costs***

Deferred financing costs are those costs directly incurred in obtaining long-term debt. These costs are amortized as additional interest expense over the expected term of the corresponding debt. Deferred financing costs are recorded on the Company's consolidated balance sheets as a reduction in the carrying amount of the related debt liability. The Company classifies deferred financing costs consistent with the classification of the related debt outstanding at the end of the reporting period. As of December 31, 2019 and 2018, the Company had net deferred financing costs of \$43.6 million and \$24.4 million, respectively. The increase in deferred financing costs from 2018 to 2019 is driven by additions for the Second Lien Term Loan Facility Agreement entered into in November 2019 offset by a reduction in costs related to the Company's Facility Agreement that was modified in November 2019 (see Note 6: Long-Term Debt and Other Financing Arrangements).

#### ***Fair Value of Financial Instruments***

The Company believes it is not practicable to determine the fair value of the Facility Agreement and Second Lien Term Loan Facility. Interest rates and other terms for long-term debt are not readily available and generally involve a variety of factors, including due diligence by the debt holders. For the Company's other debt instruments, which include the Loan Agreement with Thermo and the Company's 8.00% Convertible Senior Notes Issued in 2013 ("2013 8.00% Notes"), the fair value of debt is calculated using inputs consistent with those used to calculate the fair value of the derivatives embedded in these instruments.

### ***Litigation, Commitments and Contingencies***

The Company is subject to various claims and lawsuits that arise in the ordinary course of business. Estimating liabilities and costs associated with these matters requires judgment and assessment based on professional knowledge and experience of our management and legal counsel. When a loss is considered probable and reasonably estimable, a liability is recorded for the Company's best estimate. If there is a range of loss, the Company will record a reserve based on the low end of the range, unless facts and circumstances can support a different point in the range. When a loss is probable, but not reasonably estimable, disclosure is provided, as considered necessary. Reserves for potential claims or lawsuits may be relieved if the loss is no longer considered probable. The ultimate resolution of any such exposure may vary from earlier estimates as further facts and circumstances become known.

### ***Gain/Loss on Extinguishment of Debt***

Gain or loss on extinguishment of debt generally is recorded upon an extinguishment of a debt instrument or the conversion of certain of the Company's convertible notes. Gain or loss on extinguishment of debt is calculated as the difference between the reacquisition price and net carrying amount of the debt and is recorded as an extinguishment gain or loss in the Company's consolidated statement of operations.

### ***Revenue Recognition and Deferred Revenue***

Effective January 1, 2018, the Company adopted ASC 606 using the modified retrospective method. As such, the revenue accounting policies below reflect the Company's policies after adoption of this standard. Refer to the Company's annual report on Form 10-K for the year ended December 31, 2017 for its revenue accounting policies in place during 2017 and 2016.

Revenue consists primarily of satellite voice and data service revenue and revenue generated from the sale of fixed and mobile devices as well as other products and accessories. A performance obligation is a promise in a contract to transfer a distinct good or service to the customer. Each type of revenue is a separate performance obligation with distinct deliverables and is therefore accounted for discretely. Revenue is measured based on the consideration specified in a contract with a customer, adjusted for credits and discounts, as applicable, and is recognized when the Company satisfies a performance obligation by transferring control over a product or service to a customer.

Unless otherwise disclosed, service revenue is recognized over a period of time and revenue from the sale of subscriber equipment is recognized at a point in time. The recognition of revenue for service is over time as the customer simultaneously receives and consumes the benefits of the Company's performance over the contract term. The recognition of revenue for subscriber equipment is at a point in time as the risks and rewards of ownership of the hardware transfer to the customer generally upon shipment, which is when legal title of the product transfers to the customer, among other things (as discussed further below).

The Company does not record sales taxes, telecommunication taxes or other governmental fees collected from customers in revenue. The Company excludes these taxes from the measurement of contract transaction prices.

The Company receives payment from customers in accordance with billing statements or invoices for customer contracts; these payments may be in advance or arrears of services provided to the customer by the Company. Customer payments received in advance of the corresponding service period are recorded as deferred revenue.

Upon activation of a Globalstar device, certain customers are charged an activation fee, which is recognized over the term of the expected customer life. Credits granted to customers are expensed or charged against revenue or accounts receivable over the remaining term of the contract. Estimates related to earned but unbilled service revenue are calculated primarily using current subscriber data, including plan subscriptions and usage between the end of the billing cycle and the end of the period. The recognition of service revenue related to amounts allocated to performance obligations that were satisfied (or partially satisfied) in a previous period is not material to the Company's financial statements. Amounts related to earned but unbilled revenue from the sale of subscriber equipment are recognized if hardware is shipped prior to the invoice being generated. This situation may result from multi-deliverable contracts, whereby equipment and service revenue are bundled and billed over time to a single customer.

Provisions for estimated future warranty costs, returns and rebates are recorded as a cost of sale, or a reduction to revenue, as applicable. These costs are based on historical trends and the provision is reviewed regularly and periodically adjusted to reflect changes in estimates.

Certain contracts with customers may contain a financing component. Under ASC 606, an entity should adjust the promised amount of the consideration for the effects of time value of money if the timing of the payments agreed upon by the parties to the contract provides the customer or the entity with a significant benefit of financing for the transfer of goods or services to the customer. This type of transaction is infrequent and not considered material to the Company. Additionally, in connection with the adoption of ASC 606, the Company has applied the practical expedient related to the existence of a significant financing component as it expects at contract inception that the period between payment by the customer and transfer of the promised goods or services will be one year or less.

The following describes the principal activities from which the Company generates its revenue. The Company's only reportable segment is its MSS business.

*Duplex Service Revenue.* The Company recognizes revenue for monthly access fees in the period services are rendered. Access fees represent the minimum monthly charge for each line of service based on its associated rate plan. The Company also recognizes revenue for airtime minutes and data in excess of the monthly access fees in the period such minutes or data are used. The Company offers certain annual plans whereby a customer prepays for a predetermined amount of minutes and data. In these cases, revenue is recognized consistent with a customer's expected pattern of usage based on historical experience because the Company believes that this method most accurately depicts the satisfaction of the Company's obligation to the customer. This usage pattern is typically seasonal and highest in the second and third calendar quarters of the year. The Company offers other annual plans whereby the customer is charged an annual fee to access the Company's system with an unlimited amount of usage. Annual fees for unlimited plans are recognized on a straight-line basis over the term of the plans.

*SPOT Service Revenue.* The Company sells SPOT services as monthly, annual or multi-year plans and recognizes revenue on a straight-line basis over the service term, beginning when the service is activated by the customer.

*Commercial IoT Service Revenue.* The Company sells Commercial IoT services as monthly, annual or multi-year plans and recognizes revenue ratably over the service term or as service is used, beginning when the service is activated by the customer.

*Independent Gateway Operator ("IGO") Service Revenue.* The Company owns and operates its satellite constellation and earns a portion of its revenues through the sale of airtime minutes or data on a wholesale basis to IGOs. Revenue from services provided to IGOs is recognized based upon airtime minutes or data packages used by customers of the IGOs and in accordance with contractual fee arrangements.

*Equipment Revenue.* Subscriber equipment revenue represents the sale of fixed and mobile user terminals, SPOT and Commercial IoT products, and accessories. The Company recognizes revenue upon shipment provided control has transferred to the customer. Indicators of transfer of control include, but are not limited to; 1) the Company's right to payment, 2) the customer has legal title of the equipment, 3) the Company has transferred physical possession of the equipment to the customer or carrier, and 4) the customer has significant risks and rewards of ownership of the equipment. The Company sells equipment designed to work on its network through various channels, including through dealers, retailers and resellers (including IGOs) as well as direct to consumers or other businesses by its global sales team and through its e-commerce website. The sales channel depends primarily on the type of equipment and geographic region. Promotional rebates are offered from time to time. A reduction to revenue is recorded to reflect the lower transaction price based on an estimate of the customer take rate at the time of the sale using primarily historical data. This estimate is adjusted periodically to reflect actual rebates given to the Company's customers. Shipping and handling costs associated with outbound freight after control over a product has transferred to a customer are accounted for as a fulfillment cost and are included in cost of revenues.

*Other Service Revenue.* Other service revenue includes primarily revenue associated with engineering services to assist customers in developing new applications related to its system. The revenue associated with these engineering services is generally recorded over time as the services are rendered, and the Company's obligation to the customer is satisfied.

*Multiple-Element Arrangement Contracts.* At times, the Company will sell subscriber equipment through multiple-element arrangement contracts with services. When the Company sells subscriber equipment and services in bundled arrangements and determines that it has separate performance obligations, the Company allocates the bundled contract price among the various performance obligations based on relative stand-alone selling prices at contract inception of the distinct goods or services underlying each performance obligation and recognizes revenue when, or as, each performance obligation is satisfied.

### ***Stock-Based Compensation***

The Company recognizes compensation expense in the financial statements for both employee and non-employee share-based awards based on the grant date fair value of those awards. For stock options, the Company uses the Black-Scholes option pricing model to estimate fair values of stock options. Option pricing models, including the Black-Scholes model, require the use of input estimates and assumptions, including expected volatility, term, and risk-free interest rate. The assumptions for expected volatility and expected term most significantly affect the estimated grant-date fair value. For restricted stock awards and units, the fair value is determined from the stock price on the grant date. The Company's estimate of the forfeiture rate of its share-based awards also impacts the timing of expense recorded over the vesting period of the award. The Company's estimate for pre-vesting forfeitures is recognized over the requisite service periods of the awards on a straight-line basis, which is generally commensurate with the vesting term. See Note 16: Stock Compensation for a description of methods used to determine the Company's assumptions.

For share-based awards with a performance condition that affects vesting, the Company recognizes compensation cost for awards if and when the performance condition is probable of achievement. For awards with a performance condition, the Company reassesses the probability of vesting at each reporting period and adjusts compensation cost based on the Company's probability assessment.

### ***Foreign Currency***

The functional currency of the Company's foreign consolidated subsidiaries is generally their local currency, unless the subsidiary operates in a hyperinflationary economy, such as Venezuela and Argentina. Assets and liabilities of its foreign subsidiaries are translated into United States dollars based on exchange rates at the end of the reporting period. Income and expense items are translated at the average exchange rates prevailing during the reporting period. For 2019, 2018 and 2017, the foreign currency translation adjustments were net losses of \$0.7 million, net gains of \$3.2 million and net losses of \$1.9 million, respectively.

Foreign currency transaction gains/losses were approximately net gains of \$0.1 million, net losses of \$3.1 million and net losses of \$2.2 million for each of 2019, 2018, and 2017, respectively. These were classified as other income (expense) on the consolidated statement of operations.

### ***Asset Retirement Obligation***

Liabilities arising from legal obligations associated with the retirement of long-lived assets are measured at fair value and recorded as a liability. Upon initial recognition of a liability for retirement obligations, the Company records an asset, which is depreciated over the life of the asset to be retired. Accretion of the asset retirement obligation liability and depreciation of the related assets are included in depreciation, amortization and accretion in the accompanying consolidated statements of operations.

The Company capitalizes, as part of the carrying amount, the estimated costs associated with the eventual retirement of gateways owned by the Company. As of both December 31, 2019 and 2018, the Company had accrued approximately \$1.5 million, respectively, for asset retirement obligations. The Company believes this estimate will be sufficient to satisfy the Company's obligation under leases to remove the gateway equipment and restore the sites to their original condition.

### ***Warranty Expense***

Warranty terms extend from 90 days on equipment accessories to one year for fixed and mobile user terminals. A provision for estimated future warranty costs is recorded as cost of sales when products are shipped. Warranty costs are based on historical trends in warranty charges as a percentage of gross product shipments. The resulting accrual is reviewed regularly and periodically adjusted to reflect changes in warranty cost estimates.

### ***Research and Development Expenses***

Research and development costs were \$3.2 million, \$2.7 million and \$3.8 million for 2019, 2018 and 2017, respectively. These costs are expensed as incurred as cost of services and include primarily the cost of new product development, chip set design and other engineering work.

### **Advertising Expenses**

Advertising costs were \$3.4 million, \$3.6 million and \$2.5 million for 2019, 2018, and 2017, respectively. These costs are expensed as incurred as marketing, general and administrative expenses.

### **Income Taxes**

The Company is taxed as a C corporation for U.S. tax purposes. The Company recognizes deferred tax assets and liabilities for future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax basis, operating losses and tax credit carryforwards. The Company measures deferred tax assets and liabilities using tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The Company recognizes the effect on deferred tax assets and liabilities of a change in tax rates in income in the period that includes the enactment date; however, as the Company has full valuation allowance on its deferred tax assets, there is no impact to the consolidated statements of operations and balance sheets.

The Company also recognizes valuation allowances to reduce deferred tax assets to the amount that is more likely than not to be realized. In assessing the likelihood of realization, management considers: (i) future reversals of existing taxable temporary differences; (ii) future taxable income exclusive of reversing temporary differences and carryforwards; (iii) taxable income in prior carry-back year(s) if carry-back is permitted under applicable tax law; and (iv) tax planning strategies.

### **Comprehensive Income (Loss)**

All components of comprehensive income (loss), including the minimum pension liability adjustment and foreign currency translation adjustment, are reported in the financial statements in the period in which they are recognized. Comprehensive income (loss) is defined as the change in equity during a period from transactions and other events and circumstances from non-owner sources.

### **Earnings (Loss) Per Share**

The Company is required to present basic and diluted earnings (loss) per share. Basic earnings (loss) per share is computed by dividing income (loss) available to common stockholders by the weighted average number of shares of common stock outstanding during the period. The numerator used to calculate diluted EPS includes the effect of dilutive securities, including interest expense, net, and derivative gains or losses reflected in net income (loss). Common stock equivalents are included in the calculation of diluted earnings per share only when the effect of their inclusion would be dilutive. Potentially dilutive securities include primarily outstanding stock-based awards, convertible notes, warrants and shares issuable pursuant to the Company's Employee Stock Purchase Plan.

### **Intangible and Other Assets**

#### *Intangible Assets Not Subject to Amortization*

A significant portion of the Company's intangible assets are licenses that provide the Company the exclusive right to provide MSS services over the Globalstar System or to utilize designated radio frequency spectrum to provide terrestrial wireless communication services in a particular region of the world. While licenses are issued for only a fixed time, such licenses are subject to renewal by the Federal Communications Commission ("FCC") or equivalent international regulatory authorities. These license renewals are expected to occur routinely and at nominal cost. Moreover, the Company has determined that there are currently no legal, regulatory, contractual, competitive, economic or other factors that limit the useful life of its wireless licenses. As a result, the Company treats the wireless licenses as an indefinite-lived intangible asset. The Company re-evaluates the useful life determination for wireless licenses annually, or more frequently if needed, to determine whether events and circumstances continue to support an indefinite useful life.

#### *Intangible Assets Subject to Amortization*

Our intangible assets that do not have indefinite lives (primarily developed technology and customer relationships) are amortized over their estimated useful lives. For information related to each major classes of intangible assets, including accumulated amortization and estimated average useful lives, see Note 5: Intangible and Other Assets.

## *Other Assets*

### Prepaid Licenses and Royalties

The Company has signed various licensing and royalty agreements necessary for the manufacture and distribution of its second-generation products. Amounts that are prepaid are recorded primarily in noncurrent assets on the Company's consolidated balance sheet. The Company estimates the portion of expense incurred or royalties earned for the next 12 months and reclassifies these amounts to current assets on the Company's consolidated balance sheet each reporting period. The Company will expense these amounts through depreciation expense over the life of the gateway, maintenance expense over the term of the services, or cost of goods sold on a per unit basis as these units are manufactured, sold, or activated.

### Business Economic Loss Claim Receivable

In accordance with ASC 450, the Company believes that the recognition of a gain is appropriate at the earlier of when the gain is realizable or realized. A realized gain is one where cash (or other assets, such as claims to cash) has already been received without expectation of repayment. A gain is realizable when assets are readily convertible to known amounts of cash or claims to cash. In May 2018, the Company entered into a settlement agreement related a business economic loss claim. As part of the Company's assessment, it considered that the terms of the settlement agreement are final (e.g. not subject to appeal) and the counterparty has the ability to pay the amount. Therefore, the Company recorded a receivable and non-operating income for the amount of the settlement. The Company imputed interest on this receivable in accordance with ASC 835-30-15-2 as it represents a contractual right to receive money on fixed or determinable dates. The difference between the present value and the face amount was treated as a discount and is being amortized as interest income over the life of the claim using the interest method. See Note 10: Contingencies for further discussion.

### Costs to Obtain a Contract

The Company also capitalizes costs to obtain a contract, which include certain deferred subscriber acquisition costs which are amortized consistently with the pattern of transfer of the good or delivery of the service to which the asset relates. When a contract terminates prior to the end of its expected life, the remaining deferred costs asset associated with it becomes impaired. An immediate recognition of expense for individual remaining costs to obtain a contract following deactivation is not practicable. Because early terminations are factored into the determination of the expected customer life and therefore affect the amortization period, the Company does not recognize early termination expense on individual assets because the incremental effect would be immaterial and doing so would be impractical.

### *Impairment of Intangible and Other Assets*

The Company assesses these intangible assets for impairment annually or more frequently if events or changes in circumstances indicate that it is more likely than not that the asset is impaired. In assessing whether it is more likely than not that such an asset is impaired, the Company assesses relevant events and circumstances that could affect the significant inputs used to determine the fair value of the asset. If the Company determines that an impairment exists, any related loss is estimated based on fair values.

### **Recently Issued Accounting Pronouncements**

In August 2018, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2018-14, *Compensation - Retirement Benefits - Defined Benefit Plans - General Disclosure Framework - Changes to the Disclosure Requirements for Defined Benefit Plans*. As part of the FASB's disclosure framework project, it has changed the disclosure requirements for defined pension and other post-retirement benefit plans. The FASB eliminated disclosure requirements related to the amounts in accumulated other comprehensive income expected to be recognized as components of net periodic benefit cost over the next fiscal year, the amount and timing of plan assets expected to be returned to the employer, if any, information related to Japanese Welfare Pension Insurance Law, information about the amount of future annual benefits covered by insurance contracts and significant transactions between the employer or related parties and the plan, and the disclosure of the effects of a one-percentage-point change in the assumed health care cost trend rates on the (1) aggregate of the service and interest cost components of net periodic benefit costs and the (2) benefit obligation for postretirement health care benefits. Entities will be required to disclose the weighted-average interest crediting rate for cash balance plans and other plans with promised interest crediting rates as well as an explanation of the reasons for significant gains and losses related to changes in the benefit obligation for the period. This ASU is effective for public entities for annual periods beginning after December 15, 2020. Early adoption is permitted as of the beginning of any annual reporting period. This ASU will have an impact on the Company's disclosures.



### **Recently Issued and Implemented Financial Reporting Rules**

In April 2019, the SEC adopted the final rules under SEC Releases 33-10618 and 34-85381, *FAST Act Modernization and Simplification of Regulation S-K*. Among other things, the amendments 1) allow registrants who present financial statements covering three years in their periodic reports to omit discussion of the earliest year from management's discussion and analysis if the discussion was included in a prior filing, 2) allow registrants to omit certain information and exhibits from their periodic reports without submitting confidential treatment requests to the Commission, 3) clarify and streamline certain risk factor and property disclosure requirements, 4) require all filings to include hyperlinks to information that is incorporated by reference in current filings to the information available on EDGAR, as applicable, and 5) require registrants to apply XBRL tags to certain information on cover pages of SEC filings. Certain of the amended rules became effective April 2, 2019 or May 2, 2019 and have been applied to any filings after these dates, except for the XBRL tagging requirement, which is effective for accelerated filers for fiscal reports ending on or after June 15, 2020. These final rules did not (or will not) have a material impact on its disclosures and financial statements.

### **Recently Adopted Accounting Pronouncements**

In February 2016, the FASB issued ASU No. 2016-02, *Leases*. ASU 2016-02 amended the FASB Accounting Standards Codification ("ASC") and created a new ASC Topic 842, "Leases" ("ASC 842"). This ASU became effective for public business entities in fiscal years, and interim periods within those fiscal years, beginning after December 15, 2018. The Company adopted this standard when it became effective on January 1, 2019. See Note 3: Leases for further discussion, including the impact on the Company's condensed consolidated financial statements and required disclosures.

In June 2016, the FASB issued ASU No. 2016-13, *Credit Losses, Measurement of Credit Losses on Financial Instruments*. ASU No. 2016-13, as amended, significantly changes how entities will measure credit losses for most financial assets and certain other instruments that are not measured at fair value through net income. The standard will replace today's incurred loss approach with an expected loss model for instruments measured at amortized cost. Entities will apply the standard's provisions as a cumulative-effect adjustment to retained earnings as of the beginning of the first reporting period in which the guidance is effective. This ASU became effective for public entities for annual and interim periods beginning after December 15, 2019. The Company adopted this standard on January 1, 2020. The adoption of this standard did not have a material impact on the Company's consolidated financial statements and will impact certain of the Company's related disclosures in future filings.

In February 2018, the FASB issued ASU No. 2018-02, *Reclassification of Certain Tax Effects from Accumulated Other Comprehensive Income*. This guidance allows companies to reclassify items in accumulated other comprehensive income to retained earnings for stranded tax effects resulting from the H.R.1, "An Act to Provide for Reconciliation Pursuant to Titles II and V of the Concurrent Resolution on the Budget for Fiscal Year 2018" (the "Tax Act") (previously known as "The Tax Cuts and Jobs Act"). This ASU is effective for all entities for annual and interim periods beginning after December 15, 2018. The Company adopted this standard on January 1, 2019. The adoption of this standard did not have a material effect on the Company's financial statements or related disclosures.

In June 2018, the FASB issued ASU No. 2018-07, *Compensation - Stock Compensation: Improvements to Nonemployee Share-Based Payment Accounting*. ASU 2018-07 aligns the accounting for share-based payment awards issued to employees and nonemployees. Measurement of equity-classified nonemployee awards will now be valued on the grant date and will no longer be remeasured through the performance completion date. This amendment also changes the accounting for nonemployee awards with performance conditions to recognize compensation cost when achievement of the performance condition is probable, rather than upon achievement of the performance condition, as well as eliminating the requirement to reassess the equity or liability classification for nonemployee awards upon vesting, except for certain award types. This ASU is effective for public entities for annual and interim periods beginning after December 15, 2018. The Company adopted this standard on January 1, 2019. The adoption of this standard did not have a material effect on the Company's financial statements or related disclosures.

In August 2018, the FASB issued ASU No. 2018-13, *Fair Value Measurement Disclosure Framework - Changes to the Disclosure Requirements for Fair Value Measurement*. As part of the FASB's disclosure framework project, it has eliminated, amended and added disclosure requirements for fair value measurements. Entities will no longer be required to disclose the amount of, and reasons for, transfers between Level 1 and Level 2 of the fair value hierarchy, the policy of timing of transfers between levels of the fair value hierarchy and the valuation processes for Level 3 fair value measurements. Public companies will be required to disclose the range and weighted average used to develop significant unobservable inputs for Level 3 fair value measurements. This ASU became effective for public entities for annual and interim periods beginning after December 15, 2019. The Company adopted this standard on January 1, 2020. The adoption of this standard will impact certain of the Company's disclosures in future filings.

In August 2018, the FASB issued ASU No. 2018-15, *Intangibles - Goodwill and Other - Internal-Use Software Customer's Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement That Is a Service Contract*. This ASU requires companies to defer specified implementation costs in a cloud computing arrangement that are often expensed under current US GAAP and recognize these costs to expense over the noncancellable term of the arrangement. This ASU became effective for public entities for annual and interim periods beginning after December 15, 2019. The Company adopted this standard on January 1, 2020. The adoption of this standard did not have a material impact on the Company's consolidated financial statements.

## 2. REVENUE

### Disaggregation of Revenue

The following table discloses revenue disaggregated by type of product and service (amounts in thousands):

	Year Ended		
	December 31, 2019	December 31, 2018	December 31, 2017
<b>Service revenue:</b>			
Duplex	\$ 43,679	\$ 41,223	\$ 37,635
SPOT	50,461	52,363	45,427
Commercial IoT	16,972	13,459	10,946
IGO	497	932	1,068
Other	1,777	3,112	3,397
Total service revenue	113,386	111,089	98,473
<b>Subscriber equipment sales:</b>			
Duplex	\$ 1,325	\$ 2,021	\$ 2,773
SPOT	7,617	8,425	6,062
Commercial IoT	9,300	8,444	5,335
Other	90	134	17
Total subscriber equipment sales	18,332	19,024	14,187
<b>Total revenue</b>	<b>\$ 131,718</b>	<b>\$ 130,113</b>	<b>\$ 112,660</b>

<sup>(1)</sup> Effective January 1, 2018, the Company adopted Accounting Standards Codification ("ASC") Topic 606, "Revenue from Contracts with Customers" ("ASC 606"). This standard was adopted using the modified retrospective method and, as such, amounts reflected in the table for the year ended December 31, 2017 have not been adjusted.

The Company attributes equipment revenue to various countries based on the location where equipment is sold. Service revenue is generally attributed to the various countries based on the Globalstar entity that holds the customer contract. The following table discloses revenue disaggregated by geographical market (amounts in thousands):

	Year Ended		
	December 31, 2019	December 31, 2018	December 31, 2017 <sup>(1)</sup>
<b>Service revenue:</b>			
United States	\$ 80,704	\$ 78,918	\$ 68,556
Canada	20,709	20,186	18,296
Europe	8,628	9,190	8,183
Central and South America	2,513	2,183	2,959
Others	832	612	479
<b>Total service revenue</b>	<b>113,386</b>	<b>111,089</b>	<b>98,473</b>
<b>Subscriber equipment sales:</b>			
United States	\$ 9,937	\$ 11,756	\$ 8,431
Canada	4,632	3,051	2,995
Europe	1,707	2,487	1,532
Central and South America	1,946	1,472	1,202
Others	110	258	27
<b>Total subscriber equipment sales</b>	<b>18,332</b>	<b>19,024</b>	<b>14,187</b>
<b>Total revenue</b>	<b>\$ 131,718</b>	<b>\$ 130,113</b>	<b>\$ 112,660</b>

<sup>(1)</sup> Effective January 1, 2018, the Company adopted Accounting Standards Codification ("ASC") Topic 606, "Revenue from Contracts with Customers" ("ASC 606"). This standard was adopted using the modified retrospective method and, as such, amounts reflected in the table for the year ended December 31, 2017 have not been adjusted.

During the third quarter of 2019, the Company changed its calculation of the estimated impact from the initial adoption of ASC 606) on January 1, 2018. In accordance with ASC 606, the Company accrues contract breakage to revenue based on historical usage patterns. The original calculation of the adoption impact did not reduce deferred revenue and retained deficit enough for revenue that would have been recognized under ASC 606 for contracts that were open at the adoption date. This adjustment was immaterial to the Company's financial statements for each period since January 1, 2018. Accordingly, the Company recorded a cumulative adjustment to increase service revenue during the third quarter of 2019; this adjustment included an out-of-period amount of \$3.9 million.

### Contract Balances

The following table discloses information about accounts receivable, costs to obtain a contract (as recorded in intangible and other assets, net on the Company's consolidated balance sheet), and contract liabilities (as recorded in both current and long-term deferred revenue on the Company's consolidated balance sheet) from contracts with customers (amounts in thousands):

	December 31, 2019	December 31, 2018
Accounts receivable	\$ 21,760	\$ 19,327
Capitalized costs to obtain a contract	1,976	2,018
Contract liabilities	35,183	37,630

### Accounts Receivable

Included in the accounts receivable balance in the table above are contract assets, which represent primarily unbilled amounts related to performance obligations satisfied by the Company, of \$2.2 million and \$0.7 million as of December 31, 2019 and 2018, respectively. The increase in this balance is primarily attributable to the timing and higher volume of sales to one of our Commercial IoT value-added-resellers ("VAR"). The Company recognizes the revenue for performance obligations in the period they are satisfied and then bills this VAR for both hardware and service on a monthly basis over the subsequent twelve-month period.

The Company has agreements with certain of its IGOs whereby the parties net settle outstanding payables and receivables between the respective entities on a periodic basis. As of December 31, 2019 and 2018, \$6.5 million and \$7.8 million, respectively, related to these agreements was included in accounts receivable on the Company's consolidated balance sheet. The reduction in this accounts receivable balance from December 31, 2018 resulted primarily from the write-off of the receivable due from the Company's Mexican IGO partner following that gateway being shut down during 2019 and the settlement of the receivable due from the Argentinian IGO partner following the acquisition of their MSS license by Globalstar in 2019.

During the year ended December 31, 2019 and 2018, impairment loss on receivables from contracts with customers was \$4.8 million and \$3.9 million, respectively, including both provisions for bad debt and the reversal of revenue for accounts where collectability is not reasonably assured. The increase in the impairment loss on receivables during 2019 compared to 2018 was driven primarily by a specific reserve related to one of the Company's IGOs, which shut down gateway operations during the quarter ended March 31, 2019.

#### *Costs to Obtain a Contract*

The Company also capitalizes costs to obtain a contract, which include certain deferred subscriber acquisition costs that are amortized consistently with the pattern of transfer of the good or delivery of the service to which the asset relates. The Company's subscriber acquisition costs primarily include dealer and internal sales commissions and certain other costs, including but not limited to, promotional costs, cooperative marketing credits and shipping and fulfillment costs. The Company capitalizes incremental costs to obtain a contract to the extent it expects to recover them. These capitalized contract costs include only internal and external initial activation commissions because these costs are considered incremental and would not have been incurred if the contract had not been obtained. These capitalized costs are included in other assets on the Company's consolidated balance sheet and are amortized to marketing, general and administrative expenses on the Company's consolidated statement of operations on a straight-line basis over the estimated customer life of three years, which considers anticipated contract renewals.

For the year ended December 31, 2019 and 2018, the amount of amortization related to previously capitalized costs to obtain a contract was \$1.4 million and \$1.5 million, respectively.

#### *Contract Liabilities*

Contract liabilities, which are included in deferred revenue on the Company's consolidated balance sheet, represent the Company's obligation to transfer service or equipment to a customer for which it has previously received consideration from a customer. As of December 31, 2019, the total transaction price allocated to unsatisfied (or partially unsatisfied) performance obligations was \$35.2 million. The amount of revenue recognized during the year ended December 31, 2019 from performance obligations included in the contract liability balance at the beginning of the period was \$30.9 million. The amount of revenue recognized during the year ended December 31, 2018 from performance obligations included in the contract liability balance at the beginning of the period was \$28.7 million.

In general, the duration of the Company's contracts is one year or less; however, from time to time, the Company offers multi-year contracts. As of December 31, 2019, the Company expects to recognize \$29.9 million, or approximately 85%, of its remaining performance obligations during the next twelve months and \$2.4 million, or approximately 7%, between two to six years from the balance sheet date. The remaining \$2.9 million, or approximately 8%, is related to a single contract and will be recognized as work is performed by the Company, the timing of which is currently unknown.

### **3. LEASES**

#### **Adoption of ASC Topic 842 "Leases"**

On January 1, 2019, the Company adopted ASC 842 using the modified retrospective method. The Company has presented financial results and applied its accounting policies for the period beginning January 1, 2019 under ASC 842, while prior period results and accounting policies have not been adjusted and are reflected under legacy GAAP pursuant to ASC 840.

In connection with the adoption of ASC 842, the Company performed an analysis of contracts under ASC 840 to ensure proper assessment of leases (or embedded leases) in existence as of January 1, 2019. The Company elected the package of practical expedients permitted under ASC 842, which allows the Company not to reassess 1) whether any expired or existing contracts as of the adoption date are or contain a lease, 2) lease classification for any expired or existing leases as of the adoption date and 3) initial direct costs for any existing leases as of the adoption date.

The most significant impact of applying ASC 842 was the recognition of right-of-use assets and lease liabilities for operating leases in its condensed consolidated balance sheet. For finance leases, the accounting remained generally consistent with legacy GAAP; however, the existing capital lease and obligation for these leases have been reclassified to a right-of-use asset and lease liability. On January 1, 2019, the Company recognized an initial operating right-of-use asset of \$3.3 million and associated operating lease liabilities of \$3.7 million. Since adoption of ASC 842 on January 1, 2019, the Company entered into additional leases, most significantly a lease agreement for its new headquarters location (see further discussion in Note 12: Related Party Transactions), resulting in the recognition of additional right-of-use assets and associated lease liabilities of \$14.3 million. There was no impact to opening retained deficit as of January 1, 2019.

## Leases

The following tables disclose the components of the Company's finance and operating leases (amounts in thousands):

	As of:
	December 31, 2019
<b>Operating leases:</b>	
Right-of-use asset, net	\$ 15,871
Short-term lease liability (as recorded in accrued expenses)	1,634
Long-term lease liability	14,747
Total operating lease liabilities	<u>\$ 16,381</u>
<b>Finance leases:</b>	
Right-of-use asset, net (as recorded in intangible and other current assets, net)	\$ 95
Short-term lease liability (as recorded in accrued expenses)	68
Long-term lease liability (as recorded in non-current liabilities)	19
Total finance lease liabilities	<u>\$ 87</u>

## Impact on Financial Statements

The following table summarizes the impact of the adoption of ASC 842 on the Company's condensed consolidated balance sheet. There was no impact on the Company's condensed consolidated statement of operations as a result of this adoption. Amounts are in thousands.

### Condensed Consolidated Balance Sheet As of December 31, 2019

	As reported December 31, 2019	Impact on change in accounting policy	
		Impact of ASC 842	Legacy GAAP
Right-of-use asset, net	\$ 15,871	\$ (15,871)	\$ —
Intangible and other assets, net	95	(95)	—
Property and equipment, net	—	95	95
Accrued expenses	1,702	(1,526)	176
Lease liabilities	14,747	(14,747)	—
Other non-current liabilities	19	—	19

## Lease Cost

The components of lease cost are reflected in the table below (amounts in thousands). As noted above, prior periods have not been adjusted under the modified retrospective method of adoption.

	Twelve Months Ended December 31, 2019
<b>Operating lease cost:</b>	
Amortization of right-of-use assets	\$ 1,719
Interest on lease liabilities	1,098
<b>Finance lease cost:</b>	
Amortization of right-of-use assets	105
Interest on lease liabilities	11
Short-term lease cost	180
Total lease cost	<u>\$ 3,113</u>

As reported under legacy GAAP, total rent expense for 2018 and 2017 was approximately \$1.4 million and \$1.3 million, respectively.

## Weighted-Average Remaining Lease Term and Discount Rate

The following table discloses the weighted-average remaining lease term and discount rate for finance and operating leases.

	As of: December 31, 2019
<b>Weighted-average lease term</b>	
Finance leases	1.5 years
Operating Leases	8.9 years
<b>Weighted-average discount rate</b>	
Finance leases	8.1%
Operating leases	8.4%

## Supplemental Cash Flow Information

The below table discloses supplemental cash flow information for finance and operating leases (in thousands).

	Twelve Months Ended December 31, 2019
<b>Cash paid for amounts included in the measurement of lease liabilities:</b>	
Operating cash flows from operating leases	\$ 2,647
Operating cash flows from finance leases	11
Financing cash flows from finance leases	103

## Maturity Analysis

The following table reflects undiscounted cash flows on an annual basis for the Company's lease liabilities as of December 31, 2019 (amounts in thousands):

	Operating Leases	Finance Leases
2020	\$ 3,045	\$ 72
2021	2,462	11
2022	2,345	7
2023	2,372	3
2024	2,373	—
Thereafter	11,123	—
Total lease payments	\$ 23,720	\$ 93
Imputed interest	(7,339)	(6)
Discounted lease liability	\$ 16,381	\$ 87

## 4. PROPERTY AND EQUIPMENT

Property and equipment consists of the following (in thousands):

	December 31, 2019	December 31, 2018
Globalstar System:		
Space component		
First and second-generation satellites in service	\$ 1,195,509	\$ 1,195,291
Second-generation satellite, on-ground spare	32,443	32,481
Ground component	269,547	256,850
Construction in progress:		
Ground component	16,040	18,068
Next-generation software upgrades	3,699	2,250
Other	1,433	2,699
Total Globalstar System	1,518,671	1,507,639
Internally developed and purchased software	18,922	26,045
Equipment	8,731	10,097
Land and buildings	3,287	3,311
Leasehold improvements	1,633	1,478
Total property and equipment	1,551,244	1,548,570
Accumulated depreciation	(751,330)	(665,875)
Total property and equipment, net	\$ 799,914	\$ 882,695

Amounts in the above table consist primarily of costs incurred related to the construction of the Company's second-generation constellation and ground upgrades. The remaining ground component of construction in progress represents costs (including capitalized interest) incurred for assets to upgrade the Company's ground infrastructure in certain regions around the world. These gateway assets will be deployed based on coverage optimization. The ground component of construction in progress also includes costs (including capitalized interest) associated with the Company's contract for the procurement and production of new gateway antennas.

In January 2019, the Company completed technology upgrades to allow customers to use Sat-Fi2® in certain areas of Latin America. Accordingly, it placed into service approximately \$7.9 million of construction in progress (including capitalized interest)

related to the deployment of two RANs to this region. Additionally, a portion of internally developed and purchased software assets were retired during 2019, driving the decrease in the table above. Offsetting these decreases was an increase in construction in progress related to the procurement and production of new antennas for substantially all of the Company's gateways. The Company plans to deploy these antennas over the next few years.

Amounts included in the Company's second-generation satellite, on-ground spare balance as of December 31, 2019 and 2018, consist primarily of costs related to a spare second-generation satellite that has not been placed in orbit, but is capable of being included in a future launch. As of December 31, 2019, this satellite has not been placed into service; therefore, the Company has not started to record depreciation expense.

#### **Capitalized Interest and Depreciation Expense**

The following table summarizes capitalized interest for the periods indicated below (in thousands):

	Year Ended December 31,		
	2019	2018	2017
Interest cost eligible to be capitalized	\$ 64,058	\$ 51,819	\$ 51,212
Interest cost recorded in interest income (expense), net	(62,255)	(43,434)	(33,319)
Net interest capitalized	<u>\$ 1,803</u>	<u>\$ 8,385</u>	<u>\$ 17,893</u>

The following table summarizes depreciation expense for the periods indicated below (in thousands):

	Year Ended December 31,		
	2019	2018	2017
Depreciation Expense	<u>\$ 83,575</u>	<u>\$ 81,779</u>	<u>\$ 77,197</u>

The following table summarizes amortization expense for the periods indicated below (in thousands):

	Year Ended December 31,		
	2019	2018	2017
Amortization Expense	<u>\$ 12,197</u>	<u>\$ 8,659</u>	<u>\$ 301</u>

During 2018, the Company placed into service developed technology associated with the launch of its next generation of products. The amortization expense in the table above reflects primarily the 15-year life of these assets from the in-service date.

#### **Geographic Location of Long-Lived Assets**

Long-lived assets consist primarily of property and equipment and are attributed to various countries based on the physical location of the asset, except for the Company's satellites which are included in the long-lived assets of the United States. The Company's information by geographic area is as follows (in thousands):

	Year Ended December 31,	
	2019	2018
<b>Long-lived assets:</b>		
United States	\$ 772,498	\$ 852,033
Canada	12,239	12,603
Europe	3,126	3,425
Central and South America	11,786	14,383
Other	265	251
Total long-lived assets	<u>\$ 799,914</u>	<u>\$ 882,695</u>



## 5. INTANGIBLE AND OTHER ASSETS

### Intangible Assets

The Company has intangible assets not subject to amortization, which include certain costs to obtain or defend regulatory authorizations and a portion of capitalized interest associated with these assets. These costs include primarily efforts related to the enhancement of the Company's licensed MSS spectrum to provide terrestrial wireless services as well as costs with international regulatory agencies to obtain similar terrestrial authorizations outside of the United States. This category includes work in progress assets as well as indefinite lived assets already placed into service. The Company also has intangible assets subject to amortization, which include primarily developed technology and definite lived MSS licenses.

The gross carrying amount and accumulated amortization of the Company's intangible assets consist of the following (in thousands):

	December 31, 2019			December 31, 2018		
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Intangible Assets Not Subject to Amortization	\$ 18,288	\$ —	\$ 18,288	\$ 20,215	\$ —	\$ 20,215
Intangible Assets Subject to Amortization:						
Developed technology	\$ 11,692	\$ (6,232)	\$ 5,460	\$ 9,415	\$ (5,478)	\$ 3,937
Customer relationships	2,100	(2,100)	—	2,100	(2,100)	—
Regulatory authorizations	1,937	(477)	1,460	1,109	(152)	957
Trade name	200	(200)	—	200	(200)	—
	\$ 15,929	\$ (9,009)	\$ 6,920	\$ 12,824	\$ (7,930)	\$ 4,894
<b>Total</b>	<b>\$ 34,217</b>	<b>\$ (9,009)</b>	<b>\$ 25,208</b>	<b>\$ 33,039</b>	<b>\$ (7,930)</b>	<b>\$ 25,109</b>

During 2019, the Company completed the acquisition of certain assets and related government authorizations from the owner of its IGO in Argentina. Included in this asset purchase was an indefinite lived spectrum license totaling \$1.0 million.

For 2019 and 2018, the Company recorded amortization expense on these intangible assets of \$1.1 million and \$0.6 million, respectively. Amortization expense is recorded in operating expenses in the Company's consolidated statements of operations.

Excluding the effects of any acquisitions, dispositions or write-downs subsequent to December 31, 2019, total estimated annual amortization of intangible assets is as follows (in thousands):

2020	\$ 1,158
2021	1,081
2022	1,081
2023	813
2024	583
Thereafter	2,204
<b>Total</b>	<b>\$ 6,920</b>

## Other Assets

Other assets consist of the following (in thousands):

	December 31,	
	2019	2018
Costs to obtain a contract	\$ 1,976	\$ 2,018
Long-term prepaid licenses and royalties	5,037	5,209
Business economic loss claim receivable (see Note 10 for further discussion)	—	3,684
International tax receivables	800	840
Investments in businesses	2,089	2,089
Other long-term assets	535	1,337
	<u>\$ 10,437</u>	<u>\$ 15,177</u>

## 6. LONG-TERM DEBT AND OTHER FINANCING ARRANGEMENTS

Long-term debt consists of the following (in thousands):

	December 31, 2019			December 31, 2018		
	Principal Amount	Unamortized Discount and Deferred Financing Costs	Carrying Value	Principal Amount	Unamortized Discount and Deferred Financing Costs	Carrying Value
Facility Agreement	\$ 190,361	\$ 10,185	\$ 180,176	\$ 389,390	\$ 24,355	\$ 365,035
Second Lien Term Loan Facility	201,495	35,448	166,047	—	—	—
Loan Agreement with Thermo	135,105	18,562	116,543	119,702	22,665	97,037
8.00% Convertible Senior Notes Issued in 2013	1,410	—	1,410	1,379	—	1,379
Total Debt	<u>528,371</u>	<u>64,195</u>	<u>464,176</u>	<u>510,471</u>	<u>47,020</u>	<u>463,451</u>
Less: Current Portion	—	—	—	96,249	—	96,249
Long-Term Debt	<u>\$ 528,371</u>	<u>\$ 64,195</u>	<u>\$ 464,176</u>	<u>\$ 414,222</u>	<u>\$ 47,020</u>	<u>\$ 367,202</u>

The principal amounts shown above include payment of in-kind interest, as applicable. The carrying value is net of deferred financing costs and any discounts to the loan amounts at issuance, including accretion, as further described below. As of December 31, 2019, there is no current portion of long-term debt since there are no scheduled principal repayments due within one year of the balance sheet date. As discussed further below, the Company completed a broad-scale refinancing during November 2019, including an amendment and restatement of the Facility Agreement and issuance of a second lien term loan facility agreement (the "Second Lien Term Loan Facility").

### Facility Agreement

In 2009, the Company entered into the Facility Agreement with a syndicate of bank lenders, including BNP Paribas, Société Générale, Natixis, Crédit Agricole Corporate and Investment Bank and Crédit Industriel et Commercial, as arrangers, and BNP Paribas, as the security agent. The Facility Agreement was amended and restated in July 2013, August 2015, June 2017 and November 2019.

The Facility Agreement is scheduled to mature in December 2022. Indebtedness under the Facility Agreement bears interest at a floating rate of LIBOR plus a margin that increases by 0.5% each year to a maximum rate of LIBOR plus 5.75%. The current interest rate is LIBOR plus 4.25%. Interest on the Facility Agreement is payable semi-annually in arrears on June 30 and December 31 of each calendar year. Ninety-five percent of the Company's obligations under the Facility Agreement are guaranteed by Bpifrance Assurance Export S.A.S. ("BPIFAE"), the French export credit agency. The Company's obligations under the Facility Agreement are guaranteed on a senior secured basis by all of its domestic subsidiaries and are secured by a first priority lien on substantially all of the assets of the Company and its domestic subsidiaries (other than their FCC licenses), including patents and trademarks, 100% of the equity of the Company's domestic subsidiaries and 65% of the equity of certain foreign subsidiaries.

The Facility Agreement contains customary events of default and requires that the Company satisfy various financial and non-financial covenants, including the following:

- The Company's capital expenditures do not exceed \$15.0 million per year;
- The Company's expenditures in connection with its spectrum rights do not exceed \$20.0 million;
- The Company maintains at all times a minimum liquidity balance of \$4.0 million;
- The Company achieves for each period the following minimum adjusted consolidated EBITDA (as defined in the Facility Agreement) (amounts in thousands):

<b>Period</b>	<b>Minimum Amount</b>	
1/1/19-6/30/19	\$	45,509
7/1/19-12/31/19	\$	21,174
1/1/20-6/30/20	\$	18,245
7/1/20-12/31/20	\$	23,755

- The Company maintains a minimum debt service coverage ratio of 1.00:1;
- The Company maintains a maximum net debt to adjusted consolidated EBITDA ratio of 4.90:1 for the December 31, 2019 measurement period, decreasing gradually each semi-annual period until the requirement equals 2.50:1 for the four semi-annual measurement periods leading up to December 31, 2022;
- The Company maintains a minimum interest coverage ratio of 1.50:1 for the December 31, 2019 measurement period, increasing gradually each semi-annual period until the requirement equals 5.25:1 for the two semi-annual measurement periods leading up to December 31, 2022; and
- The Company makes mandatory prepayments in specified circumstances and amounts, including if the Company generates excess cash flow, monetizes its spectrum rights, receives the proceeds of certain asset dispositions or receives more than \$145.0 million from the sale of additional debt or equity securities.

Additionally, the covenants in the Facility Agreement limit the Company's ability to, among other things, incur or guarantee additional indebtedness; make certain investments, acquisitions or capital expenditures above certain agreed levels; pay dividends or repurchase or redeem capital stock or subordinated indebtedness; grant liens on its assets; incur restrictions on the ability of its subsidiaries to pay dividends or to make other payments to the Company; enter into transactions with its affiliates; merge or consolidate with other entities or transfer all or substantially all of its assets; and transfer or sell assets.

In calculating compliance with the financial covenants of the Facility Agreement, the Company may include certain cash funds contributed to the Company from the issuance of the Company's common stock and/or subordinated indebtedness. These funds are referred to as "Equity Cure Contributions" and may be used to achieve compliance with financial covenants through maturity. If the Company violates any covenants and is unable to obtain a sufficient Equity Cure Contribution or obtain a waiver, or is unable to make payments to satisfy its debt obligations under the Facility Agreement when due and is unable to obtain a waiver, it would be in default under the Facility Agreement and payment of the indebtedness could be accelerated. The acceleration of the Company's indebtedness under one agreement may permit acceleration of indebtedness under other agreements that contain cross-acceleration provisions. As of December 31, 2019, the Company was in compliance with respect to the covenants of the Facility Agreement.

The Facility Agreement also requires the Company to maintain a debt service reserve account, which is pledged to secure all of the Company's obligations under the Facility Agreement. As part of the amendment to the Facility Agreement in November 2019, the required balance in the debt service reserve account is fixed and must equal at least \$50.9 million. As of December 31, 2019, the balance in the debt service reserve account was approximately \$51.5 million, of which \$50.9 million is classified as non-current restricted cash on the Company's consolidated balance sheet as it will be used towards the final scheduled payment due upon maturity of the Facility Agreement in December 2022. The remaining balance of \$0.6 million is classified as current and represents the portion of the debt service reserve account in excess of the required balance. The Company expects to receive this amount from its lenders during the next twelve months.

On November 26, 2019, the Company, Thermo, the lenders and the BPIFAE and Security Agent entered into a Fourth Global Amendment and Restatement Agreement (the “2019 GARA”). Pursuant to the 2019 GARA, the Facility Agreement was amended and restated and the Company, Thermo and the lenders agreed to the following:

- The \$151.6 million prepayment of the next three scheduled principal payments and a portion of the fourth scheduled principal payment using proceeds from the Second Lien Term Loan Facility (as described in more detail below), cash on hand and proceeds from the reduction of the Company's debt service reserve account;
- A \$10.0 million reduction to the required balance in the debt service reserve account, which will remain at approximately \$50.9 million through the maturity date;
- Revisions to the remaining repayment schedule to reduce the amount of scheduled principal payments prior to maturity, leaving a final scheduled principal payment upon maturity of \$109.5 million;
- A requirement that the Company raise no less than \$45.0 million of equity prior to March 31, 2021 via the cash exercise of outstanding warrants or other equity to be applied towards the principal payment due on June 30, 2021 and then, if applicable, to the next scheduled principal payments;
- A reset of financial covenant levels based on the Company's 2019 business plan agreed with the lenders under the Facility Agreement;
- An extension of the Company's ability to make Equity Cure Contributions to prevent certain financial covenant defaults through the maturity date; and
- Amendment fees of \$1.4 million paid to the agent for the Lenders and BPI in connection with the 2019 GARA.

The 2019 GARA was considered a debt modification pursuant to applicable accounting guidance. As such, fees paid to the creditors were capitalized on the Company's consolidated balance sheet as deferred financing costs and fees paid to the Company's advisors and other third parties were expensed in the Company's statement of operations for the period ended December 31, 2019. Additionally, as a result of this modification, the Company wrote off \$7.3 million in deferred financing costs, which represents the portion of debt prepaid by the Company in November 2019.

#### ***Subordinated Loan Agreement***

In July 2019, the Company entered into a Subordinated Loan Agreement (the “Subordinated Loan Agreement”) with Thermo Funding Company LLC (an affiliated entity to Thermo), and certain unaffiliated parties (together with Thermo, the “Lenders”). Under the Subordinated Loan Agreement, the Lenders lent \$62.0 million to the Company for the primary purpose of funding the June 30, 2019 scheduled payment of interest and principal under the Company's Facility Agreement and for certain other purposes. The Subordinated Loan Agreement accrued interest at 15% per annum, which was capitalized and added to the outstanding principal in lieu of cash payments. Prior to repayment, the Subordinated Loan Agreement had accrued a total of \$4.0 million. In November 2019, the Subordinated Loan Agreement was paid in full from a portion of the proceeds from the Second Lien Term Loan Facility (see further discussion below). There were no unamortized deferred financing costs on the repayment debt.

The payoff of the Subordinated Loan Agreement was considered a debt extinguishment pursuant to applicable accounting guidance. As such, fees paid to the Company's advisors and other third parties were capitalized on the Company's consolidated balance sheet as deferred financing costs and fees paid to the Company's creditors, including the value of the original issue discount and warrants, were expensed in the Company's statement of operations for the period ended December 31, 2019. Additionally, a gain or loss on extinguishment of debt is generally recorded upon an extinguishment of a debt instrument. Such gain or loss on extinguishment of debt is calculated as the difference between the reacquisition price (including the new Second Lien Term Loan Facility, warrants issued to the holders and fees paid to the lenders) and net carrying amount of the Subordinated Loan Agreement. Based on an assessment of the transaction, the Company estimated the reacquisition price to be \$66.0 million, which is equal to the net carrying value of the extinguished debt. Therefore, the Company did not record a gain or loss on extinguishment of debt. Furthermore, the Company was required to record the portion of the Second Lien Term Loan Facility, which was used to pay off the Subordinated Loan Agreement, at fair value at inception. The fair value was determined based on various factors and included the value of the warrants issued to the Second Lien Term Loan Facility holders.

The Company's Board of Directors considered the Subordinated Loan Agreement and the related transactions and unanimously concluded that they constitute a “Permitted Financing” under Article Eleventh of the Second Amended and Restated Certificate of Incorporation of the Company.

## Second Lien Term Loan Facility

In November 2019, the Company entered into a \$199.0 million Second Lien Term Loan Facility with Thermo, EchoStar Corporation and certain other unaffiliated lenders. The Second Lien Term Loan Facility is scheduled to mature in November 2025. The loans under the Second Lien Term Loan Facility bear interest at a blended rate of 13.5% per annum to be paid in kind (or in cash at the option of the Company, subject to restrictions in the Facility Agreement).

The cash proceeds from this loan were net of a 3%, or \$6.0 million, original issue discount (the "OID"). The portion of this OID that was not included in the reacquisition price of the Subordinated Loan Agreement (see previous section) was recorded as a debt discount of \$4.0 million. This debt discount was netted against the principal amount of the loan and is being accreted using an effective interest method to interest expense over the term of the loan.

As additional consideration for the loan, the Company issued the lenders warrants to purchase 124.5 million shares of voting common stock at an exercise price of \$0.38 per share. These warrants expire on March 31, 2021. The Company determined that the warrants were equity instruments and recorded them as a part of stockholders' equity. The portion of the warrants fair value that was not included in the reacquisition price of the Subordinated Loan Agreement (see previous section) was recorded as a debt discount of \$15.8 million. This debt discount was netted against the principal amount of the loan and is being accreted using an effective interest method to interest expense over the term of the loan. In December 2019, Thermo exercised 9.5 million warrants resulting in cash proceeds to the Company of \$3.6 million.

A portion of the proceeds from the Second Lien Term Loan Facility was used to repay all of the Company's Subordinated Loan Agreement. The remaining proceeds of the Second Lien Term Loan Facility were used towards the prepayment of scheduled principal payments under the Facility Agreement.

The Second Lien Term Loan Facility contains customary events of default and requires that the Company satisfy various financial and non-financial covenants. Unless shown below, covenants under the Second Lien Term Loan Facility are consistent with the covenants under the Company's Facility Agreement (discussed above). The financial covenants in the Second Lien Term Loan Facility require the Company to:

- maintain at all times a minimum liquidity balance of \$3.6 million;
- achieve for each period the following minimum adjusted consolidated EBITDA (as defined in the Second Lien Term Loan Facility) (amounts in thousands):

<b>Period</b>	<b>Minimum Amount</b>	
7/1/19-12/31/19	\$	19,100
1/1/20-6/30/20	\$	16,400
7/1/20-12/31/20	\$	21,400

- maintain a minimum debt service coverage ratio of 0.90:1;
- maintain a maximum net debt to adjusted consolidated EBITDA ratio of 5.39:1 for the December 31, 2019 measurement period, decreasing gradually each semi-annual period until the requirement equals 2.75:1 for the four semi-annual measurement periods leading up to December 31, 2022;
- maintain a minimum interest coverage ratio of 1.35:1 for the December 31, 2019 measurement period, increasing gradually each semi-annual period until the requirement equals 4.73:1 for the two semi-annual measurement periods leading up to December 31, 2022; and

As of December 31, 2019, the Company was in compliance with the covenants of the Second Lien Term Loan Facility.

The portion of the Second Lien Term Loan Facility proceeds that was used to repay the Subordinated Loan Agreement was considered a debt extinguishment pursuant to applicable accounting guidance. See discussion in the *Subordinated Loan Agreement* section above for further information. The remaining Second Lien Term Loan Facility was recorded at its carrying value at inception.

The Company evaluated the various embedded derivatives within the Second Lien Term Loan Facility related to certain contingently exercisable put options. Due to the substantial discount upon issuance, as calculated under applicable accounting guidance, these prepayment features within the Second Lien Term Loan Facility were required to be bifurcated and separately valued. The Company recorded the compound embedded derivative liability as a non-current liability on its consolidated balance sheets with a corresponding debt discount, which is netted against the face value of the Second Lien Term Loan Facility.

The Company is accreting the debt discount associated with the compound embedded derivative liability to interest expense through the maturity of the Second Lien Term Loan Facility using an effective interest rate method. The fair value of the compound embedded derivative liability is marked-to-market at the end of each reporting period, with any changes in value reported in the consolidated statements of operations. The Company determines the fair value of the compound embedded derivative using a probability weighted discounted cash flow model.

Thermo's participation in the Second Lien Term Loan Facility was reviewed and approved on the Company's behalf by the Strategic Review Committee, which is a committee of disinterested and independent directors who are represented by independent legal counsel. See Note 12: Related Party Transactions for further information on the role and responsibility of the Strategic Review Committee.

### ***Thermo Loan Agreement***

In connection with the amendment and restatement of the Facility Agreement in July 2013, the Company amended and restated its loan agreement with Thermo (the "Loan Agreement"). All obligations of the Company to Thermo under the Loan Agreement are subordinated to the Company's obligations under the Facility Agreement and the Second Lien Term Loan Facility. The Loan Agreement is convertible into shares of common stock at a conversion price of \$0.69 (as adjusted) per share of common stock.

The Loan Agreement accrues interest at 12% per annum, which is capitalized and added to the outstanding principal in lieu of cash payments. As of December 31, 2019, \$91.6 million of interest had accrued since 2009 with respect to the Loan Agreement; the Loan Agreement is included in long-term debt on the Company's consolidated balance sheets based on its contractual maturity date.

The Company will make payments to Thermo only when permitted by the Facility Agreement and the Second Lien Term Loan Facility. Principal and interest under the Loan Agreement become due and payable six months after the obligations under the Facility Agreement have been paid in full; however, the November 2019 Finance Documents (including the amended and restated Facility Agreement and the Second Lien Term Loan Facility) permit the conversion of all amounts outstanding under the Loan Agreement by June 30, 2022, or earlier if the Company has a change in control or if any acceleration of the maturity of the loans under the Facility Agreement or Second Lien Term Loan Facility occurs. In connection with the November 2019 refinancing, Thermo committed to convert the total principal balance outstanding under the Loan Agreement by March 31, 2020; on February 19, 2020, Thermo converted the entire principal balance outstanding resulting in the issuance of 200.1 million shares of common stock. Upon conversion, the remaining debt discount and deferred financing costs is written off through the statement of operations and the associated derivative liability (discussed below) is marked-to-market at the conversion date and then extinguished through the statement of operations.

The Company evaluated the various embedded derivatives within the Loan Agreement (See Note 8: Fair Value Measurements for additional information about the embedded derivative in the Loan Agreement). The Company determined that the conversion option and the contingent put feature upon a fundamental change required bifurcation from the Loan Agreement. The conversion option and the contingent put feature were not deemed clearly and closely related to the Loan Agreement and were separately accounted for as a standalone derivative. The Company recorded this compound embedded derivative liability as a non-current liability on its consolidated balance sheets with a corresponding debt discount, which is netted against the face value of the Loan Agreement.

The Company is accreting the debt discount associated with the compound embedded derivative liability to interest expense through the maturity of the Loan Agreement using an effective interest rate method. The stated maturity is used as the expected term for purposes of amortizing the debt discount, despite the Company's expectation of an earlier conversion as of December 31, 2019, based on the applicable accounting rules. The fair value of the compound embedded derivative liability is marked-to-market

at the end of each reporting period, or upon conversion, with any changes in value reported in the consolidated statements of operations. The Company determines the fair value of the compound embedded derivative using a Monte Carlo simulation model.

### **8.00% Convertible Senior Notes Issued in 2013**

In May 2013, the Company issued \$54.6 million aggregate principal amount of its 2013 8.00% Notes. The 2013 8.00% Notes are convertible into shares of common stock at a conversion price of \$0.69 per share of common stock, as adjusted pursuant to the terms of the Fourth Supplemental Indenture between the Company and U.S. Bank National Association, as Trustee (the "Indenture"). The 2013 8.00% Notes are senior unsecured debt obligations that will mature on April 1, 2028, subject to various call and put features, and bear interest at a rate of 8.00% per annum. Interest is paid in cash at a rate of 5.75% and in additional notes at a rate of 2.25%. Since issuance, \$55.4 million of principal amount of the 2013 8.00% Notes have been converted; no amount was converted during 2019.

Subject to certain conditions set forth in the Indenture, the Company may redeem the 2013 8.00% Notes, with the prior approval of the majority lenders under the Facility Agreement and the Second Lien Term Loan Facility, in whole or in part, at a price equal to the principal amount of the 2013 8.00% Notes to be redeemed plus all accrued and unpaid interest thereon. As of December 31, 2019, the 2013 8.00% Notes have not been redeemed by the Company.

A holder of the 2013 8.00% Notes has the right, at the holder's option, to require the Company to purchase some or all of the 2013 8.00% Notes held by it on April 1, 2023, or at any time if there is a Fundamental Change (as defined in the Indenture), at a price equal to the principal amount of the 2013 8.00% Notes to be purchased plus accrued and unpaid interest. Subject to the procedures for conversion and other terms and conditions of the Indenture, a holder may convert its 2013 8.00% Notes at its option at any time prior to April 1, 2028, into shares of common stock (or, at the option of the Company, cash in lieu of all or a portion thereof, provided that, under the Facility Agreement and the Second Lien Term Loan Facility, the Company may pay cash only with the consent of the majority lenders).

The Indenture provides for customary events of default. If there is an event of default, the Trustee may, at the direction of the holders of 25% or more in aggregate principal amount of the 2013 8.00% Notes, accelerate the maturity of the 2013 8.00% Notes. As of December 31, 2019, the Company was in compliance with respect to the terms of the 2013 8.00% Notes and the Indenture.

The Company evaluated the various embedded derivatives within the Indenture for the 2013 8.00% Notes. The Company determined that the conversion option and the contingent put feature within the Indenture required bifurcation from the 2013 8.00% Notes. The Company did not deem the conversion option and the contingent put feature to be clearly and closely related to the 2013 8.00% Notes and separately accounted for them as a standalone derivative. The Company recorded this compound embedded derivative liability as a liability on its consolidated balance sheets with a corresponding debt discount which was netted against the face value of the 2013 8.00% Notes. The debt discount associated with the compound embedded derivative liability has been fully accreted as of September 30, 2017, following significant conversions in August 2017. The Company is marking to market the fair value of the compound embedded derivative liability at the end of each reporting period, or more frequently as deemed necessary, with any changes in value reported in the consolidated statements of operations. The Company determines the fair value of the compound embedded derivative using a Monte Carlo simulation model.

### **Debt maturities**

Annual debt maturities for each of the five years following December 31, 2019 and thereafter are as follows (in thousands):

2020	\$	—
2021		60,841
2022		129,520
2023		136,515
2024		—
Thereafter		201,495
<b>Total</b>	<b>\$</b>	<b>528,371</b>

Amounts in the above table are calculated based on amounts outstanding at December 31, 2019, and therefore exclude paid-in-kind interest payments that will be made in future periods.

On February 19, 2020, Thermo converted into shares of common stock the principal amount outstanding under the Loan Agreement; however, the maturity of the Loan Agreement is shown in 2023 in the table above, consistent with its contractual life.

## 7. DERIVATIVES

In connection with certain existing borrowing arrangements, the Company was required to record derivative instruments on its consolidated balance sheets. None of these derivative instruments are designated as a hedge. The following table discloses the fair values of the derivative instruments on the Company's consolidated balance sheets (in thousands):

	<u>December 31, 2019</u>	<u>December 31, 2018</u>
Derivative liabilities:		
Compound embedded derivative with the 2013 8.00% Notes	\$ (522)	\$ (757)
Compound embedded derivative with the Loan Agreement with Thermo	(1,270)	(146,108)
Compound embedded derivative with the Second Lien Term Loan Facility	(2,000)	—
Total derivative liabilities	<u>\$ (3,792)</u>	<u>\$ (146,865)</u>

The following table discloses the changes in value recorded as a derivative gain in the Company's consolidated statement of operations (in thousands):

	<u>Year ended December 31,</u>		
	<u>2019</u>	<u>2018</u>	<u>2017</u>
Interest rate cap	\$ —	\$ —	\$ (4)
Compound embedded derivative with the 2013 8.00% Notes	235	569	(6,662)
Compound embedded derivative with the Loan Agreement with Thermo	144,838	80,551	27,848
Total derivative gain	<u>\$ 145,073</u>	<u>\$ 81,120</u>	<u>\$ 21,182</u>

### Intangible and Other Assets

#### Interest Rate Cap

In June 2009, in connection with entering into the Facility Agreement, under which interest accrues at a variable rate, the Company entered into five ten-year interest rate cap agreements, which matured in December 2019. The interest rate cap agreements reflect a variable notional amount at interest rates that provide coverage to the Company for exposure resulting from escalating interest rates over the term of the Facility Agreement. The interest rate cap provides limits on the six-month Libor rate ("Base Rate") used to calculate the coupon interest on outstanding amounts on the Facility Agreement and is capped at 5.50% should the Base Rate not exceed 6.5%. Should the Base Rate exceed 6.5%, the Company's Base Rate will be 1% less than the then six-month Libor rate. The Company paid an approximately \$12.4 million upfront fee for the interest rate cap agreements. The interest rate cap did not qualify for hedge accounting treatment, and changes in the fair value of the agreements are included in the consolidated statements of operations. The value of the interest rate cap was zero as of both December 31, 2019 and December 31, 2018.

### Derivative Liabilities

The Company has identified various embedded derivatives resulting from certain features in the Company's debt instruments, including the conversion option and the contingent put feature within both the 2013 8.00% Notes and the Loan Agreement with Thermo as well as certain contingently exercisable put features within the Second Lien Term Loan Facility. The fair value of each embedded derivative liability is marked-to-market at the end of each reporting period, or more frequently as deemed necessary, with any changes in value reported in its consolidated statements of operations and its consolidated statements of cash flows as an operating activity. The Company classifies its derivative liabilities consistent with the classification of the underlying debt on the Company's consolidated balance sheet. See Note 8: Fair Value Measurements for further discussion. Each liability and the features embedded in the debt instrument which required the Company to account for the instrument as a derivative are described below.



### Compound Embedded Derivative with 2013 8.00% Notes

As a result of the conversion option and the contingent put feature within the 2013 8.00% Notes, the Company recorded a compound embedded derivative liability on its consolidated balance sheets with a corresponding debt discount that is netted against the face value of the 2013 8.00% Notes. The Company determined the fair value of the compound embedded derivative liability using a Monte Carlo simulation model. The Company classifies this derivative liability consistent with the classification of the 2013 8.00% Notes on the Company's consolidated balance sheet.

### Compound Embedded Derivative with the Loan Agreement with Thermo

As a result of the conversion option and the contingent put feature within the Loan Agreement with Thermo as amended and restated in 2013, the Company recorded a compound embedded derivative liability on its consolidated balance sheets with a corresponding debt discount that is netted against the face value of the Loan Agreement. The Company determined the fair value of the compound embedded derivative liability using a Monte Carlo simulation model.

### Compound Embedded Derivative with the Second Lien Term Loan Facility

As a result of certain contingently exercisable put features within the Second Lien Term Loan Facility, the Company recorded a compound embedded derivative liability on its consolidated balance sheet with a corresponding debt discount that is netted against the face value of the Second Lien Term Loan Facility. The Company determined the fair value of the compound embedded derivative liability using a probability weighted discounted cash flow model.

## 8. FAIR VALUE MEASUREMENTS

The Company follows the authoritative guidance for fair value measurements relating to financial and non-financial assets and liabilities, including presentation of required disclosures herein. This guidance establishes a fair value framework requiring the categorization of assets and liabilities into three levels based upon the assumptions (inputs) used to price the assets and liabilities. Level 1 provides the most reliable measure of fair value, whereas Level 3 generally requires significant management judgment. The three levels are defined as follows:

*Level 1:* Unadjusted quoted prices in active markets that are accessible at the measurement date for identical assets or liabilities.

*Level 2:* Quoted prices in markets that are not active or inputs which are observable, either directly or indirectly, for substantially the full term of the asset or liability.

*Level 3:* Prices or valuation techniques that require inputs that are both significant to the fair value measurement and unobservable (i.e., supported by little or no market activity).

### Recurring Fair Value Measurements

The following tables provide a summary of the liabilities measured at fair value on a recurring basis (in thousands):

	<b>Fair Value Measurements at December 31, 2019:</b>			
	<b>(Level 1)</b>	<b>(Level 2)</b>	<b>(Level 3)</b>	<b>Total Balance</b>
<b>Liabilities:</b>				
Compound embedded derivative with the 2013 8.00% Notes	\$ —	\$ —	\$ (522)	\$ (522)
Compound embedded derivative with the Loan Agreement with Thermo	—	—	(1,270)	(1,270)
Compound embedded derivative with the Second Lien Term Loan Facility	—	\$ —	(2,000)	(2,000)
Total liabilities measured at fair value	\$ —	\$ —	\$ (3,792)	\$ (3,792)

	<b>Fair Value Measurements at December 31, 2018:</b>			
	<b>(Level 1)</b>	<b>(Level 2)</b>	<b>(Level 3)</b>	<b>Total Balance</b>

**Liabilities:**

Compound embedded derivative with the 2013 8.00% Notes	\$	—	\$	—	\$	(757)	\$	(757)
Compound embedded derivative with the Loan Agreement with Thermo		—		—		(146,108)		(146,108)
<b>Total liabilities measured at fair value</b>	<b>\$</b>	<b>—</b>	<b>\$</b>	<b>—</b>	<b>\$</b>	<b>(146,865)</b>	<b>\$</b>	<b>(146,865)</b>

**Assets***Interest Rate Cap*

The fair value of the interest rate cap is determined using observable pricing inputs including benchmark yields, reported trades and broker/dealer quotes at the reporting date. As previously disclosed, the value of the interest rate cap was zero as of both December 31, 2019 and December 31, 2018, accordingly, the interest rate cap is not reflected in the tables above. See Note 7: Derivatives for further discussion.

**Liabilities**

The Company has three derivative liabilities classified as Level 3. The Company marks-to-market these liabilities at each reporting date, or more frequently as deemed necessary, with the changes in fair value recognized in the Company's consolidated statements of operations. See Note 7: Derivatives for further discussion.

*Derivative Liabilities - 2013 8.00% Notes and Loan Agreement with Thermo*

The significant quantitative Level 3 inputs utilized in the valuation models are shown in the tables below:

	<b>December 31, 2019:</b>				
	<b>Stock Price Volatility</b>	<b>Risk-Free Interest Rate</b>	<b>Note Conversion Price</b>	<b>Discount Rate</b>	<b>Market Price of Common Stock</b>
Compound embedded derivative with the 2013 8.00% Notes	70 - 130%	1.6%	\$0.69	27%	\$0.52
Compound embedded derivative with the Loan Agreement with Thermo	70 - 130%	1.6%	\$0.69	27%	\$0.52
	<b>December 31, 2018:</b>				
	<b>Stock Price Volatility</b>	<b>Risk-Free Interest Rate</b>	<b>Note Conversion Price</b>	<b>Discount Rate</b>	<b>Market Price of Common Stock</b>
Compound embedded derivative with the 2013 8.00% Notes	40 - 120%	2.5%	\$0.69	28%	\$0.64
Compound embedded derivative with the Loan Agreement with Thermo	40 - 120%	2.5%	\$0.69	28%	\$0.64

Fluctuation in the Company's stock price is a significant driver of the changes in the derivative valuations during each reporting period. The Company's stock price decreased 19% from December 31, 2018 to December 31, 2019. As the stock price decreases, the value to the holder of the instrument generally decreases, thereby decreasing the liability on the Company's consolidated balance sheets. Stock price volatility is another significant unobservable input used in the fair value measurement of each of the Company's derivative instruments. The simulated fair value of these liabilities is sensitive to changes in the expected volatility of the Company's stock price. Decreases in expected volatility would generally result in a lower fair value measurement.

Probability of a change of control is another significant unobservable input used in the fair value measurement of the Company's derivative instruments. Subject to certain restrictions in each indenture, the Company's debt instruments contain certain provisions whereby holders may require the Company to purchase all or any portion of the convertible debt instrument upon a change of control. A change of control will occur upon certain changes in the ownership of the Company or certain events relating to the trading of the Company's common stock. The simulated fair value of the derivative liabilities above is sensitive to changes in the assumed probabilities of a change of control. Increases in the assumed probability of a change of control in the short-term

would generally result in a lower fair value measurement, while increases in the assumed probability of a change in control in the long-term would generally result in a higher fair value measurement.

Expected term is another significant input used in the fair value measurement of the Company's derivative instruments. As previously discussed, in November 2019, the Company completed the refinancing of its debt obligations. In connection with this refinancing, Thermo committed to convert the total principal balance outstanding under the Loan Agreement by March 31, 2020; on February 19, 2020, Thermo converted the entire principal balance outstanding resulting in the issuance of 200.1 million shares of common stock. For the valuation of the associated compound embedded derivative, this probability of conversion was modeled into the valuation as of December 31, 2019, which resulted in a reduction of the derivative value during 2019.

In addition to the inputs described above, the valuation model used to calculate the fair value measurement of the compound embedded derivatives within the Company's 2013 8.00% Notes and Loan Agreement with Thermo included the following inputs and features: payment in kind interest payments, make whole premiums, a 40-day stock issuance settlement period upon conversion, and the principal balance of each loan at the balance sheet date. There are also certain put and call features within the 2013 8.00% Notes that impact the valuation model.

#### *Derivative Liabilities - Second Lien Term Loan Facility*

The compound embedded derivative with the Second Lien Term Loan Facility is valued using a probability weighted discounted cash flow model. The significant unobservable inputs used in the fair value measurement include estimated timing and amounts of cash flows associated with certain mandatory prepayments within the debt agreement. These mandatory prepayments include, but are not limited to, prepayments upon change of control, excess cash flow from spectrum monetization, and excess cash flow from the Company's core satellite business.

#### *Rollforward of Recurring Level 3 Liabilities*

The following table presents a rollforward for all liabilities measured at fair value on a recurring basis using significant unobservable inputs (Level 3) (in thousands):

	<b>Year Ended December 31,</b>	
	<b>2019</b>	<b>2018</b>
Balance at beginning of period	\$ (146,865)	\$ (227,985)
Issuance of compound embedded derivative with the Second Lien Term Loan Facility	(2,000)	—
Unrealized gain, included in derivative gain	145,073	81,120
Balance at end of period	<u>\$ (3,792)</u>	<u>\$ (146,865)</u>

#### *Fair Value of Debt Instruments*

The Company believes it is not practicable to determine the fair value of the Facility Agreement and the Second Lien Term Loan Facility without incurring significant additional costs. Unlike typical long-term debt, interest rates and other terms for these instruments are not readily available and generally involve a variety of factors, including due diligence by the debt holders. The following table sets forth the carrying values and estimated fair values of the Company's other debt instruments, which are classified as Level 3 financial instruments (in thousands):

	<b>December 31, 2019</b>		<b>December 31, 2018</b>	
	<b>Carrying Value</b>	<b>Estimated Fair Value</b>	<b>Carrying Value</b>	<b>Estimated Fair Value</b>
Loan Agreement with Thermo	\$ 116,543	\$ 88,886	\$ 97,037	\$ 67,452
2013 8.00% Notes	1,410	875	1,379	734

## Nonrecurring Fair Value Measurements

### Warrants

The Company follows the authoritative guidance regarding non-financial assets and non-financial liabilities that are remeasured at fair value on a nonrecurring basis; pursuant to applicable accounting guidance, measuring the fair value of an instrument classified in shareholders' equity is generally consistent with the requirement for measuring liabilities. On November 27, 2019, the Company entered into a Second Lien Term Loan Facility Agreement. As additional consideration for the loan, the Company issued the lenders warrants to purchase 124.5 million shares of voting common stock at a strike price of \$0.38. The Company determined that the warrants were equity instruments and recorded them as a part of stockholders' equity. The fair value of the warrants was estimated using a Black-Scholes option-pricing model. On the date of issuance, the fair value of the warrants was \$23.6 million. The significant quantitative Level 3 inputs utilized in the valuation model as of the issuance date are shown in the table below:

	November 27, 2019				
	Stock Price Volatility	Risk-Free Interest Rate	Exercise Price	Market Price of Common Stock	
Warrants issued in connection with the Second Lien Term Loan Facility	120%	1.6%	\$ 0.38	\$	0.37

### Long-Lived Assets

Long-lived assets and intangible and other assets are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of such assets may not be recoverable.

During 2019, the Company reclassified its former gateway location in Nicaragua to held for sale as, among other factors, the Company intends on disposing of this asset in the next twelve months. In its 2019 consolidated statement of operations, the Company recorded a reduction in the carrying value of this asset of \$0.5 million to equal fair value less estimated costs to sell. This asset was originally recorded at a total fair value of \$1.6 million prior to the reduction in its value, resulting in a total loss of \$1.1 million during 2019. During 2018, a reduction in the value of long-lived assets and/or intangible and other assets was not required.

## 9. COMMITMENTS

### Contractual Obligations - Second-Generation Network

As of December 31, 2019, the Company had purchase commitments with certain vendors related to the procurement, deployment and maintenance of the second-generation network. These commitments include primarily a purchase commitment with MIL-SAT LLC for the procurement and production of new antennas for substantially all of the Company's gateways. As of December 31, 2019, the Company's remaining purchase obligations under this commitment are approximately \$14.6 million; the timing of payments is driven by work performed under the contract over the remaining contract period, approximately three years.

### Other Commitments

The Company has inventory purchase commitments with its third party product manufacturers in the normal course of business. These commitments are generally non-cancelable and are based on sales forecasts. The Company estimates that its open inventory purchase commitments as of December 31, 2019 were approximately \$7.0 million. As of December 31, 2019, approximately \$1.1 million related to these commitments was recorded in prepaid expenses and other current assets on the Company's consolidated balance sheet.

## 10. CONTINGENCIES

### *Securities Claim*

On September 25, 2018, a shareholder action was filed against Globalstar, Inc. (the "Company" or "Globalstar"), members of the Board of Directors, Thermo Companies, Inc., and certain members of Globalstar management in the Court of Chancery of the State of Delaware (the "Court"), captioned Mudrick Capital Management, LP, et al. v. Monroe, et al., C.A. No. 2018-0699-TMR (the "Action"). As previously disclosed, on December 14, 2018, all parties to the Action, including plaintiffs Mudrick Capital Management, L.P. ("Mudrick Capital") and Warlander Asset Management ("Warlander", and together with Mudrick Capital, the "Plaintiffs"), entered into a stipulation and agreement of settlement, compromise and release of stockholder derivative action (the "Settlement Agreement") to settle all claims asserted against all defendants in the Action.

On September 5, 2019, the Court approved the Settlement Agreement and awarded to the Plaintiffs' attorneys a fee of \$4.5 million, inclusive of expenses, which was paid in November 2019. The Plaintiff's award, as well as other costs incurred by the Company directly associated with the Action, exceeded the Company's retention limit of \$1.5 million for a "securities claim" under its directors and officers insurance policy. The Company's primary insurance provider paid the \$4.5 million settlement award directly to the Plaintiff's in November 2019. Additionally, the Company received a total of \$2.4 million during 2019 as reimbursement for other costs incurred by the Company directly associated with the Action. According to ASC 450, a recovery related to a contingent loss (e.g., insurance recovery) is a contingent gain. Recovery of a recorded contingent loss shall be recognized only when realization of the recovery is deemed probable and reasonably estimable. Accordingly, in December 2019, the Company recorded a gain of \$1.7 million, which represents the portion of the total \$2.4 million insurance recovery that was previously treated as a contingent gain. This gain was recorded in marketing, general and administrative expenses during the fourth quarter of 2019.

### *Tariff Ruling*

In September 2019, U.S Customs and Border Protection ("CBP") issued a ruling related to the classification of certain of the Company's core products imported from China. This classification, which carries 25% tariffs upon import, is inconsistent with the classification the Company previously used based on external legal advice. As a result of the CBP ruling, the Company recorded a payable of approximately \$1.8 million in accrued expenses on the Company's December 31, 2019 consolidated balance sheet related to goods imported from China since July 2018. The Company recorded an offsetting receivable for a portion of the payable that is recoverable as a duty drawback; this receivable represents the portion of duties owed for equipment transferred to foreign subsidiaries for sale.

The Company plans on filing a protest against this ruling to challenge the classification and reduce the amounts owed. The Company cannot provide any assurance that it may be successful in achieving a favorable outcome; as such, the Company is accounting for this matter as a gain contingency and may record any such gain from a reimbursement or change in ruling in future periods if and when the contingency is resolved.

### *Business Economic Loss Claim*

In May 2018, the Company concluded the settlement of a business economic loss claim in which it was an absent member in a tort class action lawsuit. The Company received proceeds of \$7.4 million, net of legal fees, related to this settlement. The Company received the two installments of \$3.7 million each in January 2019 and January 2020. As of December 31, 2019, the \$3.7 million received in January 2020 was recorded in prepaid and other current assets on the Company's consolidated balance sheet. The Company evaluated the facts and circumstances surrounding this settlement and determined that under ASC 450, this contingent gain was considered realizable as the signed settlement was enforceable, the counterparty had the wherewithal to pay the amount and the proceeds met the definition of an asset. Accordingly, during 2018, the Company recorded the present value of the proceeds of \$6.8 million and a discount of \$0.6 million. The present value of the net proceeds of \$6.8 million was recorded in other income on the Company's consolidated statement of operations. The discount of \$0.6 million was recorded on the Company's consolidated balance sheet and was accreted to interest income over the term of the receivable using the effective interest method.

### *Other Litigation*

Due to the nature of the Company's business, the Company is involved, from time to time, in various litigation matters or subject to disputes or routine claims regarding its business activities. Legal costs related to these matters are expensed as incurred.

In management's opinion, there is no pending litigation, dispute or claim, other than those described in this report, which could be expected to have a material adverse effect on the Company's financial condition, results of operations or liquidity.

## 11. ACCRUED EXPENSES AND OTHER NON-CURRENT LIABILITIES

Accrued expenses consist of the following (in thousands):

	December 31,	
	2019	2018
Accrued compensation and benefits	\$ 3,455	\$ 3,027
Accrued property and other taxes	4,022	3,069
Accrued customer liabilities and deposits	5,751	4,802
Accrued professional and other service provider fees	3,034	5,224
Accrued commissions	1,780	1,224
Accrued telecommunications expenses	610	1,528
Accrued inventory	702	561
Accrued asset purchase	—	1,401
Accrued tariffs	1,795	—
Short-term lease liability	1,634	—
Other accrued expenses	2,091	2,249
Total accrued expenses	<u>\$ 24,874</u>	<u>\$ 23,085</u>

Other accrued expenses include primarily advertising costs, vendor services, warranty reserve, occupancy costs, accrued network costs and estimated payroll shortfall under the Cooperative Endeavor Agreement with the Louisiana Department of Economic Development (“LED”).

The following is a summary of the activity in the warranty reserve account, which is included in other accrued expenses above (in thousands):

	Year Ended December 31,		
	2019	2018	2017
Balance at beginning of period	\$ 153	\$ 143	\$ 132
Provision	525	372	273
Utilization	(492)	(362)	(262)
Balance at end of period	<u>\$ 186</u>	<u>\$ 153</u>	<u>\$ 143</u>

Other non-current liabilities consist of the following (in thousands):

	December 31,	
	2019	2018
Asset retirement obligation	\$ 1,467	\$ 1,459
Deferred tax liability	395	—
Deferred rent and other deferred expense	104	147
Capital lease obligations	19	77
Liability related to the Cooperative Endeavor Agreement with the State of Louisiana	—	248
Foreign tax contingencies	1,086	1,435
Total other non-current liabilities	<u>\$ 3,071</u>	<u>\$ 3,366</u>

Asset retirement obligations reflect the estimated liability arising from legal obligations associated with the retirement of certain long-lived assets; for further discussion refer to Note 1: Summary of Significant Accounting Policies.

Foreign tax contingencies reflect primarily amounts owed by the Company's Brazilian subsidiary pursuant to refinancing programs in country as well as certain pre-acquisition tax liabilities arising from the Company's acquisition of the former IGO in Brazil in 2008.

The Company relocated its headquarters to Louisiana in 2010. In connection with its relocation, the Company entered into a Cooperative Endeavor Agreement with the LED, which expired on December 31, 2019, whereby the Company was reimbursed for certain qualified relocation costs and annual lease expenses. Under the terms of the agreement, since its relocation in 2010, the Company was reimbursed a total of \$5.8 million for qualifying relocation and lease expenses and \$1.3 million for facility improvements and replacement equipment in connection with the relocation through December 31, 2019.

## 12. RELATED PARTY TRANSACTIONS

Payables to Thermo and other affiliates related to normal purchase transactions were \$0.3 million and \$0.7 million as of December 31, 2019 and 2018, respectively. This decrease is related to the timing of expenses incurred by Thermo on behalf of the Company related to the shareholder litigation discussed in Note 10: Contingencies.

### *Transactions with Thermo*

Certain general and administrative expenses are incurred by Thermo on behalf of the Company. These expenses, which include non-cash expenses that the Company accounts for as a contribution to capital, related to services provided by certain executive officers of Thermo and expenses incurred by Thermo on behalf of the Company which are charged to the Company. The expenses charged are based on actual amounts (with no mark-up) incurred by Thermo or upon allocated employee time. The expenses charged to the Company were \$0.5 million, \$1.5 million, and \$0.8 million for the periods ended December 31, 2019, 2018 and 2017, respectively; 2018 included approximately \$0.7 million of expenses incurred by Thermo on behalf of the Company related to the shareholder litigation that did not recur in 2019.

In February 2019, the Company entered into a lease agreement with Thermo Covington, LLC for the Company's new headquarters office. Annual lease payments for the new location are \$1.4 million per year, increasing at a rate of 2.5% per year, for a lease term of ten years. During the twelve months ended December 31, 2019, the Company incurred lease expense of \$1.5 million due to Thermo under this lease agreement.

As of December 31, 2019, the principal amount outstanding under the Loan Agreement with Thermo was \$135.1 million, and the fair value of the compound embedded derivative liability associated with the Loan Agreement was \$1.3 million. During 2019 and 2018, interest accrued on the Loan Agreement was approximately \$15.4 million and \$13.6 million, respectively. As previously disclosed, Thermo committed to convert the total principal balance outstanding under the Loan Agreement by March 31, 2020; on February 19, 2020, Thermo converted the entire principal balance outstanding resulting in the issuance of 200.1 million shares of common stock.

In July 2019, the Company entered into a Subordinated Loan Agreement, effective June 28, 2019, with Thermo and certain unaffiliated parties. Thermo's participation in the Subordinated Loan Agreement was \$53.8 million and \$3.4 million of interest had accrued prior to its pay down. In November 2019, the Company entered into the Second Lien Term Loan Facility which was used in part to repay the entire balance of the Subordinated Loan Agreement. Thermo's participation in the Second Lien Term Loan Facility was \$95.1 million. This principal balance earns paid-in-kind interest at a rate of 13% per annum. During 2019, interest accrued with respect to Thermo's portion of the debt outstanding on the Second Lien Term Loan Facility was approximately \$1.2 million. In connection with the issuance of the Second Lien Term Loan Facility, the holders received warrants to purchase shares of voting common stock, of which Thermo received 59.5 million warrants with an exercise price of \$0.38 per share. In December 2019, Thermo exercised 9.5 million warrants resulting in cash proceeds to the Company of \$3.6 million. See Note 6: Long-Term Debt and Other Financing Arrangements for further discussion of the Company's debt and financing transactions with Thermo.

In April 2018, Globalstar entered into a merger agreement with certain Thermo entities, which are controlled by James Monroe III, Executive Chairman of the Board of Directors of Globalstar and former Chief Executive Officer of Globalstar. The transaction was unanimously recommended by the Special Committee of the Board of Directors of Globalstar, consisting entirely of disinterested independent directors, and unanimously approved by the full Board of Directors. On July 31, 2018, Globalstar, following the unanimous recommendation of its Special Committee of independent directors and Thermo, terminated the merger agreement by mutual written agreement.

The Facility Agreement requires Thermo to maintain minimum and maximum ownership levels in the Company's common stock.

As previously disclosed, in connection with the Settlement Agreement discussed in Note 10: Contingencies, the Company formed a Strategic Review Committee that is required to remain in existence for as long as Thermo and its affiliates beneficially own forty-five percent (45%) or more of Globalstar's outstanding common stock. To the extent permitted by applicable law, the Strategic Review Committee will have exclusive responsibility for the oversight, review and approval of, among other things and subject to certain exceptions, any acquisition by Thermo and its affiliates of additional newly-issued securities of the Company and any transaction between the Company and Thermo and its affiliates with a value in excess of \$250,000. The approval of any of the foregoing transactions will require the vote of at least a majority of the Strategic Review Committee.

### 13. PENSIONS AND OTHER EMPLOYEE BENEFITS

#### Defined Benefit Plan

Until June 1, 2004, substantially all Old and New Globalstar employees and retirees who participated and/or met the vesting criteria for the plan were participants in the Retirement Plan of Space Systems/Loral (the "Loral Plan"), a defined benefit pension plan. The accrual of benefits in the Old Globalstar segment of the Loral Plan was curtailed, or frozen, by the administrator of the Loral Plan in 2003. Prior to 2003, benefits for the Loral Plan were generally based upon contributions, length of service with the Company and age of the participant. On June 1, 2004, the assets and frozen pension obligations of the Globalstar Segment of the Loral Plan were transferred into a new Globalstar Retirement Plan (the "Globalstar Plan"). The Globalstar Plan remains frozen and participants are not currently accruing benefits beyond those accrued as of October 23, 2003. The Company's funding policy is to fund the Globalstar Plan in accordance with the Internal Revenue Code and regulations.

In December 2019, the Company settled a portion of the pension liability related to terminated vested employees in the Globalstar Plan as a de-risking strategy. The total settlement of \$1.7 million was paid out through the assets held in the Globalstar Plan. The settlement resulted in a reduction to the projected benefit obligation and a corresponding decrease to plan assets as of December 31, 2019. Additionally, in accordance with ASC 715 *Compensation — Retirement Benefits*, the Company recognized a loss of \$0.5 million in its consolidated statement of operations during the twelve-month period ended December 31, 2019 associated with this settlement. This loss represents the pro rata portion of actuarial losses that were previously deferred in other comprehensive income.

#### Defined Benefit Pension Obligation and Funded Status

Below is a reconciliation of projected benefit obligation, plan assets and the funded status of the Company's defined benefit plan (in thousands):

	<b>Year Ended December 31,</b>	
	<b>2019</b>	<b>2018</b>
Change in projected benefit obligation:		
Projected benefit obligation, beginning of year	\$ 17,150	\$ 18,637
Service cost	195	194
Interest cost	706	663
Actuarial (gain) loss	1,147	(1,332)
Settlement	(1,660)	—
Benefits paid	(1,029)	(1,012)
Projected benefit obligation, end of year	<u>\$ 16,509</u>	<u>\$ 17,150</u>
Change in fair value of plan assets:		
Fair value of plan assets, beginning of year	\$ 12,661	\$ 14,248
Return on plan assets	2,179	(870)
Employer contributions	230	295
Settlement	(1,660)	—
Benefits paid	(1,029)	(1,012)
Fair value of plan assets, end of year	<u>\$ 12,381</u>	<u>\$ 12,661</u>
Funded status, end of year-net liability	<u>\$ (4,128)</u>	<u>\$ (4,489)</u>



## Net Benefit Cost and Amounts Recognized

Components of the net periodic benefit cost of the Company's defined benefit pension plan were as follows (in thousands):

	Year Ended December 31,		
	2019	2018	2017
Net periodic benefit cost:			
Service cost	\$ 195	\$ 194	\$ 195
Interest cost	706	663	722
Expected return on plan assets	(794)	(901)	(825)
Amortization of unrecognized net actuarial loss	404	374	443
Settlement	455	—	—
Total net periodic benefit cost	\$ 966	\$ 330	\$ 535

Amounts recognized in the consolidated balance sheet were as follows (in thousands):

	December 31,	
	2019	2018
Amounts recognized:		
Funded status recognized in other non-current liabilities	\$ (4,128)	\$ (4,489)
Net actuarial loss recognized in accumulated other comprehensive loss	4,525	5,622
Net amount recognized in retained deficit	\$ 397	\$ 1,133

The estimated net actuarial loss that will be amortized from accumulated other comprehensive loss into net periodic benefit cost in 2020 is \$0.3 million. No amounts are expected to be amortized from accumulated other comprehensive loss into net periodic benefit cost in 2020 related to prior service costs or net transition obligations.

## Assumptions

The weighted-average assumptions used to determine the benefit obligation and net periodic benefit cost were as follows:

	For the Year Ended December 31,		
	2019	2018	2017
Benefit obligation assumptions:			
Discount rate	3.28%	4.25%	3.63%
Rate of compensation increase	N/A	N/A	N/A
Net periodic benefit cost assumptions:			
Discount rate	4.25%	3.63%	4.15%
Expected rate of return on plan assets	6.50%	6.50%	6.50%
Rate of compensation increase	N/A	N/A	N/A

The assumptions, investment policies and strategies for the Globalstar Plan are determined by the Globalstar Plan Committee. The Globalstar Plan Committee is responsible for ensuring the investments of the plans are managed in a prudent and effective manner. Amounts related to the pension plan are derived from actuarial and other assumptions, including discount rates, mortality, expected rate of return, participant data and termination. The Company reviews assumptions on an annual basis and makes adjustments as considered necessary.

The expected long-term rate of return on pension plan assets is selected by taking into account the expected duration of the projected benefit obligation for the plan, the asset mix of the plan and the fact that the plan assets are actively managed to mitigate risk. Discount rates are determined annually based on the Plan administrator's yield curve index, which considers expected benefit payments and is discounted with rates from the yield curve to determine a single equivalent discount rate.

*Plan Assets and Investment Policies and Strategies*

The plan assets are invested in various mutual funds which have quoted prices. The plan has a target allocation. On a weighted-average basis, target allocations for equity securities range from 50% to 60%, for debt securities 25% to 50% and for other investments 0% to 15%. The defined benefit pension plan asset allocations as of the measurement date presented as a percentage of total plan assets were as follows:

	December 31,	
	2019	2018
Equity securities	55%	54%
Debt securities	45	46
Total	100%	100%

The fair values of the Company's pension plan assets by asset category were as follows (in thousands):

	December 31, 2019			
	Total	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
United States equity securities	\$ 5,501	\$ —	\$ 5,501	\$ —
International equity securities	1,366	—	1,366	—
Fixed income securities	3,725	—	3,725	—
Other	1,789	—	1,789	—
Total	\$ 12,381	\$ —	\$ 12,381	\$ —

	December 31, 2018			
	Total	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
United States equity securities	\$ 5,509	\$ —	\$ 5,509	\$ —
International equity securities	1,288	—	1,288	—
Fixed income securities	4,158	—	4,158	—
Other	1,706	—	1,706	—
Total	\$ 12,661	\$ —	\$ 12,661	\$ —

*Accumulated Benefit Obligation*

The accumulated benefit obligation of the defined benefit pension plan was \$16.5 million and \$17.2 million at December 31, 2019 and 2018, respectively.

## Benefits Payments and Contributions

The benefit payments to retirees over the next ten years are expected to be paid as follows (in thousands):

2020	\$	1,023
2021		1,024
2022		1,041
2023		1,026
2024		1,037
2025 - 2029		5,101

For 2019 and 2018, the Company contributed \$0.2 million and \$0.3 million, respectively, to the Globalstar Plan. For 2020, the Company's expected contributions to the Globalstar Plan will be \$0.8 million.

## 401(k) Plan

The Company has a defined contribution employee savings plan, or "401(k)," which provides that the Company may match the contributions of participating employees up to a designated level. Under this plan, the matching contributions were approximately \$0.6 million, \$0.6 million and \$0.4 million for 2019, 2018, and 2017, respectively. The increase in matching contributions during 2018 was due to increased headcount as well as an increase to the matching contribution percentage by the Company during 2018.

## 14. TAXES

The components of income tax expense (benefit) were as follows (in thousands):

	Year Ended December 31,		
	2019	2018	2017
Current:			
Federal tax	\$ —	\$ —	\$ —
State tax	56	30	25
Foreign tax	94	95	165
Total	150	125	190
Deferred:			
Federal and state tax	395	—	—
Foreign tax	—	—	—
Total	395	—	—
Income tax expense	\$ 545	\$ 125	\$ 190

U.S. and foreign components of income (loss) before income taxes are presented below (in thousands):

	Year Ended December 31,		
	2019	2018	2017
U.S. income (loss)	\$ 47,545	\$ 28,699	\$ (60,964)
Foreign income (loss), net	(31,676)	(35,090)	(27,920)
Total income (loss) before income taxes	\$ 15,869	\$ (6,391)	\$ (88,884)

As of December 31, 2019, the Company had cumulative U.S. and foreign net operating loss carryforwards for income tax reporting purposes of approximately \$1.8 billion and \$242.0 million, respectively. As of December 31, 2018, the Company had cumulative U.S. and foreign net operating loss carryforwards for income tax reporting purposes of approximately \$1.8 billion and \$228.9 million, respectively. The current net operating loss carryforwards expire from 2020 through 2039, with less than 1% expiring prior to 2025.

The components of net deferred income tax assets were as follows (in thousands):

	December 31,	
	2019	2018
Federal and foreign net operating loss, interest limitation and credit carryforwards	\$ 475,171	\$ 489,815
Property and equipment and other long-term assets	(153,049)	(80,830)
Accruals and reserves	2,310	7,152
Deferred tax assets before valuation allowance	324,432	416,137
Valuation allowance	(324,827)	(416,137)
Net deferred income tax asset (liability)	\$ (395)	\$ —

The change in the valuation allowance during 2019 of \$91.3 million was due to the Company providing valuation allowances against all of the tax benefit generated from its consolidated net losses. Due to the remeasurement of the state impact on U.S. deferred tax assets and the Company's reconciliation of various deferred tax assets to reflect the remaining cumulative differences, the Company has remeasured all U.S. deferred tax assets resulting in a decrease in both the deferred tax asset and the associated valuation allowance. Due to the limitation on utilization of state net operating losses, the Company recorded a deferred tax liability and income tax expense during 2019. The change in property and equipment and other long-term assets was driven primarily by depreciation due to the difference between tax and book depreciable lives.

The actual provision for income taxes differs from the statutory U.S. federal income tax rate as follows (in thousands):

	Year Ended December 31,		
	2019	2018	2017
Provision at U.S. statutory rate of 21% for each of 2019 and 2018 and 35% for 2017	\$ 3,333	\$ (1,349)	\$ (31,118)
State income taxes, net of federal benefit	1,055	890	(1,804)
Change in valuation allowance (excluding impact of foreign exchange rates)	(89,998)	(8,228)	(245,304)
Effect of foreign income tax at various rates	(84)	(237)	3,739
Permanent differences	7,942	7,031	11,166
Net change in permanent items due to provision to tax return	2,475	1,813	(3,565)
Adjustment to reserved deferred assets	62,085	—	—
Remeasurement of U.S. deferred tax assets (Federal and State)	—	—	266,864
Adjustment to state deferred rate	13,639	—	—
Other (including amounts related to prior year tax matters)	98	205	212
Total	\$ 545	\$ 125	\$ 190

#### Tax Audits

The Company operates in various U.S. and foreign tax jurisdictions. The process of determining its anticipated tax liabilities involves many calculations and estimates which are inherently complex. The Company believes that it has complied in all material respects with its obligations to pay taxes in these jurisdictions. However, its position is subject to review and possible challenge by the taxing authorities of these jurisdictions. If the applicable taxing authorities were to challenge successfully its current tax positions, or if there were changes in the manner in which the Company conducts its activities, the Company could become subject to material unanticipated tax liabilities. It may also become subject to additional tax liabilities as a result of changes in tax laws, which could in certain circumstances have a retroactive effect.

In July 2018, the Company's Canadian subsidiary was notified that its income tax returns for the years ended October 31, 2015 and 2016 had been selected for audit. The Company has provided all requested information to the Canada Revenue Agency ("CRA") and is working with the CRA to complete the audit.

Except for the audit noted above, neither the Company nor any of its subsidiaries is currently under audit by the IRS or by any state income tax jurisdiction in the United States. The Company's corporate U.S. tax returns for 2016 and subsequent years remain subject to examination by tax authorities. State income tax returns are generally subject to examination for a period of three to five years after filing of the respective return. The state impact of any federal changes remains subject to examination by various states for a period of up to one year after formal notification to the states.

In the Company's international tax jurisdictions, numerous tax years remain subject to examination by tax authorities, including tax returns for 2011 and subsequent years in most of the Company's international tax jurisdictions.

There are no unrecognized tax benefits as of December 31, 2019 and December 31, 2018.

*Other*

As of December 31, 2019, the Company had not provided foreign withholding taxes on approximately \$2.4 million of undistributed earnings from certain foreign subsidiaries indefinitely invested outside the U.S.

On December 22, 2017, the United States ("U.S.") enacted significant changes to the U.S. tax law following the passage and signing of the Tax Act. The Tax Act included significant changes to existing tax law substantially effective January 1, 2018, including a permanent reduction to the U.S. federal corporate income tax rate from 35% to 21%, changes to the NOL utilization regulations, repeal of alternative minimum tax, a one-time deemed repatriation tax on deferred foreign income ("Transition Tax"), implementation of a territorial tax system, implementation of anti-deferral and anti-base erosion provisions, and provisions to both accelerate and limit certain deductions. The Company has revalued its deferred tax assets and liabilities based on the new corporate tax rate. As the Company's deferred tax assets have a full valuation allowance, the Company has not recorded any income statement impact as a result of the remeasurement of net deferred tax assets. Accordingly, the tax law changes did not have a material impact to the financial statements of the Company.

Also, on December 22, 2017, the SEC staff issued Staff Accounting Bulletin (SAB) 118 to provide guidance for companies that are not able to complete their accounting for the income tax effects of the Tax Act in the period of enactment. SAB 118 provides for a measurement period of up to one year from the date of enactment. During the measurement period, companies need to reflect adjustments to any provisional amounts if it obtains, prepares or analyzes additional information about facts and circumstances that existed as of the enactment date that, if known, would have affected the income tax effects initially reported as provisional amounts. The Company completed its analysis of the Tax Act and no adjustments were made to the provisional amounts recorded in the Company's financial statements for the period ending on December 31, 2017.

In January 2018, the FASB released guidance on the accounting for tax on the global intangible low-taxed income ("GILTI") provisions of the Tax Act. The GILTI provisions impose a tax on foreign income in excess of a deemed return on tangible assets of foreign corporations. The guidance indicates that either accounting for deferred taxes related to GILTI inclusions or treating any taxes on GILTI inclusions as period costs are both acceptable methods subject to an accounting policy election. The Company has elected to account for GILTI tax in the period in which it is incurred, and therefore has not provided any deferred tax impacts of GILTI in its consolidated financial statements for the years ended December 31, 2019 and December 31, 2018.

## 15. EARNINGS (LOSS) PER SHARE

Basic earnings (loss) per share is computed by dividing income (loss) available to common stockholders by the weighted average number of shares of common stock outstanding during the period. The numerator used to calculate diluted EPS includes the effect of dilutive securities, including interest expense, net, and derivative gains or losses reflected in net income (loss). Common stock equivalents are included in the calculation of diluted earnings per share only when the effect of their inclusion would be dilutive. Potentially dilutive securities include primarily outstanding stock-based awards, convertible notes, warrants and shares issuable pursuant to the Company's Employee Stock Purchase Plan.

The following table sets forth the calculation of basic and diluted earnings (loss) per share and reconciles basic weighted average shares to diluted weighted average shares of common stock outstanding for the periods indicated (in thousands):

	Year ended December 31,		
	2019	2018	2017
Net income (loss)	\$ 15,324	\$ (6,516)	\$ (89,074)
Effect of dilutive securities:			
2013 8.00% Notes	(127)	—	—
Loan Agreement with Thermo	(125,880)	—	—
Loss to common stockholders plus assumed conversions	\$ (110,683)	\$ (6,516)	\$ (89,074)
Weighted average common shares outstanding:			
Basic shares outstanding	1,450,768	1,269,548	1,166,581
Incremental shares from assumed exercises, conversions and other issuance of:			
Stock options, restricted stock, restricted stock units and ESPP	4,743	—	—
2013 8.00% Notes	2,044	—	—
Loan Agreement with Thermo	195,805	—	—
Warrants issued in connection with Second Lien Term Loan Facility	1,831	—	—
Diluted shares outstanding	1,655,191	1,269,548	1,166,581
Income (loss) per share:			
Basic	\$ 0.01	\$ (0.01)	\$ (0.08)
Diluted	\$ (0.07)	\$ (0.01)	\$ (0.08)

For the years ended December 31, 2018, and 2017, 201.7 million and 176.5 million shares of potential common stock, respectively, were excluded from diluted shares outstanding because the effects of potentially dilutive securities would be anti-dilutive.

In connection with the Second Lien Term Loan Facility entered into in November 2019, the Company issued 124.5 million warrants to purchase the Company's common stock to the debt holders as consideration for the loan. As of December 31, 2019, approximately 115.0 million warrants remain outstanding. Refer to Note 6: Long-Term Debt and Other Financing Arrangements for further discussion on these warrants.

## 16. STOCK COMPENSATION

The Company's 2006 Equity Incentive Plan ("Equity Plan") provides long-term incentives to the Company's key employees, including officers, directors, consultants and advisers ("Eligible Participants"), and is designed to align stockholder and employee interests. Under the Equity Plan, the Company may grant incentive stock options, nonstatutory stock options, restricted stock awards, restricted stock units, and other stock based awards or any combination thereof to Eligible Participants. The Compensation Committee of the Company's Board of Directors establishes the terms and conditions of any awards granted under the plans. As of December 31, 2019, and 2018, the number of shares of common stock that was authorized and remained available for issuance under the Equity Plan was 34.4 million and 11.4 million, respectively. In 2019, the stockholders of Globalstar approved amendments to the Company's Equity Plan; key changes included the authorization of an additional 28.9 million shares for future issuance as well as extension of the term of the Equity Plan through February 2029.

## Stock Options

The Company has granted incentive stock options under the Equity Plan. These options have various vesting terms, but generally vest in equal installments over three or four years and expire in ten years. Non-vested options are generally forfeited upon termination of employment.

The Company recognizes compensation expense for stock option grants based on the fair value at the date of grant using the Black-Scholes option pricing model. The Company uses historical data, among other factors, to estimate the expected stock price volatility, the expected option life and the expected forfeiture rate. The market price of common stock has been volatile at times in recent years. The Company makes judgmental adjustments to project volatility during the expected term of the options, considering, among other things, historical volatility of the share prices of its peer group and expectations with regard to business conditions that may impact stock price fluctuations or stability. The Company estimates the expected term considering factors such as historical exercise patterns and the recipients of the options granted. The risk-free rate is based on the United States Treasury Department yield curve in effect at the time of grant for the expected life of the option. The Company assumes an expected dividend yield of zero for all periods. The table below summarizes the assumptions for the indicated periods:

	Year Ended December 31,		
	2019	2018	2017
Risk-free interest rate	2.5%	2 - 3%	2%
Expected term of options (years)	5	5	5
Volatility	63%	63%	67%
Weighted average grant-date fair value per share	\$ 0.29	\$ 0.26	\$ 0.85

The following table represents the Company's stock option activity for the year ended December 31, 2019:

	Shares	Weighted Average Exercise Price
Outstanding at January 1, 2019	8,215,230	\$ 1.45
Exercised	(95,000)	0.38
Forfeited or expired	(292,766)	2.66
Outstanding at December 31, 2019	7,827,464	1.42
Exercisable at December 31, 2019	7,135,678	\$ 1.47

The Company did not grant any stock options during 2019, accordingly, no amounts are shown in the table above.

The following table summarizes the aggregate intrinsic value of stock options exercised during the years indicated below (in thousands):

	Year Ended December 31,		
	2019	2018	2017
Intrinsic value of stock options exercised	\$ 17	\$ 35	\$ 94

The intrinsic value of a stock option is the amount by which the market value of the underlying stock exceeds the exercise price of the option. Net cash proceeds during the year ended December 31, 2019 from the exercise of stock options was less than \$0.1 million. The aggregate intrinsic value of all outstanding stock options at December 31, 2019 was \$0.1 million with a remaining contractual life of 6.5 years. The aggregate intrinsic value of all vested stock options at December 31, 2019 was \$0.1 million with a remaining contractual life of 6.5 years.

The following table presents compensation expense related to stock options for the years indicated below (in millions):

	Year Ended December 31,		
	2019	2018	2017
Total compensation expense	\$ 0.3	\$ 1.1	\$ 1.2

In recent years, the Company has adjusted its philosophy related to equity compensation and has increased the volume of grants of restricted stock award and units (shown in more detail below) and has decreased the volume of grants of stock options. This change in compensation philosophy has resulted in lower compensation cost recognized during 2019. As of December 31, 2019, unrecognized compensation expense related to nonvested stock options outstanding was approximately \$0.4 million to be recognized over a weighted-average period of 1.8 years.

The Company adjusts its estimates of expected forfeitures of equity awards based upon its review of recent forfeiture activity and expected future employee turnover. The Company considers the impact of both pre-vesting forfeitures and post-vesting cancellations for purposes of evaluating forfeiture estimates. The effect of adjusting the forfeiture rate is recognized in the period in which the forfeiture estimate is changed.

### Restricted Stock

Shares of restricted stock generally vest immediately, one year from the grant date, in equal annual installments over three years or based on performance criteria. Non-vested shares are generally forfeited upon the termination of employment. Holders of restricted stock awards are entitled to all rights of a stockholder of the Company with respect to the restricted stock, including the right to vote the shares and receive any dividends or other distributions. Compensation expense associated with restricted stock is measured based on the grant date fair value of the common stock and is recognized on a straight line basis over the vesting period. The table below summarizes the weighted average grant date fair value of restricted stock for the indicated periods:

	Year Ended December 31,		
	2019	2018	2017
Weighted average grant date fair value	\$ 0.46	\$ 0.49	\$ 1.37

The following is a rollforward of the activity in restricted stock for the year ended December 31, 2019:

	Shares	Weighted Average Grant Date Fair Value
Nonvested at January 1, 2019	12,811,016	\$ 0.61
Granted	5,034,986	0.46
Vested	(8,007,290)	0.58
Forfeited	(545,912)	0.54
Nonvested at December 31, 2019	9,292,800	\$ 0.56

Approximately 2.0 million performance-based restricted stock awards are reflected in the nonvested balance at January 1, 2019 and December 31, 2019.

The following table represents the compensation expense related to restricted stock for the years indicated below (in millions):

	Year Ended December 31,		
	2019	2018	2017
Total compensation expense	\$ 4.3	\$ 3.9	\$ 2.3

The total fair value, as calculated on the day of vesting, of restricted stock awards that vested during 2019, 2018 and 2017 was \$4.1 million, \$3.1 million, and \$3.4 million, respectively. As of December 31, 2019, unrecognized compensation expense related to unvested restricted stock outstanding was approximately \$4.0 million to be recognized over a weighted-average period of 1.8 years.



### **Key Employee Bonus Plan**

The Company has an annual bonus plan designed to reward designated key employees' efforts to exceed the Company's financial performance goals for the designated calendar year ("Plan Year"). The bonus pool available for distribution is determined based on the Company's adjusted EBITDA performance during the Plan Year. The bonus may be paid in cash or the Company's common stock, as determined by the Compensation Committee and with the consent of our Lenders if paid cash.

For the 2019 Plan Year, the Company's adjusted EBITDA performance was within the bonus payout threshold according to the plan document. As of December 31, 2019, \$0.9 million was accrued on the Company's consolidated balance sheet related to this bonus payment, which is expected to be made in the form of common stock during the first quarter of 2020.

### **Employee Stock Purchase Plan**

The Company has an Employee Stock Purchase Plan (the "Plan") which provides eligible employees of the Company and its subsidiaries with an opportunity to acquire shares of its common stock at a discount. The maximum aggregate number of shares of common stock that may be purchased through the Plan is 14.0 million shares. The number of shares that may be purchased through the Plan will be subject to proportionate adjustments to reflect stock splits, stock dividends, or other changes in the Company's capital stock. In 2019, the stockholders of Globalstar approved an amendment to the Company's Equity Plan; key changes included the authorization of an additional 7.0 million shares for future issuance as well as a 2% annual increase to the maximum aggregate number of shares available for grant in future years.

The Plan permits eligible employees to purchase shares of common stock during two semi-annual offering periods beginning on June 15 and December 15 (the "Offering Periods"), unless adjusted by the Company's Board of Directors or one of its designated committees. Eligible employees may purchase shares of up to 15% of their total compensation per pay period, but may purchase in any calendar year no more than the lesser of \$25,000 in fair market value of common stock or 500,000 shares of common stock, as measured as of the first day of each applicable Offering Period. The price an employee pays is 85% of the fair market value of common stock. Fair market value is equal to the lesser of the closing price of a share of common stock on either the first day or the last day of the Offering Period.

For the years ended December 31, 2019 and 2018, the Company received \$0.6 million and \$0.5 million, respectively, related to shares issued under this plan. For each of 2019 and 2018, the Company recorded compensation expense of approximately \$0.5 million, which is reflected in marketing, general and administrative expenses. Additionally, the Company has issued approximately 8.2 million shares through December 31, 2019 related to the Plan.

The fair value of the employees' stock purchase rights granted under the ESPP was estimated using the Black-Scholes option pricing model with the following assumptions for the following years:

	Year Ended December 31,	
	2019	2018
Risk-free interest rate	2.00%	2.00%
Expected term (months)	6	6
Volatility	128%	104%
Weighted average grant-date fair value per share	\$ 0.20	\$ 0.35

### **17. ACCUMULATED OTHER COMPREHENSIVE LOSS**

Accumulated other comprehensive loss includes all changes in equity during a period from non-owner sources. The change in accumulated other comprehensive loss for all periods presented resulted from foreign currency translation adjustments and minimum pension liability adjustments.

The components of accumulated other comprehensive loss were as follows (in thousands):

	December 31,	
	2019	2018
Accumulated minimum pension liability adjustment	\$ (4,525)	\$ (5,622)
Accumulated net foreign currency translation adjustment	1,076	1,783
<b>Total accumulated other comprehensive loss</b>	<b>\$ (3,449)</b>	<b>\$ (3,839)</b>

The minimum pension liability adjustment in the table above includes a settlement loss of \$0.5 million. In December 2019, the Company settled a portion of its pension liability related to terminated vested employees in the Globalstar Plan as a de-risking strategy. The settlement resulted in a reduction to the projected benefit obligation and a corresponding decrease to plan assets as of December 31, 2019. In accordance with ASC 715 *Compensation — Retirement Benefits*, the Company recognized a loss of \$0.5 million in other comprehensive income and non-operating expense during 2019 associated with this settlement. This loss represents the pro rata portion of actuarial losses that were previously deferred in other comprehensive income.

No amounts were reclassified out of accumulated other comprehensive loss for the periods shown above.

#### 18. QUARTERLY FINANCIAL INFORMATION (UNAUDITED)

The following is a summary of consolidated quarterly financial information (amounts in thousands, except per share data):

2019	Quarter Ended			
	March 31	June 30	Sept. 30	Dec. 31
Total revenue	\$ 30,078	\$ 31,191	\$ 38,614	\$ 31,835
Loss from operations	\$ (18,331)	\$ (16,656)	\$ (12,005)	\$ (17,054)
Net income (loss)	\$ 25,771	\$ 6,189	\$ 21,111	\$ (37,747)
Basic income (loss) per common share	\$ 0.02	\$ 0.00	\$ 0.01	\$ (0.03)
Diluted loss per common share	\$ (0.02)	\$ (0.01)	\$ (0.01)	\$ (0.03)
Shares used in basic per share calculations	1,448,318	1,450,380	1,451,703	1,452,614
Shares used in diluted per share calculations	1,632,257	1,640,442	1,647,734	1,452,614

2018	Quarter Ended			
	March 31	June 30	Sept. 30	Dec. 31
Total revenue	\$ 28,749	\$ 33,726	\$ 35,692	\$ 31,946
Operating income (loss)	\$ (12,958)	\$ 1,948	\$ (17,962)	\$ (18,407)
Net income (loss)	\$ 87,930	\$ (7,012)	\$ 9,019	\$ (96,453)
Basic income (loss) per common share	\$ 0.07	\$ (0.01)	\$ 0.01	\$ (0.07)
Diluted loss per common share	\$ (0.01)	\$ (0.01)	\$ (0.02)	\$ (0.07)
Shares used in basic per share calculations	1,262,336	1,263,372	1,264,516	1,287,742
Shares used in diluted per share calculations	1,437,328	1,263,372	1,427,800	1,287,742

During the third quarter of 2019, the Company identified a misapplication of GAAP in the previously reported calculation of net income (loss) attributable to common stockholders in the numerator of diluted EPS for certain prior periods. The correction of this calculation had no impact on net income (loss), retained deficit or any other financial statement line items. For comparative purposes, prior period calculations of diluted EPS have been adjusted to conform to current period presentation, as necessary, throughout this filing.

## Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure

Not applicable.

### Item 9A. Controls and Procedures

#### (a) Evaluation of disclosure controls and procedures

Our management, with the participation of our Principal Executive Officer and Principal Financial Officer, evaluated the effectiveness of our disclosure controls and procedures pursuant to Rule 13a-15(b) under the Securities Exchange Act of 1934 as of December 31, 2019, the end of the period covered by this Report. This evaluation was based on the guidelines established in *Internal Control - Integrated Framework* issued in 2013 by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). In designing and evaluating the disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives.

Based on this evaluation, each of our Principal Executive Officer and Principal Financial Officer concluded that as of December 31, 2019 our disclosure controls and procedures were effective to provide reasonable assurance that information we are required to disclose in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in Securities and Exchange Commission rules and forms, and that such information is accumulated and communicated to our management, including our Principal Executive Officer and Principal Financial Officer, as appropriate, to allow timely decisions regarding required disclosure.

We believe that the Consolidated Financial Statements included in this Report fairly present, in all material respects, our consolidated financial position and results of operations as of and for the year ended December 31, 2019.

#### (b) Changes in internal control over financial reporting

As of December 31, 2019, our management, with the participation of our Principal Executive Officer and Principal Financial Officer, evaluated our internal control over financial reporting. Based on that evaluation, our Principal Executive Officer and Principal Financial Officer concluded that no changes in our internal control over financial reporting occurred during the quarter ended December 31, 2019 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

### Management's Annual Report on Internal Control over Financial Reporting

Management of the Company, including our Principal Executive Officer and Principal Financial Officer, is responsible for establishing and maintaining adequate internal control over financial reporting, as defined in Rules 13a-15(f) and 15d-15(f) of the Securities Exchange Act of 1934, as amended. The Company's internal controls were designed to provide reasonable assurance as to the reliability of our financial reporting and the preparation and presentation of the Consolidated Financial Statements for external purposes in accordance with accounting principles generally accepted in the United States and includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the Company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the Company are being made only in accordance with authorizations of management and directors of the Company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the Company's assets that could have a material effect on the financial statements.

The Company conducted an evaluation of the effectiveness of its internal control over financial reporting based on the criteria in *Internal Control - Integrated Framework* issued in 2013 by the Committee of Sponsoring Organizations of the Treadway Commission. This evaluation included review of the documentation of controls, evaluation of the design effectiveness of controls, testing of the operating effectiveness of controls and a conclusion on this evaluation. Through this evaluation, management did not identify any material weakness in the Company's internal control over financial reporting. There are inherent limitations in the effectiveness of any system of internal control over financial reporting; however, based on the evaluation, management has concluded the Company's internal control over financial reporting was effective as of December 31, 2019.

The Company's internal control over financial reporting as of December 31, 2019 has been audited by Crowe LLP, an independent registered public accounting firm, as stated in their report, which appears herein.

**Item 9B. Other Information**

Not applicable.

**PART III****Item 10. Directors, Executive Officers and Corporate Governance**

The information required by this item is incorporated by reference from the applicable information set forth in "Executive Officers," "Election of Directors," "Information about the Board of Directors and its Committees," and "Security Ownership of Directors and Executive Officers - Section 16(a) Beneficial Ownership Reporting Requirements" which will be included in our definitive Proxy Statement for our 2020 Annual Meeting of Stockholders to be filed with the SEC, and Part I, Item 1. Business - Additional Information in this Report.

**Item 11. Executive Compensation**

The information required by this item is incorporated by reference from the applicable information set forth in "Compensation of Executive Officers," "Compensation of Directors" and "2019 Pay Ratio" which will be included in our definitive Proxy Statement for our 2020 Annual Meeting of Stockholders to be filed with the SEC.

**Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters**

The information required by this item is incorporated by reference from the applicable information set forth in "Security Ownership of Principal Stockholders and Management" and "Equity Compensation Plan Information" which will be included in our definitive Proxy Statement for our 2020 Annual Meeting of Stockholders to be filed with the SEC.

**Item 13. Certain Relationships and Related Transactions, and Director Independence**

The information required by this item is incorporated by reference from the applicable information set forth in "Other Information - Related Person Transactions" and "Information about the Board of Directors and its Committees" which will be included in our definitive Proxy Statement for our 2020 Annual Meeting of Stockholders to be filed with the SEC.

**Item 14. Principal Accounting Fees and Services**

The information required by this item is incorporated by reference from the applicable information set forth in "Other Information - Globalstar's Independent Registered Accounting Firm" which will be included in our definitive Proxy Statement for our 2020 Annual Meeting of Stockholders to be filed with the SEC.

**PART IV**

**Item 15. Exhibits, Financial Statement Schedules**

(a) The following documents are filed as part of this Report:

(1) Financial Statements and Report of Independent Registered Public Accounting Firm

Report of Independent Registered Public Accounting Firm

Consolidated balance sheets at December 31, 2019 and 2018

Consolidated statements of operations for the years ended December 31, 2019, 2018 and 2017

Consolidated statements of comprehensive income (loss) for the years ended December 31, 2019, 2018 and 2017

Consolidated statements of stockholders' equity for the years ended December 31, 2019, 2018 and 2017

Consolidated statements of cash flows for the years ended December 31, 2019, 2018 and 2017

Notes to Consolidated Financial Statements

(2) Financial Statement Schedules

All schedules are omitted because they are not applicable or the required information is in the financial statements or notes thereto.

(3) Exhibits

See Exhibit Index

**Item 16. Form 10-K Summary**

None.

**SIGNATURES**

Pursuant to the requirements of Section 13 or 15(d) 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.

GLOBALSTAR, INC.

By: /s/ David B. Kagan

David B. Kagan

*Chief Executive Officer*

Date: February 28, 2020

**POWER OF ATTORNEY**

KNOW BY ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints David B. Kagan and Rebecca S. Clary, jointly and severally, his or her attorney-in-fact, with the power of substitution, for him or her in any and all capacities, to sign any amendments to this Annual Report on Form 10-K and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, hereby ratifying and confirming all that each of said attorneys-in-fact, or his or her substitute or substitutes, may do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities indicated as of February 28, 2020.

<b>Signature</b>	<b>Title</b>
<u>/s/ David B. Kagan</u> David B. Kagan	Chief Executive Officer (Principal Executive Officer)
<u>/s/ Rebecca S. Clary</u> Rebecca S. Clary	Chief Financial Officer (Principal Financial and Accounting Officer)
<u>/s/ James Monroe III</u> James Monroe III	Director
<u>/s/ William A. Hasler</u> William A. Hasler	Director
<u>/s/ James F. Lynch</u> James F. Lynch	Director
<u>/s/ Michael J. Lovett</u> Michael J. Lovett	Director
<u>/s/ Keith O. Cowan</u> Keith O. Cowan	Director
<u>/s/ Benjamin G. Wolff</u> Benjamin G. Wolff	Director



## EXHIBIT INDEX

Exhibit Number	Description
2.1*	<a href="#"><u>Agreement and Plan of Merger dated as of April 24, 2018 by and among Globalstar, Inc., GBS Acquisitions, Inc., Thermo Acquisitions, Inc., Stockholders of Thermo Acquisitions, Inc. and Thermo Development, Inc. (Exhibit 2.1 to Form 8-K filed April 25, 2018)</u></a>
3.1*	<a href="#"><u>Corrected Second Amended and Restated Certificate of Incorporation of Globalstar, Inc. (Exhibit 3.1 to Form 8-K filed June 19, 2019)</u></a>
3.2*	<a href="#"><u>Fourth Amended and Restated Bylaws of Globalstar, Inc. (Exhibit 3.1 to Form 8-K filed on April 15, 2019)</u></a>
4.1*	<a href="#"><u>Indenture between Globalstar, Inc. and U.S. Bank, National Association as Trustee dated as of April 15, 2008 (Exhibit 4.1 to Form 8-K filed April 16, 2008)</u></a>
4.2*	<a href="#"><u>Fourth Supplemental Indenture between Globalstar, Inc. and U.S. Bank, National Association as Trustee dated as of May 20, 2013, including Form of Global 8% Convertible Senior Note due 2028 (Exhibit 4.1 to Form 8-K filed May 20, 2013)</u></a>
4.3	<a href="#"><u>Description of Registrant's Securities Registered Pursuant to Section 12 of the Securities Exchange Act of 1934</u></a>
10.1*†	<a href="#"><u>Contract between Globalstar, Inc. and Hughes Network Systems LLC dated May 1, 2008 (Exhibit 10.1 to Form 10-Q filed August 11, 2008)</u></a>
10.2*	<a href="#"><u>Amendment No.2 to Contract between Globalstar, Inc. and Hughes Network Systems LLC effective as of August 28, 2009 (Amendment No. 1 Superseded),(Exhibit 10.2 to Form 10-Q filed November 6, 2009)</u></a>
10.3*	<a href="#"><u>Amendment No.3 to Contract between Globalstar, Inc. and Hughes Network Systems LLC effective as of September 21, 2009.(Exhibit 10.3 to Form 10-Q filed November 6, 2009)</u></a>
10.4*†	<a href="#"><u>Amendment No.4 to Contract between Globalstar, Inc. and Hughes Network Systems LLC dated as of March 24, 2010 (Exhibit 10.2 to Form 10-Q filed May 7, 2010)</u></a>
10.5* †	<a href="#"><u>Amendment No.5 to Contract between Globalstar, Inc. and Hughes Network Systems LLC dated as of April 5, 2011 (Exhibit 10.24 to Form 10-K filed March 13, 2012)</u></a>
10.6* †	<a href="#"><u>Amendment No.6 to Contract between Globalstar, Inc. and Hughes Network Systems LLC dated as of November 4, 2011 (Exhibit 10.25 to Form 10-K/A filed June 25, 2012)</u></a>
10.7 *†	<a href="#"><u>Amendment No. 7 to Contract between Globalstar and Hughes Network Systems LLC dated as of February 1, 2012 (Exhibit 10.1 to Form 10-Q filed May 10, 2012)</u></a>
10.8*†	<a href="#"><u>Letter Agreement dated March 30, 2012 between Globalstar, Inc. and Hughes Network Systems, LLC (Exhibit 10.2 to Form 10-Q filed May 10, 2012)</u></a>
10.9*†	<a href="#"><u>Letter Agreement dated June 26, 2012 between Globalstar, Inc. and Hughes Network Systems, LLC (Exhibit 10.1 to Form 10-Q filed August 9, 2012)</u></a>
10.10*†	<a href="#"><u>Letter Agreement by and between Globalstar, Inc. and Hughes Network Systems, LLC dated September 27, 2012 (Exhibit 10.2 to Form 10-Q filed November 14, 2012)</u></a>
10.11*†	<a href="#"><u>Letter Agreement by and between Globalstar, Inc. and Hughes Network Systems, LLC dated December 20, 2012 (Exhibit 10.30 to Form 10-K filed March 15, 2013)</u></a>
10.12*†	<a href="#"><u>Amendment No. 9 to Contract between Globalstar and Hughes Network Systems LLC dated as of January 13, 2013 (Exhibit 10.1 to Form 10-Q filed May 10, 2013)</u></a>
10.13*†	<a href="#"><u>Letter Agreement by and between Globalstar, Inc. and Hughes Network Systems, LLC dated March 26, 2013 (Exhibit 10.4 to Form 10-Q filed May 10, 2013)</u></a>
10.14*†	<a href="#"><u>Letter Agreement by and between Globalstar, Inc. and Hughes Network Systems, LLC dated June 28, 2013 (Exhibit 10.2 to Form 10-Q filed August 14, 2013)</u></a>
10.15*	<a href="#"><u>Letter Agreement by and between Globalstar, Inc. and Hughes Network Systems, LLC dated August 7, 2013 (Exhibit 10.8 to Form 10-Q filed November 14, 2013)</u></a>
10.16*†	<a href="#"><u>Amendment No. 10 to Contract between Globalstar and Hughes Network Systems LLC dated as of August 7, 2013 (Exhibit 10.9 to Form 10-Q filed November 14, 2013)</u></a>
10.17*	<a href="#"><u>Amendment No. 11 to Contract between Globalstar and Hughes Network Systems LLC dated as of December 17, 2013 (Exhibit 10.37 to Form 10-K filed March 11, 2014)</u></a>
10.18*†	<a href="#"><u>Letter Agreement by and between Globalstar, Inc. and Hughes Network Systems, LLC dated as of May 30, 2014 (Exhibit 10.1 to Form 10-Q filed August 11, 2014)</u></a>



- 10.19\* [Letter Agreement regarding equity payment by and between Globalstar, Inc. and Hughes Network Systems, LLC dated as of May 30, 2014 \(Exhibit 10.2 to Form 10-Q filed August 11, 2014\)](#)
- 10.20\*† [Amendment No.12 to Contract between Globalstar, Inc. and Hughes Network Systems LLC dated as of October 16, 2014 \(Exhibit 10.2 to Form 10-Q filed November 6, 2014\)](#)
- 10.21\*† [Amendment No.13 to Contract between Globalstar, Inc. and Hughes Network Systems LLC dated as of July 16, 2015 \(Exhibit 10.1 to Form 10-Q filed August 10, 2015\)](#)
- 10.22† [Amendment No.14 to Contract between Globalstar, Inc. and Hughes Network Systems LLC dated as of December 16, 2016 \(Exhibit 10.22 to Form 10-K filed February 23, 2017\)](#)
- 10.23\* [Amendment to Letter Agreement regarding equity payment by and between Globalstar, Inc. and Hughes Network Systems, LLC dated as of December 3, 2015 \(Exhibit 10.22 to Form 10-K filed February 26, 2016\)](#)
- 10.24\* [Amendment to Letter Agreement regarding equity payment by and between Globalstar, Inc. and Hughes Network Systems, LLC dated as of March 7, 2016 \(Exhibit 10.1 to Form 10-Q filed May 5, 2016\)](#)
- 10.25\* [Amendment to Letter Agreement regarding equity payment by and between Globalstar, Inc. and Hughes Network Systems, LLC dated as of June 14, 2016 \(Exhibit 10.1 to Form 10-Q filed August 4, 2016\)](#)
- 10.26\* [Amendment to Letter Agreement regarding equity payment by and between Globalstar, Inc. and Hughes Network Systems, LLC dated as of September 21, 2016 \(Exhibit 10.1 to Form 10-Q filed November 3, 2016\)](#)
- 10.27\* [Amendment to Letter Agreement regarding equity payment by and between Globalstar, Inc. and Hughes Network Systems, LLC dated as of December 6, 2016 \(Exhibit 10.27 to Form 10-K filed February 23, 2017\)](#)
- 10.28\*† [Amendment #15 to Contract between Globalstar, Inc. and Hughes Network Systems, LLC dated as of June 1, 2017 \(Exhibit 10.1 to Form 10-Q filed August 3, 2017\)](#)
- 10.29\* [Amended and Restated Loan Agreement between Globalstar, Inc., and Thermo Funding Company LLC dated as of July 31, 2013 \(Exhibit 10.4 to Form 8-K filed August 22, 2013\)](#)
- 10.30\* [Common Stock Purchase Agreement dated as of June 30, 2017 between Globalstar, Inc. and Thermo Funding II LLC \(Exhibit 10.3 to Current Report on Form 8-K filed July 7, 2017\)](#)
- 10.31\* [Voting Agreement dated as of April 24, 2018 \(Exhibit 10.1 to Form 8-K filed on April 25, 2018\)](#)
- 10.32\* [Termination of Agreement and Plan of Merger dated as of July 31, 2018 \(Exhibit 10.1 to Form 8-K filed on August 1, 2018\)](#)
- 10.33\* [Settlement Agreement dated December 14, 2018 \(Exhibit 10.1 to Form 8-K filed December 17, 2018\)](#)
- 10.34\* [Lease Agreement by and between Globalstar, Inc. and Thermo Covington, LLC dated February 1, 2019 \(Exhibit 10.1 to Form 10-Q filed May 2, 2019\)](#)
- 10.35\* [Form of Indemnification Agreement between Globalstar, Inc. and its Directors dated February 26, 2019 \(Exhibit 10.50 to Form 10-K filed February 28, 2019\)](#)
- 10.36\* [Subordinated Loan Agreement Dated as of July 2, 2019 by and among Globalstar, Inc. and Other Lenders \(Exhibit 10.1 to Form 10-Q filed August 9, 2019\)](#)
- 10.37 [Fourth Global Amendment and Restatement Agreement dated as of November 26, 2019 between Globalstar, Inc., Thermo Funding Company LLC, BNP Paribas and the other lenders thereto](#)
- 10.38 [Fourth Amended and Restated Facility Agreement dated as of November 26, 2019 between Globalstar, Inc., BNP Paribas and the other lenders party thereto](#)
- 10.39 [Second Lien Facility Agreement dated as of November 26, 2019 between Globalstar, Inc., Global Loan Agency Services Limited, GLAS Trust Corporation Limited and other lenders thereto](#)
- 10.40 [Form of Common Stock Purchase Warrant dated November 27, 2019 between Globalstar, Inc. and other lenders thereto](#)
- 10.41 [Registration Rights Agreement dated November 26, 2019 between Globalstar, Inc. and other lenders thereto](#)
- 10.42 [Intercreditor Agreement dated November 26, 2019 between BNP Paribas, Global Loan Agency Services Limited, The Senior Lenders, The Second Lien Lenders, Globalstar, Inc., BNP Paribas, GLAS Trust Corporation Limited and other lenders thereto](#)

**Executive Compensation Plans and Agreements**

10.43*	<a href="#">Third Amended and Restated Globalstar, Inc. 2006 Equity Incentive Plan (Appendix A to Definitive Proxy Statement filed April 16, 2019)</a>
10.44*	<a href="#">Amended and Restated Employee Stock Purchase Plan (Appendix B to Definitive Proxy Statement filed April 16, 2019)</a>
10.45*	<a href="#">Form of Restricted Stock Units Agreement for Non-U.S. Designated Executives under the Globalstar, Inc. 2006 Equity Incentive Plan (Exhibit 10.2 to Form 10-Q filed August 14, 2007)</a>
10.46*	<a href="#">Form of Notice of Grant and Restricted Stock Agreement under the Globalstar, Inc. 2006 Equity Incentive Plan (Exhibit 10.29 to Form 10-K filed March 17, 2008)</a>
10.47*	<a href="#">Form of Non-Qualified Stock Option Award Agreement for Members of the Board of Directors under the Globalstar, Inc. 2006 Equity Incentive Plan (Exhibit 10.1 to Form 8-K filed November 20, 2008)</a>
10.48*	<a href="#">Form of Stock Option Award Agreement for use with executive officers (Exhibit 10.45 to Form 10-K filed March 31, 2011)</a>
10.49*†	<a href="#">2016 Key Employee Cash Bonus Plan (Exhibit 10.53 to Form 10-K filed February 26, 2016)</a>
10.50*†	<a href="#">2017 Key Employee Cash Bonus Plan (Exhibit 10.59 to Form 10-K filed February 23, 2017)</a>
10.51*†	<a href="#">2018 Key Employee Cash Bonus Plan (Exhibit 10.54 to Form 10-K filed February 23, 2018)</a>
10.52†	<a href="#">2019 Key Employee Cash Bonus Plan</a>
10.53*	<a href="#">Letter Agreement with David Kagan dated November 27, 2017 (Exhibit 10.55 to Form 10-K filed February 23, 2018)</a>
10.54*	<a href="#">Letter Agreement with David Kagan dated September 4, 2018 (Exhibit 10.59 to Form 10-K filed February 28, 2019)</a>
21.1	<a href="#">Subsidiaries of Globalstar, Inc.</a>
23.1	<a href="#">Consent of Crowe LLP</a>
24.1	<a href="#">Power of Attorney (included as part of page titled "Signatures")</a>
31.1	<a href="#">Section 302 Certification of Principal Executive Officer of Globalstar, Inc.</a>
31.2	<a href="#">Section 302 Certification of Principal Financial Officer of Globalstar, Inc.</a>
32.1	<a href="#">Section 906 Certification of Principal Executive Officer of Globalstar, Inc.</a>
32.2	<a href="#">Section 906 Certification of Principal Financial Officer of Globalstar, Inc.</a>
101.INS	XBRL Instance Document
101.SCH	XBRL Taxonomy Extension Schema Document
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document
101.LAB	XBRL Taxonomy Extension Label Linkbase Document
*	Incorporated by reference.

† Portions of the exhibit have been omitted pursuant to a request for confidential treatment filed with the Commission. The omitted portions have been filed with the Commission.

**DESCRIPTION OF THE REGISTRANT'S SECURITIES  
REGISTERED PURSUANT TO SECTION 12 OF THE  
SECURITIES EXCHANGE ACT OF 1934**

As of December 31, 2019, Globalstar, Inc. (the "Company") had one class of securities registered under Section 12 of the Securities Exchange Act of 1934, as amended: our common stock.

**DESCRIPTION OF CAPITAL STOCK**

The following description of our capital stock is a summary and does not purport to be complete. It is subject to and qualified in its entirety by reference to our certificate of incorporation and our bylaws, each of which are incorporated by reference as an exhibit to the Annual Report on Form 10-K of which this Exhibit 4.1 is a part. We encourage you to read our certificate of incorporation, our bylaws and the applicable provisions of the Delaware General Corporation Law, Title 8 of the Delaware Code, for additional information.

**Common Stock**

*General.* We are authorized to issue 1.9 billion shares of common stock, par value \$0.0001 per share. All outstanding shares of common stock are, and all shares of common stock to be issued upon exercise of any warrants offered hereby will be, fully-paid and nonassessable.

*Dividends.* Subject to preferences that may be granted to holders of any preferred stock and restrictions under our credit facilities, the holders of our common stock will be entitled to dividends as may be declared from time to time by the board of directors from funds available therefor.

*Voting Rights.* Each share of common stock entitles its holder to one vote on all matters to be voted on by the stockholders. Our certificate of incorporation does not provide for cumulative voting in the election of directors. Generally, all matters to be voted on by the stockholders must be approved by a majority or, in the case of the election of directors, by a plurality, of the votes present in person or by proxy and entitled to vote. While Thermo Capital Partners, L.L.C. and any of its affiliates (collectively, "Thermo"), beneficially own 45% or more of the shares of our common stock, two directors will be elected by a vote of the holders of shares of common stock not affiliated with Thermo ("Minority Directors"). Additionally, even if Thermo owns 70% or more of the voting power of our stock, Thermo may not vote more than 69.9% of the voting power of the shares eligible to vote in the election of any directors.

*Preemptive Rights.* Holders of common stock do not have preemptive rights with respect to the issuance and sale by the company of additional shares of common stock or other equity securities of the company.

*Liquidation Rights.* Upon dissolution, liquidation or winding-up, the holders of shares of common stock will be entitled to receive our assets available for distribution proportionate to their pro rata ownership of the outstanding shares of common stock.

**Preferred Stock**

Our board of directors has the authority, without further action of our stockholders, to issue up to 100 million shares of preferred stock, par value \$0.0001 per share, in one or more series, to determine the number of shares constituting and the designation of each series and to fix the powers, preferences, rights and qualifications, limitations or restrictions thereof, which may include dividend rights, conversion rights, voting rights, terms of redemption, and liquidation preferences.

There are no restrictions on the repurchase or redemption of preferred stock by the Company in the event of any arrearage in the payment of dividends or sinking fund installments.

The issuance of preferred stock could adversely affect the holders of common stock. The potential issuance of preferred stock may discourage bids for shares of our common stock at a premium over the market price of our common stock, may adversely affect the market price of shares of our common stock and may discourage, delay or prevent a change of control.

No shares of our preferred stock are outstanding. We have no current plans to issue any shares of preferred stock.

### **Anti-takeover Effects of Certain Provisions of Our Amended and Restated Certificate of Incorporation and Bylaws and of Delaware General Corporation Law**

The provisions of the Delaware General Corporation Law and our amended and restated certificate of incorporation and bylaws summarized below may have the effect of discouraging, delaying or preventing a hostile takeover, including one that might result in a premium being paid over the market price of our common stock, and discouraging, delaying or preventing changes in the control or management of the Company.

#### *Certificate of Incorporation and Bylaws*

Our certificate of incorporation and bylaws provide that:

- if Thermo does not own a majority of our outstanding capital stock entitled to vote in the election of directors, no action can be taken by stockholders except at an annual or special meeting of the stockholders called in accordance with our bylaws, and stockholders may not act by written consent;
- while Thermo owns a majority of our outstanding capital stock entitled to vote in the election of directors, action can be taken by written consent signed by the number of stockholders necessary to authorize or take such action at a meeting;
- if Thermo does not own a majority of our outstanding capital stock entitled to vote in the election of directors, the approval of holders of 66 2/3% of the shares then entitled to vote in the election of directors will be required to adopt, amend or repeal our bylaws;
- while Thermo owns a majority of our outstanding capital stock entitled to vote in the election of directors, the approval of the majority of the holders of the shares then entitled to vote in the election of directors will be required to adopt, amend or repeal our bylaws;
- our board of directors is expressly authorized to make, alter or repeal our bylaws;
- stockholders may not call special meetings of the stockholders or fill vacancies on the board of directors;
- our board of directors are divided into three classes of service with staggered three-year terms, meaning that only one class of directors will be elected at each annual meeting of stockholders, with the other classes continuing for the remainder of their respective terms;
- our board of directors is authorized to issue preferred stock without stockholder approval;
- if Thermo does not own a majority of our outstanding capital stock entitled to vote in the election of directors, directors may only be removed for cause by the holders of 66 2/3% of the shares then entitled to vote in the election of directors;
- while Thermo owns a majority of our outstanding capital stock entitled to vote in the election of directors, directors may be removed with or without cause; *provided that*, Thermo may not vote on, or consent to, or have any voting power in respect to, the removal without cause of the Minority Directors; and

- we will indemnify directors and certain officers against losses they may incur in connection with investigations and legal proceedings resulting from their service to us, which may include services in connection with takeover defense measures.

The anti-takeover and other provisions of our certificate of incorporation and by-laws could discourage potential acquisition proposals and could delay or prevent a change in control. These provisions are intended to enhance the likelihood of continuity and stability in the composition of the board of directors and in the policies formulated by the board of directors and to discourage certain types of transactions that may involve an actual or threatened change of control. These provisions are designed to reduce our vulnerability to an unsolicited acquisition proposal. The provisions also are intended to discourage certain tactics that may be used in proxy fights. However, such provisions could have the effect of discouraging others from making tender offers for our shares and, as a consequence, they also may inhibit fluctuations in the market price of our shares that could result from actual or rumored takeover attempts. Such provisions also may have the effect of preventing changes in our management.

#### *Delaware General Corporation Law*

We are subject to Section 203 of the Delaware General Corporation Law regulating corporate takeovers, which prohibits a Delaware corporation from engaging in any business combination with an “interested stockholder” for three years after the person becomes an interested stockholder unless:

- prior to the date of the transaction, the board of directors of the corporation approved either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder;
- the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding for purposes of determining the number of shares outstanding (a) shares owned by persons who are directors and also officers and (b) shares owned by employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or
- on or subsequent to the date of the transaction, the business combination is approved by the board and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least 66 2/3% of the outstanding voting stock which is not owned by the interested stockholder.

Except as otherwise specified in Section 203, an “interested stockholder” is defined to include (a) any person that is the owner of 15% or more of the outstanding voting securities of the corporation, or is an affiliate or associate of the corporation and was the owner of 15% or more of the outstanding voting stock of the corporation at any time within three years immediately prior to the date of determination and (b) the affiliates and associates of any such person. Thermo is not an “interested stockholder” because it acquired more than 15% of our outstanding stock prior to the completion of our initial public offering.

For purposes of Section 203, the term “business combinations” includes mergers, consolidations, asset sales or other transactions that result in a financial benefit to the interested stockholder and transactions that would increase the interested stockholder’s proportionate share ownership of our company.

Under some circumstances, Section 203 makes it more difficult for an interested stockholder to effect various business combinations with us. Although our stockholders have the right to exclude us from the restrictions imposed by Section 203, they have not done so. Section 203 may encourage companies interested in acquiring us to negotiate in advance with the board of directors, because the requirement stated above regarding stockholder approval would be avoided if a majority of the directors approves, prior to the

time the party became an interested stockholder, either the business combination or the transaction which results in the stockholder becoming an interested stockholder.

### **Forum Selection Provision**

Our Bylaws provide that, unless the Company consents in writing to the selection of an alternative forum, the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Company; (ii) any action asserting a claim for or based on a breach of a fiduciary duty owed by any current or former director or officer or other employee of the Company to the Company or to the Company's shareowners, including a claim alleging the aiding and abetting of such a breach of fiduciary duty; (iii) any action asserting a claim against the Company or any current or former director or officer or other employee of the Company arising pursuant to any provision of the General Corporation Law of the State of Delaware or the Company's Certificate of Incorporation or Bylaws (as either may be amended from time to time); (iv) any action asserting a claim related to or involving the Company that is governed by the internal affairs doctrine; or (v) any action asserting an "internal corporate claim" as that term is defined in Section 115 of the General Corporation Law of the State of Delaware shall be a state court located within the State of Delaware (or, if no state court located within the State of Delaware has jurisdiction, the federal court for the District of Delaware).

Section 27(a) of the Securities Exchange Act of 1934 (the "Exchange Act") confers exclusive jurisdiction over all suits and actions to enforce a liability or duty created under the Exchange Act or the rules and regulations thereunder. Accordingly, the provisions above do not apply to any such suits or actions. In addition, a recent decision of the Delaware Court of Chancery has held that exclusive forum provisions of the kind included in the Company's Bylaws do not apply to claims arising under the Securities Act of 1933. Unless action by the Delaware legislature or the Delaware courts provides otherwise, the provisions above will also not apply to such claims.

This forum selection provision may limit the ability of holders of our shares to bring a claim arising in other instances in a judicial forum that such shareholders find favorable for disputes with us or our directors or officers, which may discourage such lawsuits against the Company and/or our directors and officers. Alternatively, if a court outside of the State of Delaware were to find this forum selection provision inapplicable to, or unenforceable in respect of, one or more of the specified types of actions or claims described above, we may incur additional costs associated with resolving such matters in other jurisdictions, which could harm our business, prospects, financial condition and results of operations.

### **Strategic Review Committee**

As part of the settlement of the previously disclosed shareholder action against us, captioned *Mudrick Capital Management, LP, et al. v. Monroe, et al.*, C.A. No. 2018-0699-TMR, our certificate of incorporation and bylaws were amended to require us to form a Strategic Review Committee that is required to remain in existence for as long as Thermo beneficially owns 45% or more of our outstanding common stock. To the extent permitted by applicable law, the Strategic Review Committee has exclusive responsibility for the oversight, review and approval of, among other things and subject to certain exceptions, any acquisition by Thermo of additional newly-issued securities of the Company and any transaction between the Company and Thermo with a value in excess of \$250,000. The approval of any of the foregoing transactions will require the vote of at least three members of the Strategic Review Committee.

### **Limitation of Liability of Directors**

Our certificate of incorporation provides that no director shall be personally liable to us or our stockholders for monetary damages for breach of fiduciary duty as a director, except for liability as follows:

- for any breach of the director’s duty of loyalty to us or our stockholders;
- for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; and
- for any transaction from which the director derived an improper personal benefit.

**Listing**

Our common stock is listed on the NYSE American under the trading symbol “GSAT.”

**Transfer Agent and Registrar**

The transfer agent and registrar for our common stock is Computershare Investor Services LLC.

Dated 26 November 2019

## Fourth Global Amendment and Restatement Agreement

between

**Globalstar, Inc.**

as the Borrower

**Thermo Funding Company LLC**

as Thermo

**BNP Paribas**

as the BPIFAE Agent and the Security Agent

**The Banks and Financial Institutions**

named in Schedule 1 (*Lenders*) as the Lenders

and

**Others**

in respect of a BPIFAE Facility Agreement

dated 5 June 2009 and amended and restated on 22 August 2013, 7 August 2015 and 30 June 2017

White & Case LLP  
5 Old Broad Street  
London EC2N 1DW



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**This Fourth Global Amendment and Restatement Agreement** (the “**Agreement**”) is made by way of deed on 26 November 2019 between:

- (1) **Globalstar, Inc.**, a corporation duly organised and validly existing under the laws of the State of Delaware, with its principal office located at 1351 Holiday Square Boulevard, Covington, LA 70433, United States of America (the “**Borrower**”);
- (2) **Thermo Funding Company LLC**, a limited liability company duly organised and existing under the laws of the State of Colorado, with its principal office located at 1735 Nineteenth Street, Second Floor, Denver, Colorado 80202, United States of America (“**Thermo**”);
- (3) **The Subsidiary Guarantors**, listed in Schedule 2 (*Subsidiary Guarantors*) as Subsidiary Guarantors (the “**Subsidiary Guarantors**”);
- (4) **BNP Paribas**, a société anonyme with a share capital of €2,499,597,122 organised and existing under the laws of the Republic of France, whose registered office is at 16 boulevard des Italiens, 75009 Paris, France registered under number 662 042 449 at the Commercial Registry of Paris, acting in its capacity as facility agent and *Chef de File* for and on behalf of the Finance Parties (the “**BPIFAE Agent**” (previously referred to as the “*COFACE Agent*”));
- (5) **BNP Paribas**, a société anonyme with a share capital of €2,499,597,122 organised and existing under the laws of the Republic of France, whose registered office is at 16 boulevard des Italiens, 75009 Paris, France registered under number 662 042 449 at the Commercial Registry of Paris, acting in its capacity as the security agent (the “**Security Agent**”);
- (6) **BNP Paribas**, a société anonyme with a share capital of €2,499,597,122 organised and existing under the laws of the Republic of France, whose registered office is at 16 boulevard des Italiens, 75009 Paris, France registered under number 662 042 449 at the Commercial Registry of Paris, acting in its capacity as offshore account bank;
- (7) **BNP Paribas, Société Générale, Natixis, Crédit Agricole Corporate and Investment Bank and Credit Industriel et Commercial**, each acting in its capacity as a mandated lead arranger (the “**Mandated Lead Arrangers**”); and
- (8) **The Banks and Financial Institutions** listed in Schedule 1 (*Lenders*) as lenders (the “**Lenders**”).

**Recitals:**

- (A) The Borrower, the BPIFAE Agent (previously referred to as the “*COFACE Agent*”), the Original Lenders and others entered into a facility agreement dated 5 June 2009 (the “**Original Facility Agreement**”).
- (B) Following the occurrence of certain Defaults and Events of Default under the Original Facility Agreement, the Borrower, the Subsidiary Guarantors, the Security Agent, the BPIFAE Agent, the Lenders and Thermo entered into an equity commitment, restructuring support and consent agreement dated 20 May 2013 pursuant to which the Borrower requested that, among other things, the Lenders consent and agree to a restructuring of the obligations of the Borrower under the Original

Facility Agreement on the basis of certain key terms as set out therein, and subject to other terms and conditions as set out therein (the “**Initial Restructuring**”).

(C) In connection with the Initial Restructuring, the Parties entered into a global deed of amendment and restatement dated 31 July 2013, as amended, varied and modified from time to time (the “**First GARA**”), pursuant to which the Parties agreed to, among other things, amend and restate the Original Facility Agreement (as amended and restated, the “**First Amended and Restated Facility Agreement**”) on the terms and subject to the First GARA.

(D) The Parties agreed to amend and restate the First Amended and Restated Facility Agreement pursuant to, and in accordance with, an amendment and restatement agreement dated 7 August 2015 (the “**Second GARA**”).

(E) The Parties agreed to, among other things, further amend and restate the Second Amended and Restated Facility Agreement pursuant to, and in accordance with, an amendment and restatement agreement dated 30 June 2017 (the “**Third GARA**”).

(F) Pursuant to an amendment request letter from the Borrower to the BPIFAE Agent, the Parties have agreed to amend and restate the Third Amended and Restated Facility Agreement pursuant to, and in accordance with, this Agreement.

(G) It is the intention of the Parties that this Agreement be executed as a deed.

**It is Hereby Agreed** as follows:

## 1. Definitions and Interpretation

### 1.1 Definitions

In this Agreement:

“**A&R Agreement**” has the meaning given to that term in paragraph 1 of Schedule 5 (*Conditions Subsequent to the Effective Date*).

“**Effective Date**” means the date on which the BPIFAE Agent confirms to the Borrower and the Lenders that it has received all of the documents and other evidence set out in Schedule 3 (*Conditions Precedent to the Effective Date*) in form and substance satisfactory to the BPIFAE Agent (acting on the instructions of each Lender).

“**First Amended and Restated Facility Agreement**” has the meaning given to such term in Recital (C).

“**First GARA**” has the meaning given to such term in Recital (C).

“**Fourth Amended and Restated Facility Agreement**” means the Third Amended and Restated Facility Agreement, as amended and restated by this Agreement, the terms of which are set out in Schedule 6 (*Fourth Amended and Restated Facility Agreement*).

“**Initial Restructuring**” has the meaning given to such term in Recital (B).

“**Longstop Date**” means 15 December 2019 or such other date as may be agreed between the Borrower and the BPIFAE Agent (acting on the instructions of all the Lenders).

“**Original Facility Agreement**” has the meaning given to such term in Recital (A).

“**Party**” means a party to this Agreement.

“**Second Amended and Restated Accounts Agreement**” means the “*Accounts Agreement*” as such term is defined in the Third Amended and Restated Facility Agreement.

“**Second Amended and Restated Facility Agreement**” means the First Amended and Restated Facility Agreement as amended and restated by the Second GARA.

“**Second GARA**” has the meaning given to such term in Recital (D).

“**Third Amended and Restated Facility Agreement**” means the Second Amended and Restated Facility Agreement, as amended and restated by the Third GARA.

“**Third GARA**” has the meaning given to such term in Recital (E).

### 1.2 Incorporation of Defined Terms

Both prior to, and from, the Effective Date terms defined in clause 1.1 (*Definitions*) of the Fourth Amended and Restated Facility Agreement shall, unless otherwise defined herein, have the same

meaning in this Agreement and the principles of construction set out in clause 1.2 (*Construction*) of the Fourth Amended and Restated Facility Agreement shall have effect as if set out in this Agreement.

### 1.3 Clauses

- (a) In this Agreement any reference to a “*Clause*” or a “*Schedule*” is, unless the context otherwise requires, a reference to a Clause or a Schedule hereof.
- (b) Clause headings are for ease of reference only.

### 1.4 Third Party Rights

- (a) A person which is not a party to this Agreement (a “**third party**”) shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Agreement.
- (b) The Parties may, without the consent of any third party, vary or rescind this Agreement.

### 1.5 BPIFAE Agent and Security Agent

- (a) The BPIFAE Agent has been appointed by each other Finance Party (other than the Security Agent) to act as agent on its behalf pursuant to clause 28 (*Role of the BPIFAE Agent, the Security Agent and the Mandated Lead Arrangers*) of the Third Amended and Restated Facility Agreement and shall act in accordance with the instructions of the Majority Lenders or such other group of Lenders pursuant to such clause and exercise any other right or discretion of the BPIFAE Agent howsoever described in accordance with the relevant provisions of the Finance Documents.
- (b) The Security Agent has been appointed by each other Finance Party (other than the BPIFAE Agent) to act as its security agent and trustee pursuant to clause 28 (*Role of the BPIFAE Agent, the Security Agent and the Mandated Lead Arrangers*) of the Third Amended and Restated Facility Agreement and shall act in accordance with the instructions of the Majority Lenders or such other group of Lenders pursuant to such clause and exercise any other right or discretion of the Security Agent howsoever described in accordance with the relevant provisions of the Finance Documents.

### 1.6 Conflict

In the case of any inconsistency between the provisions of this Agreement and the provisions of any other Finance Document, the provisions of this Agreement shall prevail.

## **2. Amendment and Restatement**

### **2.1 Amendment and Restatement**

With effect from the Effective Date the Third Amended and Restated Facility Agreement shall be deemed to have been amended and restated so that it shall be read and construed for all purposes as set out in Schedule 6 (*Fourth Amended and Restated Facility Agreement*).

### **2.2 Failure to Achieve Effective Date**

If the Effective Date does not occur on or prior to the Longstop Date, the Third Amended and Restated Facility Agreement shall not be deemed to have been amended and restated as set out in accordance with Schedule 6 (*Fourth Amended and Restated Facility Agreement*).

### **2.3 Conditions Subsequent**

As soon as possible, but in any event no later than the date specified for a condition set out in Schedule 5 (*Conditions Subsequent to the Effective Date*) (or such later date as may be agreed between the Borrower and the BPIFAE Agent (acting on the instructions of each Lender)) each condition subsequent set out in Schedule 5 (*Conditions Subsequent to the Effective Date*) shall be satisfied in form and substance satisfactory to the BPIFAE Agent (acting on the instructions of each Lender).

### **2.4 Finance Document**

Each Party agrees that this Agreement is designated a “*Finance Document*” for the purposes of the Third Amended and Restated Facility Agreement.

### **2.5 Debt Service Reserve Account**

Notwithstanding anything to the contrary in the Accounts Agreement:

- (a) the Borrower shall ensure that the amounts standing to the credit of the Debt Service Reserve Account shall, at all times, be equal to or in excess of the DSRA Required Balance; and
- (b) on the Second Lien Facility Prepayment Date, the Borrower shall withdraw cash from the Debt Service Reserve Account pursuant to, and in accordance with, clause 7.17 (*Mandatory Prepayment – DSRA*) of the Fourth Amended and Restated Facility Agreement.

### **2.6 Equity Proceeds Account**

Notwithstanding anything to the contrary in the Accounts Agreement, the Borrower shall withdraw cash from the Equity Proceeds Account in the required amount and apply that amount in mandatory prepayment pursuant to, and in accordance with, clause 7.17 (*Mandatory Prepayment – DSRA*) of the Fourth Amended and Restated Facility Agreement.

### **3. Representations and Warranties**

#### **3.1 Borrower Representations**

Subject to the disclosures set out in Schedule 4 (*Disclosures*), on each of:

- (a) the date of this Agreement; and
- (b) the Effective Date,

the Borrower repeats in favour of the Finance Parties each of the representations and warranties set out in clause 18 (*Representations*) of the Fourth Amended and Restated Facility Agreement and in each other Finance Document to which it is a party but with reference to the facts existing as of the date on which such representation is being repeated (with any reference in clause 18 (*Representations*) of the Fourth Amended and Restated Facility Agreement (or equivalent provision) to the “*date of this Agreement*” being deemed to be the date of this Agreement or the Effective Date, as the context requires).

#### **3.2 Subsidiary Guarantor Representations**

Subject to the disclosures set out in Schedule 4 (*Disclosures*), on each of:

- (a) the date of this Agreement; and
- (b) the Effective Date,

each Subsidiary Guarantor repeats in favour of the Finance Parties each of the representations and warranties set out in clause 4 (*Representations and Warranties*) of each Guarantee Agreement and each other Finance Document to which it is a party but with reference to the facts existing as of the date on which such representation is being repeated (with any reference in clause 4 (*Representations and Warranties*) of a Guarantee Agreement (or any equivalent provision in a Finance Document) to the “*date of this Agreement*” being deemed to be the date of this Agreement or the Effective Date, as the context requires).

#### **3.3 Thermo Representations**

Subject to the disclosures set out in Schedule 4 (*Disclosures*), on each of:

- (a) the date of this Agreement; and
- (b) the Effective Date,

Thermo repeats in favour of the Finance Parties each of the representations and warranties set out in clause 5 (*Representations and Warranties*) of the Thermo Subordination Deed but with reference to the facts existing as of the date on which such representation is being repeated (with any reference in clause 5 (*Representations and Warranties*) of the Thermo Subordination Deed to the “*date of this Agreement*” being deemed to be the date of this Agreement or the Effective Date, as the context requires).

## 4. Amendment Fees

### 4.1 Amendment Fees

- (a) As consideration for the Finance Parties' entry into this Agreement, the Borrower shall pay the amendment fees, in the amounts and at the times, set out in the applicable fee letters dated 24 September 2019 and made between:
- (i) the Borrower and each Lender; and
  - (ii) the Borrower and the BPIFAE Agent.
- (b) Any failure by the Borrower to make payment under, and in accordance with, the fee letters referred to in paragraph (a) above shall be an immediate Event of Default pursuant to clause 23.1 (*Non-Payment*) of the Third Amended and Restated Facility Agreement.

### 4.2 Other Fees, Costs and Expenses

Clause 17.2 (*Amendment Costs*) of the Third Amended and Restated Facility Agreement, as amended and supplemented by this Agreement, applies to this Agreement as if it were expressly incorporated in it with any necessary modifications.

## 5. Confirmations of Obligors

### 5.1 Confirmations – Date of this Agreement

As of the date of this Agreement:

- (a) each Obligor irrevocably and unconditionally confirms its acceptance of the Fourth Amended and Restated Facility Agreement;
- (b) each Obligor irrevocably and unconditionally confirms that notwithstanding this Agreement, each Finance Document to which it is a party remains in full force and effect and the rights, duties and obligations of each Obligor thereunder are not released, discharged or impaired by this Agreement;
- (c) each Subsidiary Guarantor irrevocably and unconditionally confirms that its guarantee and indemnity under clause 2.1 (*Guarantee and Indemnity*) of each Guarantee Agreement to which it is a party:
  - (i) continues in full force and effect on the terms of each Guarantee Agreement to which it is a party; and
  - (ii) extends to the liabilities and obligations of the Obligors under the Finance Documents (including this Agreement);



- (d) each Obligor irrevocably and unconditionally confirms that any Lien created by it under the Security Documents extends to the liabilities and obligations of the Obligors under the Finance Documents subject to any limitations set out in the Security Documents; and
- (e) each Obligor irrevocably and unconditionally confirms that the Liens created under the Security Documents to which it is a party continue in full force and effect on the terms of the Security Documents.

## 5.2 Confirmations – Effective Date

As of the Effective Date:

- (a) each Obligor irrevocably and unconditionally confirms its acceptance of the Fourth Amended and Restated Facility Agreement;
- (b) each Obligor irrevocably and unconditionally agrees that it is bound by the terms of the Fourth Amended and Restated Facility Agreement applicable to it;
- (c) each Subsidiary Guarantor irrevocably and unconditionally confirms that its guarantee and indemnity under clause 2.1 (*Guarantee and Indemnity*) of each Guarantee Agreement to which it is a party:
  - (i) continues in full force and effect on the terms of each Guarantee Agreement to which it is a party; and
  - (ii) extends to the liabilities and obligations of the Obligors under the Finance Documents;
- (d) each Obligor irrevocably and unconditionally confirms that, except as explicitly provided for in this Agreement, each Finance Document to which it is a party remains in full force and effect and the rights, duties and obligations of each Obligor thereunder are not released, discharged or impaired by this Agreement;
- (e) each Obligor irrevocably and unconditionally confirms that any Lien created by it under the Security Documents extends to the liabilities and obligations of the Obligors under the Finance Documents subject to any limitations set out in the Security Documents;
- (f) each Obligor irrevocably and unconditionally confirms that the obligations of the Obligors arising under the Finance Documents are included in the definition of the relevant secured obligations (howsoever defined) for the purposes of the Security Documents; and
- (g) each Obligor irrevocably and unconditionally confirms that the Liens created under the Security Documents to which it is a party continue in full force and effect on the terms of the Security Documents.

## 6. Continuity, Waivers and Further Assurance

## 6.1 Continuing Obligations

- (a) The provisions of the Third Amended and Restated Facility Agreement, the Second Amended and Restated Accounts Agreement and each other Finance Document, save as amended hereby, continue in full force and effect.
- (b) For the avoidance of doubt, this Agreement shall not constitute an assignment or novation of any of the rights and obligations of any party to the Third Amended and Restated Facility Agreement or the Second Amended and Restated Accounts Agreement nor shall it constitute an amendment to any Finance Document (except as expressly provided in this Agreement) or Security Document in place at the date of this Agreement, each of whose terms shall remain in full force and effect.

## 6.2 Further Assurance

The Borrower shall, at the request of the BPIFAE Agent and at its own expense, do all such acts or execute all such documents deemed necessary or desirable by the BPIFAE Agent to give effect to the amendments effected or to be effected pursuant to this Agreement.

## 7. Miscellaneous

### 7.1 Incorporation of Terms

The provisions of clauses 13.4 (*Stamp Taxes*), 13.5 (*Value Added Tax*), 35 (*Partial Invalidity*), 36 (*Remedies and Waivers*), 40 (*Enforcement*) and 41 (*Confidentiality*) of the Fourth Amended and Restated Facility Agreement shall also apply to this Agreement as if expressly set out herein, *mutatis mutandis*, with each reference therein to “*this Agreement*” being deemed to be a reference to this Agreement, each reference to “*Party*” or “*Parties*” being deemed to be a reference to the parties to this Agreement and each reference to the “*Borrower*” being deemed to be a reference to each Obligor and the Subordinated Creditor.

### 7.2 Counterparts

This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument.

### 7.3 Governing Law

This Agreement, and any non-contractual obligations arising out of or in connection with it, shall be governed by, and construed in accordance with, English law.

**This Agreement** has been executed by the Borrower, Thermo, and the Subsidiary Guarantors as a deed and has been signed on behalf of the other Parties.

**SIGNATURE PAGE**

**The Borrower**

**SIGNED** by **GLOBALSTAR, INC.**

acting by its attorney /s/Lindsey Keeble  
*Attorney-in-fact*

Witnessed by:

/s/Sam Goodwill  
Name: Sam Goodwill  
Address: Watson Farley & Williams LLP  
15 Appold Street  
London EC2A 2HB  
Occupation: Trainee Solicitor

1. BNP Paribas;
2. Société Générale;
3. Natixis;
4. Crédit Agricole Corporate and Investment Bank; and
5. Crédit Industriel et Commercial.

**Schedule 2****Subsidiary Guarantors**

1. GSSI, LLC, a limited liability company organised in Delaware, United States of America, with organisational identification number 3732317 and whose chief executive office is at 1351 Holiday Square Boulevard, Covington, LA 70433, United States of America;
2. Globalstar Security Services, LLC, a limited liability company organised in Delaware, United States of America, with organisational identification number 3747502 and whose chief executive office is at 1351 Holiday Square Boulevard, Covington, LA 70433, United States of America;
3. Globalstar C, LLC, a limited liability company organised in Delaware, United States of America, with organisational identification number 3732313 and whose chief executive office is at 1351 Holiday Square Boulevard, Covington, LA 70433, United States of America;
4. Globalstar USA, LLC, a limited liability company organised in Delaware, United States of America, with organisational identification number 2663064 and whose chief executive office is at 1351 Holiday Square Boulevard, Covington, LA 70433, United States of America;
5. Globalstar Leasing LLC, a limited liability company organised in Delaware, United States of America, with organisational identification number 3731109 and whose chief executive office is at 1351 Holiday Square Boulevard, Covington, LA 70433, United States of America;
6. Spot LLC, a limited liability company organised in Colorado, United States of America, with organisational identification number 20071321209 and whose chief executive office is at 1351 Holiday Square Boulevard, Covington, LA 70433, United States of America;
7. ATSS Canada, Inc., a corporation incorporated in Delaware, United States of America, with organisational identification number 2706412 and whose chief executive office is at 1351 Holiday Square Boulevard, Covington, LA 70433, United States of America;
8. Globalstar Brazil Holdings, L.P., a limited partnership formed in Delaware, United States of America, with organisational identification number 2453576 and whose chief executive office is at 1351 Holiday Square Boulevard, Covington, LA 70433, United States of America;
9. GCL Licensee LLC, a limited liability company organised in Delaware, United States of America, with organisational identification number 4187922 and whose chief executive office is at 1351 Holiday Square Boulevard, Covington, LA 70433, United States of America;
10. GUSA Licensee LLC, a limited liability company organised in Delaware, United States of America, with organisational identification number 4187919 and whose chief executive office is at 1351 Holiday Square Boulevard, Covington, LA 70433, United States of America;
11. Globalstar Licensee LLC, a limited liability company organised in Delaware, United States of America, with organisational identification number 4187920 and whose chief executive office is at 1351 Holiday Square Boulevard, Covington, LA 70433, United States of America;

12. Globalstar Media, L.L.C., a limited liability company organised in Louisiana, United States of America, with organisational identification number 40224959K and whose chief executive office is at 1351 Holiday Square Boulevard, Covington, LA 70433;
13. Globalstar Broadband Services Inc. a corporation incorporated in Delaware, United States of America, with organisational identification number 4833062 and whose chief executive office is at 1351 Holiday Square Boulevard, Covington, LA 70433; and
14. Globalstar International, LLC is a limited liability company organised in Delaware, United States of America, with an organisational identification number of 6438610 and whose chief executive office is at 1351 Holiday Square Boulevard, Covington, LA 70433.
15. Globalstar Holding US, LLC is a limited liability company organised in Delaware, United States of America, with an organisational identification number of 6508346 and whose chief executive office is at 1351 Holiday Square Boulevard, Covington, LA 70433.

## Schedule 3

### Conditions Precedent to the Effective Date

1. **Obligors**
  - (a) A copy of the constitutional documents of each Obligor.
  - (b) A copy of a resolution of the board of directors of each Obligor:
    - (i) approving the terms of, and the transactions contemplated by, this Agreement and resolving that it execute this Agreement;
    - (ii) authorising a specified person or persons to execute this Agreement on its behalf; and
    - (iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with this Agreement.
  - (c) A specimen of the signature of each person authorised by the resolutions referred to in paragraph (b) above.
  - (d) A certificate from a Responsible Officer of the Borrower certifying that, as at the Effective Date:
    - (i) the statement set out in paragraph 4 (*No Litigation*) below is true and correct;
    - (ii) each copy document relating to an Obligor specified in this Schedule 3 (*Conditions Precedent to the Effective Date*) is correct, complete and in full force and effect as at the Effective Date;
    - (iii) all representations and warranties of the Obligors contained in the Finance Documents are true, correct and complete in all respects;
    - (iv) none of the Obligors is in violation of any of the covenants contained in the Finance Documents to which it is a party save as set out in the Finance Documents; and
    - (v) after giving effect to the transactions contemplated by the Finance Documents, no Default or Event of Default has occurred and is continuing.

- (e) Certificates as of a recent date of the good standing of each Obligor under the laws of its jurisdiction of organisation and, to the extent requested by the BPIFAE Agent, each other jurisdiction where such Obligor is qualified to do business.

2. **Finance Documents**

An original (duly executed by each of the parties thereto) of:

- (a) this Agreement;
- (b) the Second Lien Intercreditor Agreement;
- (c) the Second Lien Facility Agreement; and
- (d) each other Second Lien Finance Document (other than the Second Lien Security Documents).

3. **BPIFAE Insurance Policy**

Each BPIFAE Insurance Policy (as amended) is in full force and effect and is in form and substance satisfactory to the BPIFAE Agent (acting on the instructions of all Lenders) and the BPIFAE Agent (acting on the instructions of all the Lenders) is satisfied that all conditions to each BPIFAE Insurance Policy are fulfilled, that all requisite approvals of the French Authorities have been obtained.

4. **No Litigation**

No litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes are commenced or threatened against the Group or its assets which has not been disclosed to the BPIFAE Agent in writing.

5. **Process Agent**

Evidence that any process agent referred to in the Finance Documents has accepted its appointment.

6. **Legal Opinions**

Delivery of the following:

- (a) a legal opinion of White & Case LLP (advisers to the Lenders) as to matters of the laws of England and confirming, amongst other things, the validity and enforceability of this Agreement and the Second Lien Intercreditor Agreement;
- (b) a legal opinion of Taft Stettinius & Hollister LLP (advisers to the Borrower) confirming, amongst other things:
  - (i) the due authorization of each Obligor and the Security Documents in place at the date of the Agreement are the legal, valid, binding and enforceable obligations of the Obligors, notwithstanding the amendments to the Third Amended and Restated Facility Agreement as set out in this Agreement; and
  - (ii) the due authorization of each Obligor to enter into the Second Lien Intercreditor Agreement; and
- (c) such other favourable legal opinions of counsel to the Obligors addressed to the BPIFAE Agent (for and on behalf of itself and the other Finance Parties) with respect to the Obligors, the Finance Documents and such other matters as the BPIFAE Agent shall reasonably request.

7. **Funds Flow Statement**

A copy of the “*Funds Flow Statement*” (as such term is defined in the Second Lien Facility Agreement).

8. **Fees**

Evidence of payment of all fees, costs and expenses of the Finance Parties associated with the negotiation, preparation, due diligence, documentation, administration and closing of all conditions precedent, including the payment of all fees of the professional advisors to the Lenders accruing up until and including the Effective Date.

## Schedule 4

### Disclosures

1. **Clause 18.35 Tax Returns and Payments**

**Tax Returns and Payments.** The Borrower operates in various U.S. and foreign tax jurisdictions. The process of determining its anticipated tax liabilities involves many calculations and estimates which are inherently complex. The Borrower believes that it has complied in all material respects with its obligations to pay taxes in these jurisdictions. However, its position is subject to review and possible challenge by the taxing authorities of these jurisdictions. If the applicable taxing authorities were to challenge successfully its current tax positions, or if there were changes in the manner in which the Borrower conducts its activities, the Borrower could become subject to material unanticipated tax liabilities. It may also become subject to additional tax liabilities as a result of changes in tax laws, which could in certain circumstances have a retroactive effect.

- (i) The Canada Revenue Agency (CRA) is currently auditing the income tax returns of the Borrower’s Canadian subsidiary for the years ended October 31, 2015 and 2016. The Borrower is in the process of collecting information and responding to questions from the Canada Revenue Agency.
- (ii) Except for the Canadian tax audits, neither the Borrower nor any of its Subsidiaries are currently under audit; however, numerous tax years remain subject to examination by tax authorities.
- (iii) The Borrower’s Worlds’ End Subsidiary has not timely filed with its taxing authority its income tax returns as the statutory audits of the underlying financial statements have not been completed.

2. **Clause 18.37**

The 5% Notes and Old 8% Notes were converted into equity in accordance with their terms.

## Schedule 5

### Conditions Subsequent to the Effective Date

1. **Obligors**

No later than 31 January 2020:

- (a) a copy of any changes to the constitutional documents of each Obligor since the Effective Date;
- (b) a copy of a resolution of the board of directors of each Obligor that is a party to the amendment and restatement agreement in respect of the Accounts Agreement (“**A&R Agreement**”):
  - (i) approving the terms of, and the transactions contemplated by, the A&R Agreement and resolving that it execute the A&R Agreement;
  - (ii) authorising a specified person or persons to execute the A&R Agreement on its behalf; and
  - (iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with the A&R Agreement; and
- (c) a specimen of the signature of each person authorised by the resolutions referred to in paragraph (b) above.

2. **Accounts Agreement**

No later than 31 January 2020, an original (duly executed by each of the parties thereto) of the A&R Agreement.

3. **Second Lien Security Documents**

No later than 31 January 2020, a certified copy (duly executed by each of the parties thereto) of each Security Document entered into in connection with the Second Lien Facility.

4. **Process Agent**

No later than 30 November 2019, evidence that any process agent referred to in the Second Lien Intercreditor Agreement has accepted its appointment.

5. **Legal Opinions**

No later than 31 January 2020, delivery of the following:

- (a) a legal opinion of White & Case LLP (advisers to the Lenders) as to matters of the laws of England and confirming, amongst other things, the validity and enforceability of the A&R Agreement;
- (b) a legal opinion of Taft Stettinius & Hollister LLP (advisers to the Borrower) confirming, amongst other things, the due authorization of each Obligor to enter into the A&R Agreement; and
- (c) such other favourable legal opinions of counsel to the Obligors addressed to the BPIFAE Agent (for and on behalf of itself and the other Finance Parties) with respect to the Obligors, the Finance Documents and such other matters as the BPIFAE Agent shall reasonably request.



6. **Cash Movement Summary Report**

No later than 31 January 2020, delivery of a template form of the cash movement summary report, in form and substance satisfactory to the BPIFAE Agent (acting on the instructions of each Lender).

**Schedule 6**

**Fourth Amended and Restated Facility Agreement**

**Originally dated 5 June 2009  
as amended and restated on 22 August 2013, 7 August 2015 and 30 June 2017  
and as further amended and restated on 26 November 2019**

## **BPIFAE Facility Agreement**

between

**Globalstar, Inc.**

as Borrower

**BNP Paribas  
Société Générale  
Natixis**

**Crédit Agricole Corporate and Investment Bank  
Crédit Industriel Et Commercial**

as Mandated Lead Arrangers

**BNP Paribas**

as the Security Agent  
and the BPIFAE Agent

and

**The Banks and Financial Institutions**

listed in Schedule 1 as the Original Lenders

White & Case LLP  
5 Old Broad Street  
London EC2N 1DW

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**This Agreement** (the “**Agreement**”) is dated 5 June 2009 (as amended and restated on 22 August 2013 by the First Global Deed of Amendment and Restatement, amended and restated on 7 August 2015 by the Second Global Amendment and Restatement Agreement and on 30 June 2017 by the Third Global Amendment and Restatement Agreement and further amended and restated on 26 November 2019 by the Fourth Amendment and Restatement Agreement and made

**Between:**

- (1) **Globalstar, Inc.**, a corporation duly organised and validly existing under the laws of the State of Delaware, with its principal office located at 1351 Holiday Square Boulevard, Covington, LA 70433, United States of America (the “**Borrower**”);
- (2) **BNP Paribas**, a société anonyme with a share capital of €2,499,597,122 organised and existing under the laws of the Republic of France, whose registered office is at 16 boulevard des Italiens, 75009 Paris, France registered under number 662 042 449 at the Commercial Registry of Paris, acting in its capacity as facility agent and *Chef de File* for and on behalf of the Finance Parties (the “**BPIFAE Agent**” (previously referred to as the “*COFACE Agent*”));
- (3) **BNP Paribas, Société Générale, Natixis, Crédit Agricole Corporate and Investment Bank (formerly known as Calyon) and Crédit Industriel et Commercial** each acting in its capacity as a mandated lead arranger (the “**Mandated Lead Arrangers**”);
- (4) **BNP Paribas**, a société anonyme with a share capital of €2,499,597,122 organised and existing under the laws of the Republic of France, whose registered office is at 16 boulevard des Italiens, 75009 Paris, France registered under number 662 042 449 at the Commercial Registry of Paris, acting in its capacity as the security agent (the “**Security Agent**”); and
- (5) **The Financial Institutions** listed in Schedule 1 (*Lenders and Commitments*) as lenders (the “**Original Lenders**”).

## **1. Definitions and Interpretation**

### **1.1 Definitions**

In this Agreement:

“**5% Notes**” means the 5% convertible senior unsecured notes issued by the Borrower pursuant to the Original Indenture as supplemented by the third supplemental indenture dated as of 14 June 2011.

“**5.75% Notes Term Sheet**” means the term sheet attached as schedule 1 to the Restructuring, Support and Consent Agreement in respect of the restructuring of the 5.75% notes which were exchanged or redeemed in full by the Borrower on or prior to 26 June 2013.

“**8% New Notes**” means the 8% convertible senior notes issued by the Borrower pursuant to the Original Indenture as supplemented by the Fourth Supplemental Indenture.

“**8% Old Notes**” means the 8% convertible senior unsecured notes issued by the Borrower pursuant to the Original Indenture as supplemented by a second supplemental indenture dated 19 June 2011.

**“2013 Closing Commitment”** means the equity commitment made by Thermo in respect of the Borrower on or prior to the First Effective Date pursuant to the Restructuring Support and Consent Agreement in an aggregate amount of cash equal to US\$20,000,000 less the aggregate amount of cash actually received by the Borrower in connection with the Initial Minimum Cash Commitment (as such amount may be reduced by the amount of any proceeds received by the Borrower from any financing pursuant to third party Equity Issuances (*but excluding* any Equity Issuance involving Terrapin)).

**“2013 Year-End Commitment”** means the equity commitment made or to be made by Thermo or any other member of the Thermo Group in respect of the Borrower pursuant to the First Global Deed of Amendment and Restatement or the First Thermo Group Undertaking Letter (as the case may be) to be funded on or prior to 26 December 2013 as a condition precedent to the entry into Guarantee Obligations by the Subsidiary Guarantors under Clause 22.1 (*Limitations on Financial Indebtedness*), in an aggregate amount of cash equal to US\$20,000,000 (as such amount may be reduced by the amount of any proceeds received by the Borrower from any financing pursuant to third party Equity Issuances (*but excluding* any Equity Issuance involving Terrapin)).

**“2014 Equity Financing”** means the equity commitment made or to be made by Thermo or any other member of the Thermo Group in respect of the Borrower pursuant to the First Global Deed of Amendment and Restatement or the First Thermo Group Undertaking Letter (as the case may be) to be funded on or prior to 31 December 2014 in an aggregate amount of cash equal to US\$20,000,000 less the amount by which the amount of cash actually received by the Borrower in connection with the Initial Minimum Cash Commitment, the 2013 Closing Commitment and the 2013 Year-End Commitment exceeds US\$40,000,000 (as such amount may be reduced by the amount of any proceeds received by the Borrower from any financing pursuant to third party Equity Issuances (*but excluding* any Equity Issuance involving Terrapin)).

**“2019 Bridge Facility Agreement”** means the US\$62,000,000 unsecured bridge facility agreement dated 2 July 2019 (with an effective date of 28 June 2019) and made between Thermo, [ \* ], [ \* ], [ \* ] and the Borrower.

**“2019 Bridge Loan Subordination Deed”** means the subordination deed dated 2 July 2019 and made between Thermo, [ \* ], [ \* ], [ \* ], the Borrower, the Security Agent and the BPIFAE Agent.

**“2021 Equity Issuance”** has the meaning given to such term in Clause 23.28 (*2021 Equity Issuance*).

**“2021 Equity Issuance Amount”** means US\$45,000,000.

**“Acceptable Bank”** means:

- (a) a bank or financial institution which has a rating for its long-term unsecured and non credit-enhanced debt obligations of AA- or higher by S&P or Fitch Ratings Ltd or Aa2 or higher by Moody’s or a comparable rating from an internationally recognised credit rating agency;
- (b) Union Bank, *provided that*, it has a rating for its long-term unsecured and non credit-enhanced debt obligations of A or higher by S&P or A+ by Fitch Ratings Ltd or a comparable rating from an internationally recognised credit rating agency; or

(c) any other bank or financial institution approved by the BPIFAE Agent.

**“Acceptable Intercreditor Agreement”** means an intercreditor agreement in form and substance satisfactory to the BPIFAE Agent to be entered into by the Borrower or any Subsidiary (as the case may be), the BPIFAE Agent (unless the BPIFAE Agent agrees otherwise) and the relevant provider of Subordinated Indebtedness. Such Acceptable Intercreditor Agreement excludes the Second Lien Intercreditor Agreement but shall include, without limitation, the following provisions, whereby the relevant Subordinated Indebtedness provider shall agree not to:

- (a) seek direct or indirect recovery, payment or repayment of, nor permit direct or indirect payment or repayment of any of the Subordinated Indebtedness or other amounts payable by the Borrower or any Subsidiary (as the case may be) in respect thereof or of any other Subordinated Indebtedness of the Borrower or any Subsidiary (as the case may be);
- (b) demand, sue for or accept from the Borrower or any Subsidiary (as the case may be) any payment in respect of the Subordinated Indebtedness or take any other action to enforce its rights or to exercise any remedies in respect of any Subordinated Indebtedness (whether upon the occurrence or during the occurrence of an event of default (howsoever described) or otherwise) unless requested to do so by the BPIFAE Agent;
- (c) file or join in any petition to commence any winding-up proceedings or an order seeking reorganisation or liquidation of the Borrower or any Subsidiary (as the case may be), or take any other action for the winding-up, dissolution or administration of the Borrower or any Subsidiary (as the case may be) or take, or agree to, any other action which could or might lead to the bankruptcy, insolvency or similar process of the Borrower or any Subsidiary (as the case may be) unless requested to do so by the BPIFAE Agent; and/or
- (d) claim, rank or prove as a creditor of the Borrower or any Subsidiary (as the case may be) in competition with any Finance Party.

**“Account Control Agreement”** has the meaning given to such term in Schedule 33 (*Security Documents*).

**“Accounts Agreement”** means the accounts agreement originally dated 5 June 2009 (as amended and restated on 31 July 2013 pursuant to the First Global Deed of Amendment and Restatement, on the Third Effective Date pursuant to the Third Global Amendment and Restatement Agreement) and made between the Borrower, the BPIFAE Agent, the Offshore Account Bank and the Security Agent.

**“Acquisition Document”** means the share purchase agreement dated on or around the Third Effective Date relating to the Permitted Peruvian Acquisition and made between the Borrower and the Sellers.

**“Adjusted Consolidated EBITDA”** means, for any period, Consolidated EBITDA for such period *provided that*, for the purpose of calculating the Consolidated Net Income component of Consolidated EBITDA, any cash revenue received in that period but not recognised under GAAP shall be included, *plus* (in the case of paragraphs (a), (b) and (c) below only, to the extent deducted in the calculation of Consolidated EBITDA (without double-counting)):

- (a) non-cash stock compensation expenses;
- (b) non-cash asset impairment charges; and
- (c) one time non-cash non-recurring expenses,

*but excluding* the proceeds of any Spectrum Cash Flow (save for, to the extent agreed in writing by the BPIFAE Agent (acting on the instructions of the Majority Lenders), any such proceeds which replace revenue that had otherwise been projected in the then current Agreed Business Plan but which has not been earned due to a change in the strategy of the Group).

**“Adjusted Consolidated EBITDA Reconciliation”** means, for any period, a reconciliation statement prepared by the Borrower in a form reasonably acceptable to the BPIFAE Agent showing a reconciliation of:

- (a) cash revenue received in that period but not recognised under GAAP, as determined in accordance with the definition of Adjusted Consolidated EBITDA; *to*
- (b) revenues recognised for such period, as determined in accordance with GAAP.

**“Advance Payment”** means an advance payment:

- (a) in the case of the Launch Services Contract, of five *per cent.* (5%) of the total Contract Price payable by the Borrower pursuant to the Launch Services Contract; and
- (b) in the case of the Satellite Construction Contract, of fifteen *per cent.* (15%) of the total Contract Price payable by the Borrower pursuant to the Satellite Construction Contract.

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

**“Agreed Business Plan”** means the business plan:

- (a) delivered to the BPIFAE Agent on or prior to the First Effective Date pursuant to paragraph 13 of schedule 3 (*Conditions Precedent to the Effective Date*) of the First Global Deed of Amendment and Restatement; or
- (b) as updated on an annual basis in accordance with Clause 19.3 (*Annual Business Plan and Financial Projections*).

**“ANFR”** means the Agence Nationale des Fréquences.



“**Applicable Law**” means all applicable provisions of constitutions, laws, statutes, ordinances, rules, treaties, regulations, permits, licences, approvals, interpretation and orders of courts or Governmental Authorities and all orders and decrees of all courts and arbitrators.

“**Applicable Margin**” means in respect of each Facility for any Interest Period commencing:

- (a) any time prior to the First Effective Date, two point two five *per cent.* (2.25%) per annum;
- (b) from the First Effective Date and prior to (but excluding) 1 July 2017, two point seven five *per cent.* (2.75%) per annum;
- (c) on (and including) 1 July 2017 and ending on 30 June 2018, three point two five *per cent.* (3.25%) per annum;
- (d) on (and including) 1 July 2018 and ending on 30 June 2019, three point seven five *per cent.* (3.75%) per annum;
- (e) on (and including) 1 July 2019 and ending on 30 June 2020, four point two five *per cent.* (4.25%) per annum;
- (f) on (and including) 1 July 2020 and ending on 30 June 2021, four point seven five *per cent.* (4.75%) per annum;
- (g) on (and including) 1 July 2021 and ending on 30 June 2022, five point two five *per cent.* (5.25%) per annum; and
- (h) on (and including) 1 July 2022 and thereafter, five point seven five *per cent.* (5.75%) per annum.

“**Applicable Negative Excess Cash Flow**” means:

- (a) for all Payment Periods (except the Second Half 2017 Payment Period), the absolute value of such negative Excess Cash Flow for such Payment Period *provided that* if such absolute value is greater than US\$10,000,000 the Applicable Negative Excess Cash Flow shall be deemed to be US\$10,000,000; or
- (b) for the Second Half 2017 Payment Period, the absolute value of such negative Excess Cash Flow for such Payment Period *provided that* if such absolute value is greater than US\$25,000,000 the Applicable Negative Excess Cash Flow shall be deemed to be US\$25,000,000.

“**Article 55 BRRD**” means Article 55 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms.

“**Asset Disposition**” means the disposition of any or all assets (including the Capital Stock of a Subsidiary or any ownership interest in a joint venture) of any Obligor or any Subsidiary thereof whether by sale, lease, transfer or otherwise. The term “*Asset Disposition*” shall not include any Equity Issuance or any Debt Issuance.

**“Assignment Agreement”** means an agreement substantially in the form set out in Part B (*Form of Assignment Agreement*) of Schedule 5 (*Form of Transfer Certificate and Assignment Agreement*) or any other form agreed between the relevant assignor and assignee.

**“Attributable Indebtedness”** means, on any date:

- (a) in respect of any Finance Lease of any person, the capitalised 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, the capitalised amount or principal 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 Finance Lease.

**“Authorisation”** means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration (including all Governmental Approvals).

**“Authorised Signatory”** means, with respect to the Supplier and the Launch Services Provider, a person authorised to sign any document on its behalf to be delivered pursuant to this Agreement.

**“Availability Period”** means, subject to clause 7 (*Other Provisions*) of the First Global Deed of Amendment and Restatement, the period from and including the date of this Agreement to and including 31 December 2012.

**“Available Cash”** means the sum of:

- (a) the Borrower’s consolidated unrestricted cash balance at the beginning of the relevant Payment Period *less* the minimum Liquidity threshold set out in Clause 20.2 (*Minimum Liquidity*);
- (b) any Spectrum Cash Flow for the relevant Payment Period; and
- (c) any Excess Cash Flow for the relevant Payment Period.

**“Available Commitment”** means, in relation to a Facility, a Lender’s Commitment under that Facility *minus*:

- (a) the amount of its participation in any outstanding Loans under that Facility; and
- (b) in relation to any proposed Utilisation, the amount of its participation in any Loans that are due to be made under that Facility on or before the proposed Utilisation Date.

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

**“Bail-In Action”** means the exercise of any Write-down and Conversion Powers.

**“Bail-In Legislation”** means:

- (a) in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 BRRD, the relevant implementing law or regulation as described in the EU Bail-In Legislation Schedule from time to time; and

- (b) in relation to any state other than such an EEA Member Country or (to the extent that the United Kingdom is not such an EEA Member Country) the United Kingdom, any analogous law or regulation from time to time which requires contractual recognition of any Write-down and Conversion Powers contained in that law or regulation.

“**Borrower Additional Pledge of Bank Accounts**” has the meaning given to such term in Schedule 33 (*Security Documents*).

“**Borrower Pledge of Bank Accounts**” has the meaning given to such term in Schedule 33 (*Security Documents*).

“**BPIFAE**” means Bpifrance Assurance Export S.A.S acting for and on behalf of the French state as successor in title to COFACE as referred to in clause 1.5 (*References to COFACE and BPIFAE*) of the Third Global Amendment and Restatement Agreement.

“**BPIFAE 2013 Deferred Fee Premium**” means the premium due to BPIFAE and payable by the Borrower to the BPIFAE Agent (for the account of BPIFAE) in accordance with Clause 12.1(c) (*BPIFAE Insurance Premia and BPIFAE 2013 Deferred Fee Premium*) in an aggregate amount of US\$20,000,000, the final instalment of which is in an amount equal to US\$12,000,000.

“**BPIFAE Insurance Policy**” means each credit insurance policy (as amended from time to time) in respect of this Agreement originally issued by COFACE (and now managed by BPIFAE acting for and on behalf of the French state as successor in title to COFACE as referred to in clause 1.5 (*References to COFACE and BPIFAE*) of the Third Global Amendment and Restatement Agreement) for the benefit of the Lenders in respect of each Facility and as approved by the BPIFAE Agent (on behalf of the Lenders) pursuant to article L.432-2 of the French *Code des Assurances* and signed by the BPIFAE Agent and the Original Lenders.

“**BPIFAE Insurance Premia**” means the premia due to BPIFAE and payable by the Borrower to the BPIFAE Agent (for the account of BPIFAE) on each Facility in accordance with Clause 12.1(b) (*BPIFAE Insurance Premia and BPIFAE 2013 Deferred Fee Premium*).

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

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

*exceeds:*

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

“**Business Day**” means a day (other than a Saturday or Sunday) on which banks are open for general business in London, Paris and New York City.

“**Canadian Dollars**” means the lawful currency for the time being of Canada.

**“Capital Assets”** means, with respect to the Borrower and its Subsidiaries, any asset that should, in accordance with GAAP, be classified and accounted for as a capital asset on a Consolidated balance sheet of the Borrower and its Subsidiaries *but excluding* any capitalised interest.

**“Capital Expenditures”** means with respect to the Borrower and its Subsidiaries for any period, the aggregate cost of all Capital Assets acquired by the Borrower and its Subsidiaries during such period, as determined in accordance with GAAP.

**“Capital Stock”** means:

- (a) in the case of a corporation, capital stock;
- (b) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of capital stock;
- (c) in the case of a partnership, partnership interests (whether general or limited);
- (d) in the case of a limited liability company, membership interests; and
- (e) any other interest or participation that confers on a person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing person.

**“Cash”** means, at any time, cash denominated in Dollars and the Dollar equivalent of Euros and Canadian Dollars, in hand or at bank and (in the latter case) credited to an account in the name of an Obligor with an Acceptable Bank and to which an Obligor is alone (or together with other Obligors) beneficially entitled and for so long as:

- (a) that cash is repayable on demand;
- (b) repayment of that cash is not contingent on the prior discharge of any other indebtedness of any member of the Group or of any other person whatsoever or on the satisfaction of any other condition;
- (c) there is no Lien over that cash except for Liens created pursuant to the Security Documents or any Permitted Lien constituted by a netting or set-off arrangement entered into by members of the Group in the ordinary course of their banking arrangements; and
- (d) the cash is freely and immediately available to be applied in repayment or prepayment of the Facilities.

**“Cash Equivalent Instruments”** means at any time:

- (a) certificates of deposit maturing within one (1) year after the relevant date of calculation and issued by an Acceptable Bank;
- (b) any investment in marketable debt obligations issued or guaranteed by the government of the United States of America, the United Kingdom, any member state of the European Economic Area or any Participating Member State or by an instrumentality or agency of any of them having an equivalent credit rating, maturing within one (1) year after the relevant date of calculation and not convertible or exchangeable to any other security;

- (c) commercial paper not convertible or exchangeable to any other security:
  - (i) for which a recognised trading market exists;
  - (ii) issued by an issuer incorporated in the United States of America, the United Kingdom, any member state of the European Economic Area or any Participating Member State;
  - (iii) which matures within one (1) year after the relevant date of calculation; and
  - (iv) which has a credit rating of either A-1 or higher by S&P or F1 or higher by Fitch Ratings Ltd or P-1 or higher by Moody's, or, if no rating is available in respect of the commercial paper, the issuer of which has, in respect of its long-term unsecured and non-credit enhanced debt obligations, an equivalent rating;
- (d) any investment in money market funds which:
  - (i) have a credit rating of either A-1 or higher by S&P or F1 or higher by Fitch Ratings Ltd or P-1 or higher by Moody's;
  - (ii) invest substantially all their assets in securities of the types described in paragraphs (a) to (c) above; and
  - (iii) can be turned into cash on not more than thirty (30) days' notice; or
- (e) any other debt or marketable security approved by the Majority Lenders,

in each case, denominated in Dollars and the Dollar equivalent of Euros and Canadian Dollars, and to which any Obligor is alone (or together with other Obligors) beneficially entitled at that time and which is not issued or guaranteed by any member of the Group or subject to any Lien (other than a Lien arising under the Security Documents).

**“Cash Movement Summary Report”** means a report summarising the cash movements of the Group, in the form agreed between the Borrower and the BPIFAE Agent pursuant to paragraph 6 (*Cash Movement Summary Report*) of Schedule 5 (*Conditions Subsequent*) of the Fourth Global Amendment and Restatement Agreement.

**“Change of Control”** has the meaning given to such term in Clause 7.2 (*Mandatory Prepayment – Exit*).

**“Code”** means the US Internal Revenue Code of 1986, and the rules and regulations thereunder, each as amended or modified from time to time.

**“COFACE”** means *La Compagnie Française d'Assurance pour le Commerce Extérieur* a French *société anonyme* whose activities were transferred to the French state as referred to in clause 1.5 (*References to COFACE and BPIFAE*) of the Third Global Amendment and Restatement Agreement.

**“Collateral”** means the collateral security for the Obligations pledged or granted pursuant to the Security Documents.

“**Collateral Agreement**” has the meaning given to such term in Schedule 33 (*Security Documents*).

“**Collection Account**” has the meaning given to such term in the Accounts Agreement.

“**Commercial Contracts**” means:

- (a) the Launch Services Contract; and
- (b) the Satellite Construction Contract.

“**Commitment**” means a Facility A Commitment and/or a Facility B Commitment.

“**Communications Licences**” means the licences, permits, authorisations or certificates to construct, own, operate or promote the telecommunications business of the Borrower and its Subsidiaries (including, without limitation, the launch and operation of Satellites) as granted, or to be granted, by the FCC or the ANFR (and any other Governmental Authority), and all extensions, additions and renewals thereto or thereof.

“**Compliance Certificate**” means a certificate substantially in the form set out in Schedule 8 (*Form of Compliance Certificate*).

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

- (a) any member of the Group or any of its advisers; or
- (b) another Finance Party, if the information was obtained by that Finance Party directly or indirectly from any member of the Group or any of its advisers,

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

- (i) is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of Clause 41 (*Confidentiality*);
- (ii) is identified in writing at the time of delivery as non-confidential by any member of the Group or any of its advisers;
- (iii) is known by that Finance Party before the date the information is disclosed to it in accordance with paragraphs (a) or (b) above or is lawfully obtained by that Finance Party after that date, from a source which is, as far as that Finance Party is aware, unconnected with the Group and which, in either case, as far as that Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality; or
- (iv) any Funding Rate or Reference Bank Quotation.

“**Confidentiality Undertaking**” means a confidentiality undertaking substantially in the form set out in Schedule 10 (*Form of Confidentiality Undertaking*) or in any other form agreed between the Borrower and the BPIFAE Agent.

“**Consolidated**” means, when used with reference to financial statements or financial statement items of any person, such statements or items on a consolidated basis in accordance with applicable principles of consolidation under GAAP.

“**Consolidated EBITDA**” means, for any period, the sum of the following determined on a Consolidated basis, without duplication, for the Borrower and its Subsidiaries in accordance with GAAP:

- (a) Consolidated Net Income for such period; *plus*
- (b) the sum of the following to the extent deducted in determining Consolidated Net Income:
  - (i) income and franchise taxes;
  - (ii) Consolidated Interest Expense;
  - (iii) amortisation, depreciation, PIK Interest and other non-cash charges (except to the extent that such non-cash charges are reserved for cash charges to be taken in the future);
  - (iv) extraordinary losses (other than from discontinued operations) and any losses on foreign currency transaction; and
  - (v) any Transaction Costs (*provided that*, in no event shall the aggregate amount of Transaction Costs relating to the negotiation of any Permitted Acquisitions or Permitted Joint Venture Investments which are not consummated added back to net income during any four (4) consecutive fiscal quarter period exceed US\$1,000,000), *less*
- (c) interest income and any extraordinary gains and any gains on foreign currency transactions.

“**Consolidated Interest Expense**” means, with respect to the Borrower and its Subsidiaries for any period, the gross interest expense (including, interest expense attributable to Finance Leases, all net payment obligations pursuant to Hedging Agreements and cash interest in respect of indebtedness (including vendor indebtedness) but excluding any non-cash interest) of the Borrower and its Subsidiaries, all determined for such period on a Consolidated basis, without duplication, in accordance with GAAP.

“**Consolidated Net Income**” means, with respect to the Borrower and its Subsidiaries, for any period of determination, the net income (or loss) of the Borrower and its Subsidiaries for such period, determined on a Consolidated basis in accordance with GAAP, *provided that* there shall be excluded (without double counting) from the calculation of income:

- (a) the net income (or loss) of any person (other than a Subsidiary which shall be subject to paragraph (c) below), in which the Borrower or any of its Subsidiaries has a joint interest with a third party, except to the extent such net income is actually paid in cash

to the Borrower or any of its Subsidiaries by dividend or other distribution during such period;

- (b) the net income (or loss) of any person accrued prior to the date it becomes a Subsidiary of such person or is merged into or consolidated with such person or any of its Subsidiaries or that person's assets are acquired by such person or any of its Subsidiaries except to the extent included pursuant to the foregoing paragraph (a);
- (c) the net income (if positive) of any Subsidiary to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary to the Borrower or any of its Subsidiaries of such net income is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute rule or governmental regulation applicable to such Subsidiary; and
- (d) the proceeds of any Equity Issuances and/or Subordinated Indebtedness.

**"Consultation Period"** has the meaning given to such term in Clause 19.3(c) (*Annual Business Plan and Financial Projections*).

**"Contract Price"** means the aggregate price to be paid by the Borrower to:

- (a) the Supplier under and in relation to the Satellite Construction Contract being an amount (in aggregate) equal to €298,919,905 *plus* US\$218,483,217.82; and
- (b) the Launch Services Provider under and in relation to the Launch Services Contract being US\$216,000,000.

**"Convertible Notes"** means:

- (a) the 5% Notes;
- (b) the 8% New Notes;
- (c) the 8% Old Notes; and
- (d) any other convertible notes issued by the Borrower (or its Subsidiaries) after the First Effective Date in compliance with the terms of this Agreement.

**"Covenant Capital Expenditure"** means any Capital Expenditure, including (but not limited to), for the avoidance of doubt, any Capital Expenditure funded with the Net Cash Proceeds received in connection with:

- (a) any Insurance and Condemnation Event;
- (b) any Asset Disposition; and
- (c) any Equity Issuance or funded by the issuance of Capital Stock of the Borrower to the seller (or an affiliate thereof) of the related Capital Asset,

*but excluding*, any Capital Expenditure funded with the Net Cash Proceeds received in connection with an Insurance and Condemnation Event or an Asset Disposition *provided that* such Net Cash Proceeds are reinvested in "*like-for-like*" replacement assets in accordance with Clause 7.5



(Mandatory Prepayment – Insurance and Condemnation Events) or Clause 7.6 (Mandatory Prepayment – Asset Dispositions) (as the case may be).

“**Current Assets**” has the meaning given to such term under GAAP but *deducting* Cash and Cash Equivalent Instruments (*excluding* any Cash and Cash Equivalent Instruments subject to any Lien, including Liens created pursuant to the Security Documents).

“**Current Liabilities**” has the meaning given to such term under GAAP but *excluding* the current portion of any long-term Financial Indebtedness outstanding on the date of calculation.

“**Debt Issuance**” means any issuance of any Financial Indebtedness for borrowed money by the Borrower or any of its Subsidiaries. The term “*Debt Issuance*” shall not include any Equity Issuance or any Asset Disposition.

“**Debt Service**” means the aggregate Dollar amount of principal, interest, and, if any, fees and other sums required to be paid by the Borrower pursuant to the Finance Documents and pursuant to all the Borrower’s Financial Indebtedness incurred from time to time, including all amounts which have become due and payable as at the date of calculation but which have not been paid on such date for the Relevant Period, *provided that*, for the avoidance of doubt, when calculating the “*Debt Service Coverage Ratio*” the term “*Debt Service*” shall include, for the Relevant Period, all amounts required to be applied in prepayment of the Loans pursuant to Clause 7.4 (*Mandatory Prepayment – Excess Cash Flow*) during that Relevant Period.

“**Debt Service Account**” has the meaning given to such term in the Accounts Agreement.

“**Debt Service Coverage Ratio**” means, on any date, the ratio of:

- (a) Adjusted Consolidated EBITDA (without double-counting),
  - (i) *plus*, any Liquidity (in an amount exceeding US\$4,000,000) at the beginning of any relevant period of calculation (which, for the purposes of this paragraph (a)(i), shall exclude any amounts held in the Debt Service Reserve Account and the Insurance Proceeds Account) *plus* the cash proceeds of any Equity Issuance or Subordinated Indebtedness raised during the relevant period not committed, or required to be applied, for any other purpose under the Finance Documents but including monies standing to the credit of the Collection Account which are not required to be applied for any other purpose;
  - (ii) *less* the sum of the following (without double-counting);
    - (A) any Covenant Capital Expenditure;
    - (B) any changes in Working Capital; and
    - (C) any cash taxes,

to

- (b) Debt Service,

in each case, during the relevant period of calculation.

“**Debt Service Reserve Account**” has the meaning given to such term in the Accounts Agreement.

“**Default**” means an Event of Default or any event or circumstance specified in Clause 23 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default.

“**Delegation Agreement**” has the meaning given to such term in Schedule 33 (*Security Documents*).

“**Disruption Event**” means either or both of:

- (a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with a Facility (or otherwise in order for the transactions contemplated by the Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties; or
- (b) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a Party preventing that, or any other Party:
  - (i) from performing its payment obligations under the Finance Documents; or
  - (ii) from communicating with other Parties in accordance with the terms of the Finance Documents,

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

“**Dollar**” and “**US\$**” means the lawful currency for the time being of the United States of America.

“**Domestic Subsidiary**” means any Subsidiary organised under the laws of any state of the United States or the District of Columbia, other than GCL Licensee LLC.

“**DSRA Required Balance**” means, at any time:

- (a) prior to 30 October 2017, an amount equal to US\$37,913,900;
- (b) on and from 30 October 2017, an amount in aggregate equal to all principal, interest, premia, fees, costs and expenses and any other sums due and payable by the Borrower under the Finance Documents on the next Payment Date;
- (c) on and from the signing date of the Fourth Global Amendment and Restatement Agreement to the Second Lien Facility Prepayment Date, an amount equal to US\$58,830,256; and
- (d) after the Second Lien Facility Prepayment Date, an amount equal to at least US\$50,900,000.

**“Earth Station”** means any earth station (gateway) licenced for operation by the FCC or by a Governmental Authority outside the United States that is owned and operated by the Borrower or any of its Subsidiaries.

**“EEA Member Country”** means any member state of the European Union, Iceland, Liechtenstein and Norway.

**“Eligible Amount”** means:

- (a) in the case of Facility A, an amount which is equivalent of eighty five *per cent.* (85%) of the total cost of the Eligible Goods and Services which is at any time due and payable under and in accordance with the Satellite Construction Contract; and
- (b) in the case of Facility B, one hundred *per cent.* (100%) of the amount of US\$21,600,000, representing goods made in France and/or services performed in France under the Launch Services Contract.

**“Eligible Goods and Services”** means:

- (a) goods made in France and/or services performed in France; and
- (b) goods and services (including transport and insurance of any nature) originating from countries other than France and the United States, incorporated in the items delivered by the Supplier and/or the Launch Services Provider and which have been sub-contracted by the Supplier and/or the Launch Services Provider and therefore remaining under its responsibility, and recognised as being eligible by the French Authorities to be financed by this Agreement,

which are included in the aggregate Contract Price within an amount of eligibility of:

- (i) an amount equal to (in aggregate) €298,919,905 *plus* US\$218,483,217.82 under the Satellite Construction Contract; and
- (ii) US\$21,600,000 under the Launch Services Contract.

**“Employee Benefit Plan”** means any employee benefit plan within the meaning of Section 3(3) of ERISA which:

- (a) is maintained or contributed to by any Obligor or any ERISA Affiliate, or to which any Obligor or ERISA Affiliate has an obligation to contribute; or
- (b) has at any time within the preceding six (6) years been maintained or contributed to by any Obligor or any current or former ERISA Affiliate, or with respect to which any Obligor or any such ERISA Affiliate has had an obligation to contribute (or is deemed under Section 4069 of ERISA to have maintained or contributed, or to have had an obligation to contribute, or otherwise to have liability).

**“Environmental Claims”** means any and all administrative, regulatory or judicial actions, suits, demands, demand letters, claims, judgments, liens, accusations, allegations, notices of non-compliance or violation, investigations (other than internal reports prepared by any person in the ordinary course of trading and not in response to any third party action or request of any kind) or proceedings relating in any way to any actual or alleged violation of or liability under

any Environmental Law or relating to any Environmental Permit issued, or any approval given, under any such Environmental Law, including any and all claims by Governmental Authorities for enforcement, clean-up, removal, response, remedial or other actions or damages, contribution, indemnification cost recovery, penalties, fines, compensation or injunctive relief resulting from Hazardous Materials or arising from alleged injury or threat of injury to human health or the environment.

“**Environmental Laws**” means any and all federal, foreign state, state, regional, provincial and local laws, statutes, ordinances, codes, rules, standards and regulations, common law, permits, licences, approvals, interpretations and orders of courts or Governmental Authorities, and amendments thereto, relating to the protection of human health or the environment, including, but not limited to, requirements pertaining to the manufacture, processing, distribution, use, treatment, storage, disposal, transportation, handling, reporting, licensing, permitting, emission, release or threatened release, investigation or remediation of Hazardous Materials. For the purposes of this definition, the term “*Environmental Laws*” shall include but not be limited to:

- (a) the US Comprehensive Environmental Response, Compensation and Liability Act, as amended (42 U.S.C. Section 9601, *et seq.*); and
- (b) the US Resource Conservation and Recovery Act, as amended (42 U.S.C. Section 6901, *et seq.*).

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

“**Equity Commitments**” means:

- (a) the Initial Minimum Cash Commitment;
- (b) the First Effective Date Commitment;
- (c) the 2013 Closing Commitment;
- (d) the 2013 Year-End Commitment;
- (e) the 2014 Equity Financing;
- (f) the Second Effective Date Commitment;
- (g) the Third Effective Date Commitment; and
- (h) the Thermo Commitment.

“**Equity Cure Contribution**” means cash funds contributed to the Borrower from the issuance of shares in the Borrower’s Capital Stock and/or Subordinated Indebtedness (*but excluding* the Initial Equity) in the amounts as set out in Clause 23.2(c) (*Financial Covenants*).

“**Equity Issuance**” means any issuance by the Borrower or any Subsidiary to any person of:

- (a) shares of its Capital Stock;

- (b) any shares of its Capital Stock pursuant to the exercise of options or warrants; or
- (c) any shares of its Capital Stock pursuant to the conversion of any debt securities to equity.

The term “*Equity Issuance*” shall not include any Asset Disposition, any Debt Issuance, the conversion of any of the Convertible Notes or the issuance of any other Capital Stock pursuant to the Fourth Supplemental Indenture in circumstances where the Borrower (or any Subsidiary) does not receive any cash proceeds.

“**Equity Linked Securities**” has the meaning given to such term in the First Global Deed of Amendment and Restatement.

“**Equity Proceeds Account**” has the meaning given to such term in the Accounts Agreement.

“**Ericsson**” means Ericsson Federal Inc. a Delaware corporation with a place of business at 1595 Spring Hill Road, Vienna, VA 22182, United States.

“**ERISA**” means the US Employee Retirement Income Security Act of 1974, and the rules and regulations thereunder, each as amended or modified from time to time.

“**ERISA Affiliate**” means any person who together with any Obligor is treated as a single employer within the meaning of Section 414(b), (c), (m) or (o) of the Code or Section 4001(b) of ERISA.

“**ERISA Termination Event**” means:

- (a) a “*Reportable Event*” described in Section 4043 of ERISA with respect to a Pension Plan for which the notice requirement has not been waived by the PBGC; or
- (b) the withdrawal of any Obligor or any ERISA Affiliate from a Pension Plan during a plan year in which it was a “*substantial employer*” as defined in Section 4001(a)(2) of ERISA; or
- (c) the termination of a Pension Plan, the filing of a notice of intent to terminate a Pension Plan or the treatment of a Pension Plan amendment as a termination, under Section 4041 of ERISA, if such termination would require material additional contributions in order to be considered a standard termination within the meaning of Section 4041(b) of ERISA, or the filing under Section 4041(a)(2) of ERISA of a notice of intent to terminate any Pension Plan or the termination of any Pension Plan under Section 4041(c) of ERISA; or
- (d) the institution of proceedings to terminate, or the appointment of a trustee with respect to, any Pension Plan by the PBGC; or
- (e) any other event or condition which would reasonably be expected to constitute grounds under Section 4042(a) of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; or
- (f) the failure to make a required contribution to any Pension Plan that would reasonably be expected to result in the imposition of a Lien or the provision of security under Section 430 of the Code or Section 303 or 4068 of ERISA, or the arising of such a Lien; the failure to satisfy the minimum funding standard under section 412 of the Code or

section 302 of ERISA, whether or not waived; or the filing of any request for or receipt of a minimum funding waiver under Section 412 of the Code or Section 302 of ERISA with respect to any Pension Plan, or that such filing may be made; or a determination that any Pension Plan is, or is expected to be, considered an at-risk plan within the meaning of Section 430 of the Code or Section 303 of ERISA; or

- (g) the partial or complete withdrawal of any Obligor of any ERISA Affiliate from a Multiemployer Plan if withdrawal liability is asserted by such plan; or
- (h) any event or condition which results, or is reasonably expected to result, in the reorganisation or insolvency of a Multiemployer Plan under Sections 4241 or 4245 of ERISA; or
- (i) any event or condition which results, or is reasonably expected to result, in the termination of a Multiemployer Plan under Section 4041A of ERISA or the institution by PBGC of proceedings to terminate a Multiemployer Plan under Section 4042 of ERISA; or
- (j) the receipt by any Obligor or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from any Obligor or any ERISA Affiliate of any notice, that a Multiemployer Plan is in endangered or critical status under Section 432 of the Code or Section 305 of ERISA.

“**EU Bail-In Legislation Schedule**” means the document described as such and published by the Loan Market Association (or any successor person) from time to time.

“**Euro**” or “**€**” means the single currency of the Participating Member States.

“**Event of Default**” means any event or circumstance specified as such in Clause 23 (*Events of Default*).

“**Exceptional Items**” means any material items of an unusual or non-recurring nature which represent gains or losses including those arising on:

- (a) the restructuring of the activities of an entity and reversals of any provisions for the cost of restructuring;
- (b) disposals, revaluations, write downs or impairment of non-current assets or any reversal of any write down or impairment;
- (c) disposals of assets associated with discontinued operations; or
- (d) other exceptional terms reasonably determined by the BPIFAE Agent in good faith.

“**Excess Cash Flow**” means, for any period of determination, the sum of the following determined on a Consolidated basis, without duplication, for the Borrower and its Subsidiaries in accordance with GAAP:

- (a) Adjusted Consolidated EBITDA for such period;

*minus*

- (b) (to the extent not already deducted in the calculation of Adjusted Consolidated EBITDA):
- (i) cash taxes and Consolidated Interest Expense paid in cash for such period;
  - (ii) all scheduled principal payments made in respect of Financial Indebtedness during such period;
  - (iii) the lesser of:
    - (A) all Covenant Capital Expenditures made during the relevant period; and
    - (B) in respect of the calendar years:
      - (1) 2013 through to 2016 (inclusive), the amount set out in column 2 (*Maximum Covenant Capex for Excess Cash Flow Calculation*) of the table in Part B (*Maximum Covenant Capital Expenditures for Excess Cash Flow Calculation*) of Schedule 4 (*Maximum Covenant Capital Expenditures*); or
      - (2) 2017 and onwards, US\$2,500,000 per relevant period,(except in each case to the extent funded directly through the incurrence of Financial Indebtedness or equity contributions or investments);
  - (iv) any increase in Working Capital during such period;
  - (v) any amount applied to fund any scheduled cash reserve required under the Finance Documents, including the DSA Required Balance and the DSRA Required Balance in such period;
  - (vi) voluntary, mandatory and other non-scheduled principal payments with respect to any Loans or other Financial Indebtedness in such period (except for any mandatory payments made pursuant to Clauses 7.3 (*Mandatory Prepayment – Cash Sweep of Spectrum Cash Flow*), 7.4 (*Mandatory Prepayment – Excess Cash Flow*), 7.8 (*Mandatory Prepayment – Cash Sweep following Spectrum Sale*) and 7.9 (*Mandatory Prepayment – Cash Sweep following Equity Issuance and Debt Issuance*) and any payments that constitute or with the passage of time or giving of notice or both would constitute a Default or an Event of Default);
  - (vii) to the extent included in Adjusted Consolidated EBITDA, Spectrum Cash Flow and any other monetization of the Group's Spectrum rights;
  - (viii) any cash payments in respect of the Restructuring Fee, and the BPIFAE 2013 Deferred Fee Premium;
  - (ix) any cash payments during such period in respect of any Exceptional Items;
  - (x) Transaction Costs during such period (solely to the extent added back to net income in the calculation of Adjusted Consolidated EBITDA);
  - (xi) any non-cash income recognized during such period;

- (xii) any cash utilized during such period in respect of amounts expensed in a prior period;
- (xiii) any non-cash extraordinary losses and any losses on foreign currency transactions; and
- (xiv) the portion of the purchase price and other reasonable acquisition related costs paid during such period to make Permitted Acquisitions and investments, except to the extent financed with proceeds of Financial Indebtedness, Equity Issuances or insurance or casualty payments,

*plus*

- (c) (to the extent not already added in the calculation of Adjusted Consolidated EBITDA and without double counting):
  - (i) any decrease in Working Capital during such period;
  - (ii) any amount received as a result of decreasing cash reserves required under the Finance Documents, including the DSA Required Balance and the DSRA Required Balance in such period;
  - (iii) any cash receipts in respect of Exceptional Items;
  - (iv) any cash income whereby cash is received but the recognition of GAAP income is deferred during such period to another period;
  - (v) any expense recognized during such period in respect of amounts paid in a prior period; and
  - (vi) any cash received during such period in respect of extraordinary gains and any gains on foreign currency transactions.

“**Exchange Act**” has the meaning given to such term in paragraph (i) of the definition of “*Borrower Change of Control*” in Clause 7.2(a) (*Mandatory Prepayment – Exit*).

“**Excluded Purchase Agreement Amount**” means US\$19,500,000 in cash equity raised from the sale of Common Stock pursuant to the First Terrapin Purchase Agreement.

“**Existing Canadian Note**” means the three (3) Month *libor* plus three point fifty *per cent.* (3.50%) notes issued by Globalstar Canada Satellite Co. in favour of the Borrower.

“**Facilities**” means:

- (a) Facility A; and
- (b) Facility B.

“**Facility A**” has the meaning given to such term in Clause 2.1(a) (*Facility A and Facility B*).

“**Facility A Commitment**” means:

- (a) in relation to an Original Lender, the amount in Dollars set opposite its name under the heading “*Facility A Commitments US\$*” in Part 1 (*Facility A*) of Schedule 1 (*Lenders*)



and Commitments) and the amount of any other Facility A Commitment transferred to it under this Agreement; and

- (b) in relation to any other Lender, the amount of any other Facility A Commitment transferred to it under this Agreement, to the extent not cancelled, reduced or transferred by it under this Agreement.

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

“**Facility B**” has the meaning given to such term in Clause 2.1(b) (*Facility A and Facility B*).

“**Facility B Commitment**” means:

- (a) in relation to an Original Lender, the amount in Dollars set opposite its name under the heading “*Facility B Commitments US\$*” in Part 2 (*Facility B*) of Schedule 1 (*Lenders and Commitments*) and the amount of any other Facility B Commitment transferred to it under this Agreement; and
- (b) in relation to any other Lender, the amount of any other Facility B Commitment transferred to it under this Agreement, to the extent not cancelled, reduced or transferred by it under this Agreement.

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

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

“**FATCA**” means:

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

**“FATCA Application Date”** means, in relation to a:

- (a) “*withholdable payment*” described in section 1473(1)(A)(i) of the Code (which relates to payments of interest and certain other payments from sources within the US), 1 July 2014;
- (b) “*withholdable payment*” described in section 1473(1)(A)(ii) of the Code (which relates to “*gross proceeds*” from the disposition of property of a type that can produce interest from sources within the U.S.), 1 January 2017; or
- (c) “*passthru payment*” described in section 1471(d)(7) of the Code not falling within paragraphs (a) or (b) above, 1 January 2017, or, in each case, such other date from which such payment may become subject to a deduction or withholding required by FATCA as a result of any change in FATCA after the First Effective Date.

**“FATCA Deduction”** means a deduction or withholding from a payment under a Finance Document required by FATCA.

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

**“FCC”** shall mean the Federal Communications Commission.

**“FDIC”** means the Federal Deposit Insurance Corporation.

**“Final Discharge Date”** has the meaning given to such term in the Accounts Agreement.

**“Final In-Orbit Acceptance”** means the date upon which each of the following has occurred:

- (a) the twenty-fourth (24<sup>th</sup>) Satellite has reached its final altitude;
- (b) the testing of the twenty-fourth (24<sup>th</sup>) Satellite has been completed and the Borrower has provided to the BPIFAE Agent a certificate signed by a Responsible Officer certifying that the Borrower has delivered to its relevant insurer a confirmation that the Satellite Performance Criteria have been successfully met in respect of the twenty-fourth (24<sup>th</sup>) Satellite (and attaching a copy of such confirmation to such certificate); and
- (c) each Satellite has drifted into its final orbital plane position,

as certified by the Borrower in accordance with Clause 19.9 (*Final In-Orbit Acceptance*).

**“Final Maturity Date”** means 31 December 2022.

**“Finance Documents”** means:

- (a) this Agreement;
- (b) the First Global Deed of Amendment and Restatement;
- (c) the Second Global Amendment and Restatement Agreement;
- (d) the Third Global Amendment and Restatement Agreement;

- (e) the Fourth Global Amendment and Restatement Agreement;
- (f) the Accounts Agreement;
- (g) the Supplier Direct Agreement;
- (h) the LSP Direct Agreement;
- (i) each Security Document;
- (j) each Guarantee Agreement;
- (k) any Transfer Certificate and/or Assignment Agreement;
- (l) each Promissory Note (if any);
- (m) prior to its termination pursuant to the terms of the Second Lien Intercreditor Agreement, the Thermo Subordination Deed;
- (n) prior to its termination pursuant to the terms of the Second Lien Intercreditor Agreement, the Subsidiary Guarantor Subordination Deed;
- (o) prior to its termination pursuant to the terms of the Second Lien Intercreditor Agreement, the 2019 Bridge Loan Subordination Deed;
- (p) the First Thermo Group Undertaking Letter;
- (q) the Second Thermo Group Undertaking Letter;
- (r) the Third Thermo Group Undertaking Letter;
- (s) the Restructuring Support and Consent Agreement (to the extent that the provisions thereof are expressed to survive the termination of such document upon the occurrence of the First Effective Date);
- (t) the “*Defaults Side-Letter*” (as such term is defined in the First Global Deed of Amendment and Restatement);
- (u) the Second Terrapin Purchase Agreement;
- (v) the “*August 2015 Side-Letter*” (as such term is defined in the Second Global Amendment and Restatement Agreement);
- (w) to the extent not already covered by items (a) to (t) (inclusive) above, each “*Restructuring Document*” (as such term is defined in either the First Global Deed of Amendment and Restatement or the Second Global Amendment and Restatement Agreement);
- (x) any Acceptable Intercreditor Agreement;
- (y) the Second Lien Intercreditor Agreement; and
- (z) any other document designated in writing as a “*Finance Document*” by the BPIFAE Agent and the Borrower (acting reasonably).

“**Finance Lease**” means any lease of any property by the Borrower or any of its Subsidiaries, as lessee, that should, in accordance with GAAP, be classified and accounted for as a finance lease on a Consolidated balance sheet of the Borrower and its Subsidiaries.

“**Finance Parties**” means:

- (a) the BPIFAE Agent;
- (b) each Mandated Lead Arranger;
- (c) the Security Agent; and
- (d) the Lenders.

“**Financial Advisor**” means FTI Consulting, Inc or any other financial advisor appointed by the BPIFAE Agent (for and on behalf of the Lenders) from time to time.

“**Financial Close**” means the date on which each of the conditions precedent referred to in Clause 4.1 (*Initial Conditions Precedent*) and Clause 4.2 (*Further Conditions Precedent*) have been satisfied or waived in accordance with the terms of this Agreement.

“**Financial Conduct Authority**” means the body responsible for regulating the financial services industry in the United Kingdom.

“**Financial Indebtedness**” means, with respect to the Borrower and its Subsidiaries at any date and without duplication, the sum of the following calculated in accordance with GAAP:

- (a) all liabilities, obligations and indebtedness for borrowed money including, but not limited to, obligations evidenced by bonds, debentures, notes or other similar instruments of any such person;
- (b) all obligations of the Borrower or any of its Subsidiaries to pay the deferred purchase price of property or services (including, without limitation, all obligations under non-competition, earn-out or similar agreements) and any Permitted Vendor Indebtedness, in each case, to the extent classified as debt in accordance with GAAP, except trade payables arising in the ordinary course of trading:
  - (i) not more than ninety (90) days past due; or
  - (ii) being duly contested by the Borrower in good faith;
- (c) the Attributable Indebtedness of the Borrower or any of its Subsidiaries with respect to the obligations of the Borrower or such Subsidiary in respect of Finance Leases and Synthetic Leases (regardless of whether accounted for as indebtedness under GAAP);
- (d) all Financial Indebtedness of any third party secured by a Lien on any asset owned or being purchased by the Borrower or any of its Subsidiaries (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by the Borrower or any of its Subsidiaries or is limited in recourse;
- (e) all Guarantee Obligations of the Borrower or any of its Subsidiaries;

- (f) all obligations, contingent or otherwise, of the Borrower or any of its Subsidiaries relative to the face amount of letters of credit, whether or not drawn, including without limitation, any banker's acceptances issued for the account of the Borrower or any of its Subsidiaries;
- (g) all obligations of the Borrower or any of its Subsidiaries to redeem, repurchase exchange, defease or otherwise make payments in respect of Capital Stock of such person; and
- (h) all Net Hedging Obligations.

**"First Effective Date"** means 22 August 2013, which was the *"Effective Date"* as such term is defined in the First Global Deed of Amendment and Restatement.

**"First Effective Date Commitment"** means the equity commitment made by Thermo in respect of the Borrower prior to the First Effective Date pursuant to the Restructuring Support and Consent Agreement in an amount equal to US\$25,000,000.

**"First Global Deed of Amendment and Restatement"** means the global amendment and restatement agreement dated 31 July 2013 between, among others, the Parties.

**"First Half Payment Period"** means the period from 1 January to 30 June (inclusive) in any calendar year.

**"First Repayment Date"** means 31 December 2014.

**"First Terrapin Purchase Agreement"** means the common stock purchase agreement dated 28 December 2012 between the Borrower and Terrapin.

**"First Thermo Group Undertaking Letter"** means the undertaking letter dated 22 August 2013 entered into by each of the members of the Thermo Group in favour of the BPIFAE Agent.

**"Fiscal Year"** means the fiscal year of the Borrower and its Subsidiaries ending on 31 December.

**"Foreign Investment Limitation"** means, as of any date of determination, an amount equal to the sum of:

- (a) US\$25,000,000; *less*
- (b) the aggregate amount of:
  - (i) Financial Indebtedness permitted pursuant to Clause 22.1(f)(iii) (*Limitations on Financial Indebtedness*) outstanding as of such date of determination; *less*
  - (ii) all investments in Foreign Subsidiaries (valued as of the initial date of such investment without regard to any subsequent changes in value thereof) made after the date of this Agreement and prior to such date of determination pursuant to Clause 22.3(a)(ii)(B) (*Limitations on Loans, Investments and Acquisitions*); *less*
  - (iii) all investments (valued as of the initial date of such investment without regard to any subsequent changed in value thereof) in Foreign Subsidiaries (or any entities that would constitute Foreign Subsidiaries if the Borrower or one of its

Subsidiaries owned more than fifty *per cent.* (50%) of the outstanding Capital Stock of such entity) made after the date of this Agreement and prior to such date of determination pursuant to Clause 22.3(c) (*Limitations on Loans, Investments and Acquisitions*),

*provided that*, any investment of non-cash consideration constituting stock in the Borrower (howsoever described):

- (A) in the case of a single transaction, that does not exceed US\$10,000,000 in value; and
  - (B) which transactions in aggregate since the date of this Agreement do not exceed US\$50,000,000 in aggregate,
- shall be excluded from the determination of the Foreign Investment Limitation.

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

**“Fourth Effective Date”** means the *“Effective Date”* as such term is defined in the Fourth Global Amendment and Restatement Agreement.

**“Fourth Global Amendment and Restatement Agreement”** means the global amendment and restatement agreement dated 26 November 2019 between, among others, the Parties.

**“Fourth Supplemental Indenture”** means the fourth supplemental indenture dated 20 May 2013 in respect of the 8% New Notes between the Borrower and U.S. Bank National Association.

**“French Authorities”** means the *“Direction Générale du Trésor et de la Politique Economiques (DGTPE)”* of the French Ministry of Finance, any successors thereto, or any other Governmental Authority in or of France involved in the provision, management or regulation of the terms, conditions and issuance of export credits including, among others, such entities to whom authority in respect of the extension or administration of export financing matters have been delegated, such as BPIFAE.

**“French Security Documents”** means:

- (a) the Borrower Pledge of Bank Accounts;
- (b) the Borrower Additional Pledge of Bank Accounts;
- (c) each Delegation Agreement;
- (d) the Holding Account Pledge Agreement; and
- (e) any other Security Document governed by French law.

**“Funding Rate”** means any individual rate notified by a Lender to the BPIFAE Agent pursuant to paragraph (a)(ii) of Clause 10.3 (*Market Disruption*).

**“GAAP”** means generally accepted accounting principles, as recognised by the American Institute of Certified Public Accountants and the Financial Accounting Standards Board, consistently applied and maintained on a consistent basis for the Borrower and its Subsidiaries

throughout the period indicated and consistent with the prior financial practice of the Borrower and its Subsidiaries.

**“Governmental Approvals”** means all authorisations, consents, approvals, permits, licences and exemptions of, registrations and filings with, and reports to, all Governmental Authorities.

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

**“Group”** means the Borrower and its Subsidiaries from time to time.

**“Group Structure Chart”** means the group structure chart set out in Schedule 23 (*Group Structure Chart*).

**“Guarantee Agreements”** means:

- (a) the guarantee agreement dated 5 June 2009 (as amended and restated pursuant to the First Global Deed of Amendment and Restatement) and between the Security Agent and each Subsidiary Guarantor (other than Globalstar Media, L.L.C. and Globalstar Broadband Services Inc.);
- (b) the guarantee agreement dated 18 October 2010 and between the Security Agent, Globalstar Media, L.L.C. and Globalstar Broadband Services Inc.;
- (c) the guarantee agreement dated 4 June 2019 and made between the Security Agent and Globalstar Holdings US, LLC; and
- (d) each guarantee agreement (to be in substantially the same form as the guarantee agreement referred to in paragraph (a) above) to be entered into by a Subsidiary Guarantor in accordance with Clause 21.5 (*Additional Domestic Subsidiaries*) and/or a Licence Subsidiary in accordance with Clause 22.12 (*Nature of Business*) (as the case may be).

**“Guarantee Obligations”** means, with respect to the Borrower and its Subsidiaries, without duplication, any obligation, contingent or otherwise, of any such person pursuant to which such person has directly or indirectly guaranteed any Financial Indebtedness of any other person and, without limiting the generality of the foregoing, any obligation, direct or indirect, contingent or otherwise, of any such person:

- (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Financial Indebtedness (whether arising by virtue of partnership arrangements, by agreement to keep well, to purchase assets goods, securities or services to take-or-pay, or to maintain financial statement condition or otherwise); or
- (b) entered into for the purpose of assuring in any other manner the obligee of such Financial Indebtedness of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part),

*provided that*, the term Guarantee Obligation shall not include endorsements for collection or deposit in the ordinary course of trading. The amount of any Guarantee Obligation shall be deemed equal to the lesser of the stated or determinable amount of the primary obligation or the maximum liability of the person giving the Guarantee Obligation.

**“Hazardous Materials”** means any substances or materials:

- (a) which are or become defined as hazardous wastes, hazardous substances, pollutants, contaminants, chemical substances or mixtures or toxic substances under any Environmental Law;
- (b) which are toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise harmful to human health or the environment and are or become regulated by any Governmental Authority;
- (c) the presence of which require investigation or remediation under any Environmental Law;
- (d) the possession, use, storage, discharge, emission or release of which requires a permit or licence under any Environmental Law or other Authorisation;
- (e) the presence of which could be deemed to constitute a nuisance or a trespass or threatens to pose a health or safety hazard to persons or neighbouring properties;
- (f) which consist of underground or above ground storage tanks, whether empty, filled or partially filled with any substance; or
- (g) which contain, without limitation, asbestos, polychlorinated biphenyls, urea formaldehyde foam insulation, petroleum hydrocarbons, petroleum derived substances or waste, crude oil, nuclear fuel, natural gas or synthetic gas.

**“Hedging Agreement”** means any agreement with respect to any Interest Rate Contract, forward rate agreement, commodity swap, forward foreign exchange agreement, currency swap agreement, cross-currency rate swap agreement, currency option agreement or other agreement or arrangement designed to alter the risks of any person arising from fluctuations in interest rates, currency values or commodity prices, all as amended, restated, supplemented or otherwise modified from time to time.

**“Hedging Obligations”** means all existing or future payment and other obligations owing by the Borrower under any Hedging Agreement with any person approved by the BPIFAE Agent.

**“Holding Account”** has the meaning given to such term in the Accounts Agreement.

**“Holding Account Pledge Agreement”** has the meaning given to such term in Schedule 33 (*Security Documents*).

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

**“Hughes”** means Hughes Network Systems LLC a limited liability company organised under the laws of Delaware with its principal place of business at 11717 Exploration Lane, Georgetown, Maryland 20876, USA.



**“Incapacity”** means absence of the legal right to enter into binding contractual relations (other than pursuant to a civil or criminal sanction (including without limitation, personal bankruptcy or analogous proceedings)).

**“Individual In-Orbit Acceptance”** means the date upon which each of the following has occurred with respect to each individual Satellite:

- (a) the relevant Satellite has reached its final altitude;
- (b) the relevant Satellite is fully operational and properly integrated into the constellation;
- (c) the testing of the relevant Satellite has been completed and the Borrower has provided to the BPIFAE Agent a certificate signed by a Responsible Officer certifying that the Borrower has delivered to its relevant insurer a confirmation that the Satellite Performance Criteria has been successfully met in respect of the relevant Satellite (and attaching a copy of such confirmation to such certificate); and
- (d) the relevant Satellite has drifted into its final orbital plane position,

as certified by the Borrower in accordance with Clause 19.10 (*Individual In-Orbit Acceptance*).

**“Initial Equity”** means the equity contributed by Thermo (or any other third party) pursuant to paragraph 11 (*Equity contribution*) of Schedule 2 (*Conditions Precedent*) or issued to Thermo pursuant to paragraph 10 (*Equity / subordinated debt*) of Schedule 2 (*Conditions Precedent*).

**“Initial Minimum Cash Commitment”** means the equity commitment made by Thermo in respect of the Borrower to fund on or before the First Effective Date pursuant to the Restructuring Support and Consent Agreement an amount of up to US\$20,000,000.

**“Insurance and Condemnation Event”** means the receipt by the Borrower or any of its Subsidiaries of any cash insurance proceeds or condemnation award payable by reason of theft, loss, physical destruction, damage or similar event with respect to any of their respective property or assets.

**“Insurance Consultant”** means Jardine Lloyd Thompson Limited.

**“Insurance Proceeds Account”** has the meaning given to such term in the Accounts Agreement.

**“Insurances”** means the insurances required by Clause 21.4 (*Insurance*).

**“Intellectual Property”** has the meaning given to such term at Clause 18.7(a) (*Intellectual Property Matters*).

**“Interest Period”** means:

- (a) in relation to a Loan, each period determined in accordance with Clause 9 (*Interest Periods*); and
- (b) in relation to an Unpaid Sum, each period determined in accordance with Clause 8.3 (*Default Interest*).

**“Interest Rate Cap Agreement”** means each interest rate cap agreement to be entered into by the Borrower and the Original Lenders which shall (without limitation) provide that monies payable to the Borrower under such agreements are paid directly to the Debt Service Account.

**“Interest Rate Contract”** means any interest rate swap agreement, interest rate cap agreement, interest rate floor agreement, interest rate collar agreement, interest rate option or other agreement regarding the hedging of interest rate risk exposure executed in connection with hedging the interest rate exposure of any person and any confirming letter executed pursuant to such agreement, all as amended, restated, supplemented or otherwise modified from time to time.

**“Interpolated Screen Rate”** means, in relation to any Loan, the rate which results from interpolating on a linear basis between:

- (a) the applicable Screen Rate for the longest period (for which that Screen Rate is available) which is less than the Interest Period of that Loan; and
  - (b) the applicable Screen Rate for the shortest period (for which that Screen Rate is available) which exceeds the Interest Period of that Loan,
- each as of 11:00 a.m. (London time) on the Quotation Day for Dollars.

**“Invoice”** means any invoice or demand for payment issued by the Supplier and/or the Launch Services Provider pursuant to the Satellite Construction Contract and/or Launch Services Contract, as the case may be.

**“Joinder Agreement”** has the meaning given to such term in Schedule 33 (*Security Documents*).

**“Key Agreements”** means:

- (a) each Material Contract set out in Schedule 12 (*Material Contracts*) other than those Material Contracts referred to in paragraphs 8, 11 and 12 of Schedule 12 (*Material Contracts*); and
- (b) each other Material Contract entered into after the First Effective Date.

**“Landlord Waiver and Consent Agreements”** has the meaning given to such term in Schedule 33 (*Security Documents*).

**“Launch”** means the disconnection of the lift-off plug of the SOYUZ launch vehicle, if such event follows the ignition of the first (strap-on boosters) and second (core stage) stage liquid engines of the launch vehicle.

**“Launch Failure”** has the meaning given to such term in the Launch Services Contract.

**“Launch Insurance”** has the meaning given to such term at Clause 21.4(c)(ii) (*Launch Insurance*).

**“Launch Insurance Documentation”** has the meaning given to such term at Clause 21.4(c)(ii) (*Launch Insurance*).

**“Launch Services Contract”** means the launch services contract dated 5 September 2007 (as amended and restated on 9 March 2010 and from time to time and as further amended) and made

between the Borrower and the Launch Services Provider for the launching into low earth orbit of the Satellites through four (4) SOYUZ launch vehicles, with an option for four (4) other similar launches.

“**Launch Services Provider**” means Arianespace, a French *société anonyme* registered at the *Registre du Commerce et des Sociétés* of Evry under registration number 318 516 457, whose registered office is at Boulevard de l’Europe, 91006 Evry, France.

“**Lender**” means:

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

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

“**LIBOR**” means, in relation to any Loan:

- (a) the applicable Screen Rate as of 11:00 a.m. (London time) on the Quotation Day for Dollars and for a period comparable to the Interest Period of that Loan; or
- (b) (if no Screen Rate is available for Dollars for the Interest Period of that Loan) as otherwise determined pursuant to Clause 10.1 (*Unavailability of Screen Rate*),

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

“**Licence Subsidiary**” means any single purpose Wholly-Owned Subsidiary of the Borrower or of another Subsidiary of the Borrower, the sole business and operations of which single purpose Subsidiary is to hold one (1) or more Communications Licences, except where it is a mandatory condition of a Communications Licence in the relevant jurisdiction that any such entity is not such a vehicle (*provided that*, this exception shall not apply to any Communications Licence issued by the FCC or the ANFR).

“**Lien**” means, with respect to any asset, any mortgage, leasehold mortgage, lien, pledge, charge, security interest, hypothecation or encumbrance of any kind in respect of such asset. For the purposes of this Agreement, a person shall be deemed to own subject to a Lien any asset which it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, Finance Lease or other title retention agreement relating to such asset.

“**Liquidity**” means the sum of Cash and Cash Equivalent Instruments held by any of the Obligors (other than Thermo), but excluding any amounts held in:

- (a) the Debt Service Reserve Account; and
- (b) the Insurance Proceeds Account.

“**Loans**” means:

- (a) a Facility A Loan; and/or
- (b) a Facility B Loan.

“**Loss Payee**” has the meaning given to such term at Clause 21.4(c)(ii) (*Launch Insurance*).

“**Loss Payee Clause**” means a loss payee clause in substantially the same form as set out in Schedule 28 (*Loss Payee Clause*).

“**LSP Direct Agreement**” means the direct agreement dated 24 June 2009 between the Borrower, the Launch Services Provider and the Security Agent.

“**Majority Lenders**” means:

- (a) if there are no Loans then outstanding, a Lender or Lenders whose Commitments aggregate more than seventy five *per cent.* (75%) of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than seventy five *per cent.* (75%) of the Total Commitments immediately prior to the reduction); or
- (b) at any other time, a Lender or Lenders whose participations in the Loans then outstanding aggregate more than seventy five *per cent.* (75%) of all the Loans then outstanding.

“**Mandatory Cost**” means any fee or cost payable by banks arising from any regulation imposed by:

- (a) the European Central Bank;
- (b) the Financial Conduct Authority; or
- (c) the Prudential Regulation Authority,

in each case, similar to those customarily considered to be “*mandatory costs*”.

“**Material Adverse Effect**” means with respect to the Borrower or any of its Subsidiaries, a material adverse effect on:

- (a) the properties, business, operations, prospects or condition (financial or otherwise) of the Borrower and its Subsidiaries, taken as a whole; or
- (b) the legality, validity or enforceability of any provision of any Transaction Document; or
- (c) the rights and remedies of any Finance Party under any of the Finance Documents; or
- (d) the security interests provided under the Security Documents or the value thereof; or
- (e) its ability to perform any of its obligations under the Finance Documents,

*provided that*, existing and future first-generation satellite constellation degradation or failure issues and the effects thereof (which, for the avoidance of doubt, shall exclude any Satellite delivered under the Satellite Construction Contract) on the Borrower and its Subsidiaries, taken individually or collectively, shall not constitute a Material Adverse Effect.

“**Material Communications Licence**” means any Communications Licence, the loss, revocation, modification, non-renewal, suspension or termination of which, could be reasonably expected to have a Material Adverse Effect.

**“Material Contract”** means:

- (a) any contract or other agreement, written or oral, of the Borrower or any of its Subsidiaries involving monetary liability of or to any such person in an amount in excess of US\$10,000,000 per annum; or
- (b) any other contract or agreement, written or oral, of the Borrower or any of its Subsidiaries the failure to comply with which could reasonably be expected to have a Material Adverse Effect,

but excluding in either case any contract or other agreement that the Borrower or such Subsidiary may terminate on less than ninety (90) days’ notice without material liability.

**“Material Subsidiary”** means:

- (a) the Borrower;
- (b) each Subsidiary Guarantor;
- (c) Globalstar Canada Satellite Co.;
- (d) each Licence Subsidiary (including, GCL Licensee LLC);
- (e) any Subsidiary of the Borrower which, in the opinion of the BPIFAE Agent (acting reasonably), is of material operational or strategic importance to the business of the Group;
- (f) any Subsidiary of the Borrower which has gross assets (excluding intra group items) representing ten *per cent.* (10%) or more of the gross assets of the Group; and
- (g) any Subsidiary of the Borrower which has gross revenues per annum from all sources including intra-company revenues which are allocated to such Subsidiary of US\$10,000,000 or more in aggregate.

For the purpose of paragraphs (f) and (g) above:

- (i) subject to paragraph (ii) below:
  - (A) the contribution of a Subsidiary of the Borrower will be determined from its financial statements which were consolidated into the latest relevant financial statements; and
  - (B) the financial condition of the Group will be determined from the latest relevant financial statements;
- (ii) if a Subsidiary of the Borrower becomes a member of the Group after the date on which the latest relevant financial statements were prepared:
  - (A) the contribution of the Subsidiary will be determined from its latest financial statements; and
  - (B) the financial condition of the Group will be determined from the latest relevant financial statements but adjusted to take into account any

subsequent acquisition or disposal of a business or a company (including that Subsidiary);

- (iii) the contribution of a Subsidiary will, if it has Subsidiaries, be determined from its consolidated financial statements;
- (iv) if a Material Subsidiary disposes of all or substantially all of its assets to another member of the Group, it will immediately cease to be a Material Subsidiary and the other member of the Group (if it is not the Borrower or already a Material Subsidiary) will immediately become a Material Subsidiary;
- (v) a Subsidiary of the Borrower (if it is not already a Material Subsidiary) will become a Material Subsidiary on completion of any other intra-Group transfer or reorganisation if it would have been a Material Subsidiary had the intra-Group transfer or reorganisation occurred on the date of the latest relevant financial statements; and
- (vi) except as specifically mentioned in paragraph (iv) above, a member of the Group will remain a Material Subsidiary until the next relevant financial statements show otherwise under paragraph (i) above.

If there is a dispute as to whether or not a member of the Group is a Material Subsidiary, a determination by the BPIFAE Agent will be, in the absence of manifest error, conclusive.

“**Minimum Contribution Amount**” has the meaning given to such term in Clause 23.2(c) (*Financial Covenants*).

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

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

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

“**Monthly Report**” has the meaning given to such term in Clause 19.5(d) (*Other Reports*)

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

“**Mortgages**” has the meaning given to such term in Schedule 33 (*Security Documents*).

“**Multiemployer Plan**” means a “*multiemployer plan*” as defined in Section 4001(a)(3) of ERISA to which any Obligor or any ERISA Affiliate is making, or is accruing an obligation to

make, or has accrued an obligation to make contributions, and each such plan for the six (6) year period immediately following the latest date on which any Obligor or ERISA Affiliate contributed to or had an obligation to contribute to such plan.

“**Net Cash Proceeds**” means, as applicable:

- (a) with respect to any Equity Issuance, any Asset Disposition or any Debt Issuance, the gross cash proceeds received by the Borrower or any of its Subsidiaries therefrom *less* all legal, underwriting, placement agents and other commissions, discounts, premiums, fees and expenses incurred in connection therewith; and
- (b) with respect to any Insurance and Condemnation Event, the gross cash proceeds received by the Borrower or any of its Subsidiaries *less* the sum of:
  - (i) all fees and expenses in connection therewith; and
  - (ii) the principal amount of, premium, if any, and interest on any Financial Indebtedness secured by a Lien on the asset (or a portion thereof) subject to such Insurance and Condemnation Event, which Financial Indebtedness is expressly permitted under this Agreement and required to be repaid in connection therewith.

“**Net Debt**” means, in respect of the Group at any time, the consolidated amount of all Financial Indebtedness, in each case, in cash and including:

- (a) any vendor financings (howsoever described); and
- (b) any Relevant Subordinated Indebtedness,

in each case, with a stated maturity or put date on or prior to the Final Maturity Date (including, without limitation, all Financial Indebtedness arising in respect of the Facilities), but:

- (i) deducting the aggregate amount of Liquidity (which, for the purposes of this paragraph (b)(i), shall exclude any amounts held in the Debt Service Reserve Account and the Insurance Proceeds Account) at that time; and
- (ii) excluding any Subordinated Indebtedness that does not constitute Relevant Subordinated Indebtedness.

“**Net Hedging Obligations**” means, as of any date, the Termination Value of any such Hedging Agreement on such date.

“**New Lender**” has the meaning given to such term in Clause 26.1 (*Assignments and Transfers by the Lenders*).

“**Obligations**” means, in each case, whether now in existence or hereafter arising:

- (a) the principal of and interest on (including interest accruing after the filing of any bankruptcy or similar petition) the Loans;
- (b) all Hedging Obligations; and

(c) all other fees (including the Restructuring Fee and the BPIFAE 2013 Deferred Fee Premium) and commissions (including attorneys' fees), charges, indebtedness, loans, liabilities, financial accommodations, obligations, covenants and duties owing by the Borrower or any of its Subsidiaries to the Finance Parties, in each case under any Finance Documents or otherwise, with respect to any Loan direct or indirect, absolute or contingent, due or to become due, contractual or tortious, liquidated or unliquidated, and whether or not evidenced by any note.

**"Obligors"** means:

- (a) the Borrower; and
- (b) each Subsidiary Guarantor.

**"OFAC"** means the US Department of the Treasury's Office of Foreign Assets Control.

**"Offshore Account Bank"** has the meaning given to such term in the Accounts Agreement.

**"Onshore Account Bank"** has the meaning given to such term in the Accounts Agreement.

**"Operating Expenditure"** means all operating and maintenance costs, expenses and liabilities (including inventory purchases) incurred by a member of the Group and including any VAT in respect of any such amount (excluding any capital expenditure (other than maintenance capital expenditure)) and any other costs and expenses agreed between the BPIFAE Agent and the Borrower.

**"Operating Lease"** means, as to any person as determined in accordance with GAAP, any lease of property (whether real, personal or mixed) by such person as lessee which is not a Finance Lease.

**"Original Indenture"** means the indenture dated as of 15 April 2008 between the Borrower as issuer and U.S. Bank National Association as trustee.

**"Original Lenders"** has the meaning given to such term in the Recitals.

**"Participating Member State"** means any member state of the European Union that has the Euro as its lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union, other than Slovakia, Slovenia, Malta and Cyprus.

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

**"Payment Date"** has the meaning given to such term in the Accounts Agreement.

**"Payment Period"** means a First Half Payment Period or a Second Half Payment Period, as the case may be.

**"PBGC"** means the Pension Benefit Guaranty Corporation or any successor agency.

**"Pension Plan"** means any Employee Benefit Plan, other than a Multiemployer Plan, which is subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA.



**“Permitted Acquisition”** means any investment by the Borrower, any Subsidiary Guarantor or Globalstar Canada Satellite Co. in the form of acquisition of all or substantially all of the business or a line of business (whether by the acquisition of Capital Stock, assets or any combination thereof) of any other person (a **“Target Company”**) if each such acquisition meets each of the following requirements:

- (a) no less than fifteen (15) days prior to the proposed closing date of such acquisition, the Borrower shall have delivered written notice and financial details of such acquisition to the BPIFAE Agent, which notice shall include the proposed closing date of such acquisition;
- (b) the Borrower shall have certified on or before the closing date of such acquisition, in writing and in a form reasonably acceptable to the BPIFAE Agent (acting on the instructions of the Majority Lenders), that such acquisition has been approved by the board of directors or equivalent governing body of the Target Company;
- (c) the Target Company shall be in a substantially similar line of business as the Borrower and its Subsidiaries pursuant to Clause 22.12 (*Nature of Business*) or a parallel business the acquisition of which would be of commercial or strategic importance to such business;
- (d) if such proposed transaction is a merger with respect to the Borrower or any Subsidiary Guarantor, the Borrower shall have received the prior written consent of the BPIFAE Agent to such transaction;
- (e) such proposed transaction shall not include or result in any actual or contingent liabilities that could reasonably be expected to be material to the business, financial condition, operations or prospects of the Borrower and its Subsidiaries, taken as a whole;
- (f) if such proposed transaction is in respect of a Target Company which has negative Adjusted Consolidated EBITDA, the prior written consent of the BPIFAE Agent shall be required unless:
  - (i) such proposed transaction:
    - (A) is in respect of a Target Company which is an international gateway operator; and
    - (B) the cash consideration of such transaction does not exceed US\$5,000,000 in value,

*provided that*, the Borrower shall only be permitted to enter into two (2) transactions of the type described in this paragraph (f)(i) in each Fiscal Year; or
  - (ii) the relevant Target Company (other than an international gateway operator) has for the twelve (12) Month period prior to the date of the proposed transaction a negative Adjusted Consolidated EBITDA no greater than US\$2,000,000 in aggregate when taking into account all other acquisitions with negative Adjusted Consolidated EBITDA made following the date of this Agreement.

For the purpose of the calculations required to be made in respect of this paragraph (f) only:

- (A) any reference to “*the Borrower and its Subsidiaries*” in the definitions of Consolidated EBITDA, Consolidated Net Income, Equity Issuance, Subordinated Indebtedness, Consolidated Interest Expense and Finance Lease (and any other definition used in the calculation of Adjusted Consolidated EBITDA) shall be construed as being a reference to “*the Target Company and its Subsidiaries*”;
  - (B) any reference to “*the Borrower*” in the definitions of Consolidated EBITDA, Consolidated Net Income, Equity Issuance, Subordinated Indebtedness, Consolidated Interest Expense and Finance Lease (and any other definition used in the calculation of Adjusted Consolidated EBITDA) shall be construed as being a reference to “*the Target Company*”; and
  - (C) any reference to “*Subsidiary*” in the definitions of Consolidated EBITDA, Consolidated Net Income, Equity Issuance, Subordinated Indebtedness, Consolidated Interest Expense and Finance Lease (and any other definition used in the calculation of Adjusted Consolidated EBITDA) shall be construed as being a reference to a Subsidiary of a Target Company;
- (g) the Borrower shall have delivered to the BPIFAE Agent:
- (i) no less than fifteen (15) days prior to the proposed closing date of such acquisition, forward looking financial statements taking into account the proposed transaction and demonstrating to the satisfaction of the BPIFAE Agent, compliance with each of the financial covenants set out in Clause 20 (*Financial Covenants*) on the proposed closing date of such acquisition and on a twelve (12) Month projected basis; and
  - (ii) such other documents reasonably requested by the BPIFAE Agent;
- (h) no Event of Default shall have occurred and be continuing both before and after giving effect to such acquisition; and
- (i) such acquisition is not in violation of Sanctions applicable to any member of the Group.

“**Permitted Joint Venture Investments**” means any investment by the Borrower, any Subsidiary Guarantor or Globalstar Canada Satellite Co. in joint ventures and partnerships if each such investment meets all of the following requirements:

- (a) no less than fifteen (15) days prior to the proposed closing date (in the case where the consent of the BPIFAE Agent and the Majority Lenders is required) or after the closing date (in the case where no consent is required) of any such investment of more than US\$10,000,000, the Borrower shall have delivered written notice of such investment to the BPIFAE Agent, which notice shall include the proposed closing date (or actual closing date, applicable) of such investment;

- (b) such joint venture or partnership shall be in a substantially similar line of business as the Borrower and its Subsidiaries pursuant to Clause 22.12 (*Nature of Business*) or a parallel business which is of commercial or strategic importance to such business;
- (c) the Borrower shall have delivered to the BPIFAE Agent:
  - (i) such documents reasonably requested by the BPIFAE Agent or any Finance Party (through the BPIFAE Agent) pursuant to Clause 21.5 (*Additional Domestic Subsidiaries*) to be delivered at the time required pursuant to Clause 21.5 (*Additional Domestic Subsidiaries*);
  - (ii) forward looking financial statements taking into account the proposed transaction and demonstrating to the satisfaction of the BPIFAE Agent, compliance with each of the financial covenants set out in Clause 19.14 (*Spectrum Plan*) on the proposed closing date of such investment and on a twelve (12) Month projected basis;
- (d) no Event of Default shall have occurred and be continuing both before and after giving effect to such investment;
- (e) if such investment is as a general partner, such investment shall be made by a Subsidiary that has no assets other than such investment; and in any case, such investment shall not include or result in any contingent liabilities that could reasonably be expected to be material to the business, financial condition, operations or prospects of the Borrower and its Subsidiaries, taken as a whole; and
- (f) the Borrower shall have obtained the prior written consent of the BPIFAE Agent and the Majority Lenders prior to the consummation of such investment if the amount (including all cash and non-cash consideration paid by or on behalf of the Borrower and its Subsidiaries in connection with such investment) of such investment (or series of related investments), together with all other investments in joint ventures and partnerships consummated during the term of this Agreement, exceeds US\$30,000,000 in aggregate (excluding any portion of such investment consisting of Capital Stock of the Borrower).

“**Permitted Liens**” means the Liens permitted pursuant to Clause 22.2(a) to (u) (*Limitations on Liens*).

“**Permitted Peruvian Acquisition**” means the acquisition by the Borrower of the entire share capital of the Peruvian TargetCo from the Sellers pursuant to, and in accordance with, the terms of the Acquisition Document for an amount not to exceed the Total Acquisition Costs.

“**Permitted Supplier Indebtedness**” means any Financial Indebtedness of the Borrower or any Subsidiary owing to the Supplier and relating to the Satellite Construction Contract.

“**Permitted Vendor Indebtedness**” means:

- (a) any Permitted Supplier Indebtedness; and
- (b) any Financial Indebtedness of the Borrower or any Subsidiary;

- (i) owing to Ericsson pursuant to the purchase agreement between the Borrower and Ericsson dated 1 October 2008, as amended or any other agreement which replaces such agreement;
- (ii) owing to Hughes pursuant to the agreement between the Borrower and Hughes dated 1 May 2008, as amended or any other agreement which replaces such agreement;
- (iii) owing to a Satellite vendor or Satellite launch vendor or Affiliate thereof (in each case, other than the Supplier) for:
  - (A) the procurement, construction, launch and insurance of all or part of one or more Satellites or Satellite launches for such Satellites; or
  - (B) a ground or in-orbit space intended for future use or associated improvements to the ground portion of the network of the Borrower and its Subsidiaries;
- (iv) owing to any other supplier or vendor in respect of any Capital Expenditure (*but excluding* the Supplier); or
- (v) otherwise approved in writing by the BPIFAE Agent (acting on the instructions of all the Lenders),

*provided that*, in each case (other than paragraph (b)(v) above and unless stated to the contrary):

- (A) in the case of paragraph (a) above only, such Permitted Supplier Indebtedness:
  - (1) does not exceed €17,530,000 (the “**Relevant Amount**”) and the Borrower must have consented to the payment to the Supplier of the Relevant Amount (or any lesser amount), it being acknowledged that the Borrower has no obligation to pay the Relevant Amount to the Supplier; and
  - (2) is on such terms as may be approved by the BPIFAE Agent (acting on the instructions of each Lender in their absolute discretion);
- (B) in the case of paragraphs (b)(i) to (iv) (inclusive) only, such Financial Indebtedness does not exceed (either under any individual agreement or in aggregate) US\$25,000,000 (unless approved in writing by the BPIFAE Agent (acting on the instructions of all the Lenders));
- (C) the issuance of such Financial Indebtedness shall not cause, and could not reasonably be expected to cause, a Default;
- (D) any interest payable in respect of such Financial Indebtedness does not exceed ten *per cent.* (10%) per annum;
- (E) such Financial Indebtedness is not evidenced by any promissory note; and

- (F) such Financial Indebtedness is not secured by any Lien (other than a Permitted Lien) on any asset or property of the Borrower or any Subsidiary thereof.

**“Peruvian TargetCo”** means Globalstar Telecomunicaciones Perú S.A.C., a corporation incorporated in the Republic of Peru and registered under Electronic File No. 13766834 of the Registry of Legal Entities of the Registry of Lima, whose register capital amounts to S/ 1,000.00 (One Thousand and 00/100 Soles).

**“PIK Interest”** means interest paid by the Borrower or any Subsidiary in respect of a debt instrument by the issuance of:

- (a) shares in the Borrower’s Capital Stock issued for the sole purpose of a making a dividend to the shareholders of the Borrower; and/or
- (b) additional debt securities,

in each case:

- (i) which debt securities will not mature or become payable prior to the maturity date of such instrument and the Final Discharge Date (other than in the case of the 5% Notes and the 8% Old Notes); and
- (ii) no cash payment is made by the Borrower or any Subsidiary prior to the Final Discharge Date.

**“Project”** means:

- (a) the supply of twenty five (25) Satellites plus the long lead items for six (6) subsequent Satellites by the Supplier pursuant to the Satellite Construction Contract; and
- (b) the launching of such Satellites by the Launch Services Provider pursuant to the terms of the Launch Services Contract,

to form for the Borrower the second generation satellite constellation.

**“Project Accounts”** has the meaning given to such term in the Accounts Agreement.

**“Promissory Notes”** means a promissory note made by the Borrower in accordance with Clause 31.2(c) (*Evidence of Financial Indebtedness*) in substantially (and in all material respects in) the same form as set out in Schedule 25 (*Form of Promissory Note*) and amendments, supplements and modifications thereto, any substitutes therefor, and any replacements, restatements, renewals or extension thereof, in whole or in part.

**“Property All Risks Insurance”** means the insurance to be procured by the Borrower in accordance with Clause 21.4(c)(i) (*Insurance*).

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

**“Prudential Regulation Authority”** means the Bank of England body responsible for the prudential regulation and supervision of banks, building societies, credit unions, insurers and major investment firms.

**“Purchase Notice”** has the meaning given to such term in the Fourth Supplemental Indenture.

**“Qualifying Certificate”** means a certificate from the Supplier and/or the Launch Services Provider (as the case may be) substantially in the form set out in Schedule 18 (*Qualifying Certificate*) and signed by an Authorised Signatory of such person.

**“Qualifying Lender”** means a Lender which is:

- (a) a United States person (as defined in Section 7701(a)(30) of the Code);
- (b) engaged in a US trade or business with which such interest is “*effectively connected*” within the meaning of the Code;
- (c) entitled in respect of payments of interest receivable by it under this Agreement to the benefit of a double taxation agreement with the United States which makes provision for full exemption from tax imposed by the United States on interest; or
- (d) entitled to the benefit of the “*portfolio interest*” exemption under Section 871(h) or 881(c) of the Code.

**“Quotation Day”** means, in relation to any period for which an interest rate is to be determined, two (2) Business Days before the first day of that period unless market practice differs in the London interbank market in which case the Quotation Day will be determined by the BPIFAE Agent in accordance with market practice in the London interbank market (and if quotations would normally be given by leading banks in the London interbank market on more than one day, the Quotation Day will be the last of those days).

**“Reference Bank Quotation”** means any quotation supplied to the BPIFAE Agent by a Reference Bank.

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

- (a) if:
  - (i) the Reference Bank is a contributor to the applicable Screen Rate; and
  - (ii) it consists of a single figure,  
the rate (applied to the relevant Reference Bank, and the relevant currency and period) which contributors to the applicable Screen Rate are asked to submit to the relevant administrator; or
- (b) in any other case, the rate at which the relevant Reference Bank could borrow funds in the London interbank market in the relevant currency and for the relevant period, were it to do so by asking for and then accepting interbank offers for deposits in reasonable market size in that currency and for that period.

“**Reference Banks**” means the principal London offices of BNP Paribas, Société Générale, Crédit Industriel et Commercial, Crédit Agricole Corporate and Investment Bank and Natixis or such other banks as may be appointed by the BPIFAE Agent in consultation with the Borrower.

“**Relevant Contribution**” has the meaning given to such term in Clause 23.2(c) (*Financial Covenants*).

“**Relevant Domestic Account**” has the meaning given to such term in the Accounts Agreement.

“**Relevant EIPs**” means the employee incentive plans set out in Schedule 22 (*Employee Incentive Plans*).

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

“**Relevant Period**” means each period of six (6) Months or twelve (12) Months (as the case may be) referred to in each of the columns titled “*Column 1 – Relevant Period*” in the tables contained in Clauses 20.1 (*Maximum Covenant Capital Expenditures*), 20.3 (*Adjusted Consolidated EBITDA*), 20.4 (*Debt Service Coverage Ratio*) and 20.5 (*Net Debt to Adjusted Consolidated EBITDA*).

“**Relevant Subordinated Indebtedness**” means any Subordinated Indebtedness the terms of which require the payment of:

- (a) cash interest *but excluding* the payment of any cash interest under the 5% Notes or the 8% Old Notes which may become due to the relevant noteholders under the 5% Notes or the 8% Old Notes (as the case may be) following the maturity of, or the occurrence of a default pursuant to, and in accordance with, the terms of the indenture relating to the relevant Convertible Notes; or
- (b) any fees *but excluding* any fees payable to an administrative agent of, or trustee for, any noteholders.

For the avoidance of doubt, the 8% New Notes shall constitute Relevant Subordinated Indebtedness.

“**Repayment Date**” has the meaning given to such term at Clause 6.1 (*Repayment*).

“**Repayment Schedule**” means the repayment schedule set out at Schedule 29 (*Repayment Schedule*).

“**Repeating Representations**” means each of the representations set out in Clauses 18.1 (*Status*), 18.2 (*Binding Obligations*), 18.3 (*Non-Conflict with other Obligations*), 18.4 (*Power and Authority*), 18.6 (*Authorisations*), 18.10 (*Margin Stock*), 18.11 (*Government Regulation*), 18.13 (*Employee Relations*), 18.14 (*Burdensome Provisions*), 18.18 (*Titles to Properties*), 18.23(a) (*Satellites*), 18.26 (*Anti-bribery, Anti-corruption and Anti-money Laundering*), 18.27 (*Sanctions*), 18.28 (*Governing Law and Enforcement*), 18.32 (*No Misleading Information*), 18.34 (*No Immunity*) and 18.37(a) and (b) (*Notes and First Terrapin Purchase Agreement*).

“**Replacement Benchmark**” means a benchmark rate which is:

(a) formally designated, nominated or recommended as the replacement for a Screen Rate by:

- (i) the administrator of that Screen Rate; or
- (ii) any Relevant Nominating Body,

and if replacements have, at the relevant time, been formally designated, nominated or recommended under both paragraphs, the "Replacement Benchmark" will be the replacement under paragraph (ii) above;

- (b) in the opinion of the Majority Lenders and the Borrower, generally accepted in the international or any relevant domestic syndicated loan markets as the appropriate successor to a Screen Rate; or
- (c) in the opinion of the Majority Lenders and the Borrower, an appropriate successor to a Screen Rate.

**"Replacement Investor"** has the meaning given to such term at Clause 23.19(a) (*Second Terrapin Purchase Agreement*).

**"Replacement Purchase Agreement"** has the meaning given to such term at Clause 23.19(a) (*Second Terrapin Purchase Agreement*).

**"Reporting Date"** means, in relation to a Monthly Report, the last day of the Month which immediately follows the Month to which such Monthly Report relates.

**"Reservations"** means:

- (a) the principle that equitable remedies may be granted or refused at the discretion of a court;
- (b) the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors;
- (c) the time barring of claims under applicable statutes of limitation;
- (d) the possibility that an undertaking to assume liability for or indemnify a person against non-payment of stamp duty may be void;
- (e) defences of set-off or counterclaim;
- (f) a court construing a Lien expressed to be created by way of fixed security as being floating security;
- (g) any additional interest imposed pursuant to any relevant agreement may be held to be irrecoverable on the grounds that it is a penalty;
- (h) an English court may not give effect to any indemnity for legal costs incurred by an unsuccessful litigant; and
- (i) equivalent principles, rights and defences under the laws of any relevant jurisdiction.



“**Resolution Authority**” means any body which has authority to exercise any Write-down and Conversion Powers.

“**Responsible Officer**” means the chief executive officer, president, chief financial officer, controller, treasurer or assistant treasurer of an Obligor or any other officer of an Obligor reasonably acceptable to the BPIFAE Agent. Any document delivered under this Agreement that is signed by a Responsible Officer of an Obligor shall be conclusively presumed to have been authorised by all necessary corporate, partnership and/or other action on the part of such Obligor and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Obligor.

“**Restructuring Fee**” has the meaning given to such term in Clause 11.5 (*Restructuring Fee*).

“**Restructuring Support and Consent Agreement**” means the equity commitment, restructuring, support and consent agreement dated 20 May 2013 between the Borrower, the Subsidiary Guarantors, the Security Agent, the BPIFAE Agent, the Lenders and Thermo.

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

“**Sanctions**” means any economic or trade sanctions or restrictive measures enacted, administered, imposed or enforced by the U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC), the U.S. Department of State, the United Nations Security Council, and/or the European Union and/or the French Republic and/or Her Majesty’s Treasury or any other such sanctions authority in a jurisdiction that is relevant to the Facilities.

“**Satellite**” shall mean any single non-geostationary satellite, or group of substantially identical non-geostationary satellites, delivered or to be delivered by the Supplier to the Borrower pursuant to the Satellite Construction Contract and owned by, leased to or for which a contract to purchase has been entered into by, the Borrower or any of its Subsidiaries, whether such satellite is in the process of manufacture, has been delivered for Launch or is in orbit (whether or not in operational service) and including any replacement satellite of the Borrower following a Launch Failure delivered or to be delivered by:

- (a) the Supplier to the Borrower pursuant to the Satellite Construction Contract; or
- (b) a French supplier (other than the Supplier) pursuant to an agreement entered into by the Borrower with such French supplier which is permitted by the Finance Documents.

“**Satellite Construction Contract**” means the satellite construction contract dated 30 November 2006 and made between the Borrower and the Supplier for the construction of forty eight (48) satellites, as amended and supplemented from time to time (and as further amended and restated on or about the date of this Agreement and delivered in satisfaction of the condition precedent set out at paragraph 7 (*Commercial contracts*) of Schedule 2 (*Conditions Precedent*)) for the purpose of, among other things, detailing a new phasing of the contract for the first twenty five (25) satellites and a final phase of twenty three (23) satellites.

“**Satellite Performance Criteria**” means the criteria set out at Schedule 31 (*Satellite Performance Criteria*).

“**SCF Amount**” has the meaning given to such term in Clause 7.3(a) (*Mandatory Prepayment – Cash Sweep of Spectrum Cash Flow*).

“**Scheduled Launch Period**” means the three (3) Month contractual period during which a Satellite is scheduled to be launched in accordance with the Launch Services Contract.

“**Screen Rate**” means the London interbank offered rate administered by the ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for Dollars for the relevant period displayed on pages LIBOR01 or LIBOR02 of the Reuters screen (or any replacement Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Reuters. If such page or service ceases to be available, the BPIFAE Agent may specify another page or service displaying the relevant rate after consultation with the Borrower and the Lenders.

“**Screen Rate Replacement Event**” means, in relation to a Screen Rate:

- (a) the methodology, formula or other means of determining that Screen Rate has, in the opinion of the Majority Lenders, and the Borrower materially changed;
- (b) the:
  - (i)
    - (A) administrator of that Screen Rate or its supervisor publicly announces that such administrator is insolvent; or
    - (B) information is published in any order, decree, notice, petition or filing, however described, of or filed with a court, tribunal, exchange, regulatory authority or similar administrative, regulatory or judicial body which reasonably confirms that the administrator of that Screen Rate is insolvent,  
*provided that*, in each case, at that time, there is no successor administrator to continue to provide that Screen Rate;
  - (ii) administrator of that Screen Rate publicly announces that it has ceased or will cease, to provide that Screen Rate permanently or indefinitely and, at that time, there is no successor administrator to continue to provide that Screen Rate;
  - (iii) supervisor of the administrator of that Screen Rate publicly announces that such Screen Rate has been or will be permanently or indefinitely discontinued; or
  - (iv) administrator of that Screen Rate or its supervisor announces that that Screen Rate may no longer be used; or
  - (v) administrator of that Screen Rate determines that that Screen Rate should be calculated in accordance with its reduced submissions or other contingency or fallback policies or arrangements and the circumstance(s) or event(s) leading to such determination are not (in the opinion of the Majority Lenders and the Borrower) temporary; or

(c) in the opinion of the Majority Lenders and the Borrower, that Screen Rate is otherwise no longer appropriate for the purposes of calculating interest under this Agreement.

**“Second Effective Date Commitment”** means the equity commitment made by Thermo in respect of the Borrower pursuant to the Second Global Amendment and Restatement Agreement in an amount equal to US\$30,000,000.

**“Second Global Amendment and Restatement Agreement”** means the global amendment and restatement agreement dated 7 August 2015 between, among others, the Parties.

**“Second Half 2017 Payment Period”** means the Second Half Payment Period occurring in the calendar year of 2017.

**“Second Half Payment Period”** means the period from 1 July to 31 December (inclusive) in any calendar year.

**“Second Lien Facility”** means the *“Facility”* as such term is defined in the Second Lien Facility Agreement.

**“Second Lien Facility Agent”** means the *“Agent”* as such term is defined in the Second Lien Facility Agreement.

**“Second Lien Facility Agreement”** means the second lien facility agreement to be entered into between, among others, the Borrower and the Second Lien Finance Parties.

**“Second Lien Facility Prepayment Date”** has the meaning given to such term in Clause 7.15(a)(*Mandatory Prepayment – Second Lien Facility*).

**“Second Lien Facility Minimum Commitment”** means an aggregate commitment extended to the Borrower under the Second Lien Facility Agreement of no less than the sum of:

- (a) US\$195,000,000; *plus*
- (b) an amount equivalent to the capitalised interest accrued since the signing date of the 2019 Bridge Facility Agreement under the 2019 Bridge Facility Agreement.

**“Second Lien Finance Documents”** means the *“Finance Documents”* as such term is defined in the Second Lien Facility Agreement.

**“Second Lien Finance Parties”** means the *“Finance Parties”* as such term is defined in the Second Lien Facility Agreement.

**“Second Lien Intercreditor Agreement”** means the intercreditor agreement to be entered into between each Finance Party, the Borrower and each other party to the Second Lien Facility Agreement in form and substance satisfactory to each Finance Party.

**“Second Lien Security Documents”** means those security documents entered into in pursuant to, and in connection with, the Second Lien Finance Documents from time to time.

**“Second Lien Utilisation Date”** means the date of the first utilisation by the Borrower under the Second Lien Facility Agreement.

“**Second Terrapin Purchase Agreement**” means the common stock purchase agreement dated 7 August 2015 between the Borrower and Terrapin.

“**Second Thermo Group Undertaking Letter**” means the undertaking letter dated 7 August 2015 entered into by each of the members of the Thermo Group in favour of the BPIFAE Agent.

“**Security Amendment and Restatement Agreement**” has the meaning given to such term in Schedule 33 (*Security Documents*).

“**Security Documents**” has the meaning given to such term in Schedule 33 (*Security Documents*).

“**Sellers**” means:

- (a) Luis Manuel Vinatea Recoba, as further identified in the Acquisition Document; and
- (b) Javier Humberto García Vélez, as further identified in the Acquisition Document.

“**Senior Facility Security Documents**” has the meaning given to such term in Schedule 33 (*Security Documents*).

“**Shareholder Distributions**” means:

- (a) any dividend paid, made or declared, other than a dividend paid exclusively in Capital Stock or rights to acquire Capital Stock which, in each case, no cash payment is made by the Borrower;
- (b) any payment by way of return on or repayment of share capital;
- (c) any payment of cash interest or capitalised interest by the Borrower to any member of the Thermo Group under any distribution (whether in cash or in kind), including, without limitation, any distribution of assets or other payment whatsoever in respect of share capital whether directly or indirectly *but excluding*:
  - (i) any distributions or other payments pursuant to any employee stock incentive plan (howsoever described) expressly permitted under the terms of this Agreement;
  - (ii) any PIK Interest relating to:
    - (A) the Thermo Loan Agreement; or
    - (B) any Convertible Note held by Thermo; and
  - (iii) any cash interest relating to any Convertible Note held by Thermo and permitted by the terms of this Agreement; and
  - (iv) any “*Permitted Second Lien Payment*” (as such term is defined in the Second Lien Intercreditor Agreement);
- (d) any redemption, cancellation or repurchase of the Borrower’s shares or any class of its shares other than any conversion on mandatory repurchase or redemption of any of the Convertible Notes in accordance with their terms or in connection with any employee

stock incentive plan (howsoever described) expressly permitted under the terms of this Agreement; and

- (e) any payments under a subordinated loan (including interest and fees).

“**Solvent**” and “**Solvency**” means, with respect to any person on any date of determination, that on such date:

- (a) the fair value of the assets of such person is greater than the total amount of liabilities, including contingent liabilities, of such person;
- (b) the present fair saleable value of the assets of such person is not less than the amount that will be required to pay the probable liability of such person on its debts as they become absolute and matured;
- (c) such person does not intend to, and does not believe that it will, incur debts or liabilities beyond such person’s ability to pay such debts and liabilities as they mature;
- (d) such person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such person’s assets would constitute an unreasonably small capital; and
- (e) such person is able to pay its debts and liabilities, contingent obligations and other commitments as they mature in the ordinary course of business.

The amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

“**Spectrum**” means spectrum in specific frequency bands that are subject to a Communications Licence issued to the Borrower or an Affiliate, and in the case of spectrum licensed by the FCC, this refers to, without limitation, spectrum that is licensed to the Borrower or an Affiliate in the 1610-1618.725 and the 2483.5 – 2500 MHz frequency bands.

“**Spectrum Cash Flow**” means any cash received by a member of the Group from monetizing (howsoever defined) the Group’s Spectrum rights, including, but not limited to, upfront payments, operating lease payments, and any other payments to a member of the Group associated with the commercial use of any Spectrum by any third parties: *less*

- (a) any capital or operating expenses incurred (or reasonably expected to be incurred) by the Borrower in direct connection with such Spectrum Cash Flow; and
- (b) any payments received by a member of the Group under such Spectrum Cash Flow which are to be “*passed through*” to any third party,

*provided that* all such deductions (including deducted expenses incurred and “*passed through*” payments) must:

- (i) be directly related to the corresponding monetization of Spectrum rights;

- (ii) be approved in good faith by the BPIFAE Agent (acting on the instructions of the Majority Lenders) in the exercise of their commercially reasonable judgment; and
- (iii) not have been deducted from the calculation of Excess Cash Flow (without double counting).

“**Spectrum Plan**” means the plan relating to the Group’s Spectrum rights, which shall include the information required pursuant to Clause 19.14 (*Spectrum Plan*) (as updated and supplemented from time to time pursuant to each Monthly Report).

“**Spectrum Sale**” means any sale or other disposition of title (legal or equitable) of any of the Group’s Spectrum rights.

“**Spot Rate of Exchange**” means the exchange rate between Euros and Dollars as notified by the BPIFAE Agent to the Borrower and calculated on the basis of the official fixing rate (as between Euros and Dollars) of the European Central Bank quoted on Reuter’s page ECB37, more or less two (2) basis points, on the date that is two (2) Business Days prior to the relevant Utilisation Date. If the agreed page is replaced or the service ceases to be available, the BPIFAE Agent may specify another page or service displaying the appropriate rate.

“**Stock Pledge Agreement**” has the meaning given to such term in Schedule 33 (*Security Documents*).

“**Subordinated Indebtedness**” means any Financial Indebtedness of the Borrower or any Subsidiary:

- (a) subordinated in right and time of payment to the Obligations pursuant to an Acceptable Intercreditor Agreement (including, for the avoidance of doubt, the provisions of any subordinated subsidiary guarantees provided in connection with the 8% New Notes pursuant to the provisions of Clause 22.1(l) (*Limitations on Financial Indebtedness*) (provided that the Borrower shall be entitled to pay PIK Interest);
- (b) to be applied by the Borrower or the relevant Subsidiary (as the case may be) towards:
  - (i) financing costs directly arising from the construction and Launch of the Satellites or additional satellites;
  - (ii) financing payments due by the Borrower to second generation ground segment vendors; and/or
  - (iii) payment of the Borrower’s working capital and general corporate purposes;
- (c) containing such other terms and conditions, in each case as are reasonably satisfactory to the BPIFAE Agent; and
- (d) the issuance of such Financial Indebtedness shall not cause, and could not reasonably be expected to cause, a Default.

“**Subsidiary**” means, as to any person, any company of which more than fifty *per cent.* (50%) of the outstanding Capital Stock having ordinary voting power to elect a majority of the board of directors or other managers of such person is at the time owned (directly or indirectly) by, or

the management is otherwise controlled by, such person (irrespective of whether, at the time, Capital Stock of any other class or classes of such person shall have or might have voting power by reason of the occurrence of any contingency). Unless otherwise qualified, references to “**Subsidiary**” or “**Subsidiaries**” in this Agreement shall refer to those of the Borrower.

“**Subsidiary Guarantor**” means each direct or indirect Domestic Subsidiary of the Borrower:

- (a) set out in Schedule 26 (*Subsidiary Guarantors*); or
- (b) which becomes a party to a Guarantee Agreement pursuant to Clause 21.5 (*Additional Domestic Subsidiaries*).

“**Subsidiary Guarantor Subordination Deed**” means the subordination deed dated 31 July 2013 and made between the Subsidiary Guarantors (other than Globalstar Holdings US, LLC), the Borrower, the Security Agent and the BPIFAE Agent.

“**Supplier**” means Thales Alenia Space France, a French *société par actions simplifiée* registered at the *Registre du Commerce et des Sociétés* of Toulouse under registration number 414 725 101, whose registered office is at 26, Avenue Jean François Champollion, 31100 Toulouse, France.

“**Supplier Direct Agreement**” means the direct agreement dated 5 June 2009 between the Borrower, the Supplier and the Security Agent.

“**Synthetic Lease**” means any synthetic lease, tax retention operating lease, off-balance sheet loan or similar off-balance sheet financing product where such transaction is considered borrowed money indebtedness for tax purposes but is classified as an Operating Lease in accordance with GAAP.

“**Target Company**” has the meaning given to such term in the definition of “*Permitted Acquisition*”.

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

“**Tax Credit**” means a credit against, relief or remission for, or repayment of any Tax.

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

“**Tax Payment**” means either the increase in a payment made by the Borrower to a Finance Party under Clause 13.1 (*Tax Gross-up*) or a payment under Clause 13.2 (*Tax Indemnity*).

“**Termination Value**” means, in respect of any one (1) or more Hedging Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Hedging Agreements:

- (a) for any date on or after such Hedging Agreements 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 paragraph (a), the amount(s) determined as the mark-to-market value(s) for such Hedging Agreements, as determined based upon

one (1) or more mid-market or other readily available quotations provided by any recognised dealer in such Hedging Agreements (which may include a Lender or an Affiliate of a Lender).

“**Terrapin**” means Terrapin Opportunity, L.P.

“**Thermo**” means Thermo Funding Company LLC.

“**Thermo Commitment**” has the meaning given to such term in the Third Global Amendment and Restatement Agreement.

“**Thermo Group**” means:

- (a) Globalstar Satellite LP;
- (b) Thermo;
- (c) FL Investment Holdings LLC (formerly known as Globalstar Holdings LLC); and
- (d) Thermo Funding II LLC.

“**Thermo Loan Agreement**” means the loan agreement dated 25 June 2009 between the Borrower as borrower and Thermo as lender, as the same may be amended from time to time, and the subordinated promissory note evidencing such loan.

“**Thermo Subordination Deed**” means the subordination deed dated 22 June 2009 (as amended and restated on 31 July 2013 pursuant to the First Global Deed of Amendment and Restatement) made between Thermo, the Borrower, the Security Agent and the BPIFAE Agent.

“**Third Effective Date**” means the “*Effective Date*” as such term is defined in the Third Global Amendment and Restatement Agreement.

“**Third Effective Date Commitment**” has the meaning given to such term in the Third Thermo Group Undertaking Letter.

“**Third Global Amendment and Restatement Agreement**” means the global amendment and restatement agreement dated 30 June 2017 between, among others, the Parties.

“**Third Parties Act**” has the meaning given to such term in Clause 1.5(a) (*Third Party Rights*).

“**Third Thermo Group Undertaking Letter**” means the undertaking letter dated on or around the Third Effective Date entered into by each of the members of the Thermo Group in favour of the BPIFAE Agent.

“**Total Acquisition Costs**” means an amount no greater than US\$500, being the total consideration, fees, costs and expenses, stamp, registration and other Taxes incurred by the Borrower in connection with the Permitted Peruvian Acquisition, *but excluding* legal fees and expenses.

“**Total Commitments**” means the aggregate of:

- (a) the Total Facility A Commitments; and
- (b) the Total Facility B Commitments.



“**Total Facility A Commitments**” means the aggregate of the Facility A Commitments, being US\$563,299,120 as at the date of this Agreement.

“**Total Facility B Commitments**” means the aggregate of the Facility B Commitments, being US\$23,042,880 as at the date of this Agreement.

“**Transaction Costs**” means all transaction fees, charges and other amounts related to the Facilities or the Second Lien Facility or any transaction which, if consummated, would be a Permitted Acquisition or a Permitted Joint Venture Investment (including, without limitation, any financing fees, merger and acquisition fees, legal fees and expenses, due diligence fees or any other fees and expenses in connection therewith).

“**Transaction Documents**” means:

- (a) each Finance Document;
- (b) each Commercial Contract;
- (c) any Acceptable Intercreditor Agreement; and
- (d) each Material Communications Licence.

“**Transfer Certificate**” means a certificate substantially in the form set out in Part A (*Form of Transfer Certificate*) of Schedule 5 (*Form of Transfer Certificate and Assignment Agreement*) or any other form agreed between the BPIFAE Agent and the Borrower (acting reasonably).

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

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

“**UCC**” means the Uniform Commercial Code as in effect in the State of New York, as amended or modified from time to time.

“**UK Bail-In Legislation**” means (to the extent that the United Kingdom is not an EEA Member Country which has implemented, or implements, Article 55 BRRD) Part I of the United Kingdom Banking Act 2009 and any other law or regulation applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (otherwise than through liquidation, administration or other insolvency proceedings).

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

“**Unpaid Sum**” means any sum due and payable but unpaid by the Borrower under the Finance Documents.

“**United States**” or “**US**” means the United States of America.

“**US Tax Obligor**” means:

- (a) a borrower which is resident for tax purposes in the United States of America; or
- (b) an Obligor some or all of whose payments under the Finance Documents are from sources within the United States for US federal income tax purposes.

“**Utilisation**” means a utilisation of a Facility.

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

“**Utilisation Request**” means a notice substantially in the form set out in Schedule 3 (*Utilisation Request*).

“**VAT**” means:

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

“**Wholly-Owned**” means, with respect to a Subsidiary, that all the shares of the Capital Stock of such Subsidiary are, directly or indirectly, owned or controlled by the Borrower and/or one (1) or more of its Wholly-Owned Subsidiaries (except for directors’ qualifying shares or other shares required by Applicable Law to be owned by a person other than the Borrower).

“**Withholding Forms**” means United States Internal Revenue Service (“**IRS**”) Form *W-8BEN*, *W-8ECI* or *W-9* (or, in each case, any successor form and, in each case, attached to an IRS Form *W-8IMY* if required) or any other IRS form by which a person may claim an exemption from withholding of US federal income tax on interest payments to that person and, in the case of a person claiming an exemption under the “*portfolio interest exemption*”, a statement certifying that such person is not a “*bank*” within the meaning of Section 881(c)(3)(A) of the Internal Revenue Code of 1986, as amended.

“**Working Capital**” means, on any date, Current Assets *less* Current Liabilities.

“**Write-down and Conversion Powers**” means, in relation to:

- (a) any Bail-In Legislation described in the EU Bail-In Legislation Schedule from time to time, the powers described as such in relation to that Bail-In Legislation in the EU Bail-In Legislation Schedule;
- (b) any other applicable Bail-In Legislation:
  - (i) any powers under that Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel,

reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers; and

(ii) any similar or analogous powers under that Bail-In Legislation; and

(c) UK Bail-In Legislation:

(iii) any powers under that UK Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that UK Bail-In Legislation that are related to or ancillary to any of those powers; and

(iv) any similar or analogous powers under that UK Bail-In Legislation.

## 1.2 Construction

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

(i) “**annual**” means a period of twelve (12) Months;

(ii) an “**agreement**” includes a deed and an instrument;

(iii) “**BPIFAE**”, the “**BPIFAE Agent**”, “**COFACE**”, any “**Finance Party**”, any “**Lender**”, any “**Mandated Lead Arranger**”, an “**Obligor**”, any “**Party**”, the “**Security Agent**” or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees;

(iv) “**assets**” includes present and future properties, revenues and rights of every description;

(v) “**determines**” or “**determined**” means a determination made in the absolute discretion of the person making the determination;

(vi) “**disposal**” means a sale, transfer, assignment, grant, lease, licence or other disposal, whether voluntary or involuntary, and “**dispose**” shall be construed accordingly;

(vii) the “**equivalent**” on any given date in one currency (the “**first currency**”) of an amount denominated in another currency (the “**second currency**”) is a reference to the amount of the first currency which could be purchased with the

second currency at the Spot Rate of Exchange for the purchase of the first currency with the second currency;

- (viii) a “**Finance Document**” or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
- (ix) “**guarantee**” means (other than in relation to a Guarantee Agreement) any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
- (x) “**include**” or “**including**” are to be construed without limitation;
- (xi) “**indebtedness**” includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (xii) a “**judgment**” includes any order, injunction, determination, award or other judicial or arbitral measure in any jurisdiction;
- (xiii) a “**notice**” includes any notice, request, instruction, demand or other communication;
- (xiv) any “**obligation**” of any person under this Agreement or any other agreement or document shall be construed as a reference to an obligation expressed to be assumed by or imposed on it under this Agreement or, as the case may be, that other agreement or document (and “**due**”, “**owing**”, “**payable**” and “**receivable**” shall be similarly construed);
- (xv) “**pari passu**” shall mean, in relation to indebtedness due to more than one person, that the payment or repayment thereof shall be made pro rata in the proportion which each such indebtedness bears to the aggregate indebtedness owed to both or all of such persons, subject to the provisions of this Agreement;
- (xvi) a “**payment**” includes a distribution, prepayment or repayment and references to “**pay**” include distribute, repay or prepay;
- (xvii) a “**person**” includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
- (xviii) a “**regulation**” includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;

- (xix) “**rights**” includes rights, authorities, discretions, remedies, liberties, powers, easements, quasi-easements and appurtenances (in each case, of any nature whatsoever);
  - (xx) a “**share**” in a company includes a share, participation, participating interest or any other analogous ownership interest;
  - (xxi) words importing the singular include the plural and vice versa;
  - (xxii) a provision of law is a reference to that provision as amended or re-enacted;
  - (xxiii) a time of day is a reference to Paris time; and
  - (xxiv) the “*date of this Agreement*” shall be a reference to the original date of this Agreement, being 5 June 2009.
- (b) Section, Clause and Schedule headings are for ease of reference only.
  - (c) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.
  - (d) A Default (other than an Event of Default) is “**continuing**” if it has not been remedied or waived, and an Event of Default is “**continuing**” if it has not been waived in writing by the BPIFAE Agent.

### 1.3 Accounting Terms

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 audited financial statements required by Clause 19.2 (*Annual Financial Statements*), except as otherwise specifically prescribed in this Agreement.

### 1.4 UCC Terms

Terms defined in the UCC in effect on the date of this Agreement and not otherwise defined in this Agreement shall, unless the context otherwise indicates, have the meanings provided by those definitions. Subject to the foregoing, the term “**UCC**” refers, as of any date of determination, to the UCC then in effect.

### 1.5 Third Party Rights

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

### 1.6 Conflict

- (a) This Agreement is entered into subject to, and with the benefit of, the terms of the Second Lien Intercreditor Agreement.
- (b) Notwithstanding anything to the contrary in this Agreement, the terms of the Second Lien Intercreditor Agreement will prevail if there is a conflict between the terms of this Agreement and the terms of the Second Lien Intercreditor Agreement.
- (c) The fact that a provision of this Agreement is expressed to be subject to the terms of the Second Lien Intercreditor Agreement does not mean, and will not be taken to mean, that any other provision of this Agreement is not so subject.

## **2. The Facilities**

### **2.1 Facility A and Facility B**

Subject to the terms of this Agreement, the First Global Deed of Amendment and Restatement and the Second Global Amendment and Restatement Agreement, the Lenders make available to the Borrower a:

- (a) Dollar term loan facility in an aggregate amount equal to the Total Facility A Commitments (“**Facility A**”); and
- (b) Dollar term loan facility in an aggregate amount equal to the Total Facility B Commitments (“**Facility B**”).

### **2.2 Finance Parties’ Rights and Obligations**

- (a) The obligations of each Finance Party (other than the Lenders) under the Finance Documents are several. Failure by a Finance Party (other than a Lender) to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Finance Party (other than a Lender) is responsible for the obligations of any other Finance Party (other than a Lender) under the Finance Documents.
- (b) The obligations of each Lender under the Finance Documents are joint and several. Each Party agrees that this Clause 2.2(b) is for the benefit of the Lenders only and the Borrower acknowledges that it has no rights of any kind whatsoever under this Clause 2.2(b).
- (c) The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from an Obligor shall be a separate and independent debt.
- (d) A Finance Party may, except as otherwise stated in the Finance Documents, separately enforce its rights under the Finance Documents.

### **2.3 Commercial Contracts**

Each Party acknowledges that the Finance Parties shall have no responsibility or liability whatsoever regarding any performance or non-performance by any party to a Commercial Contract and that the Finance Parties shall have no obligation to intervene in any dispute in

connection with or arising out of such performance or non-performance. Any such dispute shall not affect the Borrower's performance under this Agreement nor entitle the Borrower to any suspension or other claim towards the Finance Parties.

### **3. Purpose**

#### **3.1 Purpose – Facility A**

The Borrower shall apply all amounts borrowed by it under Facility A towards:

(a) ***Payments to the Supplier***

payment to the Supplier of the Eligible Amounts in excess of such amounts already paid by the Borrower to the Supplier. Such Eligible Amount shall be payable by way of direct disbursement to the Supplier in accordance with the terms of the Satellite Construction Contract;

(b) ***Reimbursement to the Borrower***

reimbursement to the Borrower of the Eligible Amounts already paid directly by the Borrower to the Supplier in excess of the Advance Payment. Such Eligible Amounts shall be payable by way of direct disbursement to the Borrower. Subject to Clause 3.4(b) (*Sub-Limits*), any amounts received by the Borrower by way of reimbursement may only be applied by the Borrower as follows:

- (i) towards payment to the Launch Services Provider of amounts not funded by Facility B in an amount not exceeding US\$216,000,000;
- (ii) towards payment to Hughes in an amount not exceeding US\$87,000,000;
- (iii) towards payment to Ericsson in an amount not exceeding US\$8,000,000; and
- (iv) towards payment of the Borrower's working capital and general corporate purposes in an amount not exceeding US\$150,000,000, and, in each case, such additional amounts as BPIFAE may agree; and

(c) ***Payment of the BPIFAE Insurance Premia***

payment to the BPIFAE Agent (for the account of BPIFAE) of an amount equal to one hundred *per cent.* (100%) of the BPIFAE Insurance Premia with respect to Facility A, being the amount specified by BPIFAE,

in each case, in accordance with the terms of this Agreement.

#### **3.2 Purpose – Facility B**

The Borrower shall apply all amounts borrowed by it under Facility B towards:

(a) ***Payments to the Launch Services Provider***

payment to the Launch Services Provider of the Eligible Amounts. Such Eligible Amount shall be payable by way of direct disbursement to the Launch Services Provider in accordance with the terms of the Launch Services Contract; and

(b) **Payment of the BPIFAE Insurance Premia**

payment to the BPIFAE Agent (for the account of BPIFAE) of an amount equal to one hundred *per cent.* (100%) of the BPIFAE Insurance Premia with respect to Facility B, being the amount specified by BPIFAE,

in each case, in accordance with the terms of this Agreement.

**3.3 Monitoring**

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

**3.4 Sub-Limits**

The aggregate amount that the Borrower may utilise under:

- (a) Clause 3.1(a) (*Payments to the Supplier*) and Clause 3.1(b) (*Reimbursement to the Borrower*) shall not exceed US\$528,026,844;
- (b) Clause 3.1(b) (*Reimbursement to the Borrower*) shall not exceed US\$309,543,626; and
- (c) Clause 3.2(a) (*Payments to the Launch Services Provider*) shall not exceed US\$21,600,000.

**4. Conditions of Utilisation**

**4.1 Initial Conditions Precedent**

The Borrower shall not deliver a Utilisation Request unless the BPIFAE Agent has received all of the documents and other evidence listed in Schedule 2 (*Conditions Precedent*) in form and substance satisfactory to the BPIFAE Agent. The BPIFAE Agent shall notify the Borrower and the Lenders promptly upon being so satisfied.

**4.2 Further Conditions Precedent**

The Lenders will only be obliged to comply with Clause 5.6 (*Lenders' Participation*) if on the date of the Utilisation Request and on the proposed Utilisation Date:

- (a) no Default is continuing or would be likely to result from the proposed Loan;
- (b) the Repeating Representations to be made by the Borrower are true in all material respects;
- (c) the credit insurance cover under the BPIFAE Insurance Policy extended by BPIFAE in favour of the Lenders in respect of each Facility is in full force and effect and has not been suspended or cancelled, and the BPIFAE Agent shall, in its sole discretion, be satisfied that all conditions of the BPIFAE Insurance Policy and of the credit insurance



cover with respect to such BPIFAE Insurance Policy have been satisfied in full and that the credit insurance coverage will apply to such Utilisation;

- (d) each Commercial Contract is in full force and effect and has not been suspended, interrupted, cancelled, terminated, amended or modified in any material respect (otherwise than as authorised by the BPIFAE Agent) and no arbitration or other legal proceedings have been initiated between the Borrower and the Supplier and/or Launch Services Provider (as the case may be) in respect of a Commercial Contract;
- (e) for any Utilisation Request made for the purpose referred to in Clause 3.1(b) (*Reimbursement to the Borrower*), the BPIFAE Agent shall have received evidence that the payment to the Supplier of the corresponding Invoices has been made;
- (f) each of the documents, information and other evidence specified in and required to be enclosed with each Utilisation Request and Qualifying Certificate, together with any other documents, information or evidence requested by the BPIFAE Agent (on behalf of the Lenders) and/or the French Authorities from time to time, shall have been delivered to the BPIFAE Agent (in form and substance satisfactory to the BPIFAE Agent);
- (g) the Borrower shall have paid or arranged for payment when due:
  - (i) all fees, costs, expenses, charges and other amounts due and payable by it under this Agreement on the Utilisation Date for such Utilisation; and
  - (ii) any and all other amounts due and payable under this Agreement on such Utilisation Date, and
  - (iii) the Borrower shall have delivered to the BPIFAE Agent such evidence of payment as the BPIFAE Agent may reasonably request; and
- (h) in respect of any payment to the Supplier, the Launch Services Provider and/or the Borrower in accordance with Clauses 3.1(a) (*Payments to the Supplier*), 3.1(b) (*Reimbursement to the Borrower*) and 3.2(a) (*Payments to the Launch Services Provider*), the Supplier and/or the Launch Services Provider (as the case may be) has delivered to the BPIFAE Agent a Qualifying Certificate, which:
  - (i) conforms to the amount and payment timing specified in the relevant Utilisation Request; and
  - (ii) to the extent applicable, specifies whether such Loan is to be applied in payment:
    - (A) of a portion of the Contract Price directly to the Supplier or the Launch Services Provider (as the case may be); or
    - (B) by reimbursement to the Borrower to the account directed by the Borrower in the Utilisation Request of any portion of the Contract Price paid by the Borrower to the Supplier or the Launch Services Provider (as the case may be);

- (i) a certificate from a Responsible Officer certifying that each of the eight (8) Satellites referred to in Schedule 16 (*Satellites*) has been launched, is in-service and is fully operational (in form and substance satisfactory to the BPIFAE Agent); and
- (j) the conditions in Clause 5 (*Utilisation*) have been fulfilled.

The BPIFAE Agent shall notify the Borrower and the Lenders promptly upon being so satisfied.

#### **4.3 Conditions Precedent to Certain Utilisations**

The Lenders will only be obliged to comply with Clause 5.6 (*Lenders' Participation*) if on the date of the Utilisation Request and on the proposed Utilisation Date:

- (a) no later than one hundred and twenty (120) days prior to the first day of the Scheduled Launch Period, the BPIFAE Agent shall have received the drafts of the Launch Insurance Documentation, in compliance with the provisions of Clause 21.4 (*Insurance*) and in form and substance satisfactory to the BPIFAE Agent; and
- (b) no later than ninety (90) days prior to each scheduled Launch date, the Borrower shall have delivered to the BPIFAE Agent the Launch Insurance Documentation duly executed by each party thereto together with:
  - (i) the Loss Payee Clause;
  - (ii) each certificate in respect of the Launch Insurance Documentation referred to in Clause 21.4(c)(ii) (*Launch Insurance*); and
  - (iii) evidence that all premia due at that time has been paid in full in compliance with Clause 21.4(c)(ii) (*Launch Insurance*) and in form and substance satisfactory to the BPIFAE Agent.

#### **4.4 Failure to Satisfy Conditions Precedent**

- (a) The Borrower agrees that all the initial conditions precedent referred to in Clause 4.1 (*Initial Conditions Precedent*) must be fulfilled within sixty (60) days of the date of this Agreement.
- (b) Subject to paragraph (c) below, if the Borrower is unable to fulfil any such conditions precedent within such sixty (60) day time period, each Lender's Commitment shall be immediately cancelled and each Lender shall have no further obligations under this Agreement.
- (c) Each Lender's Commitment shall not be cancelled pursuant to paragraph (b) above if each of the initial conditions precedent has been satisfied by the Borrower except for the condition precedent referred to in paragraph 8 (*BPIFAE Insurance Policy*) of Schedule 2 (*Conditions Precedent*) but only to the extent that the BPIFAE Insurance Policy has not been issued by BPIFAE for a reason not attributable to a breach by the Borrower of the terms of the BPIFAE Insurance Policy.

## **5. Utilisation**

### 5.1 Delivery of a Utilisation Request

- (a) Subject to the terms of the First Global Deed of Amendment and Restatement, the Borrower may utilise a Facility by delivery to the BPIFAE Agent of a duly completed Utilisation Request not later than 11:00 a.m. (Paris time) ten (10) Business Days prior to the proposed Utilisation Date.
- (b) Each Utilisation Request shall instruct the BPIFAE Agent to remit the amount utilised on behalf of the Borrower to:
  - (i) the Supplier and/or the Launch Services Provider's account, as the case may be, as part of the payment of the relevant Contract Price; or
  - (ii) in relation to a reimbursement to the Borrower under Facility A, such account as directed by the Borrower in the Utilisation Request.

### 5.2 Borrower's Mandate

- (a) The Borrower irrevocably authorises and mandates the BPIFAE Agent (on its behalf and for its account):
  - (i) in the case of Facility A:
    - (A) to pay the Supplier with respect to any Eligible Amount under the Satellite Construction Contract, upon presentation of the documents set out in Schedule 11 (*Payment Terms*);
    - (B) to reimburse the Borrower for any payments in respect of Eligible Goods and Services under the Satellite Construction Contract which exceed fifteen *per cent.* (15%) of the Satellite Construction Contract's Contract Price; and
    - (C) to pay to the BPIFAE Agent the BPIFAE Insurance Premia;
  - (ii) in the case of Facility B:
    - (A) to pay the Launch Services Provider with respect to any Eligible Amount under the Launch Services Contract, upon presentation of the documents set out in Schedule 11 (*Payment Terms*); and
    - (B) to pay to the BPIFAE Agent the BPIFAE Insurance Premia.
- (b) This mandate is irrevocable.
- (c) The payment terms set out in Schedule 11 (*Payment Terms*) may only be amended with the prior written consent of the BPIFAE Agent (acting on the instructions of all the Lenders).
- (d) The Borrower agrees that any Utilisation made under or pursuant to this Clause 5 shall be deemed to have been made to or for the benefit of the Borrower and the Borrower waives all rights of protest it may have to the contrary.

### 5.3 Examination of Documents

- (a) The BPIFAE Agent's role in examining the documents set out in Schedule 11 (*Payment Terms*) shall be limited to verifying that such documents appear on their face to be what is indicated in such Schedule 11 (*Payment Terms*) and the BPIFAE Agent shall bear no other responsibility in connection thereof. Such role shall be construed in accordance with the terms of Article 14 of the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce 2007 Revision (Publication 600).
- (b) The BPIFAE Agent and the Lenders shall not be responsible for any delay in making available any Loans resulting from any requirement for the delivery of further information or documents required by the BPIFAE Agent to confirm the relevant conditions precedent in this Agreement have been met.

#### 5.4 Completion of a Utilisation Request

- (a) Subject to the terms of the First Global Deed of Amendment and Restatement, each Utilisation Request is irrevocable and will not be regarded as having been duly completed unless:
  - (i) the proposed Utilisation Date is a Business Day within the Availability Period applicable to that Facility; and
  - (ii) the currency and amount of the Utilisation comply with Clause 5.5 (*Currency and Amount*).
- (b) Only one (1) Loan may be requested in each Utilisation Request.
- (c) The Borrower may only deliver one (1) Utilisation Request in each Month in respect of each Facility.

#### 5.5 Currency and Amount

In the case of:

(a) ***Payments to the Supplier***

any Utilisation to be made in accordance with Clause 3.1(a) (*Payments to the Supplier*), the Loan requested in a Utilisation Request must be in Dollars. Each payment to the Supplier by the BPIFAE Agent shall be made in Dollars;

(b) ***Payments to the Launch Services Provider***

any Utilisation to be made in accordance with Clause 3.2(a) (*Payments to the Launch Services Provider*), the Loan requested in a Utilisation Request must be in Dollars. Each payment to the Launch Services Provider by the BPIFAE Agent shall be made in Dollars;

(c) ***Reimbursement to the Borrower***

any Utilisation to be made in accordance with Clause 3.1(b) (*Reimbursement to the Borrower*), the Loan requested in a Utilisation Request must be in Dollars. The Borrower shall confirm in each such Utilisation Request that the requested Dollar amount is the Dollar equivalent of the relevant Euro amount applying a Euro to Dollar exchange rate

of one (1) Euro for US\$1.34. Each Utilisation made pursuant to Clause 3.1(b) (*Reimbursement to the Borrower*) shall be made in Dollars;

(d) **Facility A – Payment of the BPIFAE Insurance Premia**

any Utilisation to be made in accordance with Clause 3.1(c) (*Payment of the BPIFAE Insurance Premia*), the Loan requested in a Utilisation Request must be, subject to Clause 12.3(d) (*Borrower's Payment Obligations*), US\$35,272,276. Any payment to BPIFAE of the BPIFAE Insurance Premia shall be made in Dollars;

(e) **Facility B – Payment of the BPIFAE Insurance Premia**

any Utilisation to be made in accordance with Clause 3.2(b) (*Payment of the BPIFAE Insurance Premia*), the Loan requested in a Utilisation Request must be, subject to Clause 12.3(d) (*Borrower's Payment Obligations*), US\$1,442,880. Any payment to BPIFAE of the BPIFAE Insurance Premia shall be made in Dollars;

(f) **Facility A – Minimum Amount**

Facility A, the amount of the proposed Loan must be an amount which is not more than the Available Facility and which is a minimum of US\$1,000,000 or, if less, the Available Facility; and

(g) **Facility B – Minimum Amount**

Facility B, the amount of the proposed Loan must be an amount which is not more than the Available Facility and which is a minimum of US\$1,000,000 or, if less, the Available Facility.

## 5.6 Lenders' Participation

- (a) If the conditions set out in this Agreement, the First Global Deed of Amendment and Restatement and the Second Global Amendment and Restatement Agreement have been met, each Lender shall make its participation in each Loan available by the Utilisation Date through its Facility Office.
- (b) The amount of each Lender's participation in each Loan will be equal to the proportion borne by its Available Commitment to the Available Facility immediately prior to making the Loan.
- (c) Subject to the terms of the First Global Deed of Amendment and Restatement and the Second Global Amendment and Restatement Agreement, the BPIFAE Agent shall notify each Lender of the amount of each Loan and the amount of its participation in that Loan by 11:00 a.m. (Paris time) on a Business Day which is seven (7) Business Days prior to the proposed Utilisation Date for such Utilisation.

## 5.7 Cancellation of Commitment

Subject to the terms of the First Global Deed of Amendment and Restatement and the Second Global Amendment and Restatement Agreement, the Total Commitments which, at that time, are unutilised shall be immediately cancelled at the end of the Availability Period.

## 6. Repayment

### 6.1 Repayment

- (a) Subject to paragraph (b) below, the Borrower shall repay the Loans made to it in full by making the repayments as set out in the Repayment Schedule on the dates (each a “**Repayment Date**”) and in the amounts set out opposite each Repayment Date in the Repayment Schedule (each a “**Principal Repayment Amount**”).
- (b) If the Principal Repayment Amount scheduled to be repaid by the Borrower on a Repayment Date is greater than the principal amount of the Loans outstanding on that Repayment Date (the “**Outstanding Amount**”) then the relevant Principal Repayment Amount will be reduced to the Outstanding Amount and the Borrower shall repay the relevant Outstanding Amount on the relevant Repayment Date.

### 6.2 Reborrowing

The Borrower may not reborrow any part of a Facility which is repaid.

## 7. Prepayment and Cancellation

### 7.1 Illegality

If in any applicable jurisdiction it becomes unlawful for any Lender to perform any of its obligations as contemplated by this Agreement or to fund or maintain its participation in any Loan or it becomes unlawful for any Affiliate of a Lender for that Lender to do so:

- (a) that Lender shall promptly notify the BPIFAE Agent upon becoming aware of that event;
- (b) upon the BPIFAE Agent notifying the Borrower, the Commitment of that Lender will be immediately cancelled; and
- (c) the Borrower shall repay that Lender’s participation in the Loans made to the Borrower on the last day of the Interest Period for each Loan occurring after the BPIFAE Agent has notified the Borrower or, if earlier, the date specified by the Lender in the notice delivered to the BPIFAE Agent (being no earlier than the last day of any applicable grace period permitted by law).

### 7.2 Mandatory Prepayment - Exit

- (a) For the purposes of this Clause 7.2:

“**Acting in Concert**” means acting together pursuant to an agreement or understanding (formal or informal).

“**Borrower Change of Control**” means:

- (i) the Thermo Group shall at any time and for any reason fail to own and control (without being subject to a voting trust, voting agreement, shareholders agreement or any other agreement limiting or affecting the voting of such stock other than any agreement entered into among the members of Thermo Group

and their Affiliates which agreement is not otherwise inconsistent with this Agreement), free and clear of any Lien, at least fifty one *per cent.* (51%) of both the economic and voting interests in the Borrower's Capital Stock (assuming that all convertible instruments, warrants or options then outstanding have been exercised); or

- (ii) any "*person*" (other than the Thermo Group) together with its Affiliates owns or acquires (together with all stock that such person or Affiliate has the right to acquire whether such right is exercisable immediately or only after the passage of time), directly or indirectly, twenty five *per cent.* (25%) or more of the economic or voting interests in the Borrower's Capital Stock (assuming that all convertible instruments, warrants or options then outstanding have been exercised); or
- (iii) any "*person*" or "*group*" (as such terms are used in Sections 13(d) and 14(d) of the US Securities Exchange Act of 1934 (the "**Exchange Act**")), Acting in Concert or otherwise (other than Thermo Group), is or shall become the "*beneficial owner*" (as defined in Rules 13(d)-3 and 13(d)-5 under the Exchange Act, except that a person shall be deemed to have beneficial ownership of all stock that such person has the right to acquire whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of thirty three *per cent.* (33%) or more of the economic or voting interests in the Borrower's Capital Stock (assuming that all convertible instruments, warrants or options then outstanding have been exercised); or
- (iv) the board of directors of the Borrower shall cease to consist of a majority of Continuing Directors.

"**Change of Control**" means either a Borrower Change of Control or a Thermo Change of Control.

"**Continuing Directors**" means the directors of the Borrower and/or Thermo Group (as the case may be) on the date of this Agreement and each other director if such director's nomination for election to the board of directors of the Borrower and/or Thermo Group (as the case may be) is recommended by a majority of the then Continuing Directors.

"**Thermo Change of Control**" means:

- (i) James Monroe III (or, in the event of his death or Incapacity, his executors, trustees, heirs or legal representatives) shall at any time and for any reason fail to own and control (without being subject to a voting trust, voting agreement, shareholders agreement or any other agreement limiting or affecting the voting of such stock), free and clear of any Lien, at least fifty one *per cent.* (51%) of both the economic and voting interests in any member of the Thermo Group's Capital Stock (assuming that all convertible instruments, warrants or options then outstanding have been exercised); or
- (ii) any "*person*" or "*group*" (as such terms are used in the Exchange Act, Acting in Concert or otherwise, other than James Monroe III (or, in the event of his

death or Incapacity, his executors, trustees, heirs or legal representatives), is or shall become the “*beneficial owner*” (as defined in Rules 13(d)-3 and 13(d)-5 under the Exchange Act, except that a person shall be deemed to have beneficial ownership of all stock that such person has the right to acquire whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of twenty five *per cent.* (25%) or more of the economic or voting interests in any member of the Thermo Group’s Capital Stock (assuming that all convertible instruments, warrants or options then outstanding have been exercised); or

- (iii) the board of directors (or its equivalent) of any member of the Thermo Group shall cease to consist of a majority of Continuing Directors; or
  - (iv) James Monroe III (or, in the event of his death or Incapacity, his executors, trustees, heirs or legal representatives) shall cease to have the power to elect or remove a majority of the board of directors (or its equivalent) of any member of the Thermo Group; or
  - (v) any “*change of control*” or similar event shall occur under any document with respect to any equity or debt instrument issued or incurred by the Thermo Group.
- (b) The Borrower must promptly notify the BPIFAE Agent if it becomes aware that the circumstances referred to in paragraph (c) below have occurred or are likely to occur.
- (c) Upon the occurrence of a Change of Control, the Total Commitments shall be cancelled and all outstanding Loans, together with accrued interest and all other amounts accrued under the Finance Documents, shall become immediately due and payable.

### 7.3 Mandatory Prepayment – Cash Sweep of Spectrum Cash Flow

- (a) The Borrower shall prepay the Loans (in the order set out in Clause 7.13 (*Application of Mandatory Prepayments*)) in an amount equal to seventy five *per cent.* (75%) of any Spectrum Cash Flow received by the Group at any time (the “**SCF Amount**”), *provided that* if the Excess Cash Flow for the Payment Period during which the Spectrum Cash Flow is realised is negative, the amount to be prepaid by the Borrower shall be the greater of:
- (i) an amount equal to the Available Cash; and
  - (ii) the SCF Amount *minus* the Applicable Negative Excess Cash Flow,
- unless the Available Cash referred to in paragraph (a)(i) above is greater than the SCF Amount, in which case, the amount to be prepaid by the Borrower shall be the SCF Amount.
- (b) The prepayment referred to in paragraph (a) above shall be made within:
- (i) forty-five (45) days following the end of a First Half Payment Period, if the Spectrum Cash Flow is realised by a member of the Group during such First Half Payment Period; or



- (ii) seventy-five (75) days following the end of a Second Half Payment Period if the Spectrum Cash Flow is realised by a member of the Group during such Second Half Payment Period.
- (c) Any mandatory prepayment arising as a result of any Spectrum Sale shall be made in accordance with Clause 7.8 (*Mandatory Prepayment – Cash Sweep following Spectrum Sale*).

#### **7.4 Mandatory Prepayment – Excess Cash Flow**

- (a) No later than 8 January 2020, the Borrower shall apply an amount equivalent to one hundred *per cent.* (100%) of:
  - (i) the Group’s consolidated unrestricted cash balance calculated on 31 December 2019 and as calculated by the Borrower in consultation with the Financial Advisor by reference to the applicable Cash Movement Summary Report, the Borrower’s bank account statements and such other information that the BPIFAE Agent may reasonably request; *less*
  - (ii) the amount required to ensure that such prepayment will not result in the minimum Liquidity requirement set out in Clause 20.2 (*Minimum Liquidity*) being breached for the succeeding thirty (30) days after such prepayment, provided that, the Borrower delivers a certified copy of the calculations confirming such projected Liquidity requirements at least 5 Business Days prior to such prepayment; and
- (b) from and including 30 June 2020 and no later than:
  - (i) forty-five (45) days after the end of any First Half Payment Period; and
  - (ii) seventy-five (75) days after the end of any Second Half Payment Period,the Borrower shall, in each case, apply seventy five per cent. (75%) of all Excess Cash Flow calculated as of the last day of such Payment Period or such lesser amount required to ensure that such prepayment will not result in the minimum Liquidity requirement set out in Clause 20.2 (*Minimum Liquidity*) being breached,  
  
in each case, in mandatory prepayment of the Loans in accordance with the provisions of Clause 7.13 (*Application of Mandatory Prepayments*).

#### **7.5 Mandatory Prepayment - Insurance and Condemnation Events**

- (a) Subject to Clause 7.5(b) below, the Borrower shall prepay the Loans (in the order set out in Clause 7.13 (*Application of Mandatory Prepayments*)) in an amount equal to one hundred *per cent.* (100%) of the aggregate Net Cash Proceeds from any Insurance and Condemnation Event and other extraordinary recoveries by the Borrower or any of its Subsidiaries.
- (b) Such prepayments shall be made within three (3) Business Days after receipt of the Net Cash Proceeds from any Insurance and Condemnation Event by the Borrower or any of its Subsidiaries, *provided that* so long as no Event of Default has occurred and is

continuing (and so long as no action is being taken under Clause 24 (*Remedies Upon an Event of Default*)), no prepayment shall be required:

- (i) in connection with such Insurance and Condemnation Event yielding in aggregate less than US\$500,000 in Net Cash Proceeds; or
- (ii) with respect to any such Net Cash Proceeds which are committed by the Borrower to be reinvested in replacement assets of French suppliers or the procurement or Launch of a Satellite or Satellites acquired or planned to be acquired pursuant to the then current Agreed Business Plan of the Borrower (as evidenced by a contractual agreement for the purchase or acquisition of assets) within six (6) Months after receipt of such Net Cash Proceeds and the proceeds arising out of the relevant Insurance are placed into the Insurance Proceeds Account (such account to be secured in favour of the Security Agent (for and on behalf of itself and the other Finance Parties)) and, *provided that* no action is being taken under Clause 24 (*Remedies Upon an Event of Default*), will be applied by the BPIFAE Agent in payment to a supplier of such replacement asset or replacement Satellite, any long lead items, launch services, insurances or other costs directly arising in relation to such purchase or Launch in accordance with the terms and conditions agreed between the Borrower and the Supplier. Any excess in Net Cash Proceeds after taking into account such payments and costs shall be transferred to the Collection Account in accordance with the Accounts Agreement.

## **7.6 Mandatory Prepayments – Asset Dispositions**

- (a) The Borrower shall prepay the Loans (in the order set out in Clause 7.13 (*Application of Mandatory Prepayments*)) in an amount equal to one hundred *per cent.* (100%) of the aggregate Net Cash Proceeds from any Asset Disposition by the Borrower or any of its Subsidiaries.
- (b) Such prepayment shall be made within three (3) days after the date of receipt of the Net Cash Proceeds of any such transaction by the Borrower or any of its Subsidiaries, *provided that*, so long as no Default has occurred and is continuing, no prepayment shall be required pursuant to this Clause 7.6:
  - (i) in connection with such Asset Dispositions yielding less than US\$50,000 per disposal in Net Cash Proceeds (*provided that* any such disposal shall be deemed to include the Net Cash Proceeds from any related disposal or series of disposals), and in any event subject to an annual aggregate of US\$200,000 and a total aggregate of US\$1,000,000; or
  - (ii) with respect to any such Net Cash Proceeds which are:
    - (A) reinvested within six (6) Months after receipt of such Net Cash Proceeds by such person in replacement assets (useful to the Borrower and its Subsidiaries in the conduct of business in accordance with Clause 22.12 (*Nature of Business*)); or

- (B) committed (as evidenced by a contractual agreement for the purchase or acquisition of assets with a vendor of such assets) within six (6) Months after receipt of such Net Cash Proceeds by such person to be reinvested in the procurement or Launch of a Satellite or Satellites acquired or to be acquired pursuant to the then current Agreed Business Plan of the Borrower,

*provided further that* the Borrower shall procure that all such Net Cash Proceeds referred to in this paragraph (b)(ii) shall, immediately upon receipt thereof by the Borrower, be paid into the Holding Account.

- (c) The Borrower irrevocably authorises the BPIFAE Agent to instruct the Offshore Account Bank to apply amounts credited to the Holding Account (to the extent not applied in accordance with sub-paragraphs (A) and (B) above) in prepayment of the Loans.
- (d) Prior to any application of the Net Cash Proceeds in accordance with paragraphs (b)(ii)(A) and (B) above, the Borrower shall deliver to the BPIFAE Agent a certificate satisfactory in all respects to the BPIFAE Agent and signed by a Responsible Officer providing details of the intended use of such Net Cash Proceeds.
- (e) Any application of the Net Cash Proceeds in accordance with paragraphs (b)(ii)(A) and (B) above shall be made in a manner consistent with the then current Agreed Business Plan.
- (f) Solely for the purposes of this Clause 7.6, the term Asset Disposition shall exclude any Spectrum Sale and any disposal of inventory in the ordinary course of trading (but shall include any disposal of obsolete, damaged, worn-out or surplus assets).

#### **7.7 Mandatory Prepayment – BPIFAE Insurance Policy**

If the credit insurance cover under the BPIFAE Insurance Policy is not in full force and effect for a reason not attributable to the Borrower, the BPIFAE Agent shall, by not less than thirty (30) days' notice to the Borrower, cancel the Total Commitments and declare all outstanding Loans, together with accrued interest, and all other amounts accrued under the Finance Documents immediately due and payable, whereupon the Total Commitments will be cancelled and all such outstanding amounts will become immediately due and payable.

#### **7.8 Mandatory Prepayment – Cash Sweep following Spectrum Sale**

- (a) The Borrower shall prepay the Loans (in the order set out in Clause 7.13 (*Application of Mandatory Prepayments*)) in an amount equal to one hundred *per cent.* (100%) of the aggregate Net Cash Proceeds from any Spectrum Sale.
- (b) Such prepayment shall be made within three (3) Business Days after receipt of the Net Cash Proceeds from any Spectrum Sale by the Borrower or such other member of the Group.
- (c) Any Liens held by the BPIFAE Agent in respect of any Spectrum which is the subject of a Spectrum Sale shall only be released upon the BPIFAE Agent being satisfied that:

- (i) all Net Cash Proceeds in respect of such Spectrum Sale have been applied in accordance with Clause 7.13 (*Application of Mandatory Prepayments*);
- (ii) no amount being prepaid is, or shall be, the subject of any clawback or restitution claim; and
- (iii) no Default is continuing (unless otherwise agreed by the BPIFAE Agent).

## 7.9 Mandatory Prepayment – Cash Sweep following Equity Issuance and Debt Issuance

(a) Subject to paragraphs (b) and (d) below, in the case of:

- (i) any Debt Issuance (other than any Subordinated Indebtedness required pursuant to clause 5.1(a)(iv) and (v) (*Payments to the Collection Account*) of the Accounts Agreement to be paid to the Collection Account for onward transfer to either the Equity Proceeds Account or the Relevant Domestic Account (as the case may be) in accordance with the terms of the Accounts Agreement) occurring on or after the First Effective Date; or
- (ii) any Equity Issuance (other than the 2021 Equity Issuance) occurring on or after 1 January 2020,

any Net Cash Proceeds raised by the Borrower pursuant to any such Equity Issuance or any Debt Issuance (*but excluding* any Net Cash Proceeds raised pursuant to any Equity Commitments and the Excluded Purchase Agreement Amount) which exceed, in aggregate, an amount of US\$145,000,000 shall be prepaid by the Borrower in accordance with the provisions of Clause 7.13 (*Application of Mandatory Prepayments*) in the following amounts in respect of any Net Cash Proceeds raised pursuant to any relevant:

- (A) Equity Issuance (including any Equity Linked Securities), in an amount equal to fifty *per cent.* (50%) of such Net Cash Proceeds; and
- (B) Debt Issuance, in an amount equal to seventy five *per cent.* (75%) of such Net Cash Proceeds.

(b) On the first Business Day following 1 July 2021, any remaining proceeds standing to the credit of the Equity Proceeds Account shall be prepaid by the Borrower:

(i) either:

- (A) immediately; or
- (B) in accordance with clause 6 (*Holding Account*) of the Accounts Agreement,

as may be determined by the BPIFAE Agent (acting on the instructions of the Majority Lenders) at such time; and

(ii) in accordance with the provisions of Clause 7.13 (*Application of Mandatory Prepayments*) (with, in the case of paragraph (b)(i) (B) above only, such prepayment being made on 30 June 2020, and in all other cases such prepayment being made immediately).

- (c) Any prepayment made in relation to paragraph (a) above shall be made:
  - (i) in respect of any relevant Equity Issuance, within three (3) Business Days of the completion of such Equity Issuance; or
  - (ii) in respect of any relevant Debt Issuance, simultaneously with the funding of such Debt Issuance.
- (d) For the avoidance of doubt, no prepayment from the proceeds of the Second Lien Facility shall be required pursuant to this Clause 7.9 (with any such proceeds to be applied in prepayment in accordance with Clause 7.15 (*Mandatory Prepayment – Second Lien Facility*) below).

#### **7.10 Voluntary Cancellation**

The Borrower may, if it:

- (a) gives the BPIFAE Agent not less than twenty (20) Business Days' (or such shorter period as the Majority Lenders may agree) prior notice; and
- (b) delivers to the BPIFAE Agent a certificate signed by a Responsible Officer demonstrating that the Borrower has sufficient funds to finance the Project to the satisfaction of the BPIFAE Agent after any such cancellation,

cancel the whole or any part (being a minimum amount of US\$1,000,000) of the Available Facility. Any cancellation under this Clause 7.10 shall reduce the Commitments of the Lenders in inverse order of maturity.

#### **7.11 Voluntary Prepayment of the Loans**

- (a) The Borrower may, if it gives the BPIFAE Agent not less than twenty (20) Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, prepay the whole or any part of the Loans (but, if in part, being an amount that reduces the amount of the Loans by a minimum amount of US\$1,000,000). The Borrower may make a prepayment in accordance with this Clause 7.11 on a Repayment Date.
- (b) If such a prepayment is made on a day other than the last day of an Interest Period, the Borrower shall make that prepayment together with any Break Costs in accordance with Clause 10.5 (*Break Costs*), without premium or penalty.
- (c) The Loans may only be prepaid after the last day of the Availability Period (or, if earlier, the day on which the Available Facility is zero (0)).
- (d) Any prepayment under this Clause 7.11 shall be applied:
  - (i) *pro rata* among the Facilities and within each Facility; and
  - (ii) in inverse order of maturity across the remaining scheduled repayments under each Facility.

#### **7.12 Right of Repayment and Cancellation in relation to a Single Lender**

- (a) If:
- (i) any sum payable to any Lender by the Borrower is required to be increased under paragraph (c) of Clause 13.1 (*Tax Gross-up*); or
  - (ii) any Lender claims indemnification from the Borrower under Clause 13.2 (*Tax Indemnity*) or Clause 14.1 (*Increased Costs*),
- the Borrower may, whilst the circumstance giving rise to the requirement for indemnification continues, give the BPIFAE Agent notice of cancellation of the Commitment of that Lender and its intention to procure the repayment of that Lender's participation in the Loans.
- (b) On receipt of a notice of cancellation referred to in paragraph (a) above, the Commitment of that Lender shall immediately be reduced to zero (0).
- (c) On the last day of each Interest Period which ends after the Borrower has given notice of cancellation under paragraph (a) above (or, if earlier, the date specified by the Borrower in that notice), the Borrower shall repay that Lender's participation in that Loan.

### 7.13 Application of Mandatory Prepayments

Other than in respect of any prepayment under Clause 7.1 (*Illegality*), all other mandatory prepayments under this Clause 7 (*Prepayment and Cancellation*) shall be applied:

- (a) solely in the case of a prepayment pursuant to Clause 7.15(a)(i) (*Mandatory Prepayment – Second Lien Facility*):
- (i) in prepayment of the scheduled principal repayment amount due on 31 December 2019 (being those amounts that were, prior to the occurrence of the Fourth Effective Date, scheduled to be due and payable under each Facility in respect of the Repayment Dates falling on each of 31 December 2019, 30 June 2020 and 31 December 2020 as set out in schedule 29 (*Repayment Schedule*) of the Third Amended and Restated Facility Agreement (as such term is defined in the Fourth Global Amendment and Restatement Agreement)); and
  - (ii) an amount equivalent to US\$200,000, in prepayment of the scheduled principal repayment amount due under each Facility on 30 June 2021,
- in each case, *pro rata* among the Facilities and within each Facility;
- (b) in the case of prepayments pursuant to Clause 7.4 (*Mandatory Prepayment – Excess Cash Flow*):
- (i) for each of the Payment Periods ended 31 December 2019, 30 June 2020, 31 December 2020 and 30 June 2021:
    - (A) **first**, in prepayment of the scheduled principal repayment amounts due on 30 June 2021; and

- (B) **thereafter**, in prepayment of the Loans in inverse order of maturity in respect of the remaining scheduled repayments under each Facility.

in each case, *pro rata* among the Facilities and within each Facility;

- (c) solely in the case of a prepayment pursuant to Clause 7.16 (*Mandatory Prepayment – 2021 Equity Issuance*):
- (i) *pro rata* among the Facilities and within each Facility; and
  - (ii) in respect of the scheduled principal repayment due under each Facility on 30 June 2021 and then, if applicable, to subsequent instalments in the order of maturity; and
- (d) in all other cases:
- (i) *pro rata* among the Facilities and within each Facility; and
  - (ii) in inverse order of maturity across the remaining scheduled repayments under each Facility.

#### **7.14 Restrictions**

- (a) Any notice of cancellation or prepayment given by the Borrower under this Clause 7 (*Prepayment and Cancellation*) shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.
- (b) Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and, subject to any Break Costs, without premium or penalty.
- (c) The Borrower may not reborrow any part of a Facility which is prepaid.
- (d) The Borrower shall not repay or prepay all or any part of the Loans or cancel all or any part of the Commitments except at the times and in the manner expressly provided for in this Agreement.
- (e) No amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.
- (f) If the BPIFAE Agent receives a notice under this Clause 7 (*Prepayment and Cancellation*) it shall promptly forward a copy of that notice to either the Borrower or the affected Lender, as appropriate.
- (g) The Borrower shall promptly notify the BPIFAE Agent (but in any event no later than three (3) Business Days) of any payment pursuant to this Clause 7 (*Prepayment and Cancellation*), and the BPIFAE Agent shall promptly notify the Lenders (but in any event no later than five (5) Business Days) of the same.

#### **7.15 Mandatory Prepayment – Second Lien Facility**

- (a) The Borrower shall prepay the Loans from the Net Cash Proceeds of the Second Lien Facility:
- (i) in an amount equal to US\$147,635,060; and
  - (ii) *provided that* the principal amount of the 2019 Bridge Facility has been repaid in accordance with Clause 21.25 (*Second Lien Facility*), if the total commitments under the Second Lien Facility exceed, in aggregate, US\$195,000,000, in an amount equal to one hundred *per cent.* (100%) of all total commitments in excess of US\$195,000,000, in accordance with the provisions of Clause 7.13(a) (*Application of Mandatory Prepayments*).
- (b) Any prepayment made in relation to paragraph (a) above shall be made on the Second Lien Utilisation Date (the “**Second Lien Facility Prepayment Date**”).

#### **7.16 Mandatory Prepayment – 2021 Equity Issuance**

The Borrower shall prepay the Loans, from the Net Cash Proceeds of the 2021 Equity Issuance, in accordance with the provisions of Clause 7.13(c) (*Application of Mandatory Prepayments*) in an amount equal to at least US\$45,000,000 within three (3) Business Days of the completion of the 2021 Equity Issuance.

#### **7.17 Mandatory Prepayment – DSRA**

On the Second Lien Facility Prepayment Date, the Borrower shall apply:

- (a) US\$7,933,582.67 standing to the credit of the Debt Service Reserve Account; and
- (b) US\$ 2,066,417.33 standing to the credit of the Equity Proceeds Account,

in each case, towards prepayment of the Loans in accordance with the provisions of Clause 7.13 (*Application of Mandatory Prepayments*) and the Accounts Agreement.

#### **7.18 Mandatory Prepayment – Second Lien Intercreditor Agreement**

If:

- (a) any:
  - (i) party to the Second Lien Intercreditor Agreement (other than a Finance Party or an Obligor) fails to comply with the provisions of, or does not perform its obligations under, the Second Lien Intercreditor Agreement; or
  - (ii) representation or warranty given by that party in the Second Lien Intercreditor Agreement is incorrect in any material respect, and, if the non-compliance or circumstances giving rise to the misrepresentation are capable of remedy, it is not remedied within ten (10) Business Days of the earlier of the BPIFAE Agent giving notice to that party or that party becoming aware of the non-compliance or misrepresentation; or



- (b) any party to the Second Lien Intercreditor Agreement rescinds or purports to rescind or repudiates or purports to repudiate that agreement in whole or in part where to do so has or is, in the reasonable opinion of the Majority Lenders, likely to have a material adverse effect on the interests of the Lenders under the Finance Documents,

the BPIFAE Agent shall (acting on the instructions of the Majority Lenders), have the right to issue a Blocking Notice (as such term is defined in the Accounts Agreement) and/or request that the Total Commitments shall be cancelled and all outstanding Loans, together with accrued interest and all other amounts accrued under the Finance Documents, shall become immediately due and payable.

## **8. Interest**

### **8.1 Calculation of Interest**

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

- (a) Applicable Margin; and
- (b) LIBOR.

### **8.2 Payment of Interest**

The Borrower shall pay accrued interest on each Loan on the last day of each Interest Period.

### **8.3 Default Interest**

- (a) If an Obligor fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to paragraph (b) below, is two *per cent.* (2%) higher than the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a Loan in the currency of the overdue amount for successive Interest Periods, each of a duration selected by the BPIFAE Agent (acting reasonably). Any interest accruing under this Clause 8.3 shall be immediately payable by the Borrower on demand by the BPIFAE Agent.
- (b) If any overdue amount consists of all or part of a Loan which became due on a day which was not the last day of an Interest Period relating to that Loan:
  - (i) the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period relating to that Loan; and
  - (ii) the rate of interest applying to the overdue amount during that first Interest Period shall be two *per cent.* (2%) higher than the rate which would have applied if the overdue amount had not become due.

- (c) Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.

#### 8.4 Notification of Rates of Interest

- (a) The BPIFAE Agent shall within two (2) Business Days after a Quotation Day notify the Lenders and the Borrower of the determination of a rate of interest under this Agreement.
- (b) The BPIFAE Agent shall within two (2) Business Days after a Quotation Day notify the Borrower of each Funding Rate relating to a Loan or any Unpaid Sum.

### 9. Interest Periods

#### 9.1 Interest Periods

- (a) The Interest Period for which any Loan is outstanding shall be divided into successive Interest Periods each of which shall start on the last day of the preceding such Interest Period.
- (b) The initial Interest Period for each Loan:
  - (i) shall start on (and include) the Utilisation Date of such Loan and end on (but excluding) the last day of such Interest Period. Each subsequent Interest Period in respect of such Loan shall start on (and include) the last day of the previous Interest Period and end on (but exclude) the last day of the relevant Interest Period *provided that*, the Interest Period occurring prior to the First Repayment Date shall start (and include) on the last day of the previous Interest Period and end on (but excluding) the First Repayment Date; and
  - (ii) after the first Utilisation shall start on (and include) the Utilisation Date of the relevant Loan and end on (but excluding) the last day of the current Interest Period for the first Utilisation.

#### 9.2 Duration

- (a) The duration of each Interest Period shall, save as otherwise provided in this Agreement, be six (6) Months or such other period as the BPIFAE Agent may agree, *provided that* any Interest Period that would otherwise extend beyond a Repayment Date relating to any Loan shall be of such duration that it shall end on that Repayment Date.
- (b) Notwithstanding anything to the contrary in this Agreement, if the Interest Period falling immediately prior to the First Repayment Date would be shorter than ten (10) days (a “**Relevant Interest Period**”), then the Interest Period falling immediately prior to the Relevant Interest Period shall be extended so that it shall end on the First Repayment Date.
- (c) Each Interest Period commencing after the First Repayment Date shall end on the following Repayment Date.

(d) An Interest Period for a Loan shall not extend beyond the Final Maturity Date.

### 9.3 Non-Business Days

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

### 9.4 Consolidation of Loans

If two (2) or more Interest Periods:

- (a) relate to Loans; and
- (b) end on the same date,

those Loans will be consolidated into, and treated as, a single Loan on the last day of the Interest Period.

## 10. Changes to the Calculation of Interest

### 10.1 Unavailability of Screen Rate

- (a) *Interpolated Screen Rate*: If no Screen Rate is available for LIBOR for the Interest Period of a Loan, the applicable LIBOR shall be the Interpolated Screen Rate for a period equal in length to the Interest Period of that Loan.
- (b) *Reference Bank Rate*: If no Screen Rate is available for LIBOR for:
  - (i) Dollars; or
  - (ii) the Interest Period of a Loan and it is not possible to calculate the Interpolated Screen Rate,the applicable LIBOR shall be the Reference Bank Rate as of 11:00 a.m. (London time) on the Quotation Day for Dollars and for a period equal in length to the Interest Period of that Loan.

### 10.2 Absence of Quotations

Subject to Clause 10.3 (*Market Disruption*), if LIBOR is to be determined on the basis of a Reference Bank Rate but a Reference Bank does not supply a quotation by 11:00 a.m. (London time) on the Quotation Day, the Reference Bank Rate shall be determined on the basis of the quotations of the remaining Reference Banks.

### 10.3 Market Disruption

- (a) If a Market Disruption Event occurs in relation to a Loan for any Interest Period, then the rate of interest on each Lender's share of that Loan for the Interest Period shall be the percentage rate per annum which is the sum of:
  - (i) the Applicable Margin; and

- (ii) the rate notified to the BPIFAE Agent by that Lender as soon as practicable and in any event before interest is due to be paid in respect of that Interest Period, to be that which expresses as a percentage rate per annum the cost to that Lender of funding its participation in that Loan from whatever source it may reasonably select.
- (b) In this Agreement “**Market Disruption Event**” means:
  - (i) if paragraph (b) of Clause 10.1 (*Unavailability of Screen Rate*) applies but no Reference Bank Rate is available for Dollars or the relevant Interest Period;
  - (ii) at or about noon on the Quotation Day for the relevant Interest Period none or only one (1) of the Reference Banks supplies a rate to the BPIFAE Agent to determine LIBOR for Dollars for the relevant Interest Period; or
  - (iii) before close of business in London on the Quotation Day for the relevant Interest Period, the BPIFAE Agent receives notifications from a Lender or Lenders (whose participations in a Loan exceed thirty *per cent.* (30%) of that Loan) that the cost to it or them of obtaining matching deposits in the London interbank market would be in excess of LIBOR.

#### **10.4 Alternative Basis of Interest or Funding**

- (a) If a Market Disruption Event occurs and the BPIFAE Agent or the Borrower so requires, the BPIFAE Agent and the Borrower shall enter into negotiations (for a period of not more than thirty (30) days) with a view to agreeing a substitute basis for determining the rate of interest.
- (b) Any alternative basis agreed pursuant to paragraph (a) above shall, with the prior consent of all the Lenders and the Borrower, be binding on all Parties.
- (c) If a Market Disruption Event occurs and:
  - (i) a Lender’s Funding Rate is less than LIBOR; or
  - (ii) a Lender does not supply a quotation by the time specified in paragraph (a)(ii) of Clause 10.3 (*Market Disruption*),the cost to that Lender of funding its participation in that Loan for that Interest Period shall be deemed, for the purposes of paragraph (a) (ii) of Clause 10.3 (*Market Disruption*), to be LIBOR.

#### **10.5 Break Costs**

- (a) The Borrower shall, within three (3) Business Days of demand by a Finance Party, pay to that Finance Party its Break Costs attributable to all or any part of a Loan or Unpaid Sum being paid by the Borrower on a day other than the last day of an Interest Period for that Loan or Unpaid Sum.
- (b) Each Lender shall, as soon as reasonably practicable after a demand by the BPIFAE Agent, provide a certificate confirming the amount of its Break Costs for any Interest Period in which they accrue.

## 11. Fees

### 11.1 Commitment Fee

- (a) The Borrower shall pay to the BPIFAE Agent (for the account of each Lender) a fee computed at the rate of one point fifteen *per cent.* (1.15%) per annum on that Lender's daily undrawn Available Commitment under:
  - (i) Facility A for the Availability Period applicable to Facility A; and
  - (ii) Facility B for the Availability Period applicable to Facility B.
- (b) The accrued commitment fee is payable:
  - (i) on the last day of each successive period of six (6) Months which ends during the Availability Period;
  - (ii) on the last day of the Availability Period; and
  - (iii) if cancelled in full, on the cancelled amount of the relevant Lender's Commitment at the time the cancellation is effective.

### 11.2 Up-front Fee

- (a) The Borrower shall pay to the BPIFAE Agent (for the account of each Mandated Lead Arranger) an arrangement fee in an amount equal to two point eight *per cent.* (2.8%) of the aggregate principal amount of the Total Commitments as at the date of this Agreement (the "Up-front Fee").
- (b) The Up-front Fee shall be due on the date of this Agreement and payable on the earlier of:
  - (i) sixty (60) days from the date of this Agreement; and
  - (ii) Financial Close.

### 11.3 BPIFAE Agent Fees

- (a) The Borrower shall pay to the BPIFAE Agent (for its own account) an annual agency fee of US\$65,000 (the "BPIFAE Agent Fee"), which must be paid annually in advance in accordance with paragraphs (b) and (c) below.
- (b) The BPIFAE Agent Fee for 2020 shall be payable in full on the Fourth Effective Date.
- (c) Each subsequent payment of the BPIFAE Agent Fee is payable on each anniversary of the Fourth Effective Date for as long as any Commitment is in force or amount is outstanding under the Finance Documents.

### 11.4 Security Agent Fees

- (a) The Borrower shall pay to the Security Agent (for its own account) an annual agency fee of US\$65,000 (the "Security Agent Fee"), which must be paid annually in advance in accordance with paragraphs (b) and (c) below.

- (b) The Security Agent Fee for 2020 shall be payable in full on the Fourth Effective Date.
- (c) Each subsequent payment of the BPIFAE Agent Fee is payable on each anniversary of the Fourth Effective Date for as long as any Commitment is in force or amount is outstanding under the Finance Documents.

### **11.5 Restructuring Fee**

- (a) Pursuant to clause 4.1 (*Restructuring Fee*) of the First Global Deed of Amendment and Restatement, the Borrower is required to pay to the BPIFAE Agent (for the account of each Lender *pro rata* to the proportion of each Lender's Commitment) a restructuring fee in an amount equal to two point five *per cent.* (2.5%) of the Total Commitments as at the First Effective Date, being US\$14,658,550 (the "**Restructuring Fee**") which amount shall become due on the First Effective Date and shall be payable in accordance with paragraph (b) below.
- (b) Pursuant to clause 4.2 (*Restructuring Fee Payment*) of the First Global Deed of Amendment and Restatement, the Borrower has agreed to pay the Restructuring Fee on the following dates:
  - (i) an amount equal to forty *per cent.* (40%) of the Restructuring Fee (being US\$5,863,420) on or prior to the First Effective Date as a condition precedent to the occurrence thereof; and
  - (ii) an amount equal to sixty *per cent.* (60%) of the Restructuring Fee (being US\$8,795,130) on 30 June 2017 (or such earlier date as all principal, interest and other amounts outstanding under this Agreement have been repaid in full).
- (c) For the avoidance of doubt, the Restructuring Fee is payable in accordance with the First Global Deed of Amendment and Restatement and this Clause 11.5 does not create a separate obligation to pay such fee pursuant to this Agreement.

### **11.6 Non-Refundable**

Each of the fees set out in this Clause 11 (*Fees*) once paid are non-refundable and non-creditable against other fees payable in connection with the Project.

## **12. BPIFAE Insurance Premia and BPIFAE 2013 Deferred Fee Insurance Premium**

### **12.1 Payment by the Borrower**

- (a) The Borrower shall bear the cost of the BPIFAE Insurance Premia and the BPIFAE 2013 Deferred Fee Premium payable in respect of, or in connection with, the BPIFAE Insurance Policy and shall pay all such amounts to the BPIFAE Agent (for the account of BPIFAE).
- (b) The BPIFAE Insurance Premia is due and payable in full to the BPIFAE Agent (for the account of BPIFAE) on the Utilisation Date for the first Utilisation and such amounts have been paid by the Borrower.

(c) The BPIFAE 2013 Deferred Fee Premium is due to the BPIFAE Agent (for the account of BPIFAE) on the First Effective Date and shall be paid by the Borrower as follows:

(i) US\$8,000,000 shall be paid on the First Effective Date; and

(ii) US\$12,000,000 shall be paid on 30 June 2017,

(or, if earlier, in each case, the date on which the BPIFAE 2013 Deferred Fee Premium has been paid in full pursuant to any prepayments applied against such BPIFAE 2013 Deferred Fee Premium under the terms of this Agreement).

## 12.2 Financing with Proceeds of Loans

(a) Subject to all the other terms and conditions of this Agreement, the BPIFAE Insurance Premia shall be financed from the first Utilisation under the Facilities.

(b) Loans made under a Facility on account of the BPIFAE Insurance Premia shall be included in the principal amount of a Facility and repaid to the BPIFAE Agent in accordance with the relevant provisions in this Agreement and the Borrower shall pay interest on such amount at the rates determined under, and in accordance with, Clause 8 (*Interest*) and repay such amount together with all other principal as stated in Clause 6.1 (*Repayment*).

(c) For the avoidance of doubt, the BPIFAE 2013 Deferred Fee Premium shall not be financed by the proceeds of either Facility.

## 12.3 Borrower's Payment Obligations

(a) The Borrower acknowledges that the obligation to pay one hundred *per cent.* (100%) of the BPIFAE Insurance Premia and the BPIFAE 2013 Deferred Fee Premium as and when they arise is absolute and unconditional.

(b) If the BPIFAE Insurance Premia due and payable is not financed or paid out of any Loans under this Agreement or if the undrawn amount under a Facility is not sufficient to finance one hundred *per cent.* (100%) of the BPIFAE Insurance Premia due to BPIFAE under the BPIFAE Insurance Policy, the Borrower shall pay directly to the BPIFAE Agent the amount of any such BPIFAE Insurance Premia not so financed or paid.

(c) Subject to Clause 12.3(d) below, as of the date of this Agreement the premia due to BPIFAE in respect of the BPIFAE Insurance Premia shall be calculated at a rate estimated to be six point sixty eight *per cent.* (6.68%), and in an estimated amount being the aggregate of:

(i) US\$35,272,276 in respect of Facility A; and

(ii) US\$1,442,880 in respect of Facility B.

(d) The BPIFAE Agent will only be notified of the actual amount of the BPIFAE Insurance Premia on the date of final issuance of each BPIFAE Insurance Policy.

(e) Following receipt of each BPIFAE Insurance Policy, the BPIFAE Agent shall promptly notify the Borrower of the actual amount of the BPIFAE Insurance Premia. If the actual

amount of the BPIFAE Insurance Premia is greater than the estimated amount set out in paragraph (c) above, the Borrower shall be obliged to make payment of the actual amount of the BPIFAE Insurance Premia. Accordingly, the estimated amount provided in Clauses 3.1(c) (*Payment of the BPIFAE Insurance Premia*) and 3.2(b) (*Payment of the BPIFAE Insurance Premia*) shall be automatically increased or reduced by the amounts required to ensure the payment of the premiums after adjustment by BPIFAE, which would result in an increase or reduction by a corresponding amount in the Total Commitments subject to available Commitments).

- (f) [*Intentionally omitted*]
- (g) Notwithstanding the above, a minimum premium being, as of the date of this Agreement, in an amount equal to the Dollar equivalent of €1,515 shall be paid to BPIFAE by the Borrower in respect of each BPIFAE Insurance Policy upon the execution of the relevant BPIFAE Insurance Policy. Such amounts shall remain the property of BPIFAE and are accordingly payable by the Borrower to BPIFAE in any event.
- (h) Subject to paragraph (i) below, the Borrower shall not be entitled to claim any credit or reimbursement of the BPIFAE Insurance Premia or the BPIFAE 2013 Deferred Fee Premium, including in the event of a cancellation, an acceleration or a prepayment of any Loan under this Agreement.
- (i) Notwithstanding paragraph (h) above and subject to paragraph (j) below:
  - (i) with respect to any partial cancellation of any undisbursed amount of a Facility; and/or
  - (ii) immediately following the end of the Availability Period, where an Available Commitment remains outstanding,the Borrower shall be entitled to submit a request to the BPIFAE Agent for reimbursement of any proportionate amount of the BPIFAE Insurance Premia, in an amount up to one hundred *per cent.* (100%) of the total amount of the BPIFAE Insurance Premia, which relates to such cancelled amount of any undisbursed portion of a Facility and/or outstanding Available Commitment referred to in paragraphs (i)(i) and (ii) above, as the case may be, in each case such amount to be subject to the approval of the BPIFAE Agent. For the avoidance of doubt, this paragraph (i) does not apply to the BPIFAE 2013 Deferred Fee Premium.
- (j) No reimbursement of the BPIFAE Insurance Premia pursuant to paragraph (i) above shall be made by the BPIFAE Agent if:
  - (i) a Default shall have occurred and be continuing; and
  - (ii) the BPIFAE Agent has not received funds from BPIFAE in an amount equal to the BPIFAE Insurance Premia to be reimbursed.
- (k) Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge that the Borrower has paid the BPIFAE Insurance Premia on or around Financial Close. This paragraph (k) does not apply to the BPIFAE 2013 Deferred Fee Premium.



### 13. Tax gross-up and Indemnities

#### 13.1 Tax Gross-up

- (a) The Borrower shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.
- (b) The Borrower shall, promptly upon becoming aware that it must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the BPIFAE Agent accordingly. Similarly, a Lender shall notify the BPIFAE Agent on becoming so aware in respect of a payment payable to that Lender. If the BPIFAE Agent receives such notification from a Lender it shall notify the Borrower.
- (c) If a Tax Deduction is required by law to be made by the Borrower, the amount of the payment due from the Borrower shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.
- (d) If the Borrower is required to make a Tax Deduction, it shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.
- (e) Within thirty (30) days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Borrower making that Tax Deduction shall deliver to the BPIFAE Agent for the Finance Party entitled to the payment evidence reasonably satisfactory to that Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.
- (f) A payment shall not be increased under paragraph (c) above by reason of a Tax Deduction on account of Tax, if on the date on which the payment falls due:
  - (i) the payment could have been made to the relevant Lender without a Tax Deduction if the Lender had been a Qualifying Lender, but on that date that Lender is not, or has ceased to be, a Qualifying Lender other than as a result of any change after the date it became a Lender under this Agreement:
    - (A) in (or in the interpretation, administration, or application of) any law or double taxation agreement, or any published practice or published concession of any relevant authority; or
    - (B) in the circumstance of the Borrower; or
  - (ii) the Borrower is able to demonstrate that the payment could have been made to the Lender without the Tax Deduction had that Lender complied with its obligations under paragraph (g) below.
- (g) Each Lender agrees to use reasonable efforts (consistent with legal and regulatory restrictions and subject to overall policy considerations of such Lender) to file any Withholding Forms as requested by the Borrower that may be necessary to establish an exemption from withholding of US federal income taxes.

### 13.2 Tax Indemnity

- (a) The Borrower shall (within three (3) Business Days of demand by the BPIFAE Agent) pay to a Protected Party an amount equal to the loss, liability or cost which that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Finance Document.
- (b) Paragraph (a) above shall not apply with respect to any Tax assessed on a Finance Party:
  - (i) under the law of the jurisdiction in which that Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Finance Party is treated as resident for tax purposes; or
  - (ii) under the law of the jurisdiction in which that Finance Party's Facility Office is located in respect of amounts received or receivable in that jurisdiction,if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by that Finance Party or to the extent a loss, liability or cost:
  - (A) is compensated for by an increased payment under Clause 13.1 (*Tax Gross-up*);
  - (B) would have been compensated for by an increased payment under Clause 13.1 (*Tax Gross-up*) but was not so compensated solely because one of the exclusions in paragraph (f) of Clause 13.1 (*Tax Gross-up*) applied; or
  - (C) relates to a FATCA Deduction required to be made by a Party.
- (c) A Protected Party making, or intending to make a claim under paragraph (a) above shall promptly notify the BPIFAE Agent of the event which will give, or has given, rise to the claim, following which the BPIFAE Agent shall notify the Borrower.
- (d) A Protected Party shall, on receiving a payment from the Borrower under this Clause 13.2, notify the BPIFAE Agent.

### 13.3 Tax Credit

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

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

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

- (i) any Finance Party may determine, in its sole discretion consistent with the policies of such Finance Party, whether to seek a Tax Credit;
- (ii) if such Tax Credit is subsequently disallowed or reduced, the Borrower shall indemnify the Finance Party for such amount; and
- (iii) nothing in this Clause 13.3 shall require a Finance Party to disclose any confidential information to the Borrower (including, without limitation, its tax returns or its calculations).

#### **13.4 Stamp Taxes**

The Borrower shall pay and, within three (3) Business Days of demand, indemnify each Finance Party against any cost, loss or liability that Finance Party incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document.

#### **13.5 Value Added Tax**

- (a) All amounts expressed to be payable under a Finance Document by any Party to a Finance Party which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply, and accordingly, subject to paragraph (b) below, if VAT is or becomes chargeable on any supply made by any Finance Party to any Party under a Finance Document and such Finance Party is required to account to the relevant tax authority for the VAT, that Party must pay to such Finance Party (in addition to and at the same time as paying the consideration for such supply) an amount equal to the amount of the VAT (and such Finance Party must promptly provide an appropriate VAT invoice to that Party).
- (b) Where a Finance Document requires any Party to reimburse or indemnify a Finance Party for any cost or expense, that Party shall reimburse or indemnify (as the case may be) such Finance Party for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that such Finance Party reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.
- (c) In relation to any supply made by a Finance Party to any Party under a Finance Document, if reasonably requested by such Finance Party, that Party must promptly provide such Finance Party with details of that Party's VAT registration and such other information as is reasonably requested in connection with such Finance Party's VAT reporting requirements in relation to such supply.

#### **13.6 Lender Status Confirmation**

Each Lender which becomes a Party to this Agreement after the date of this Agreement shall indicate, in the Transfer Certificate or Assignment Agreement which it executes on becoming a Party, and for the benefit of the BPIFAE Agent and without liability to any Obligor, which of the following categories it falls in:

- (a) not a Qualifying Lender; or
- (b) a Qualifying Lender.

If a New Lender fails to indicate its status in accordance with this Clause 13.6 then such New Lender shall be treated for the purposes of this Agreement (including by each Obligor) as if it is not a Qualifying Lender until such time as it notifies the BPIFAE Agent which category applies (and the BPIFAE Agent, upon receipt of such notification, shall inform the Borrower). For the avoidance of doubt, a Transfer Certificate or Assignment Agreement shall not be invalidated by any failure of a Lender to comply with this Clause 13.6.

### 13.7 FATCA Information

- (a) Subject to paragraph (c) below, each Party shall, within ten (10) Business Days of a reasonable request by another Party:
  - (i) confirm to that other Party whether it is:
    - (A) a FATCA Exempt Party; or
    - (B) not a FATCA Exempt Party; and
  - (ii) supply to that other Party such forms, documentation and other information relating to its status under FATCA (including other information required under the US Treasury Regulations or other official guidance including intergovernmental agreements) as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA.
- (b) If a Party confirms to another Party pursuant to Clause 13.7(a)(i) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not, or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.
- (c) Paragraph (a) above shall not oblige any Finance Party to do anything which would or might in its reasonable opinion constitute a breach of:
  - (i) any law or regulation;
  - (ii) any fiduciary duty; or
  - (iii) any duty of confidentiality.
- (d) If a Party fails to confirm its status or to supply forms, documentation or other information requested in accordance with paragraph (a) above (including, for the avoidance of doubt, where paragraph (c) above applies), then if that Party failed to confirm whether it is (and/or remains) a FATCA Exempt Party such Party shall be treated for the purposes of the Finance Documents as if it is not a FATCA Exempt Party until such time as the Party in question provides the requested confirmation, forms, documentation or other information.
- (e) If the Borrower is a US Tax Obligor, or where the BPIFAE Agent reasonably believes that its obligations under FATCA require it, each Lender shall, within ten Business Days of:
  - (i) where the Borrower is a US Tax Obligor and the relevant Lender is an Original Lender, the date of this Agreement;

(ii) where the Borrower is a US Tax Obligor and the relevant Lender is a New Lender, the relevant Transfer Date; or

(iii) where the Borrower is not a US Tax Obligor, the date of a request from the BPIFAE Agent,

supply to the BPIFAE Agent:

(A) a withholding certificate on Form W-8 or Form W-9 (or any successor form) (as applicable); or

(B) any withholding statement and other documentation, authorisations and waivers as the BPIFAE Agent may require to certify or establish the status of such Lender under FATCA.

The BPIFAE Agent shall provide any withholding certificate, withholding statement, documentation, authorisations and waivers it receives from a Lender pursuant to this paragraph (e) to the Borrower and shall be entitled to rely on any such withholding certificate, withholding statement, documentation, authorisations and waivers provided without further verification. The BPIFAE Agent shall not be liable for any action taken by it under or in connection with this paragraph (e).

(f) Each Lender agrees that if any withholding certificate, withholding statement, documentation, authorisations and waivers provided to the BPIFAE Agent pursuant to paragraph (e) above is or becomes materially inaccurate or incomplete, it shall promptly update such withholding certificate, withholding statement, documentation, authorisations and waivers or promptly notify the BPIFAE Agent in writing of its legal inability to do so. The BPIFAE Agent shall provide any such updated withholding certificate, withholding statement, documentation, authorisations and waivers to the Borrower. The BPIFAE Agent shall not be liable for any action taken by it under or in connection with this paragraph (f).

### **13.8 FATCA Deduction**

(a) Each Party may make any FATCA Deduction it is required to make by FATCA, and any payment required in connection with that FATCA Deduction, and no Party shall be required to increase any payment in respect of which it makes such a FATCA Deduction or otherwise compensate the recipient of the payment for that FATCA Deduction.

(b) Each Party shall promptly, upon becoming aware that it must make a FATCA Deduction (or that there is any change in the rate or the basis of such FATCA Deduction) notify the Party to whom it is making the payment and, in addition, shall notify the Borrower, the BPIFAE Agent and the other Finance Parties.

## **14. Increased Costs**

### **14.1 Increased Costs**

- (a) Subject to Clause 14.3 (*Exceptions*) the Borrower shall, within five (5) Business Days of a demand by the BPIFAE Agent, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of:
- (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation;
  - (ii) compliance with any law or regulation made after the date of this Agreement; or
  - (iii) the implementation or application of or compliance with (including any change in the interpretation, administration or application of) the Bank for International Settlements' recommendations on banking laws and regulations published by the Bank for International Settlements on 16 December 2010 in the form of the consultative documents entitled "*A global regulatory framework for more resilient banks and banking systems*" and "*International Framework for Liquidity Risk Measurement, Standards and Monitoring*" (collectively, commonly referred to as "*Basel III*") or any other law or regulation which implements Basel III (whether such implementation, application or compliance is by a government, regulator, Finance Party or any of its Affiliates) ("**Basel III**").
- (b) In this Agreement "**Increased Costs**" means:
- (i) a reduction in the rate of return from a Facility or on a Finance Party's (or its Affiliate's) overall capital;
  - (ii) an additional or increased cost; or
  - (iii) a reduction of any amount due and payable under any Finance Document,
- which is incurred or suffered by a Finance Party or any of its Affiliates to the extent that it is attributable to that Finance Party having entered into its Commitment or funding or performing its obligations under any Finance Document.
- (c) For the purposes of this Clause 14 (*Increased Costs*), any regulation imposed by the European Central Bank, the Financial Conduct Authority or the Prudential Regulation Authority in effect as of the First Effective Date with respect to fees and costs payable by banks similar to those customarily considered to be "*Mandatory Costs*" shall be deemed to be an Applicable Law made after the First Effective Date.

#### 14.2 Increased Cost Claims

- (a) Subject to paragraphs (c) below, a Finance Party intending to make a claim pursuant to Clause 14.1 (*Increased Costs*) shall notify the BPIFAE Agent of the event giving rise to the claim, following which the BPIFAE Agent shall promptly notify the Borrower.
- (b) Each Finance Party shall, as soon as practicable after a demand by the BPIFAE Agent, provide a certificate confirming the amount of its Increased Costs.

- (c) A Finance Party intending to make a claim in relation to Mandatory Costs as contemplated by Clause 14.1(c) (*Increased Costs*) shall notify (with a copy to the BPIFAE Agent) the Borrower of its claim in respect of such Mandatory Costs.

### 14.3 Exceptions

Clause 14.1 (*Increased Costs*) does not apply to the extent any Increased Cost is:

- (a) attributable to a Tax Deduction required by law to be made by the Borrower;
- (b) compensated for by Clause 13.2 (*Tax Indemnity*) (or would have been compensated for under Clause 13.2 (*Tax Indemnity*) but was not so compensated solely because any of the exclusions in paragraph (b) of Clause 13.2 (*Tax Indemnity*) applied);
- (c) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation; or
- (d) attributable to a FATCA Deduction required to be made by a Party.

## 15. Other Indemnities

### 15.1 Currency Indemnity

- (a) If any sum due from an Obligor under the Finance Documents (a “**Sum**”), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the “**First Currency**”) in which that Sum is payable into another currency (the “**Second Currency**”) for the purpose of:

- (i) making or filing a claim or proof against an Obligor;
- (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

the Borrower shall as an independent obligation, within three (3) Business Days of demand, indemnify each Finance Party to whom that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between:

- (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency; and
- (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

- (b) The Borrower waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.

### 15.2 Other Indemnities

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

- (a) the occurrence of any Event of Default;
- (b) a failure by the Borrower to pay any amount due under a Finance Document on its due date, including without limitation, any cost, loss or liability arising as a result of Clause 30 (*Sharing among the Finance Parties*);
- (c) funding, or making arrangements to fund, its participation in a Loan requested by the Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by that Lender alone);
- (d) a Loan (or part of a Loan) not being prepaid in accordance with a notice of prepayment given by the Borrower; or
- (e) the breach by the Borrower or any member of the Group of any applicable Environmental Laws or Environmental Permits. Any Affiliate of a Finance Party may rely on this Clause 15.2(e).

### **15.3 Indemnity to the BPIFAE Agent**

The Borrower shall promptly indemnify the BPIFAE Agent against any cost, loss or liability incurred by the BPIFAE Agent (acting reasonably) as a result of:

- (a) investigating any event which it reasonably believes is a Default; or
- (b) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised.

### **15.4 Indemnity to the Security Agent**

- (a) The Borrower shall promptly indemnify the Security Agent against any cost, loss or liability incurred by the Security Agent as a result of:
  - (i) the protection or enforcement of a Lien expressed to be created under a Security Document; or
  - (ii) the exercise of any of the rights, powers, discretions and remedies vested in it by the Finance Documents or by law.
- (b) The Security Agent may, in priority to any payment to other Finance Parties, indemnify itself out of the assets subject to a Lien expressed to be created under the Security Documents in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this Clause 15.4.

## **16. Mitigation by the Lenders**

### **16.1 Mitigation**



- (a) Each Finance Party shall, in consultation with the Borrower, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 7.1 (*Illegality*), Clause 13 (*Tax gross-up and Indemnities*) or Clause 14 (*Increased Costs*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.
- (b) Paragraph (a) above does not in any way limit the obligations of the Borrower under the Finance Documents.

## **16.2 Limitation of Liability**

- (a) The Borrower shall promptly indemnify each Finance Party for all costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under Clause 16.1 (*Mitigation*).
- (b) A Finance Party is not obliged to take any steps under Clause 16.1 (*Mitigation*) if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

## **17. Costs and Expenses**

### **17.1 Transaction Expenses**

The Borrower shall promptly on demand pay the BPIFAE Agent, the Security Agent and each Mandated Lead Arranger the amount of all costs and expenses (including legal fees) reasonably incurred by any of them in connection with the negotiation, preparation, printing, execution and syndication of:

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

### **17.2 Amendment Costs**

If:

- (a) the Borrower requests an amendment, waiver or consent; or
- (b) an amendment is required pursuant to Clause 31.10 (*Change of Currency*),

the Borrower shall, within three (3) Business Days of demand, reimburse the BPIFAE Agent and the Security Agent for the amount of all costs and expenses (including legal fees) incurred by the BPIFAE Agent and the Security Agent in responding to, evaluating, negotiating or complying with that request or requirement.

### **17.3 Enforcement Costs**

The Borrower shall, within three (3) Business Days of demand, pay to each Finance Party the amount of all costs and expenses (including legal fees) incurred by that Finance Party in connection with the enforcement of, or the preservation of any rights under, any Finance Document.

#### **17.4 Security Agent Expenses**

The Borrower shall, within three (3) Business Days of demand, pay to the Security Agent the amount of all costs and expenses (including legal fees) incurred by it in connection with the release of any Lien created pursuant to any Security Document.

#### **17.5 Financial Advisory Appointment**

The Borrower shall, within three (3) Business Days of demand, pay to the BPIFAE Agent all fees and expenses payable in connection with the appointment by the BPIFAE Agent of FTI, Consulting, Inc., (or such other financial advisor acceptable to the BPIFAE Agent (acting on the instructions of the Majority Lenders)):

- (a) on and from the First Effective Date (for so long as shall be required in order to complete any reports required in connection with the financial year ending 2013), at agreed hourly rates, for the purposes of monitoring the Group's business and results of operations (including additional work to be undertaken in relation to monthly monitoring of the Accounts Agreement and quarterly monitoring in between Annual Business Plans as set out in greater details in the applicable engagement letter); and
- (b) at any time following 31 December 2013 at agreed hourly rates if:
  - (i) an Event of Default as set out in Clauses 23.1 (*Non-Payment*), 23.2 (*Financial Covenants*), 23.5 (*Cross Default*), 23.6 (*Insolvency*), 23.7 (*Insolvency Proceedings*) or 23.8 (*Creditor's Process*) has occurred;
  - (ii) the Finance Parties receive any request from the Borrower to adjust, or a Lender or BPIFAE requires any adjustment of, the financial covenants as set out in Clause 20 (*Financial Covenants*);
  - (iii) a new business plan is provided to replace the Agreed Business Plan; or
  - (iv) the Borrower (acting reasonably) agrees to any request for such appointment from the BPIFAE Agent.

### **18. Representations**

Subject to the disclosures made by the Borrower set out in Schedule 24 (*Disclosures*), the Borrower makes the representations and warranties set out in this Clause 18 (*Representations*) to each Finance Party on the Fourth Effective Date.

#### **18.1 Status**

- (a) It is a corporation, duly incorporated and validly existing (and to the extent applicable, in good standing) under the law of its jurisdiction of incorporation.
- (b) It and each of its Subsidiaries has the power to own its assets and carry on its business as it is being conducted.

#### **18.2 Binding Obligations**

Subject to the Reservations:

- (a) the obligations expressed to be assumed by it in each Transaction Document to which it is a party are legal, valid, binding and enforceable obligations; and
- (b) (without limiting the generality of paragraph (a) above), each Security Document to which it is a party creates the security interests which that Security Document purports to create and those security interests are valid and effective.

### **18.3 Non-Conflict with other Obligations**

The entry into and performance by it of, and the transactions contemplated by, the Transaction Documents and the granting of the security interests contemplated by the Security Documents do not and will not conflict with:

- (a) any Applicable Law;
- (b) the constitutional documents of any member of the Group; or
- (c) any agreement or instrument binding upon it or any member of the Group or any of its, or any member of the Group's, assets or constitute a default or termination event (however described) under any such agreement or instrument, where such conflict would have or is reasonably likely to have a Material Adverse Effect.

### **18.4 Power and Authority**

- (a) It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Transaction Documents to which it is or will be a party and the transactions contemplated by those Transaction Documents.
- (b) No limit on its powers will be exceeded as a result of the borrowing, grant of security or giving of guarantees or indemnities contemplated by the Transaction Documents to which it is a party.

### **18.5 No Proceedings Pending or Threatened**

No litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency which is not frivolous, vexatious or otherwise an abuse of court process, and which, if adversely determined, could reasonably have a Material Adverse Effect (to the best of its knowledge and belief) have been started against it or any of its Subsidiaries.

### **18.6 Authorisations**

- (a) Each of the Borrower and its Subsidiaries has all material Authorisations required:
  - (i) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Transaction Documents to which it is a party; and
  - (ii) to make the Transaction Documents to which it is a party admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect.

- (b) Each of the Borrower and its Subsidiaries:
- (i) has all Authorisations required for it to conduct its business as currently conducted, each of which is in full force and effect, is final and not subject to review on appeal and is not the subject of any pending or, to the best of its knowledge, threatened attack by direct or collateral proceeding;
  - (ii) is in compliance with each Authorisation applicable to it and in compliance with all other Applicable Laws relating to it or any of its respective properties; and
  - (iii) has filed in a timely manner all material reports, documents and other materials required to be filed by it under all Applicable Laws with any Governmental Authority and has retained all material records and documents required to be retained by it under Applicable Law,

except in each case where the failure to have done so, comply or file could not reasonably be expected to have a Material Adverse Effect.

#### **18.7 Intellectual Property Matters**

- (a) Each of the Borrower and its Subsidiaries owns or possesses rights to use all material franchises, licences, copyrights, copyright applications, patents, patent rights or licences, patent applications, trademarks, trademark rights, service marks, service mark rights, trade names, trade name rights, copyrights and other rights with respect to the foregoing which are reasonably necessary to conduct its business as currently conducted (the “**Intellectual Property**”).
- (b) No event has occurred which permits, or after notice or lapse of time or both would permit, the revocation or termination of any such material rights, and, to the Borrower’s knowledge, neither the Borrower nor any Subsidiary thereof is liable to any person for infringement under Applicable Law with respect to any such rights as a result of its business operations except as could not reasonably be expected to have a Material Adverse Effect.

#### **18.8 Environmental Matters**

- (a) The properties owned, leased or operated by the Borrower and its Subsidiaries now or in the past do not contain, and to their knowledge have not previously contained, any Hazardous Materials in amounts or concentrations which:
  - (i) constitute or constituted an unremediated violation of applicable Environmental Laws and Environmental Permits; or
  - (ii) could give rise to a material liability under applicable Environmental Laws and Environmental Permits.
- (b) To the knowledge of the Borrower and its Subsidiaries, the Borrower, each of its Subsidiaries and such properties and all operations conducted in connection therewith are in compliance, and, at all such times when such properties have been owned or operated by the Borrower or any of its Subsidiaries have been in compliance, with all applicable Environmental Laws and Environmental Permits, and there is no

contamination at, under or about such properties or such operations which could interfere with the continued operation of such properties or materially impair the fair saleable value thereof.

- (c) Neither the Borrower nor any Subsidiary thereof has received any notice of violation, alleged violation, non-compliance, liability or potential liability regarding environmental matters, Hazardous Materials, or compliance with Environmental Laws or Environmental Permits, nor does the Borrower or any Subsidiary thereof have knowledge or reason to believe that any such notice will be received or is being threatened.
- (d) To the knowledge of the Borrower and its Subsidiaries, Hazardous Materials have not been transported or disposed of to or from the properties owned, leased or operated by the Borrower and its Subsidiaries in violation of, or in a manner or to a location which could give rise to material liability under, Environmental Laws or Environmental Permits, nor have any Hazardous Materials been generated, treated, stored or disposed of at, on or under any of such properties in violation of, or in a manner that could give rise to material liability under, any applicable Environmental Laws.
- (e) No judicial proceedings or governmental or administrative action is pending or, to the knowledge of the Borrower, threatened under any Environmental Law or Environmental Permits to which the Borrower or any Subsidiary thereof is or will be named as a potentially responsible party, nor are there any consent decrees or other decrees, consent orders, administrative orders or other orders, or other administrative or judicial requirements outstanding under any Environmental Law with respect to the Borrower, any Subsidiary or properties owned, leased or operated by the Borrower or any Subsidiary, now or in the past, that could reasonably be expected to have a Material Adverse Effect.
- (f) There has been no release, nor to the best of the Borrower's knowledge, threat of release, of Hazardous Materials at or from properties owned, leased or operated by the Borrower or any Subsidiary, now or in the past, in violation of or in amounts or in a manner that could give rise to liability under Environmental Laws or Environmental Permits that could reasonably be expected to have a Material Adverse Effect.
- (g) There are no facts, circumstances or conditions relating to the past or present business or operations of the Borrower or any Subsidiary, including the disposal of any wastes, Hazardous Material or other materials, or to the past or present ownership or use of any real property by the Borrower or any Subsidiary, that could reasonably be expected to give rise to an Environmental Claim against or to liability (other than in an immaterial respect) of any Borrower or any Subsidiary under any Environmental Laws or Environmental Permits.

## **18.9 ERISA**

- (a) As of the date of this Agreement, neither an Obligor nor any ERISA Affiliate maintains or contributes to, or has any obligation under, any Employee Benefit Plans other than those identified in Schedule 9 (*ERISA Plans*).

- (b) Each Employee Benefit Plan is in compliance in form and operation with its terms and with ERISA and the Code (including Code provisions compliance with which is necessary for any intended favourable tax treatment) and all other Applicable Laws, except where any failure to comply would not, individually or in the aggregate, reasonably be expected to result in any material liability of any Obligor or ERISA Affiliate.
- (c) Each Employee Benefit Plan that is intended to be qualified under Section 401(a) of the Code has been determined by the Internal Revenue Service to be so qualified, and each trust related to such plan has been determined by the Internal Revenue Service to be exempt under Section 501(a) of the Code, taking into account all applicable tax law changes, and nothing has occurred since the date of each such determination that would reasonably be expected to adversely affect such determination (or, in the case of an Employee Benefit Plan with no determination, nothing has occurred that would materially adversely affect the issuance of a favourable determination by the Internal Revenue Service or otherwise materially adversely affect such qualification).
- (d) No liability has been incurred by any Obligor or any ERISA Affiliate which remains unsatisfied for any taxes or penalties with respect to any Employee Benefit Plan or any Multiemployer Plan except for a liability that would not, individually or in the aggregate, reasonably be expected to result in a material liability of such Obligor or ERISA Affiliate.
- (e) Except where the failure of any of the following representations to be correct in all material respects would not, individually or in the aggregate, reasonably be expected to result in a material liability of any Obligor or any ERISA Affiliate, no Obligor or any ERISA Affiliate has:
  - (i) engaged in a non-exempt prohibited transaction described in Section 406 of ERISA or Section 4975 of the Code;
  - (ii) incurred any liability to the PBGC which remains outstanding, or reasonably expects to incur any such liability other than the payment of premiums and there are no premium payments which are within the applicable time limits prescribed by Applicable Law, due and unpaid;
  - (iii) failed to make a required contribution or payment to a Multiemployer Plan within the applicable time limits prescribed by Applicable Law; or
  - (iv) failed to make a required instalment or other required payment under Section 412 of the Code or Section 302 of ERISA.
- (f) No ERISA Termination Event, which individually or in the aggregate would reasonably be expected to result in a material liability of any Obligor or ERISA Affiliate has occurred or is reasonably expected to occur.
- (g) Except where the failure of any of the following representations to be correct in all material respects would not, individually or in the aggregate, reasonably be expected to result in a material liability of any Obligor or any ERISA Affiliate, no proceeding, claim (other than a benefits claim in the ordinary course), lawsuit and/or investigation is

existing or, to the best knowledge of the Borrower after due inquiry, threatened concerning or involving any:

- (i) employee welfare benefit plan (as defined in Section 3(1) of ERISA) currently maintained or contributed to any Obligor or any ERISA Affiliate;
  - (ii) Pension Plan; or
  - (iii) Multiemployer Plan.
- (h) There exists no Unfunded Pension Liability with respect to any Pension Plan, except for any such Unfunded Pension Liability that individually or together with any other positive Unfunded Pension Liabilities with respect to any Pension Plans, is not reasonably expected to result in a material liability of any Obligor or ERISA Affiliate.
- (i) If each Obligor and each ERISA Affiliate were to withdraw in a complete withdrawal from all Multiemployer Plans as of the date this assurance is given or deemed given, the aggregate withdrawal liability that would be incurred would not reasonably be expected to result in a material liability of any Obligor or ERISA Affiliate.
- (j) No Pension Plan which is subject to Section 412 of the Code or Section 302 of ERISA has applied for or received an extension of any amortization period, within the meaning of Section 412 of the Code or Section 302 or 304 of ERISA. No Obligor or ERISA Affiliate has ceased operations at a facility so as to become subject to the provisions of Section 4062(e) of ERISA, withdrawn as a substantial employer so as to become subject to the provisions of Section 4063 of ERISA or ceased making contributions to any Pension Plan subject to Section 4064(a) of ERISA to which it made contributions. No Lien imposed under the Code or ERISA on the assets of any Obligor or any ERISA Affiliate exists or is likely to arise on account of any Pension Plan. No Obligor or ERISA Affiliate has any liability under Section 4069 or 4212(c) of ERISA.

#### **18.10 Margin Stock**

- (a) Neither the Borrower nor any Subsidiary of it is engaged principally or as one of its activities in the business of extending credit for the purpose of “*purchasing*” or “*carrying*” any “*margin stock*” (as each such term is defined or used, directly or indirectly, in Regulation U of the Board of Governors of the Federal Reserve System).
- (b) No part of the proceeds of the Loans will be used for purchasing or carrying margin stock or for any purpose which violates, or which would be inconsistent with, the provisions of Regulation T, U or X of such Board of Governors.

#### **18.11 Government Regulation**

Neither the Borrower nor any Subsidiary is an “*investment company*” or a company “*controlled*” by an “*investment company*” (as each such term is defined or used in the Investment Company Act of 1940, as amended) and neither the Borrower nor any Subsidiary is, or after giving effect to any Utilization will be, subject to regulation under the Interstate Commerce Act, as amended, or any other Applicable Law which limits its ability to incur or consummate the transactions contemplated under this Agreement.

#### **18.12 Material Contracts**

- (a) Schedule 12 (*Material Contracts*) contains a complete and accurate list of all Material Contracts of the Borrower and its Subsidiaries in effect as of the Fourth Effective Date.
- (b) Other than as set out in Schedule 12 (*Material Contracts*), each such Material Contract is, and after giving effect to the consummation of the transactions contemplated by the Finance Documents will be, in full force and effect in accordance with the terms thereof.
- (c) The Borrower and its Subsidiaries have delivered to the BPIFAE Agent a true and complete copy of each Material Contract required to be listed on Schedule 12 (*Material Contracts*) (including all amendments with respect thereto).
- (d) Neither the Borrower nor any Subsidiary (nor, to the knowledge of the Borrower, any other party thereto) is in breach of or in default under any Material Contract in any material respect.

#### **18.13 Employee Relations**

- (a) Each of the Borrower and its Subsidiaries has a work force in place adequate to conduct its business as currently conducted and is not, as of the date of this Agreement, party to any collective bargaining agreement nor has any labour union been recognised as the representative of its employees except as set out in Schedule 13 (*Labour and Collective Bargaining Agreements*).
- (b) The Borrower knows of no pending, threatened or contemplated strikes, work stoppage or other collective labour disputes involving its employees or those of its Subsidiaries that could reasonably be expected to have a Material Adverse Effect.

#### **18.14 Burdensome Provisions**

No Subsidiary is party to any agreement or instrument or otherwise subject to any restriction or encumbrance that restricts or limits its ability to make dividend payments or other distributions in respect of its Capital Stock to the Borrower or any Subsidiary or to transfer any of its assets or properties to the Borrower or any other Subsidiary in each case other than existing under or by reason of the Finance Documents or Applicable Law.

#### **18.15 Financial Statements**

- (a) The audited and unaudited financial statements most recently delivered pursuant to Clause 19 (*Information Undertakings*) are complete and correct and fairly present in all material respects on a Consolidated basis the assets, liabilities and financial position of the Borrower and its Subsidiaries as at such dates, and the results of the operations and changes of financial position for the periods that ended (other than the absence of footnotes and customary year-end adjustments for unaudited financial statements).
- (b) All such financial statements, including the related schedules and notes thereto, have been prepared in accordance with GAAP.
- (c) Such financial statements show all material indebtedness and other material liabilities, direct or contingent, of the Borrower and its Subsidiaries as of the dates thereof, including



material liabilities for taxes, material commitments, and Financial Indebtedness, in each case, to the extent required to be disclosed under GAAP.

#### **18.16 No Material Adverse Change**

Since 30 June 2017, there has been no material adverse change in the properties, business, operations, prospects or condition (financial or otherwise) of the Borrower and its Subsidiaries taken as a whole and no event has occurred or condition arisen that could reasonably be expected to have a Material Adverse Effect.

#### **18.17 Solvency**

As of the Fourth Effective Date and after giving effect to each Loan, each Obligor (other than Globalstar Leasing LLC) will be Solvent.

#### **18.18 Titles to Properties**

Each of the Borrower and its Subsidiaries has such title to the real property owned or leased by it as necessary to the conduct of its business as currently conducted and valid and legal title to all of its personal property and assets, including, but not limited to, those reflected on the most recently delivered Consolidated balance sheets of the Borrower and its Subsidiaries delivered pursuant to Clause 19 (*Information Undertakings*), except those which have been disposed of by the Borrower or its Subsidiaries subsequent to the dates of such balance sheets which dispositions have been in the ordinary course of trading or as otherwise expressly permitted under this Agreement.

#### **18.19 Insurance**

The properties of the Borrower and its Subsidiaries are insured with financially sound and reputable insurance companies which are not Affiliates of the Borrower, in such amounts, with such deductibles and covering such risks as required by this Agreement.

#### **18.20 Liens**

From Financial Close:

- (a) none of the properties and assets of the Borrower or any Subsidiary thereof is subject to any Lien, except Permitted Liens; and
- (b) neither the Borrower nor any Subsidiary thereof has signed any financing statement or any security agreement authorising any secured party thereunder to file any financing statements, except to perfect Permitted Liens.

#### **18.21 Financial Indebtedness and Guarantee Obligations**

- (a) Schedule 14 (*Financial Indebtedness and Guarantee Obligations*) is a complete and correct listing of all Financial Indebtedness of the Borrower and its Subsidiaries as of the Fourth Effective Date in excess of US\$1,000,000.
- (b) As of the Fourth Effective Date, the amount of all Financial Indebtedness of the Borrower and its Subsidiaries (and not set out in Schedule 14 (*Financial Indebtedness and Guarantee Obligations*)) is no greater than US\$1,000,000.

- (c) The Borrower and its Subsidiaries have performed and are in compliance with all of the material terms of such Financial Indebtedness and all instruments and agreements relating thereto, and no default or event of default, or event or condition which with notice or lapse of time or both would constitute such a default or event of default on the part of the Borrower or any of its Subsidiaries exists with respect to any such Financial Indebtedness.

## 18.22 Communication Licences

- (a) Schedule 15 (*Communication Licences*) accurately and completely lists, as of the Fourth Effective Date, for the Borrower and each of its Subsidiaries, all Material Communications Licences (and the expiration dates thereof) granted or assigned to the Borrower or any Subsidiary, including, without limitation for:
- (i) each Satellite owned by the Borrower or any of its Subsidiaries, all space station licences or authorisations, including placement on the FCC's "*Permitted Space Station List*" for operation of Satellites with C-band links issued or granted by the FCC or the ANFR to the Borrower or any of its Subsidiaries; and
  - (ii) for each Earth Station of the Borrower and its Subsidiaries.
- (b) The Communications Licences set out in Schedule 15 (*Communication Licences*) include all material authorisations, licences and permits issued by the FCC, the ANFR or any other Governmental Authority that are required or necessary for the operation and the conduct of the business of the Borrower and its Subsidiaries, as conducted as of the Fourth Effective Date.
- (c) Each Communications Licence is expected to be renewed and the Borrower knows of no reason why such Communications Licence would not be renewed.
- (d) The Borrower and its Subsidiaries have filed all material applications with the FCC or the ANFR necessary for the Launch and operation of the Borrower's second-generation satellite constellation and the Borrower is not aware of any reason why such applications should not be granted.
- (e) Each Communications Licence set out in Schedule 15 (*Communication Licences*) is issued in the name of the Subsidiary indicated on such schedule.
- (f) Each Material Communications Licence is in full force and effect.
- (g) The Borrower has no knowledge of any condition imposed by the FCC, the ANFR or any other Governmental Authority as part of any Communications Licence which is neither set forth on the face thereof as issued by the FCC, the ANFR or any other Governmental Authority nor contained in the rules and regulations of the FCC, the ANFR or any other Governmental Authority applicable generally to telecommunications activities of the type, nature, class or location of the activities in question.
- (h) Each applicable location of the Borrower or any of its Subsidiaries has been and is being operated in all material respects in accordance with the terms and conditions of the

Communications Licence applicable to it and Applicable Law, including but not limited to the Communications Act and the rules and regulations issues thereunder.

- (i) No proceedings are pending or, to the Borrower's knowledge are, threatened which may result in the loss, revocation, modification, non-renewal, suspension or termination of any Communications Licence, the issuance of any cease and desist order or the imposition of any fines, forfeitures or other administrative actions by the FCC, the ANFR or any other Governmental Authority with respect to any operations of the Borrower and its Subsidiaries, which in any case could reasonably be expected to have a Material Adverse Effect.

#### 18.23 Satellites

- (a) All Satellites are owned by the Borrower or a Subsidiary that is an Obligor.
- (b) Schedule 16 (*Satellites*) accurately and completely lists as of the Fourth Effective Date, the flight model number of each of the Satellites owned by the Borrower and its Subsidiaries, and for each Satellite whether it is operational in-orbit or spare in-orbit.

#### 18.24 Permitted Peruvian Acquisition

- (a) The Acquisition Document contains all the terms of the Permitted Peruvian Acquisition.
- (b) Peruvian TargetCo has no material liabilities and has not engaged in any business operations prior to the date of the Acquisition Document.

#### 18.25 Pari Passu Ranking

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

#### 18.26 Anti-bribery, Anti-corruption and Anti-money Laundering

None of the Obligors nor any of their Subsidiaries, directors or officers, or, to the best knowledge of each Obligor, any affiliate, agent or employee of it, has engaged in any activity or conduct which would violate any anti-bribery, anti-corruption or anti-money laundering laws, regulations or rules that are applicable to it in any applicable jurisdiction and each Obligor has instituted and maintains policies and procedures designed to prevent violation of such laws, regulations and rules.

#### 18.27 Sanctions

None of the Obligors, any of their Subsidiaries, directors or officers, or, to the best knowledge of each Obligor, any affiliate, agent or employee each Obligor, is an individual or entity (a "**Person**"), that is, or is owned or controlled by Persons that are:

- (a) the target of any Sanctions (a "**Sanctioned Person**"); or
- (b) located, organised or resident in a country or territory that is, or whose government is, the subject of Sanctions broadly prohibiting dealings with such government, country or territory (a "**Sanctioned Country**").

### **18.28 Governing Law and Enforcement**

- (a) Subject to the Reservations, the choice of governing law of the Finance Documents will be recognised and enforced in its jurisdiction of incorporation.
- (b) Subject to the Reservations, any judgment obtained in relation to a Finance Document in the jurisdiction of the governing law of that Finance Document will be recognised and enforced in its jurisdiction of incorporation.

### **18.29 No Filing or Stamp Taxes**

Under:

- (a) the laws of the Borrower's or any of its Subsidiaries' jurisdiction of incorporation; and
- (b) the federal laws of the United States,

it is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration, notarial or similar Taxes or fees be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents other than:

- (i) delivery of proper financing statements (Form UCC-1 or such other financing statements or similar notices as shall be required by Applicable Law) fully executed for filing under the UCC or other appropriate filing offices of each jurisdiction as may be necessary to perfect a Lien purported to be created by a Security Document; and
- (ii) any recording with the United States Patent and Trademark Office and/or Copyright Office to perfect the Liens on intellectual property created by the Collateral Agreement,

which registrations, filings and fees will be made and paid promptly after the date of the relevant Finance Document.

### **18.30 Deduction of Tax**

It is not required to make any deduction for or on account of Tax from any payment it may make under any Finance Document.

### **18.31 No Default**

- (a) No Event of Default and, on the Fourth Effective Date, no Default is continuing or is reasonably likely to result from the making of any Loan or the entry into, the performance of, or any transaction contemplated by, any Transaction Document.
- (b) No other event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination or any combination of any of the foregoing, would constitute) a default or termination event (however described) under the Transaction Documents, which has not been waived by the relevant parties hereto.

- (c) No other event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination or any combination of any of the foregoing, would constitute) a default or termination event (however described) under any other agreement or instrument which is binding on it or any of its Subsidiaries or to which its (or any of its Subsidiaries) assets are subject which has or is reasonably likely to have a Material Adverse Effect.

### **18.32 No Misleading Information**

- (a) All factual information provided in writing by it to the Lenders was true, complete and accurate in all material respects to the best of its knowledge and belief as at the date it was provided or as at the date (if any) at which it is stated.
- (b) All financial projections provided by it have been prepared on the basis of recent historical information and on the basis of reasonable assumptions (in the case of projections made by third parties, to the best of its knowledge and belief).
- (c) To the best of its knowledge and belief, no material information has been given or withheld by it that results in any information provided to the Lenders by it being incomplete, untrue or misleading in any material respect.

### **18.33 Group Structure Chart**

The Group Structure Chart set out at Schedule 23 (*Group Structure Chart*) is true, complete and accurate in all material respects.

### **18.34 No Immunity**

None of the members of the Group or any of their assets is entitled to immunity from suit, execution, attachment or other legal process.

### **18.35 Tax Returns and Payments**

- (a) Each of the Borrower and its Subsidiaries has timely filed with the appropriate taxing authority, all returns, statements, forms and reports for taxes (the “**Returns**”) required to be filed by or with respect to the income, properties or operations of the Borrower and/or any of its Subsidiaries.
- (b) The Returns accurately reflect in all material respects all liability for taxes of the Borrower and its Subsidiaries as a whole for the periods covered thereby.
- (c) The Borrower and each of its Subsidiaries have paid all taxes payable by them other than those contested in good faith and adequately disclosed and for which adequate reserves have been established in accordance with generally accepted accounting principles.
- (d) There is no action, suit, proceeding, investigation, audit, or claim now pending or, to the best knowledge of the Borrower or any of its Subsidiaries, threatened by any authority regarding any taxes relating to the Borrower or any of its Subsidiaries which, if adversely determined, could reasonably be expected to have a Material Adverse Effect.

- (e) Neither the Borrower nor any of its Subsidiaries has entered into an agreement or waiver or been requested to enter into an agreement or waiver extending any statute of limitations relating to the payment or collection of taxes of the Borrower or any of its Subsidiaries, or is aware of any circumstances that would cause the taxable years or other taxable periods of the Borrower or any of its Subsidiaries not to be subject to the normally applicable statute of limitations.

### 18.36 Commercial Contracts

As of the Fourth Effective Date, the Borrower has not exercised the “*Optional Launches*” (as such term is defined in the Launch Services Contract) pursuant to the Launch Services Contract.

### 18.37 Notes and First Terrapin Purchase Agreement

- (a) All obligations owed to the holders of the 8% Old Notes or the 5% Notes:
  - (i) are, subject to the Reservations, the legal, valid, binding and enforceable obligations of the Borrower; and
  - (ii) are and shall remain fully subordinated to the repayment in full of the indebtedness under this Agreement on the terms set out in the relevant documentation (irrespective of whether the maturity date of the relevant notes has occurred and irrespective of whether the Final Maturity Date is amended from time to time) and such obligations have not been terminated or otherwise cancelled by the relevant holders of such notes.
- (b) The obligations of the Borrower and Terrapin under the First Terrapin Purchase Agreement:
  - (i) are, subject to the Reservations, the legal, valid, binding and enforceable obligations of the Borrower, and, to the best of the Borrower’s knowledge, Terrapin; and
  - (ii) have not been repudiated, terminated or otherwise cancelled by the Borrower or Terrapin and there is no breach thereunder by either party thereto.
- (c) The Borrower represents that, to the best of its knowledge, the amount of notes held by each of the Borrower, Thermo, any Subsidiary Guarantor and James Monroe III in respect of the 8% Old Notes and the 5% Notes has not changed since the date of the First Global Deed of Amendment and Restatement, and that no such party has entered into any written agreement, side letter, undertaking or understanding relating to such person’s ownership of or control of any voting or economic rights associated with the 8% Old Notes or the 5% Notes since the date of the First Global Deed of Amendment and Restatement.

### 18.38 Repetition

- (a) The Repeating Representations are made by the Borrower by reference to the facts and circumstances then existing on:
  - (i) the date of each Utilisation Request;
  - (ii) each Utilisation Date; and

- (iii) the first day of each Interest Period.
- (b) The representation in Clause 18.32 (*No Misleading Information*) shall be deemed to be repeated by the Borrower by reference to the facts and circumstances then existing on each date any information is delivered to the BPIFAE Agent pursuant to Clause 19.3 (*Annual Business Plan and Financial Projections*), Clause 19.5(d) (*Other Reports*) and Clause 19.14 (*Spectrum Plan*).

## 19. Information Undertakings

The undertakings in this Clause 19 (*Information Undertakings*) remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force. The Borrower will furnish, or cause to be furnished, to the BPIFAE Agent the information required by this Clause 19 (*Information Undertakings*) in sufficient copies for all the Lenders.

### 19.1 Quarterly Financial Statements

- (a) As soon as practicable and in any event within forty five (45) days after the end of each of the first three (3) fiscal quarters of each Fiscal Year (and in the case of paragraph (v) only, after the end of each fiscal quarter of each Fiscal Year) (or, if the date of any required public filing is earlier, no later than the date that is the fifth Business Day immediately following the date of any required public filing thereof after giving effect to any extensions granted with respect to such date):
  - (i) Form 10-Q;
  - (ii) an unaudited Consolidated balance sheet of the Borrower and its Subsidiaries as of the close of such fiscal quarter;
  - (iii) the notes (if any) relating to any of the financial statements delivered under this Clause 19.1;
  - (iv) unaudited Consolidated statements of income, retained earnings and cash flows;
  - (v) a report with respect to the Borrower's key performance indicators in substantially the same form as Schedule 19 (*Key Performance Indicators*); and
  - (vi) a report containing management's discussion and analysis of such financial statements for the fiscal quarter then ended and that portion of the Fiscal Year then ended,

all in reasonable detail setting forth in comparative form the corresponding figures as of the end of and for the corresponding period in the preceding Fiscal Year and prepared by the Borrower in accordance with GAAP and, if applicable, containing disclosure of the effect on the financial position or results of operations of any change in the application of accounting principles and practices during the period, and certified by the chief financial officer of the Borrower to present fairly in all material respects the financial condition of the Borrower and its Subsidiaries on a Consolidated basis as of their

respective dates and the results of operations of the Borrower and its Subsidiaries for the respective periods then ended, subject to normal year-end adjustments.

- (b) Upon request by the BPIFAE Agent and at the cost of the Borrower, the Borrower shall procure that the Group's management shall meet in person or by telephone (as the Lenders shall require) with the Lenders on a quarterly basis in order to discuss key strategic, operational, Capital Expenditure, market pricing, customer, distributor and regulatory issues.

## 19.2 Annual Financial Statements

- (a) As soon as practicable and in any event within ninety (90) days after the end of each Fiscal Year (or, if the date of any required public filing is earlier, the date that is no later than the fifth Business Day immediately following the date of any required public filing thereof after giving effect to any extensions granted with respect to such date):

- (i) Form 10-K;
- (ii) an audited Consolidated balance sheet of the Borrower and its Subsidiaries as of the close of such Fiscal Year;
- (iii) the notes (if any) relating to any of the financial statements delivered under this Clause 19.2;
- (iv) audited Consolidated statements of income, retained earnings and cash flows; and
- (v) a report containing management's discussion and analysis of such financial statements for the Fiscal Year then ended,

all in reasonable detail setting forth in comparative form the corresponding figures as of the end of and for the preceding Fiscal Year and prepared in accordance with GAAP and, if applicable, containing disclosure of the effect on the financial position or results of operations of any change in the application of accounting principles and practices during the year.

- (b) Such annual financial statements shall be audited by the independent certified public accounting firm separately notified to the BPIFAE Agent prior to the date of this Agreement or such other firm notified to the BPIFAE Agent (and acceptable to the BPIFAE Agent), and accompanied by a report thereon by such certified public accountants that is not qualified with respect to scope limitations imposed by the Borrower or any of its Subsidiaries or with respect to accounting principles followed by the Borrower or any of its Subsidiaries not in accordance with GAAP.

## 19.3 Annual Business Plan and Financial Projections

- (a) As soon as practicable and in any event no later than 31 March in any calendar year, a draft updated business plan of the Borrower and its Subsidiaries for the ensuing four (4) fiscal quarters ("**Draft Business Plan**"), such Draft Business Plan to be in substantially the same form as the Agreed Business Plan delivered to the BPIFAE Agent



on or prior to the First Effective Date and prepared, to the extent applicable, in accordance with GAAP and to include, on a quarterly basis, the following:

- (i) information relating to the amounts outstanding under the Convertible Notes;
  - (ii) an operating and capital budget in respect of the next three (3) succeeding Fiscal Years;
  - (iii) a projected income statement;
  - (iv) a statement of cash flows on a three (3) year projected basis (including, calculations (in reasonable detail) demonstrating compliance with each of the financial covenants set out in Clause 20 (*Financial Covenants*)) and balance sheet; and
  - (v) a report setting forth management's operating and financial assumptions underlying such projections.
- (b) The BPIFAE Agent shall no later than twenty (20) Business Days after receipt of the Draft Business Plan provide to the Borrower:
- (i) any comments and/or proposed amendments to the Draft Business Plan; or
  - (ii) a confirmation that the Draft Business Plan is the Agreed Business Plan.
- (c) Subject to paragraph (e) below, in the case of paragraph (b)(i) above, the Borrower shall, in good faith, consider any such comments and/or proposed amendments to the Draft Business Plan and, within five (5) Business Days, confirm to the BPIFAE Agent whether or not the comments and/or amendments proposed by the BPIFAE Agent have been accepted by the Borrower. If such comments and/or proposed amendments are:
- (i) agreed by the Borrower, the Draft Business Plan shall constitute the then current Agreed Business Plan; and
  - (ii) not agreed by the Borrower, then the Borrower, the Lenders and, to the extent applicable, any Financial Advisor, shall consult, for a period not exceeding five (5) Business Days (the "**Consultation Period**"), in good faith in order to agree the Draft Business Plan.
- (d) Subject to paragraph (e) below, in the case of paragraph (c)(ii) above, following the end of the Consultation Period the Draft Business Plan agreed to by the Borrower shall constitute the then current Agreed Business Plan.
- (e) Any:
- (i) projections contained in the Draft Business Plan and referred to in the definition of "*Adjusted Consolidated EBITDA*";
  - (ii) level of Permitted Vendor Indebtedness and cash paying Subordinated Indebtedness referred to in Clause 20.5 (*Net Debt to Adjusted Consolidated EBITDA*) and contained in the Draft Business Plan;

- (iii) material known contingent liability related to any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes referred to in Clause 23.13(b) (*Litigation*) contemplated by the Draft Business Plan; and
- (iv) change in a Draft Business Plan to the amount of Financial Indebtedness that may be incurred by the Borrower in connection with cash paying Subordinated Indebtedness above the amounts set out in the Agreed Business Plan delivered on or prior to the First Effective Date,

must be satisfactory in all respects to the BPIFAE Agent. Notwithstanding the foregoing, if following the end of the Consultation Period the Borrower and the BPIFAE Agent are unable to agree on any of the items in the Draft Business Plan referred to in this paragraph (e) then the matter shall be referred to a Financial Advisor in accordance with paragraph (f).

- (f) If a dispute exists pursuant to paragraph (e) above then the outstanding issue will be resolved by the Financial Advisor which shall:
  - (i) act as an expert and not as an arbitrator; and
  - (ii) be required to determine the matter referred to them within fifteen (15) Business Days of the referral having been made.
- (g) Upon the decision of a Financial Advisor, the Draft Business Plan shall be updated by the Borrower to reflect such determination, and the revised Draft Business Plan shall constitute the Agreed Business Plan.
- (h) Following the Draft Business Plan becoming the Agreed Business Plan, the Borrower shall deliver promptly to the BPIFAE Agent the Agreed Business Plan accompanied by a certificate from a Responsible Officer of the Borrower to the effect that, to the best of such officer's knowledge, such projections are estimates made in good faith (based on reasonable assumptions) of the financial condition and operations of the Borrower and its Subsidiaries for such four (4) fiscal quarter period and in relation to the operating and capital budget, in respect of the next three (3) succeeding Fiscal Years.

#### **19.4 Compliance Certificate**

At each time:

- (a) financial statements are delivered pursuant to Clause 19.1 (*Quarterly Financial Statements*) or Clause 19.2 (*Annual Financial Statements*);
- (b) the information and other documentation is delivered pursuant to Clause 19.3(h) (*Annual Business Plan and Financial Projections*); and
- (c) at such other times as the BPIFAE Agent shall reasonably request,

a Compliance Certificate signed by a Responsible Officer and, solely in the case of paragraph (a) above, accompanied by a report from the auditors of the Borrower in substantially the form set out in Schedule 32 (*Form of Auditors Report*) or such other form as shall be acceptable to

the BPIFAE Agent, confirming compliance by the Borrower with each of the financial covenants set out in Clause 20 (*Financial Covenants*) together with, for the fiscal period covered by such financial statements or information (as the case may be):

- (i) an Adjusted Consolidated EBITDA Reconciliation;
- (ii) a reconciliation of the Excess Cash Flow;
- (iii) details of all Spectrum Cash Flow and Spectrum Sales;
- (iv) details of all relevant amounts for the purposes of the calculation of the cash sweeps set out in Clauses 7.3 (*Mandatory Prepayment – Cash Sweep of Spectrum Cash Flow*), 7.4 (*Mandatory Prepayment – Excess Cash Flow*) 7.8 (*Mandatory Prepayment – Cash Sweep Following Spectrum Sale*) and 7.9 (*Mandatory Prepayment – Cash Sweep Following Equity Issuance and Debt Issuance*); and
- (v) details of the shareholders of record of the Borrower.

#### **19.5 Other Reports**

- (a) Upon request by the BPIFAE Agent, copies of all relevant public documents required by its independent public accountants in connection with their auditing function, including, without limitation, any management report and any management responses thereto.
- (b) As soon as practicable and in any event no later than 31 March in any calendar year, and at any time upon the reasonable request of the BPIFAE Agent, a Satellite health report prepared by the Borrower and certified by a Responsible Officer setting forth the operational status of each Satellite (other than Satellites yet to be launched) based on reasonable assumptions of the Borrower made in good faith and including such information with respect to the projected solar array life based on the total Satellite power requirements, projected battery life based on total Satellite power requirements, projected Satellite life, information concerning the availability of spare Satellites and such other information pertinent to the operation of such Satellite as the BPIFAE Agent may reasonably request, it being understood that to the extent that any such Satellite health report contains any forward looking statements, estimates or projections, such statements, estimates or projections are subject to significant uncertainties and contingencies, many of which are beyond the Borrower's control, and no assurance can be given that such forward looking statements, estimates or projections will be realised, *provided that* nothing in this paragraph (b) shall require the Borrower to deliver any information to any Lender to the extent delivery of such information is restricted by applicable law or regulation.
- (c) No less than quarterly, a Satellite health report prepared by the Borrower and certified by a Responsible Officer including the following:
  - (i) details of the operational status of each Satellite (other than Satellites yet to be launched) based on reasonable assumptions of the Borrower made in good faith

and in substantially the same form contained in Schedule 30 (*Form of Quarterly Health Report*); and

- (ii) a letter providing details of any material or unusual events that have occurred with respect to the Satellites since the delivery to the BPIFAE Agent of the last quarterly report.
- (d) No later than the Reporting Date, a report prepared by the Borrower and certified by a Responsible Officer with respect to the business of the Group including (but not limited to) details of the following matters:
- (i) network service levels;
  - (ii) the status of all material processes and negotiations with the FCC and/or ANFR (as the case may be) relating to terrestrial Authorisations;
  - (iii) any Asset Dispositions (*but excluding* any Spectrum Sale and any disposal of inventory in the ordinary course of trading (but including any disposal of obsolete, damaged, worn-out or surplus assets)) from the previous month;
  - (iv) an update to the then applicable Spectrum Plan including any Spectrum Sale or proposed monetisation of the Group's Spectrum rights (including an update and commentary on any relevant process and any key events that have either occurred or are scheduled to occur) together with updated detail on any Spectrum expenditure (both Capital Expenditure and Operating Expenditure) incurred to date, or forecast to be incurred, including a reconciliation of such expenditure against the then applicable Spectrum Plan and compliance with Clause 22.19 (*Expenditure on Group Spectrum Rights*);
  - (v) any Equity Issuances, any Debt Issuances or any issuances of Subordinated Indebtedness;
  - (vi) any update on the status of any negotiations with the Supplier in connection with any material dispute between the Borrower and the Supplier;
  - (vii) any planned new gateway or Earth Station developments;
  - (viii) further material expansion into the Latin American market;
  - (ix) updates with respect to any material new products;
  - (x) compliance with the Agreed Business Plan (as updated on an annual basis in accordance with Clause 19.3 (*Annual Business Plan and Financial Projections*));
  - (xi) any Material Contract that the Borrower has entered into (together with a copy thereof);
  - (xii) progress reports in respect of the Hughes and Ericsson ground station upgrades;

- (xiii) prior to 30 November 2020, an update as to the status of the 2021 Equity Issuance (including an update and commentary on any relevant process and any key events that have either occurred or are scheduled to occur);
- (xiv) solely in relation to the Monthly Report that relates to January 2021, the Borrower shall include all relevant material information (including potential equity subscribers) that evidences, and pertains to, the proposed 2021 Equity Issuance;
- (xv) a Cash Movements Summary Report together with a certificate from a Responsible Officer of the Borrower confirming that the Borrower has complied with the terms of the Accounts Agreement;
- (xvi) solely in relation to the Monthly Report that relates to September 2020, any such Monthly Report shall contain a summary (together with supporting information) of the Borrower's plans to ensure no Default arises pursuant to Clause 23.28 (*2021 Equity Issuance*) in form and substance satisfactory to the BPIFAE Agent (acting reasonably);
- (xvii) solely in relation to the Monthly Report that relates to January 2021, such Monthly Report shall contain, in sufficient detail (as determined by the BPIFAE Agent (acting reasonably), the amount, form and proposed participants of the 2021 Equity Issuance (and, if it is reasonably likely that the 2021 Equity Issuance will occur on a date falling prior to 30 March 2021, the Borrower shall provide the information referred to in paragraphs (d)(xvi) and (xvii) in such earlier Monthly Reports as the BPIFAE Agent may request);
- (xviii) confirmation of the identity of any advisor appointed to assist the Borrower in the 2021 Equity Issuance and delivery in sufficient detail (as determined by the BPIFAE Agent (acting reasonably), of the amount, form and the identity of the proposed participants of the 2021 Equity Issuance (and, if it is reasonably likely that the 2021 Equity Issuance will occur on a date falling prior to 30 March 2021, the Borrower shall provide the information referred to in this paragraph (d)(xvi) and paragraph (d)(xvii) in such earlier Monthly Reports as the BPIFAE Agent may request);
- (xix) the amount of any cash payments made pursuant to the Relevant EIPs in the Month to which the Monthly Report relates (together with a confirmation as to the amounts in aggregate paid pursuant to the Relevant EIPs in the then current Financial Year); and
- (xx) any other matters or events which are likely to have a material effect (positive or negative) on the Group's operations, prospects and results of operations *provided that* a failure to report on a matter pursuant to this paragraph (d)(xx) shall not constitute an Event of Default if such failure does not have, or could not reasonably be expected to have, a Material Adverse Effect,

(the "**Monthly Report**").

- (e) Such other information regarding the operations, business affairs and financial condition of the Borrower or any of its Subsidiaries as the BPIFAE Agent or any Lender may reasonably request, including, to the extent not already provided, delivery by the Borrower of certified copies of all agreements, instruments, filings and other documents necessary, or otherwise reasonably requested by the BPIFAE Agent, in order to effect the Equity Commitments in accordance with the provisions of the First Global Deed of Amendment and Restatement, the Second Global Amendment and Restatement Agreement or the Third Global Amendment and Restatement Agreement, as applicable.

#### 19.6 Notice of Litigation and Other Matters

Promptly (but in no event later than ten (10) Business Days after any Responsible Officer of the Borrower obtains knowledge thereof) written notice of:

- (a) all documents dispatched by the Borrower to all of its stockholders (or any class thereof) or its creditors generally at the same time as they are dispatched;
- (b) the commencement of all proceedings and investigations by or before any Governmental Authority and all actions and proceedings in any court or before any arbitrator against or involving the Borrower or any Subsidiary thereof or any of their respective properties, assets or businesses that if adversely determined could reasonably be expected to result in a Material Adverse Effect;
- (c) any notice of any violation received by the Borrower or any Subsidiary thereof from any Governmental Authority including, without limitation:
  - (i) any notice of violation of any Environmental Law and the details of any environmental claim, litigation, arbitration or administrative proceedings which are current, threatened or pending against any member of the Group; and
  - (ii) any other notice of violation which in each case could reasonably be expected to have a Material Adverse Effect;
- (d) any labour controversy that has resulted in a strike or other work action against the Borrower or any Subsidiary thereof which in each case could reasonably be expected to have a Material Adverse Effect;
- (e) any attachment, judgment, lien, levy or order exceeding US\$1,000,000 that has been assessed against the Borrower or any Subsidiary thereof;
- (f) any claim for *force majeure* (howsoever described) by a party under a Commercial Contract;
- (g) details of:
  - (i) any delay which has a duration exceeding three (3) Months, to the construction and scheduled delivery dates of the Satellites under the Satellite Construction Contract (as delivered pursuant to Schedule 2 (*Conditions Precedent*));
  - (ii) any event which could reasonably be expected to result in the last Launch occurring later than the fourth fiscal quarter of 2010; and

- (iii) suspension, interruption, cancellation or termination of a Commercial Contract;
- (h) any amendments or modifications to a Commercial Contract, together with a copy of such amendment;
- (i) any Default or Event of Default;
- (j) any event which constitutes or which with the passage of time or giving of notice or both would constitute a default or event of default under any Material Contract to which the Borrower or any of its Subsidiaries is a party or by which the Borrower or any Subsidiary thereof or any of their respective properties may be bound which could reasonably be expected to have a Material Adverse Effect;
- (k) any unfavourable determination letter from the US Internal Revenue Service regarding the qualification of an Employee Benefit Plan under Section 401(a) of the Code (along with a copy thereof);
- (l) a copy of each Internal Revenue Service Form 5500 (including the Schedule B or such other schedule as contains actuarial information) filed in respect of a Pension Plan with Unfunded Pension Liabilities;
- (m) any Obligor or ERISA Affiliate obtaining knowledge or a reason to know that any ERISA Termination Event has occurred or is reasonably expected to occur, a certificate of any Responsible Officer of the Borrower describing such ERISA Termination Event and the action, if any, proposed to be taken with respect to such ERISA Termination Event and a copy of any notice filed with the PBGC or the Internal Revenue Service pertaining to such ERISA Termination Event and any notices received by such Obligor or ERISA Affiliate from the PBGC, any other governmental agency or any Multiemployer Plan sponsor with respect thereto; provided that in the case of ERISA Termination Events under paragraph (c) of the definition thereof, in no event shall notice be given later than the occurrence of the ERISA Termination Event;
- (n) any Obligor or ERISA Affiliate obtaining knowledge or a reason to know of:
  - (i) a material increase in Unfunded Pension Liabilities (taking into account only Pension Plans with positive Unfunded Pension Liabilities) since the date the representations hereunder are given or deemed given, or from any prior notice, as applicable;
  - (ii) the existence of potential withdrawal liability under Section 4201 of ERISA, if each Obligor and ERISA Affiliate were to withdraw completely from any and all Multiemployer Plans;
  - (iii) the adoption of, or the commencement of contributions to, any Pension Plan or Multiemployer Plan by any Obligor or ERISA Affiliate, or
  - (iv) the adoption or amendment of any Pension Plan which results in a material increase in contribution obligations of any Obligor or any ERISA Affiliate, a detailed written description thereof from any Responsible Officer of the Borrower;

- (o) if, at any time after the date of this Agreement, any Obligor or any ERISA Affiliate maintains, or contributes to (or incurs an obligation to contribute to), an Employee Benefit Plan or Multiemployer Plan which is not set forth in Schedule 9 (*ERISA Plans*), then the Borrower shall deliver to the BPIFAE Agent an updated Schedule 9 as soon as practicable, and in any event within ten (10) days after such Obligor or ERISA Affiliate maintains or contributes (or incurs an obligation to contribute) thereto; and
- (p) if, after the date of the First Global Deed of Amendment and Restatement, and other than with respect to any PIK Interest paid in compliance with the terms of this Agreement, James Monroe III, Thermo, the Borrower, any Subsidiary Guarantor or any of such parties' respective Affiliates (directly, indirectly or beneficially):
  - (i) acquires ownership or control of any of the 8% New Notes, the 8% Old Notes or the 5% Notes; or
  - (ii) becomes a party to any written agreement, side-letter, undertaking or understanding relating to such person's ownership of or control of any voting or economic rights associated with the 8% New Notes, the 8% Old Notes or the 5% Notes.

#### **19.7 Notices Concerning Communications Licences**

Promptly (but in no event later than ten (10) Business Days after any Responsible Officer of the Borrower obtains knowledge thereof) written notice of:

- (a) (i) any citation, notice of violation or order to show cause issued by the FCC, the ANFR or any Governmental Authority with respect to any Material Communications Licence; (ii) if applicable, a copy of any notice or application by the Borrower requesting authority to or notifying the FCC, or the ANFR of its intent to cease telecommunications operations for any period in excess of ten (10) days; or (iii) notice of any other action, proceeding or other dispute, which, if adversely determined, could reasonably be expected to result in the loss or revocation of any Material Communications Licence; and
- (b) any lapse, loss, modification, suspension, termination or relinquishment of any Material Communications Licence, permit or other authorisation from the FCC, the ANFR or other Governmental Authority held by the Borrower or any Subsidiary thereof or any failure of the FCC, the ANFR or other Governmental Authority to renew or extend any such Material Communications Licence, permit or other authorisation for the usual period thereof and of any complaint against the Borrower or any of its Subsidiaries or other matter filed with or communicated to the FCC, the ANFR or other Governmental Authority.

#### **19.8 Convertible Notes**

The Borrower shall:

- (a) provide to the BPIFAE Agent upon its request information relating to the amounts outstanding under any Convertible Notes issued by the Borrower; and



- (b) promptly on request, supply to the BPIFAE Agent such further information regarding the Convertible Notes as any Finance Party through the BPIFAE Agent may reasonably request.

#### **19.9 Final In-Orbit Acceptance**

The Borrower shall:

- (a) provide to the BPIFAE Agent a certificate signed by a Responsible Officer confirming that Final In-Orbit Acceptance has occurred (such certificate to be in form and substance satisfactory to the BPIFAE Agent) within five (5) Business Days following Final In-Orbit Acceptance; and
- (b) promptly on request, supply to the BPIFAE Agent such further information regarding Final In-Orbit Acceptance as any Finance Party through the BPIFAE Agent may reasonably request.

#### **19.10 Individual In-Orbit Acceptance**

The Borrower shall provide to the BPIFAE Agent a certificate signed by a Responsible Officer confirming that, in respect of the relevant Satellite:

- (a) the testing of such Satellite has been completed and the Satellite Performance Criteria has been successfully met in respect of the relevant Satellite, promptly after the completion of such tests; and
- (b) Individual In-Orbit Acceptance has occurred not later than five (5) days after achieving Individual In-Orbit Acceptance.

#### **19.11 Equity Cure Contribution**

The Borrower shall promptly inform the BPIFAE Agent when an Equity Cure Contribution is to be made (including the details of any Equity Issuance or Subordinated Indebtedness being applied for such purpose).

#### **19.12 Use of Websites**

- (a) The Borrower may satisfy its obligation under this Agreement to deliver any information in relation to those Lenders (the “**Website Lenders**”) who accept this method of communication by posting this information onto an electronic website designated by the Borrower and the BPIFAE Agent (the “**Designated Website**”) if:
  - (i) the BPIFAE Agent expressly agrees (after consultation with each of the Lenders) that it will accept communication of the information by this method;
  - (ii) both the Borrower and the BPIFAE Agent are aware of the address of and any relevant password specifications for the Designated Website; and
  - (iii) the information is in a format previously agreed between the Borrower and the BPIFAE Agent.

If any Lender (a “**Paper Form Lender**”) does not agree to the delivery of information electronically then the BPIFAE Agent shall notify the Borrower accordingly and the Borrower shall supply the information to the BPIFAE Agent (in sufficient copies for each Paper Form Lender) in paper form. In any event the Borrower shall supply the BPIFAE Agent with at least one (1) copy in paper form of any information required to be provided by it.

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

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

- (d) Any Website Lender may request, through the BPIFAE Agent, one (1) paper copy of any information required to be provided under this Agreement which is posted onto the Designated Website. The Borrower shall comply with any such request within ten (10) Business Days.

### **19.13 “Know your Customer” Checks**

- (a) If:
  - (i) the introduction of or any change in (or in the interpretation, administration or application of) any Applicable Law made after the date of this Agreement;
  - (ii) any change in the status of any Obligor after the date of this Agreement; or
  - (iii) a proposed assignment or transfer by a Lender of any of its rights and obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer,

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

- (b) Each Lender shall promptly upon the request of the BPIFAE Agent supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the BPIFAE Agent (for itself) in order for the BPIFAE Agent to carry out and be satisfied it has complied with all necessary “*know your customer*” or other similar checks under all Applicable Laws pursuant to the transactions contemplated in the Finance Documents.
- (c) The Borrower shall:
  - (i) on and from 1 January 2021 to the date that is 3 Business Days prior to the 2021 Equity Issuance, promptly notify the BPIFAE Agent of any change to the identity of a proposed participant in the 2021 Equity Issuance promptly upon the Borrower becoming aware of the same; and
  - (ii) confirm at least 3 Business Days prior to the 2021 Equity Issuance, the identity of the actual participants in the 2021 Equity Issuance.

#### **19.14 Spectrum Plan**

- (a) As soon as practicable and in any event no later than 30 June 2017, the Borrower shall deliver to the BPIFAE Agent the Spectrum Plan (in a form pre-agreed with the BPIFAE Agent (acting reasonably)) setting out in reasonable detail its plan to monetise its Spectrum rights, such Spectrum Plan to include:
  - (i) details of the expenditure (including both Capital Expenditure and Operating Expenditure) it forecasts to incur in connection with the Group’s Spectrum rights, and the source of funds that it proposes to apply towards payment of such expenditure; and
  - (ii) details regarding its process for engaging with potential strategic partners.
- (b) The Spectrum Plan delivered pursuant to paragraph (a) above shall be updated each Month by the Monthly Report in accordance with Clause 19.5(d)(iv) (*Other Reports*).
- (c) If requested by the BPIFAE Agent following the delivery of a Monthly Report, the Borrower shall make itself available promptly to discuss with the Finance Parties and

the Financial Advisor the contents of the Spectrum Plan (as updated by the Monthly Report) together with any other issues relating thereto.

- (d) The Borrower shall, in good faith, consider any comments and/or proposed amendments to the Spectrum Plan (as updated by a Monthly Report) made by a Finance Party or the Financial Advisor and, to the extent that any such comments and/or amendments are agreed by the Borrower (acting reasonably), it shall update the Spectrum Plan to reflect such comments and/or amendments.

## **20. Financial Covenants**

### **20.1 Maximum Covenant Capital Expenditures**

- (a) Subject to paragraph (b) below, the Borrower (and its Subsidiaries on a Consolidated basis) will not permit the aggregate amount of all Covenant Capital Expenditures in any Relevant Period to exceed the amount set out in column 4 entitled “*Maximum Capex Covenant D*” in the table contained in Part A (*Maximum Covenant Capital Expenditures*) of Schedule 4 (*Maximum Covenant Capital Expenditures*).
- (b) If, in any Relevant Period, the Covenant Capital Expenditures referred to in paragraph (a) above are less than the permitted Covenant Capital Expenditures in that Relevant Period, any excess of the permitted amount over the actual amount may be added to the maximum amount of permitted Covenant Capital Expenditures for the next (and subsequent) Relevant Periods *provided that* the Borrower (and its Subsidiaries on a Consolidated basis) shall not, in any one year, rollover an amount in excess of the amount set out in column 6 entitled “*Capex Available for Rollover F*” in the table contained in Part A (*Maximum Covenant Capital Expenditures*) of Schedule 4 (*Maximum Covenant Capital Expenditures*) or, for successive rollovers until 2017, shall not rollover a cumulative amount in excess of the amount set out in column 7 entitled “*Cumulative Rollover C+F*” in the table set out in Part A (*Maximum Covenant Capital Expenditures*) of Schedule 4 (*Maximum Covenant Capital Expenditure*).
- (c) Notwithstanding anything in this Agreement to the contrary, up to US\$15,516,236 in Capital Stock of the Borrower that has been or will be issued to Hughes during the Fiscal Year of 2015 shall be excluded from any calculation of Covenant Capital Expenditures for the purpose of calculating compliance with this Clause 20.1 (*Maximum Covenant Capital Expenditures*).

### **20.2 Minimum Liquidity**

- (a) The Borrower shall at all times maintain a minimum Liquidity of US\$4,000,000.
- (b) At the end of each Month, the Borrower shall provide to the BPIFAE Agent a report detailing the daily Liquidity amounts for such Month, which daily Liquidity amounts shall be not less than the minimum Liquidity set out in paragraph (a) above.
- (c) For the avoidance of doubt, if the Borrower fails to comply with paragraph (a) above it shall deliver a notice to the BPIFAE Agent in accordance with Clause 19.6(i) (*Notice of Litigation and Other Matters*).

### 20.3 Adjusted Consolidated EBITDA

The Borrower shall ensure that the Adjusted Consolidated EBITDA in respect of any Relevant Period (including (without double-counting) in the calculation of Adjusted Consolidated EBITDA any Equity Cure Contribution made in respect of such period and not including in such calculation any Equity Cure Contribution that was counted towards a calculation of any covenant for any prior Relevant Period) shall not be less than the amount set out in column 2 (*Column 2 – Amount*) below opposite that Relevant Period.

<b>Column 1 – Relevant Period</b>	<b>Column 2 – Amount</b>
Relevant Period commencing on 1 July 2018 and expiring 31 December 2018	US\$47,694,042
Relevant Period commencing on 1 January 2019 and expiring 30 June 2019	US\$45,509,317
Relevant Period commencing on 1 July 2019 and expiring 31 December 2019	US\$21,174,000
Relevant Period commencing on 1 January 2020 and expiring 30 June 2020	US\$18,245,000
Relevant Period commencing on 1 July 2020 and expiring 31 December 2020	US\$23,755,000
Relevant Period commencing on 1 January 2021 and expiring 30 June 2021	US\$20,524,000
Relevant Period commencing on 1 July 2021 and expiring 31 December 2021	US\$26,780,000
Relevant Period commencing on 1 January 2022 and expiring 30 June 2022	US\$23,417,000
Relevant Period commencing on 1 July 2022 and expiring 31 December 2022	US\$30,152,000

### 20.4 Debt Service Coverage Ratio

The Borrower shall ensure that the Debt Service Coverage Ratio in respect of any Relevant Period (including (without double-counting) any Equity Cure Contribution made in accordance with Clause 23.2(c) (*Financial Covenants*) provided that any Equity Cure Contribution shall only be counted in the calculation of Liquidity for such purpose) specified in column 1 (*Column 1 – Relevant Period*) below shall not be less than the ratio set out in column 2 (*Column 2 – Ratio*) below opposite that Relevant Period.

<b>Column 1 - Relevant Period</b>	<b>Column 2 - Ratio</b>
Relevant Period commencing on 1 January 2018 and expiring 31 December 2018	1.00:1
Relevant Period commencing on 1 July 2018 and expiring 30 June 2019	1.00:1
Relevant Period commencing on 1 January 2019 and expiring 31 December 2019	1.00:1
Relevant Period commencing on 1 July 2019 and expiring 30 June 2020	1.00:1
Relevant Period commencing on 1 January 2020 and expiring 31 December 2020	1.00:1
Relevant Period commencing on 1 July 2020 and expiring 30 June 2021	1.00:1
Relevant Period commencing on 1 January 2021 and expiring 31 December 2021	1.00:1
Relevant Period commencing on 1 July 2021 and expiring 30 June 2022	1.00:1
Relevant Period commencing on 1 January 2022 and expiring 31 December 2022	1.00:1

## 20.5 Net Debt to Adjusted Consolidated EBITDA

The Borrower shall ensure that the ratio of Net Debt to Adjusted Consolidated EBITDA in respect of any Relevant Period (including (without double-counting) any Equity Cure Contribution made in accordance with Clause 23.2(c) (*Financial Covenants*) provided that any Equity Cure Contribution shall only be counted in the calculation of Liquidity for such purpose) specified in column 1 (*Column 1 – Relevant Period*) below shall not be greater than the ratio set out in column 2 (*Column 2 – Ratio*) below opposite that Relevant Period.

<b>Column 1 - Relevant Period</b>	<b>Column 2 - Ratio</b>
Relevant Period commencing on 1 January 2018 and expiring 31 December 2018	5.00:1
Relevant Period commencing on 1 July 2018 and expiring 30 June 2019	4.25:1
Relevant Period commencing on 1 January 2019 and expiring 31 December 2019	4.90:1
Relevant Period commencing on 1 July 2019 and expiring 30 June 2020	4.47:1
Relevant Period commencing on 1 January 2020 and expiring 31 December 2020	3.96:1
Relevant Period commencing on 1 July 2020 and expiring 30 June 2021	2.50:1
Relevant Period commencing on 1 January 2021 and expiring 31 December 2021	2.50:1
Relevant Period commencing on 1 July 2021 and expiring 30 June 2022	2.50:1
Relevant Period commencing on 1 January 2022 and expiring 31 December 2022	2.50:1

## 20.6 Interest Coverage Ratio

The Borrower shall ensure that the ratio of Adjusted Consolidated EBITDA to Consolidated Interest Expense in respect of any Relevant Period (including within Adjusted Consolidated EBITDA (without double counting) any Equity Cure Contribution made in accordance with Clause 23.2 (*Financial Covenants*) in respect of such period and not including any Equity Cure Contribution that was counted towards a calculation of any covenant for any prior Relevant Period) specified in column 1 (*Column 1 – Relevant Period*) below shall not be less than the ratio set out in column 2 (*Column 2 – Ratio*) below opposite that Relevant Period.

Column 1 - Relevant Period	Column 2 - Ratio
Relevant Period commencing on 1 January 2018 and expiring 31 December 2018	3.50:1
Relevant Period commencing on 1 July 2018 and expiring 30 June 2019	3.75:1
Relevant Period commencing on 1 January 2019 and expiring 31 December 2019	1.50:1
Relevant Period commencing on 1 July 2019 and expiring 30 June 2020	2.35:1
Relevant Period commencing on 1 January 2020 and expiring 31 December 2020	3.63:1
Relevant Period commencing on 1 July 2020 and expiring 30 June 2021	3.82:1
Relevant Period commencing on 1 January 2021 and expiring 31 December 2021	4.38:1
Relevant Period commencing on 1 July 2021 and expiring 30 June 2022	5.25:1
Relevant Period commencing on 1 January 2022 and expiring 31 December 2022	5.25:1

## 20.7 Financial Testing

The financial covenants set out in this Clause 20 (*Financial Covenants*) shall be tested by reference to the most recent set of financial statements delivered for the Relevant Period pursuant to Clause 19 (*Information Undertakings*).

## 21. Positive Undertakings

The undertakings in this Clause 21 (*Positive Undertakings*) remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force. The Borrower shall, and shall cause each of its Subsidiaries, to comply with the undertakings contained in this Clause 21 (*Positive Undertakings*).

### 21.1 Compliance with Laws

- (a) Observe and remain in compliance in all material respects with all Applicable Laws and maintain in full force and effect all Authorisations, in each case applicable to the conduct of its business except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.
- (b) Without limiting the foregoing, the Borrower shall, and shall cause each of its Subsidiaries to, comply in all material respects with all terms and conditions of all Communications Licences and all federal, state and local laws, all rules, regulations and administrative orders of the FCC, state and local commissions or authorities, the ANFR or any other Governmental Authority that are applicable to the Borrower and its Subsidiaries or the telecommunications operations thereof; *provided that* the Borrower or any Subsidiary may dispute in good faith the applicability or requirements of any such matter so long as such dispute could not reasonably be expected to have a Material Adverse Effect.



## 21.2 Environmental Laws

In addition to and without limiting the generality of Clause 21.1 (*Compliance with Laws*):

- (a) comply with, and use reasonable endeavours to ensure such compliance by all tenants and sub-tenants with all applicable Environmental Laws and obtain, comply with and maintain, and use reasonable endeavours to ensure that all tenants and subtenants, obtain, comply with and maintain, any and all Environmental Permits;
- (b) conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions required under Environmental Laws, and promptly comply with all lawful orders and directives of any Governmental Authority regarding Environmental Laws; and
- (c) defend, indemnify and hold harmless the Finance Parties, and their respective parents, Subsidiaries, Affiliates, employees, agents, officers and directors, from and against any claims, demands, penalties, fines, liabilities, settlements, judgments, damages, costs and expenses of whatever kind or nature known or unknown, contingent or otherwise, arising out of, or in any way relating to the presence of Hazardous Materials, or the violation of, non-compliance with or liability under any Environmental Laws by the Borrower or any such Subsidiary, or any orders, requirements or demands of Governmental Authorities related thereto, including, without limitation, reasonable attorneys' and consultants' fees, investigation and laboratory fees, response costs, court costs and litigation expenses, except to the extent that any of the foregoing directly result from the gross negligence or wilful misconduct of the party seeking indemnification therefor, as determined by a court of competent jurisdiction by final non-appealable judgment.

## 21.3 Compliance with ERISA

In addition to and without limiting the generality of Clause 21.1 (*Compliance with Laws*) except where the failure to comply could not, individually or in aggregate, reasonably be expected to have a Material Adverse Effect:

- (a) comply with all material applicable provisions of ERISA and the Code (including Code provisions compliance with which is necessary for any intended favourable tax treatment) and the regulations and published interpretations respectively thereunder with respect to all Employee Benefit Plans;
- (b) not take any action or fail to take action the result of which could be a liability to the PBGC or to a Multiemployer Plan *provided that* this does not require funding of the pension liabilities at a time or in an amount other than as required by Applicable Law;
- (c) not participate in any prohibited transaction that could result in any civil penalty under ERISA or tax under the Code;
- (d) operate each Employee Benefit Plan in such a manner that will not incur any tax liability under Section 4980B of the Code or any liability to any qualified beneficiary as defined in Section 4980B of the Code; and

- (e) furnish to the BPIFAE Agent upon the BPIFAE Agent's request such additional information about any Employee Benefit Plan as may be reasonably requested by the BPIFAE Agent.

#### 21.4 Insurance

- (a) Maintain insurance with insurance companies and/or underwriters rated by S&P or AM Best's Rating Agency at no lower than A- against such risks and in such amounts as are:
  - (i) maintained in accordance with prudent business practice and corporate governance; and
  - (ii) as may be required by Applicable Law with amounts and scope of coverage not less than those maintained by the Borrower and its Subsidiaries as of the date of this Agreement.
- (b) On the date of this Agreement and from time to time thereafter the Borrower shall deliver to the BPIFAE Agent upon its request information in reasonable detail as to the insurance then in effect, stating the names of the insurance companies, the amounts and rates of the insurance, the dates of the expiration thereof and the properties and risks covered thereby, *provided that*, with respect to paragraph (a) (i) only, neither the Borrower nor any of its Subsidiaries shall be required to obtain any insurance against the risk of loss of any in-orbit Satellites or against business interruption risks in addition to or with a broader scope of coverage than is currently maintained by the Borrower and its Subsidiaries as at the date of this Agreement.
- (c) In addition to, and without limiting the foregoing, the Borrower will, and will cause each of its Subsidiaries to, maintain insurance with respect to the Satellites as follows:
  - (i) ***Property All Risks Insurance***

The Borrower will procure or will cause the Supplier to procure at its own expense and maintain in full force and effect, at all times prior to the Launch of any Satellite purchased by the Borrower or any of its Subsidiaries pursuant to the terms of the Satellite Construction Contract, Property All Risks Insurance upon such terms and conditions satisfactory to the BPIFAE Agent and as are reasonably commercially available and customary in the industry which shall cover any loss of, or damage to, the Satellites and the Satellite and Launch specific ground components, including all components thereof, at all times during the manufacture, testing, storage and transportation of the Satellites and the Satellite and Launch specific ground components up to the time of Launch of the Satellites and until delivery to the Borrower of the Satellite and Launch specific ground components.

In no event shall the Borrower or the Supplier be required to maintain or procure Property All Risks Insurance to insure risks that may be required to be insured by, or that covers the same risk or period of coverage provided by the Supplier as the Launch Insurance (as defined below). The Borrower shall cause the Supplier to name BPIFAE, the BPIFAE Agent and the Lenders as additional insured but only to the extent of those persons' interests in such Satellites; and

(ii) **Launch Insurance**

The Borrower will obtain, maintain and keep in full force and effect with respect to each Satellite that is to be launched, space risk insurance against loss of or damage to the Satellite (including any loss or damage which may occur to a Satellite during the period from Launch until Individual In-Orbit Acceptance) such space risk insurance (hereinafter in this Clause 21.4 “**Launch Insurance**”). Launch Insurance shall be bound no later than three (3) Months prior to the then scheduled Launch date of such Satellite.

The Launch Insurance shall include in-orbit cover providing for:

- (x) in the case of the first successful Launch of six (6) Satellites, a six (6) Month stabilisation and performance test period for such six (6) Satellites; and
- (y) in the case of each Launch following the first successful Launch, a three (3) Month stabilisation and performance test period for each Satellite remaining to be launched for the first twenty-four (24) Satellites.

Such Launch Insurance shall be in accordance with terms commercially available and reasonably acceptable to the BPIFAE Agent (acting on the instructions of the Majority Lenders) following consultation with the Insurance Consultant. The Borrower shall not be obliged to obtain, maintain or keep in force space risk insurance on any Satellite after termination for that Satellite under the relevant Launch Insurance policy. The Launch Insurance for each Satellite shall:

- (A) commence from the time that is the earlier of (i) the time designated by the Launch Services Provider during the launch sequence when the command to ignite is intentionally sent to one of the motors of the Launch Vehicle (as such term is defined in the Launch Services Contract) for the purpose of Launch following a planned countdown; and (ii) the time that the cover with respect to the relevant Satellite being launched expires under the insurance procured by the Supplier;
- (B) be denominated in Dollars for an amount not less than US\$190,900,000 until the date of the first successful Launch, and thereafter, to be an amount equal to the higher of (i) the replacement cost of a Satellite (including, the purchase price, Launch and Insurances) and (ii) US\$146,585,500;
- (C) name the applicable Obligor purchasing the Satellite as the named insured and the Security Agent for and on behalf of the Lenders as additional insured and first loss payee in accordance with the Loss Payee Clause up to the amount specified in paragraph (B) above and provide that payments due thereunder

shall be payable directly to the Security Agent as first loss payee (“**Loss Payee**”) who, prior to an Event of Default, shall transfer to the Collection Account, for and on behalf of the Lenders, who shall receive in full such payments to be applied in accordance with clause 11 (*Insurance Proceeds Account*) of the Accounts Agreement, including any accrued unpaid interest; provided that claims if any shall be adjusted with the named insured and paid to the Loss Payee; and

- (D) provide that it will not be cancelled or reduced (other than a reduction from the payment of a claim) or amended without notice to the BPIFAE Agent. All such notices shall be sent by facsimile and e-mail to the BPIFAE Agent by the insurers at the same time such notices are sent to the Borrower and shall be effective as stated in such notices provided that, fifteen (15) days’ advance written notice shall be given in the event of notice of cancellation for non-payment of premium.

The Borrower shall submit evidence of cover satisfactory to the BPIFAE Agent (acting in consultation with the Insurance Consultant), being either the broker’s issued policy documentation cover note, binder or policy documents issued by the relevant Insurer (the “**Launch Insurance Documentation**”) to the BPIFAE Agent at least ninety (90) days prior to the first scheduled Launch date or, upon written request from the Borrower and subject to the approval of the BPIFAE Agent, such later mutually agreed date based on prevailing market conditions.

The Borrower shall obtain from its insurer providing the Launch Insurance waivers of any subrogation rights against the Supplier (or its sub-contractors) and shall provide evidence of such waivers to the BPIFAE Agent sixty (60) days prior to the Launch of any Satellite and shall provide the BPIFAE Agent with a certificate of such insurance coverage (including the percentage of risks given to such insurer) at the BPIFAE Agent’s request.

(iii) ***Third Party Liability Insurance***

The Borrower shall:

- (A) cause the Supplier to subscribe before Launch and/or maintain in full force and effect a third party liability insurance for liabilities arising from bodily injury and loss or damage to third party property (“**Third Party Liability Insurance**”);
- (B) cause the Launch Services Provider to subscribe for and maintain Third Party Liability Insurance coverage for liabilities arising from bodily injury and loss or damage to third party property caused by Satellites after Launch in an amount on an annual basis of not less than an aggregate amount equal to:

- (aa) €60,980,000 in respect of a Launch from the Kourou launch site;
- (bb) US\$100,000,000 in respect of the risks covered under article 15.2.1(ii) of the Launch Services Contract, for Launches from the Baïkonur launch site.

in each case, per occurrence, naming BPIFAE, the BPIFAE Agent and the Lenders as additional insured thereunder. In accordance with the Satellite Construction Contract, the Borrower shall use its best efforts to cause the Launch Services Provider to name the Supplier (and its sub-contractors) as additional insureds under the Launch Services Provider's Third Party Liability Insurance; and

- (C) cause the Launch Services Provider to submit a copy of the Third Party Liability Insurance documentation to the BPIFAE Agent as soon as practicable and in any event no less than thirty (30) days prior to the scheduled Launch date for any Launch. Such insurance shall be in full force at the Launch date (as of Intentional Ignition (as such term is defined in the Launch Services Contract)) and shall be maintained for a period equal to the lesser of:
  - (aa) twelve (12) Months; or
  - (bb) so long as all or any part of the Launch Vehicle (as such term is defined in the Launch Services Contract), the Satellite(s) and/or their components remain in orbit.
- (d) Each insurance policy shall comply with the Lenders' requirements set out in paragraph (e) below and shall be on reasonable terms and conditions and with acceptable exclusions and a reasonable level of deductible acceptable to the BPIFAE Agent (acting on the instructions of the Majority Lenders).

(e) **General Insurance Provisions and Requirements**

The Borrower shall:

- (i) provide, or as appropriate, request the Supplier and/or the Launch Services Provider to deliver to the BPIFAE Agent, promptly after issuance of each relevant Insurance, certificate(s) of internationally recognised insurance broker(s) usually involved in space risk insurance and approved by the Lenders, confirming that:
  - (A) the Property All Risks Insurance, the Launch Insurance and the Third Party Liability Insurance, as appropriate, are in full force and effect on the date they are respectively required to be entered into force,
  - (B) the names and percentages of the relevant insurance companies;
  - (C) the sums insured and expiration dates of such Insurances;

- (D) the premia for the Property All Risks Insurance, Launch Insurance and the Third Party Liability Insurances shall be payable by the Borrower, the Supplier and the Launch Services Provider, as applicable, in accordance with the terms of credit agreed for each such Insurance; and
  - (E) all premia due at the date of such certificate have been paid in full.
- (ii) use reasonable efforts (having regard to the terms which are reasonably commercially available in the insurance market) to obtain agreement to incorporate in the Insurances the following provisions or provisions substantially similar in content:
- (A) the insurers, either directly or via the insurance broker, and the broker shall also advise the BPIFAE Agent (by facsimile and by e-mail) of any loss or of any default in the payment of any premium and of any event other act or omission on the part of the Borrower, the Supplier and/or the Launch Services Provider, as applicable, of which the broker or the insurers have knowledge and which might result in the invalidation, the lapse or the cancellation in whole or in part of such Insurance;
  - (B) the BPIFAE Agent and/or the Lenders shall have the right (without any obligation) to pay the insurance premia if the relevant party fails to or delays in making any such payment within the time periods specified in the relevant insurance policies. If any payment of the premia is effected by the BPIFAE Agent and/or the Lenders, the Borrower shall on demand reimburse the BPIFAE Agent and/or the Lenders the amount of any premia so paid and all related costs and expenses;
  - (C) if the Borrower, the Supplier and/or the Launch Services Provider (as applicable) fails or delays in filing any notice of proof of loss, the BPIFAE Agent shall have the right to join the Borrower, the Supplier and/or the Launch Services Provider (as applicable) in submitting a notice of proof of any loss within the time periods specified in the applicable insurance policies;
  - (D) the insurers waive:
    - (aa) all rights of set-off and counterclaim against BPIFAE, the BPIFAE Agent and the Lenders in connection with their rights to make payments under such insurance; and
    - (bb) all rights of subrogation to the rights of the BPIFAE Agent and the Lenders against the Borrower;
  - (E) the insurance be primary and not excess to or contributory to any insurance or self-insurance maintained by the Lenders;
  - (F) the Insurances shall not be permitted to lapse or to be cancelled, without written notice being given by facsimile and e-mail to the BPIFAE Agent at the same time such notices are sent to the Borrower and shall be

effective as stated in such notices *provided that*, fifteen (15) days' advance written notice shall be given by the Borrower in the event of notice of cancellation for non-payment of premium; and

- (G) the insurers will undertake, not to make any material modification or amendment to the terms of such insurance policies without the prior written consent of the BPIFAE Agent (acting on the instructions of all the Lenders). For the purpose of this paragraph (G), material modification means a modification such that the insurance as modified would not meet any longer the terms and conditions set out in this Agreement.

## 21.5 Additional Domestic Subsidiaries

Notify the BPIFAE Agent of the creation or acquisition of any Domestic Subsidiary and promptly thereafter (and in any event within sixty (60) days), cause such person to:

- (a) become a Subsidiary Guarantor by delivering to the BPIFAE Agent a duly executed Guarantee Agreement or such other document as the BPIFAE Agent shall deem appropriate for such purpose;
- (b) accede to the Second Lien Intercreditor Agreement as a Debtor, a Subordinated Creditor and a Subordinated Debtor (as each such term is defined in the Second Lien Intercreditor Agreement) pursuant to, and in accordance with, the terms of the Second Lien Intercreditor Agreement;
- (c) pledge a security interest in all Collateral owned by such Subsidiary (*provided that* if such Collateral consists of Capital Stock of a Foreign Subsidiary, such security interest will be limited to sixty-five *per cent.* (65%) of such Capital Stock (subject to the provisions of clause 3.6 (*Foreign Subsidiaries Security*) of the Stock Pledge Agreement)) by delivering to the BPIFAE Agent a duly executed supplement to each Security Document or such other document as the BPIFAE Agent shall deem appropriate for such purpose and comply with the terms of each Security Document;
- (d) deliver to the BPIFAE Agent such documents and certificates referred to in Schedule 2 (*Conditions Precedent*) as may be reasonably requested by the BPIFAE Agent;
- (e) deliver to the BPIFAE Agent such original Capital Stock or other certificates and stock or other transfer powers evidencing the Capital Stock of such person;
- (f) deliver to the BPIFAE Agent such updated schedules to the Finance Documents as requested by the BPIFAE Agent with respect to such person; and
- (g) deliver to the BPIFAE Agent such other documents as may be reasonably requested by the BPIFAE Agent (including, any "*know your customer*" information), all in form, content and scope reasonably satisfactory to the BPIFAE Agent.

## 21.6 Additional Foreign Subsidiaries

Notify the BPIFAE Agent at the time that any person becomes a Foreign Subsidiary of the Borrower or any Subsidiary, and promptly thereafter (and in any event within sixty (60) days after notification):

- (a) with respect to any Subsidiary that is directly owned by an Obligor, cause the Borrower or the applicable Subsidiary to deliver to the BPIFAE Agent a Security Document pledging sixty five *per cent.* (65%) of the total outstanding Capital Stock of such new Foreign Subsidiary (subject to the provisions of clause 3.6 (*Foreign Subsidiaries Security*) of the Stock Pledge Agreement) and a consent thereto executed by such new Foreign Subsidiary (including, without limitation, if applicable, original stock certificates (or the equivalent thereof pursuant to the Applicable Laws and practices of any relevant foreign jurisdiction) evidencing that the Capital Stock of such new Foreign Subsidiary, together with an appropriate undated stock power for each certificate duly executed in blank by the registered owner thereof);
- (b) cause such person to deliver to the BPIFAE Agent such documents and certificates referred to in Schedule 2 (*Conditions Precedent*) as may be reasonably requested by the BPIFAE Agent;
- (c) cause the Borrower to deliver to the BPIFAE Agent such updated schedules to the Finance Documents as requested by the BPIFAE Agent with regard to such person; and
- (d) cause such person to deliver to the BPIFAE Agent such other documents as may be reasonably requested by the BPIFAE Agent, all in form, content and scope reasonably satisfactory to the BPIFAE Agent.

#### **21.7 Additional Communications Licences**

Notify the BPIFAE Agent within thirty (30) days after the acquisition of any Material Communications Licence and cause any Communications Licence issued by the FCC or the ANFR that is acquired by the Borrower or any Subsidiary thereof after the date of this Agreement to be held by a Licence Subsidiary.

#### **21.8 Owned Real Property**

As soon as practical, and in any event within thirty (30) days following Financial Close (as such date may be extended by the BPIFAE Agent in its reasonable discretion), or at such later time as may be provided below, with respect to all owned real property (to the extent located in the United States) of the Borrower or any of the other Subsidiaries as of the date of this Agreement:

(a) ***Mortgages***

the BPIFAE Agent shall have received a duly authorised, executed and delivered Mortgage in form and substance reasonably satisfactory to the BPIFAE Agent;

(b) ***Title Insurance***

the BPIFAE Agent shall have received upon its written request therefor a marked-up commitment for a policy of title insurance, insuring the Finance Parties' first priority Liens and showing no Liens (other than those Liens set out in items 7 and 8 of Schedule 17 (*Existing Liens*)), prior to the Finance Parties' Liens other than for *ad valorem* taxes



not yet due and payable, with title insurance companies acceptable to the BPIFAE Agent on the property subject to a Mortgage with the final title insurance policy, being delivered within sixty (60) days after the date of this Agreement, as such date may be extended by the BPIFAE Agent in its reasonable discretion. Further, the Borrower agrees to provide or obtain any customary affidavits and indemnities as may be required or necessary to obtain title insurance satisfactory to the BPIFAE Agent;

(c) ***Title Exceptions***

the BPIFAE Agent shall have received upon its written request therefor copies of all recorded documents creating exceptions to the title policy referred to in Clause 21.8(a) (*Mortgages*);

(d) ***Matters Relating to Flood Hazard Properties***

the BPIFAE Agent shall have received upon its written request therefor a certification from the U.S. National Research Centre, or any successor agency thereto, regarding each parcel of real property subject to a Mortgage; and

(e) ***Other Real Property Information***

the BPIFAE Agent shall have received such other certificates, documents and information as are reasonably requested by the BPIFAE Agent, including, without limitation, engineering and structural reports, permanent certificates of occupancy and evidence of zoning compliance, each in form and substance satisfactory to the BPIFAE Agent.

**21.9 Leased Real Property**

The Borrower shall use reasonable efforts to cause within thirty (30) days following the written request therefor by the BPIFAE Agent (as such date may be extended by the BPIFAE Agent in its reasonable discretion), with respect to all leased real property (to the extent located in the United States) of the Borrower or any of its Subsidiaries as of the date of this Agreement, the BPIFAE Agent to have received a duly authorized, executed and delivered collateral assignment of lease and related landlord agreement, in each case, in form and substance satisfactory thereto.

**21.10 After Acquired Real Property Collateral**

Notify the BPIFAE Agent, within ten (10) Business Days after the acquisition of any owned or leased real property by any Obligor that is not subject to the existing Security Documents, and within ninety (90) days following request by the BPIFAE Agent, deliver or, in the case of leased real property, use reasonable efforts to deliver, the corresponding documents, instruments and information required to be delivered pursuant to:

(a) Clause 21.8 (*Owned Real Property*) if such real property is owned; or

(b) Clause 21.9 (*Leased Real Property*) if such real property is leased.

**21.11 Hedging Agreements**

Not later than ninety (90) days after the end of any fiscal quarter during which more than twenty five *per cent.* (25%) of revenues is originally denominated in a single currency other than Dollars

or Canadian Dollars, execute foreign currency exchange or swap Hedging Agreements with the Original Lenders for such currency on terms and conditions reasonably acceptable to the BPIFAE Agent.

#### **21.12 Taxation**

- (a) Each Obligor shall (and the Borrower shall ensure that each member of the Group will) pay and discharge all Taxes imposed upon it or its assets within the time period allowed without incurring penalties unless and only to the extent that:
  - (i) such payment is being contested in good faith;
  - (ii) adequate reserves are being maintained for those Taxes and the costs required to contest them which have been disclosed in its latest financial statements delivered to the BPIFAE Agent under Clause 19 (*Information Undertakings*); and
  - (iii) such payment can be lawfully withheld and failure to pay those Taxes does not have or is not reasonably likely to have a Material Adverse Effect.
- (b) No Obligor may change its residence for Tax purposes.

#### **21.13 Preservation of Assets**

The Borrower shall (and shall ensure that each member of the Group will) maintain in good working order and condition (ordinary wear and tear excepted) all of its assets necessary in the conduct of its business.

#### **21.14 *Pari Passu* Ranking**

The Borrower shall (and shall ensure that each Obligor will):

- (a) procure that its obligations under the Finance Documents to which it is a party do and will rank at least *pari passu* with all its other present and future unsecured, unsubordinated obligations, save for obligations preferred by operation of Applicable Law; and
- (b) ensure that at all times the claims of each Finance Party against it under the Finance Documents to which it is a party rank at least *pari passu* with the claims of all its unsecured creditors save those whose claims are preferred by any bankruptcy, insolvency, liquidation or similar Applicable Laws of general application.

#### **21.15 Intellectual Property**

The Borrower shall (and shall ensure that each member of the Group will):

- (a) preserve and maintain the subsistence and validity of the Intellectual Property necessary for the business of the relevant Group member;
- (b) use reasonable endeavours to prevent any infringement in any material respect of the Intellectual Property;

- (c) make registrations and pay all registration fees and taxes necessary to maintain the Intellectual Property in full force and effect and record its interest in that Intellectual Property;
- (d) not use or permit the Intellectual Property to be used in a way or take any step or omit to take any step in respect of that Intellectual Property which may materially and adversely affect the existence or value of the Intellectual Property or imperil the right of any member of the Group to use such property; and
- (e) not discontinue the use of the Intellectual Property,

where failure to do so, in the case of paragraphs (a) and (b) above, or, in the case paragraphs (d) and (e) above, such use, permission to use, omission or discontinuation, is reasonably likely to have a Material Adverse Effect.

#### **21.16 Access**

If a Default is continuing or the BPIFAE Agent reasonably suspects a Default is continuing or may occur, each Obligor shall, and the Borrower shall ensure that each member of the Group will permit the BPIFAE Agent and/or the Security Agent and/or accountants or other professional advisers and contractors of the BPIFAE Agent or Security Agent free access at all reasonable times and on reasonable notice at the risk and cost of the Borrower to:

- (a) the premises, assets, books, accounts and records of each member of the Group; and
- (b) meet and discuss matters with management of the Group.

#### **21.17 Further Assurance**

- (a) The Borrower shall (and shall procure that each member of the Group will) promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Security Agent may reasonably specify (and in such form as the Security Agent may reasonably require in favour of the Security Agent or its nominee(s)):
  - (i) to perfect a Lien created or intended to be created under or evidenced by the Security Documents (which may include the execution of a mortgage, charge, assignment or other Lien over all or any of the assets which are, or are intended to be, the subject of the Security Documents) or for the exercise of any rights, powers and remedies of the Security Agent or the Finance Parties provided by or pursuant to the Finance Documents or by Applicable Law;
  - (ii) to confer on the Security Agent or confer on the Finance Parties a Lien over any property and assets of the Group located in any jurisdiction equivalent or similar to a Lien intended to be conferred by or pursuant to the Security Documents; and
  - (iii) to facilitate the realisation of the assets which are, or are intended to be, the subject of a Lien.

- (b) The Borrower shall (and shall procure that each member of the Group shall) take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Lien conferred or intended to be conferred on the Security Agent or the Finance Parties by or pursuant to the Finance Documents.
- (c) The Borrower will, and shall procure that any member of the Thermo Group will, in the case of any Subordinated Liabilities which are not evidenced by any instrument, upon the Security Agent's request, ensure that such Subordinated Liabilities shall be evidenced by an appropriate instrument or instruments.
- (d) The Borrower shall, and shall procure that each of Thermo and the Subsidiary Guarantors shall, promptly upon the request of the Security Agent, at its own cost, do all such acts or execute all such documents reasonably deemed necessary or desirable by the Security Agent to confirm or establish the validity and enforceability of the subordination effected by, and the obligations of the Borrower and such party under, the Thermo Subordination Deed or the Subsidiary Guarantor Subordination Deed (as the case may be).

#### **21.18 Payments under the Satellite Construction Contract**

All payments to be made in accordance with Exhibit F of the Satellite Construction Contract for the balance of phase 1 and 2 after EDC2 (as such term is defined in the Satellite Construction Contract) shall be invoiced in Euros by the Supplier and paid in Dollars using the exchange rate set out in the Supplier Direct Agreement.

#### **21.19 Equity Commitments**

- (a) The Borrower shall procure that each member of the Thermo Group complies with its obligations in respect of the provision of the Equity Commitments under and in accordance with the provisions of the First Global Deed of Amendment and Restatement, the First Thermo Group Undertaking Letter, the Second Global Amendment and Restatement Agreement, the Second Thermo Group Undertaking Letter, the Third Global Amendment and Restatement Agreement, the Third Thermo Group Undertaking Letter, as applicable.
- (b) The Borrower shall procure that any third party (other than Thermo) providing funds to the Group for the purposes of satisfaction of all or a part of the Equity Commitments or pursuant to any other instrument of indebtedness (equity linked or otherwise) shall, to the extent the Equity Commitment (or any portion thereof) is evidenced by an instrument of indebtedness, enter into an Acceptable Intercreditor Agreement.

#### **21.20 Key Agreements**

The Borrower shall:

- (a) duly and punctually perform and comply with its obligations under the Key Agreements, other than any such failure to perform or comply which does not have or could not reasonably be expected to have, a Material Adverse Effect; and

- (b) take all commercially reasonable steps necessary or desirable to protect, maintain, exercise and enforce all its rights with respect to any Key Agreement and use all its commercially reasonable efforts to procure the due performance by each other party to such Key Agreements of such party's respective material obligations under each such Key Agreement.

#### **21.21 New Subordinated Indebtedness**

- (a) The Borrower shall procure that any new Subordinated Indebtedness (other than the Second Lien Facility Agreement, in respect of which Clause 21.25 (*Second Lien Facility*) shall apply) entered into by the Borrower or any Subsidiary on or after the First Effective Date shall:
  - (i) have a maturity that extends beyond the date on which all principal, interest and other amounts due and owing under the Finance Documents have been paid in full; and
  - (ii) be subordinated to the rights of the Finance Parties pursuant to an Acceptable Intercreditor Agreement.
- (b) The Borrower shall procure that upon the entry into any guarantee in respect of the 8% New Notes by the Subsidiary Guarantors pursuant to Clause 22.1(l) (*Limitations on Financial Indebtedness*), a copy of such guarantee is delivered to the BPIFAE Agent together with an opinion from Taft Stettinius & Hollister LLP (or such other law firm as may be acceptable to the BPIFAE Agent) (in substantially the same form as the opinion delivered by Taft Stettinius & Hollister LLP to the BPIFAE Agent as a condition precedent to the First Effective Date) confirming that the subordination arrangements contained therein are the legal, valid, binding and enforceable obligations of the parties to such guarantee. If any Subsidiary becomes a Subsidiary Guarantor or a guarantor of any other notes issued under the Original Indenture and any supplemental indenture relating thereto, such Subsidiary may execute a joinder to the document evidencing the Guarantee Obligations referred to in Clause 22.1(l) (*Limitations on Financial Indebtedness*), subject to the other provisions of such Clause 22.1(l) (*Limitations on Financial Indebtedness*).

#### **21.22 Second Generation Ground Station**

The Borrower shall procure that the second generation ground station updates are completed by Hughes and Ericsson no later than 31 December 2016.

#### **21.23 The 2021 Equity Issuance**

If by 30 January 2021 the 2021 Equity Issuance has not occurred, the Borrower shall promptly mandate an independent internationally recognised advisor (with the terms of such appointment and the identity of any such adviser being, in each case, satisfactory to the BPIFAE Agent (acting reasonably)) to assist the Borrower with the 2021 Equity Issuance.

#### **21.24 Anti-bribery, Anti-corruption and Anti-money Laundering**

Each Obligor shall:

- (a) conduct its businesses in compliance with anti-corruption laws, anti-bribery or anti-money laundering laws, regulations or rules applicable to it in any applicable jurisdiction; and
- (b) maintain policies and procedures designed to promote and achieve compliance with any such laws.

#### **21.25 Second Lien Facility**

- (a) The Borrower shall enter into the Second Lien Facility Agreement on terms satisfactory to each Lender and which shall:
  - (i) be in an aggregate amount equal to, or greater than, the Second Lien Facility Minimum Commitment;
  - (ii) have a maturity that:
    - (A) extends beyond the date on which all principal, interest and other amounts due and owing under the Finance Documents have been paid in full; and
    - (B) is no less than six years from the signing date of the Second Lien Facility Agreement; and
  - (iii) be subordinated to the rights of the Finance Parties pursuant to the Second Lien Intercreditor Agreement.
- (b) The Borrower shall ensure that on the Second Lien Utilisation Date, the Net Cash Proceeds of the Second Lien Facility are applied in:
  - (i) prepayment of the full amount outstanding under the 2019 Bridge Facility Agreement; and
  - (ii) mandatory prepayment of the Loans in accordance with Clause 7.15 (*Mandatory Prepayment – Second Lien Facility*) and Clause 7.13 (*Application of Mandatory Prepayments*).

### **22. Negative Undertakings**

The undertakings in this Clause 22 (*Negative Undertakings*) remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force. The Borrower shall, and shall cause each of its Subsidiaries to, comply with the undertakings contained in this Clause 22 (*Negative Undertakings*).

#### **22.1 Limitations on Financial Indebtedness**

Not create, incur, assume or suffer to exist any Financial Indebtedness except:

- (a) the Obligations (excluding any Hedging Obligations permitted pursuant to Clause 22.1(c));

- (b) Financial Indebtedness incurred in connection with the Interest Rate Cap Agreement;
- (c) Financial Indebtedness incurred in connection with a Hedging Agreement required pursuant to Clause 21.11 (*Hedging Agreements*);
- (d) Financial Indebtedness existing as at the First Effective Date and not otherwise permitted under this Clause 22.1 and set out in Schedule 14 (*Financial Indebtedness and Guarantee Obligations*);
- (e) Guarantee Obligations in favour of the BPIFAE Agent for the benefit of the BPIFAE Agent and the Finance Parties;
- (f) other than Financial Indebtedness incurred under the 2019 Bridge Facility Agreement, unsecured:
  - (i) Subordinated Indebtedness owed by any Obligor to another Obligor;
  - (ii) Subordinated Indebtedness owed by any Obligor to a Foreign Subsidiary;
  - (iii) Financial Indebtedness owed by a Foreign Subsidiary to any Obligor; *provided that* the aggregate amount of such Financial Indebtedness outstanding at any time pursuant to this paragraph (iii) shall not exceed the Foreign Investment Limitation (calculated without regard to paragraph (b) of the definition of Foreign Investment Limitation and excluding the Existing Canadian Note) as of any date of determination;
  - (iv) Financial Indebtedness owed by a Foreign Subsidiary to another Foreign Subsidiary; and
  - (v) Guarantee Obligations by the Borrower on behalf of any Obligor or Foreign Subsidiary not to exceed US\$1,000,000 in aggregate;
- (g) Financial Indebtedness pursuant to the following paragraphs (i) to (v) (and any extension, renewal, replacement or refinancing thereof, but not to increase the aggregate principal amount), *provided that* at the time such Financial Indebtedness is incurred, the BPIFAE Agent and the Lenders shall have received from the Borrower a Compliance Certificate in form and substance satisfactory to the BPIFAE Agent (including an Adjusted Consolidated EBITDA Reconciliation for the fiscal period covered by such Compliance Certificate), demonstrating that, after giving effect to the incurrence of any such Financial Indebtedness, the Borrower will be in *pro forma* compliance with the financial covenants set out in Clause 20 (*Financial Covenants*) applicable at such time:
  - (i) Financial Indebtedness of the Borrower and its Subsidiaries incurred in connection with Finance Leases and/or purchase money Financial Indebtedness of the Borrower and its Subsidiaries in an aggregate amount not to exceed US\$25,000,000 on any date of determination;
  - (ii) Financial Indebtedness of a person existing at the time such person became a Subsidiary or assets were acquired from such person not exceeding US\$10,000,000, to the extent such Financial Indebtedness was not incurred in connection with or in contemplation of, such person becoming a Subsidiary or

the acquisition of such assets, which transactions in aggregate since the date of this Agreement do not exceed at any time US\$25,000,000;

- (iii) subject to paragraph (l) below, Guarantee Obligations with respect to Financial Indebtedness permitted pursuant to paragraph (g) of this Clause 22.1;
- (iv) Financial Indebtedness of Foreign Subsidiaries, not to exceed in the aggregate at any time outstanding US\$2,000,000; and
- (v) Subordinated Indebtedness not otherwise permitted pursuant to this Clause 22.1 in an aggregate amount outstanding not to exceed US\$200,000,000 at any time, *provided that*, no Event of Default has occurred and is continuing and subject to the prior agreement of an Acceptable Intercreditor Agreement. For the avoidance of doubt, neither a Borrower nor a Subsidiary shall incur any Subordinated Indebtedness which permits any cash payment in respect of Subordinated Indebtedness prior to the Final Maturity Date without the prior written consent of the BPIFAE Agent;
- (h) Financial Indebtedness incurred in respect of workers' compensation claims, self-insurance obligations, bankers' acceptances, performance, surety and similar bonds and completion guarantees provided by the Borrower or one of its Subsidiaries in the ordinary course of trading, not to exceed in the aggregate at any time outstanding US\$10,000,000;
- (i) Financial Indebtedness arising from the honouring by a bank or other financial institution of a cheque, draft or similar instrument in the ordinary course of trading inadvertently drawn against insufficient funds, *provided however, that* such Financial Indebtedness is extinguished within five (5) Business Days and does not exceed in the aggregate at any time outstanding US\$10,000,000;
- (j) Financial Indebtedness arising from any agreement by the Borrower or any of its Subsidiaries providing for indemnities, guarantees, purchase price adjustments, holdbacks, contingency payment obligations based on the performances of the acquired or disposed assets or similar obligations incurred by any person in connection with the acquisition or disposition of assets or Capital Stock as permitted by this Agreement *provided that* such Financial Indebtedness does not exceed in the aggregate at any time outstanding US\$10,000,000;
- (k) Financial Indebtedness incurred in connection with any Permitted Vendor Indebtedness;
- (l) Guarantee Obligations of the Subsidiary Guarantors in connection with the 8% New Notes *provided that*:
  - (i) such Guarantee Obligations are subordinated to the provisions of the Finance Documents;
  - (ii) at the time that such Guarantee Obligations are entered into, no member of the Thermo Group is in breach of any of its obligations in respect of the Equity Commitments;



- (iii) the Borrower shall have received the 2013 Closing Commitment and the 2013 Year-End Commitment;
- (iv) no Event of Default has occurred which is continuing;
- (v) the terms of such Guarantee Obligations shall be consistent with, and no less favourable to the Lenders than, the terms set out in the 5.75% Notes Term Sheet;
- (vi) each Subsidiary Guarantor is a party to the Subsidiary Guarantor Subordination Deed; and
- (vii) the Guarantee Obligations shall not be entered into prior to 26 December 2013;
- (m) Financial Indebtedness incurred pursuant to the 2019 Bridge Facility Agreement prior to the first utilisation of the Second Lien Facility Agreement on the Second Lien Utilisation Date and, thereafter, only Financial Indebtedness in respect of capitalised interest not discharged in full at the Second Lien Utilisation Date;
- (n) Financial Indebtedness incurred pursuant to the Second Lien Facility Agreement; and
- (o) Financial Indebtedness otherwise approved by the BPIFAE Agent in writing.

## 22.2 Limitations on Liens

Not create, incur, assume or suffer to exist, any Lien on or with respect to any of its assets or properties (including, without limitation, shares of Capital Stock), real or personal, whether now owned or hereafter acquired, except:

- (a) Liens of the Security Agent or the BPIFAE Agent (as the case may be) for the benefit of the Finance Parties under the Finance Documents;
- (b) Liens not otherwise permitted by this Clause 22 (*Negative Undertakings*) and in existence on the date of this Agreement and described in Schedule 17 (*Existing Liens*);
- (c) Liens for taxes, assessments and other governmental charges or levies not yet due or as to which the period of grace if any, related thereto has not expired or which are being contested in good faith and by appropriate proceedings if adequate reserves are maintained to the extent required by GAAP;
- (d) the claims of material men, mechanics, carriers, warehousemen, processors or landlords for labour, materials, supplies or rentals incurred in the ordinary course of trading:
  - (i) which are not overdue for a period of more than ninety (90) days; or
  - (ii) which are being contested in good faith and by appropriate proceedings if adequate reserves are maintained to the extent required by GAAP;
- (e) Liens consisting of deposits or pledges made in the ordinary course of trading in connection with, or to secure payment of, obligations under workers' compensation, unemployment insurance or similar legislation;
- (f) Liens constituting encumbrances in the nature of zoning restrictions, easements and rights or restrictions of record on the use of real property, which in the aggregate are not

substantial in amount and which do not, in any case, detract from the value of such property or impair the use thereof in the ordinary conduct of trading;

- (g) Liens existing on any asset of any person at the time such person becomes a Subsidiary or is merged or consolidated with or into a Subsidiary which:
  - (i) were not created in contemplation of or in connection with such event; and
  - (ii) do not extend to or cover any other property or assets of the Borrower or any Subsidiary, so long as any Financial Indebtedness related to any such Liens are permitted under Clause 22.1(g)(ii) (*Limitations on Financial Indebtedness*):
- (h) Liens securing Financial Indebtedness permitted under Clause 22.1(g)(i) (*Limitations on Financial Indebtedness*) provided that:
  - (i) such Liens shall be created substantially simultaneously with the acquisition or lease of the related asset;
  - (ii) such Liens do not at any time encumber any property other than the property financed by such Financial Indebtedness;
  - (iii) the amount of Financial Indebtedness secured thereby is not increased; and
  - (iv) the principal amount of Financial Indebtedness secured by any such Lien shall at no time exceed one hundred *per cent.* (100%) of the original purchase price or lease payment amount of such property at the time it was acquired;
- (i) Liens securing Financial Indebtedness permitted under Clause 22.1(g)(iv) (*Limitations on Financial Indebtedness*) provided that such liens do not at any time encumber any property other than that of the applicable Foreign Subsidiary obliged with respect to such Financial Indebtedness;
- (j) Liens to secure the performance of statutory obligations, surety or appeal bonds, performance bonds or other obligations of a like nature incurred in the ordinary course of trading;
- (k) Liens incurred or deposits made in the ordinary course of trading in connection with workers' compensation, unemployment insurance and other types of social security;
- (l) rights of banks to set-off deposits against debts owed to such banks;
- (m) Liens upon specific items of inventory or other goods and proceeds of the Borrower and its Subsidiaries securing their obligations in respect of bankers' acceptances issued or created for the account of any such person to facilitate the purchase, storage or shipment of such inventory or other goods;
- (n) Liens in favour of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;
- (o) Liens encumbering property or assets under construction arising from progress or partial payments by a customer of the Borrower or one of its Subsidiaries relating to such property or assets;

- (p) Liens on assets that are the subject of a sale and leaseback transaction permitted by the provisions of this Agreement;
- (q) Liens securing Permitted Vendor Indebtedness, *provided that* such Lien does not attach or encumber any asset or property of the Borrower or any Subsidiary thereof other than the asset or personal property which is the subject of such obligation;
- (r) Liens securing Financial Indebtedness permitted by Clause 22.1(b) or (c) (*Limitations on Financial Indebtedness*);
- (s) Liens not otherwise permitted under this Agreement securing obligations not at any time exceeding in aggregate US\$5,000,000;
- (t) Liens on the Collateral on a second ranking basis pursuant to the Second Lien Security Documents that:
  - (i) are subordinated in accordance with the Second Lien Intercreditor Agreement; and
  - (ii) secure the obligations of the Borrower under the Finance Documents and the Second Lien Finance Documents; and
- (u) Liens otherwise approved by the BPIFAE Agent in writing.

### 22.3 Limitations on Loans, Investments and Acquisitions

Not purchase, own, invest in or otherwise acquire, directly or indirectly, any Capital Stock, interests in any partnership or joint venture (including, without limitation, the creation or capitalisation of any Subsidiary), evidence of Financial Indebtedness or other obligation or security, substantially all or a portion of the business or assets of any other person or any other investment or interest whatsoever in any other person, or make or permit to exist, directly or indirectly, any loans, advances or extensions of credit to, or any investment in cash or by delivery of property in, any person except:

- (a) investments:
  - (i) existing on the date of this Agreement in Subsidiaries existing on the date of this Agreement;
  - (ii) after the date of this Agreement in:
    - (A) existing Subsidiaries; and/or
    - (B) Subsidiaries formed after the date of this Agreement, *provided that*, in each case:
      - (x) the Borrower and its Subsidiaries comply with the applicable provisions of Clause 21.5 (*Additional Domestic Subsidiaries*); and

- (y) the amount of any such investments in a Foreign Subsidiary shall not exceed the Foreign Investment Limitation as of the date of such investment;
  - (iii) the other loans, advances and investments described on Schedule 21 (*Existing Loans, Investments and Advances*) existing on the date of this Agreement;
  - (iv) by any Subsidiary in the Borrower;
  - (v) in connection with the Permitted Peruvian Acquisition, *provided that*:
    - (A) the Borrower and its Subsidiaries comply with the applicable provisions of Clause 21.6 (*Additional Foreign Subsidiaries*); and
    - (B) the amount of any such investments in a Foreign Subsidiary shall not exceed the Foreign Investment Limitation as of the date of such investment;
- (b) investments in:
- (i) marketable direct obligations issued or unconditionally guaranteed by the United States or any agency thereof maturing within one hundred and twenty (120) days from the date of acquisition thereof;
  - (ii) commercial paper maturing no more than one hundred and twenty (120) days from the date of creation thereof and currently having the highest rating obtainable from either S&P or Moody's;
  - (iii) certificates of deposit maturing no more than one hundred and twenty (120) days from the date of creation thereof issued by commercial banks incorporated under the laws of the United States, each having combined capital, surplus and undivided profits of not less than US\$500,000,000 and having a rating of "A" or better from either S&P or Moody's; *provided that* the aggregate amount invested in such certificates of deposit shall not at any time exceed US\$5,000,000 for any one such certificate of deposit and US\$10,000,000 for any one such bank;
  - (iv) time deposits maturing no more than thirty (30) days from the date of creation thereof with commercial banks or savings banks or savings and loan associations each having membership either in the FDIC or the deposits of which are insured by the FDIC and in amounts not exceeding the maximum amounts of insurance thereunder; and
  - (v) other investments permitted by the Borrower's investment policy as of the date hereof in the form attached at Schedule 27 (*Investment Policy*);
- (c) investments by the Borrower or any of its Subsidiaries in the form of Permitted Joint Venture Investments or, with the prior written consent of the Lenders, Permitted Acquisitions;

- (d) Hedging Agreements permitted pursuant to Clause 21.11 (*Hedging Agreements*) and any Interest Rate Cap Agreement and investments in collateral accounts securing any Hedging Agreements and Interest Rate Cap Agreement;
- (e) purchases of assets in the ordinary course of trading;
- (f) investments in the form of loans and advances to employees in the ordinary course of trading, which, in aggregate, do not exceed at any time US\$500,000;
- (g) intercompany Financial Indebtedness permitted pursuant to Clause 22.1(e) (*Limitations on Financial Indebtedness*);
- (h) loans to one (1) or more officers or other employees of the Borrower or its Subsidiaries in connection with such officers' or employees' acquisition of Capital Stock of the Borrower in the ordinary course of trading, consistent with the Borrower's equity incentive plan, which, in aggregate, do not exceed at any time US\$500,000;
- (i) endorsement of cheques or bank drafts for deposit or collection in the ordinary course of trading;
- (j) performance, surety and appeal bonds;
- (k) investments consisting of non-cash consideration received by the Borrower or any of its Subsidiaries from the sale of assets or Capital Stock of a Subsidiary as permitted by this Agreement; and
- (l) investments in Globaltouch (West Africa) Limited *provided that*:
  - (i) the amount of such investment does not exceed US\$5,000,000 including any such investment made prior to the date of this Agreement;
  - (ii) the investment complies with paragraphs (b), (d) and (e) of the definition of Permitted Joint Venture Investments; and
  - (iii) the Borrower shall deliver such information relating to the investment as the BPIFAE Agent may reasonably request.

#### **22.4 Limitations on Mergers and Liquidations**

Not merge, consolidate or enter into any similar combination with any other person or liquidate, wind-up or dissolve itself (or suffer any liquidation or dissolution) except:

- (a) any Wholly-Owned Subsidiary of the Borrower may be merged or consolidated with or into the Borrower (*provided that* the Borrower shall be the continuing or surviving person) or with or into any Subsidiary Guarantor (*provided that* the Subsidiary Guarantor shall be the continuing or surviving person);
- (b) any Wholly-Owned Subsidiary may sell, lease, transfer or otherwise dispose of any or all of its assets (upon voluntary liquidation or otherwise) to the Borrower or any other Wholly-Owned Subsidiary; (*provided that* if the transferor in such a transaction is a Subsidiary Guarantor, then the transferee must either be the Borrower or a Subsidiary Guarantor);

- (c) any Wholly-Owned Subsidiary of the Borrower may merge with or into the person such Wholly-Owned Subsidiary was formed to acquire in connection with a Permitted Acquisition; and
- (d) any Subsidiary of the Borrower may wind-up into the Borrower or any Subsidiary Guarantor.

## 22.5 Limitations on Asset Dispositions

Not make any Asset Disposition (including, without limitation, the sale of any receivables and leasehold interests and any sale-leaseback or similar transaction) except:

- (a) the sale of inventory in the ordinary course of trading;
- (b) the sale of obsolete, damaged, worn-out or surplus assets no longer needed in the business of the Borrower or any of its Subsidiaries;
- (c) any lease or sub-licence of spectrum subject to a Communications Licence *provided that* such lease or sub-licence is on *bona fide arms'* length terms at the time such agreement is entered into and does not have, and could not reasonably be expected to have, a Material Adverse Effect;
- (d) the transfer of assets to the Borrower or any Subsidiary Guarantor pursuant to Clause 22.4 (*Limitations on Mergers and Liquidations*); and
- (e) the sale or discount without recourse of accounts receivable arising in the ordinary course of trading in connection with the compromise or collection thereof.

## 22.6 Limitations on Dividends and Distributions

- (a) Subject to paragraphs (b) and (c) below, not (and shall procure that each member of the Group shall not) pay or make any Shareholder Distribution without the prior written consent of all the Lenders (including any repayment of the US\$35,000,000 (or such higher amount to take into account accrued but unpaid interest) shareholder loan from Thermo to the Borrower and all other amounts owing to Thermo under the Thermo Loan Agreement).
- (b) Following the making of prepayments required pursuant to Clause 7.15(a) (*Mandatory Prepayment - Second Lien Facility*), the Borrower shall be permitted to prepay on the Second Lien Utilisation Date, the full amount outstanding under the 2019 Bridge Facility Agreement, from the proceeds of the Second Lien Facility.
- (c) The Borrower shall permit the conversion of all amounts outstanding under the Thermo Loan Agreement into Capital Stock of the Borrower by 30 June 2022.

## 22.7 Limitations on Exchange and Issuance of Capital Stock

Except as provided for in the Borrower's 2006 Equity Incentive Plan and the "*Designated Executive Incentive Award Agreement*", not issue, sell or otherwise dispose of any class or series of Capital Stock that, by its terms or by the terms of any security into which it is convertible or exchangeable, is, or upon the happening of an event or passage of time would be:

- (a) convertible or exchangeable into Financial Indebtedness; or
- (b) required to be redeemed or repurchased prior to the date that is six (6) Months after the Final Maturity Date, including at the option of the holder, in whole or in part, or has, or upon the happening of an event or passage of time would have, a redemption or similar payment due.

## **22.8 Transactions with Affiliates**

Not directly or indirectly:

- (a) make any loan or advance to, or purchase or assume any note or other obligation to or from, any of its officers, directors, shareholders or other Affiliates, or to or from any member of the immediate family of any of its officers, directors, shareholders or other Affiliates, or subcontract any operations to any of its Affiliates, unless otherwise expressly permitted under this Agreement; or
- (b) enter into, or be a party to, any other transaction not described in clause (a) above with any of its Affiliates other than:
  - (i) transactions permitted by Clause 22.1 (*Limitations on Financial Indebtedness*), 22.3 (*Limitations on Loans, Investments and Acquisitions*), 22.4 (*Limitations on Mergers and Liquidations*) and 22.7 (*Limitations on Exchange and Issuance of Capital Stock*);
  - (ii) transactions existing on the date of this Agreement and described in Schedule 20 (*Transactions With Affiliates*);
  - (iii) normal compensation and reimbursement of reasonable expenses of officers and directors including adoption of a restricted stock bonus or purchase plan;
  - (iv) other transactions in the ordinary course of trading on terms as favourable as would be obtained by it on a comparable arms-length transaction with an independent, unrelated third party as determined in good faith by the board of directors of the Borrower;
  - (v) subject to the provisions of Clause 22.14 (*Employee Incentive Plans*), the Borrower's incentive compensation plan described in Schedule 22 (*Incentive Plan*); and
  - (vi) transactions pursuant to the Finance Documents.

## **22.9 Certain Accounting Changes; Organisational Documents**

- (a) Not change its Fiscal Year end, or make any change in its accounting treatment and reporting practices except as required by GAAP.

- (b) Not amend, modify or change:
  - (i) its articles of incorporation (or corporate charter or other similar organizational documents); or
  - (ii) its bylaws (or other similar documents),

in any such case, in any manner adverse in any respect to the rights or interests of the Finance Parties.

#### **22.10 Amendments; Payments and Prepayments of Subordinated Indebtedness**

- (a) Not amend or modify (or permit the modification or amendment of) any of the terms or provisions of any Subordinated Indebtedness without the consent of the BPIFAE Agent and the Lenders.
- (b) Other than in respect of a Permitted Second Lien Payment (as such term is defined in the Second Lien Intercreditor Agreement), not cancel, forgive, make any payment or prepayment on, or redeem or acquire for value including, without limitation:
  - (i) by way of depositing with any trustee with respect thereto money or securities before due for the purpose of paying when due; and
  - (ii) at the maturity thereof any Subordinated Indebtedness, except refinancings, refundings, renewals, extensions or exchange of any Subordinated Indebtedness permitted by Clause 22.1 (*Limitations on Financial Indebtedness*).

#### **22.11 Restrictive Agreements**

Not enter into or permit to exist any agreement which impairs or limits the ability of any Subsidiary of the Borrower to pay dividends to the Borrower.

#### **22.12 Nature of Business**

Not alter in any material respect the character or conduct of the business conducted by the Borrower and its Subsidiaries as of the date of this Agreement. Without limiting the foregoing, the Borrower will not permit or cause any Licence Subsidiary to engage in any line of business or engage in any other activity (including without limitation incurring liabilities) other than the ownership of one or more Communications Licences; *provided that*, subject to any restrictions under Applicable Law with respect to Communications Licences, the Borrower shall cause each of the Licence Subsidiaries to execute and deliver a Guarantee Agreement and each other Finance Document to which such Licence Subsidiary is a party. In no event shall:

- (a) any Licence Subsidiary own any assets other than one (1) or more Communications Licences (and assets reasonably related thereto to the extent necessary to comply with all Applicable Law); and
- (b) neither the Borrower nor any Subsidiary other than a Licence Subsidiary shall hold any Communications Licence issued by the FCC or the ANFR.

#### **22.13 Impairment of Liens**



Not take or omit to take any action, which might or would have the result of materially impairing the security interests created in favour of the BPIFAE Agent with respect to the Collateral or grant to any person (other than the BPIFAE Agent for the benefit of itself and the Lenders pursuant to the Security Documents) any interest whatsoever in the Collateral, except for Financial Indebtedness permitted under Clause 22.1 (*Limitations on Financial Indebtedness*), Permitted Liens and Asset Dispositions permitted under Clause 22.5 (*Limitations on Asset Dispositions*).

#### **22.14 Employee Incentive Plans**

- (a) Subject to paragraph (b) below, not (and shall procure that each member of the Group shall not) make any payment in cash under any employee incentive plan.
- (b) The Borrower may make cash payments to its employees pursuant to the Relevant EIPs *provided that* it obtains the prior written consent of the Majority Lenders before making any such payment.

#### **22.15 No Hedging**

- (a) Other than in accordance with Clause 21.11 (*Hedging Agreements*) or by way of the Interest Rate Cap Agreements, the Borrower shall not, without the consent of the BPIFAE Agent, enter into any Hedging Agreement.
- (b) Hedging Agreements shall not be entered into with any parties other than the Original Lenders.

#### **22.16 Commercial Contracts**

- (a) Not amend or grant any waiver:
  - (i) in respect of any provision of any Commercial Contract relating to the first twenty four (24) Satellites, if such amendment or waiver would or could reasonably be expected to adversely affect the Lenders; and
  - (ii) in respect of any other provision of any Commercial Contract not referred to in paragraph (a)(i) above, if such amendment or waiver would or could reasonably be expected to have a Material Adverse Effect.
- (b) Not exercise the option to order from the Supplier up to eighteen (18) additional recurring Spacecraft (as such term is defined in the Satellite Construction Contract) pursuant to Article 29(B) (*Options*) of the Satellite Construction Contract without the prior written consent of the BPIFAE Agent.

#### **22.17 No Amendments to Convertible Notes, First Terrapin Purchase Agreement or Second Terrapin Purchase Agreement**

- (a) Not amend, vary, modify, waive any provision of or agree to the amendment, variation, waiver or modification of any documents relating to any of the Convertible Notes, the First Terrapin Purchase Agreement or the Second Terrapin Purchase Agreement, in each case, without the prior written consent of all the Lenders, save for any amendment in respect of the extension of the redemption date in respect of any of the Convertible Notes.

- (b) Not terminate (pursuant to a breach or default), or permit any termination of, such documents referred to in paragraph (a) above, in each case without the prior written consent of all the Lenders.

#### **22.18 No Amendments to Key Agreements**

Not amend, vary, modify, waive any provision of or agree to the amendment, variation, waiver or modification of any Key Agreement unless such action:

- (a) is required by Applicable Law;
- (b) has not, or could not reasonably be expected to have, a material adverse effect on the ability of the Borrower or relevant counterparty to such Key Agreement to perform its obligations under such Key Agreement or to comply with its obligations under the Finance Documents; or
- (c) is permitted by the Finance Documents.

#### **22.19 Expenditure on Group Spectrum Rights**

Not, at any time, incur any expenditure relating to (either directly or indirectly) the Group's Spectrum rights:

- (a) (either individually or in aggregate) in an amount that exceeds the lesser of:
  - (i) US\$20,000,000; and
  - (ii) twenty *per cent.* (20%) of the aggregate of any Net Cash Proceeds raised pursuant to an Equity Issuance or any arrangements evidencing any Subordinated Indebtedness from 1 January 2017 through to 31 December 2019 (inclusive); and
- (b) on and following 30 June 2017, other than in accordance with the then-applicable Spectrum Plan.

#### **22.20 Anti-bribery, Anti-corruption and Anti-money Laundering**

Not engage in any activity or conduct which would violate any applicable anti-bribery, anti-corruption or anti-money laundering laws, regulations or rules in any applicable jurisdiction.

#### **22.21 Sanctions**

Not, directly or indirectly, use the proceeds of any Utilisation or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or any other Person (as such term is defined in Clause 18.27 (*Sanctions*)):

- (a) to fund any activities or business of or with any Person, or in any country or territory, that, at the time of such funding, is, a Sanctioned Person (as such term is defined in Clause 18.27 (*Sanctions*)) or is in a Sanctioned Country (as such term is defined in Clause 18.27 (*Sanctions*)); or

- (b) in any other manner that would result in a violation of Sanctions by any Person (including any Person participating in any Utilisation hereunder, whether as underwriter, advisor, investor, lender, hedge provider, facility or security trustee or otherwise).

## 23. Events of Default

Each of the events or circumstances set out in Clause 23 (*Events of Default*) is an Event of Default.

### 23.1 Non-Payment

An Obligor does not pay on the due date any amount payable pursuant to a Finance Document at the place and in the currency in which it is expressed to be payable unless:

- (a) its failure to pay is caused by:
  - (i) administrative or technical error; or
  - (ii) a Disruption Event; and
- (b) payment is made within:
  - (i) in the case of paragraph (a)(i) above:
    - (A) in the case of payments of principal and interest, within two (2) Business Days of its due date; or
    - (B) in the case of any other payment, within four (4) Business Days of its due date; and
  - (ii) in the case of paragraph (a)(ii) above:
    - (A) in the case of payments of principal and interest, within three (3) Business Days of the cessation (or reasonable avoidance) of such Disruption Event; or
    - (B) in the case of any other payment, within five (5) Business Days of the cessation (or reasonable avoidance) of such Disruption Event.

### 23.2 Financial Covenants

- (a) Any requirement of Clause 20 (*Financial Covenants*) is not satisfied.
- (b) No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within thirty (30) days of the earlier of the BPIFAE Agent giving notice to the Borrower or the Borrower becoming aware of the failure to comply.
- (c) No Event of Default under paragraph (a) above will occur if no later than the date that is thirty (30) days after the earlier of the BPIFAE Agent giving notice to the Borrower or the Borrower becoming aware of, in each case, the breach of the relevant covenant in respect of a Relevant Period, the Borrower has received an Equity Cure Contribution

in respect of that breach (a “**Relevant Contribution**”) and the Borrower satisfies the relevant covenant recalculated to take into account such Relevant Contribution, *provided that* any such Equity Cure Contribution shall be in a minimum amount of US\$10,000,000 (the “**Minimum Contribution Amount**”) and the Borrower may not cure a breach of a relevant covenant as contemplated under this paragraph (c) where such breach is determined on any date falling after 30 June 2022 (unless such breach is for a Relevant Period ending on 30 June 2022).

- (d) Notwithstanding anything in this Agreement to the contrary, if there is a breach of Clause 20.5 (*Net Debt to Adjusted Consolidated EBITDA*) for any Relevant Period commencing with the Relevant Period that begins on 1 January 2018 and expires on 31 December 2018 and ending with the Relevant Period that begins on 1 July 2021 and expires on 30 June 2022, then such breach may be cured pursuant to paragraph (c) above with the making of an Equity Cure Contribution in an amount equal to the lesser of:
- (i) the amount required to ensure that the ratio of Net Debt to Adjusted Consolidated EBITDA is equal to or less than the ratio set out in column 2 (*Column 2 – Ratio*) opposite that Relevant Period; and
  - (ii) the amount required to cure any breach of Clause 20.3 (*Adjusted Consolidated EBITDA*) for such Relevant Period (before application of the Minimum Contribution Amount pursuant to paragraph (c) above) multiplied by a factor of 1.5,
- provided that* such amount, if less than the Minimum Contribution Amount, shall be increased to the Minimum Contribution Amount in order to comply with paragraph (c) above.
- (e) Notwithstanding anything in this Agreement to the contrary, no portion of any Equity Cure Contribution made pursuant to paragraph (c) above on account of a breach of a covenant during a particular Relevant Period shall be applied to any breach of any covenant in any earlier or subsequent Relevant Periods.

### 23.3 Other Obligations

- (a) An Obligor does not comply with any provision of the Finance Documents (other than those referred to in Clause 23.1 (*Non-Payment*), Clause 23.2 (*Financial Covenants*), Clause 21.19 (*Equity Commitments*), Clause 21.22 (*Second Generation Ground Station*), Clause 21.23 (*The 2021 Equity Issuance*), Clause 21.25 (*Second Lien Facility*), Clause 22.21 (*Sanctions*), Clause 23.23 (*Convertible Notes*), Clause 23.24 (*Termination of Trading*) or Clause 23.25 (*Purchase Notice*)).
- (b) The Borrower does not comply with Clause 21.19 (*Equity Commitments*), Clause 21.22 (*Second Generation Ground Station*), Clause 21.23 (*The 2017 Equity Raise*), Clause 22.21 (*Sanctions*), Clause 23.23 (*Convertible Notes*), Clause 23.24 (*Termination of Trading*) or Clause 23.25 (*Purchase Notice*).
- (c) No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within ten (10) Business Days of the earlier of:

- (i) the BPIFAE Agent giving notice to the Borrower; or
- (ii) the Borrower becoming aware of the failure to comply.

#### **23.4 Misrepresentation**

Any representation or statement made by an Obligor in the Finance Documents or any other document delivered by or on behalf of an Obligor under or in connection with any Finance Document is or proves to have been incorrect or misleading when made or deemed to be made and, if capable of remedy, is not remedied within twenty (20) Business Days of the BPIFAE Agent giving notice to the Borrower or an Obligor becoming aware of such misrepresentation.

#### **23.5 Cross Default**

- (a) Any Financial Indebtedness of any Material Subsidiary is not paid when due nor within any originally applicable grace period.
- (b) Any Financial Indebtedness of any Material Subsidiary is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).
- (c) Any commitment for any Financial Indebtedness of any Material Subsidiary is cancelled or suspended by a creditor of any Material Subsidiary as a result of an event of default (however described).
- (d) Any creditor of any Material Subsidiary becomes entitled to declare any Financial Indebtedness of any Material Subsidiary due and payable prior to its specified maturity as a result of an event of default (however described).
- (e) No Event of Default will occur under this Clause 23.5 if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within paragraphs (a) to (d) above is less than US\$5,000,000 (or its equivalent in any other currency or currencies).

#### **23.6 Insolvency**

Any Material Subsidiary shall:

- (a) commence a voluntary case (or analogous motion) under the federal bankruptcy laws or under other laws, domestic or foreign, relating to bankruptcy, insolvency, reorganisation, winding-up or adjustment of debts or analogous proceedings;
- (b) file a petition (or analogous motion) seeking to take advantage of any other laws, domestic or foreign, relating to bankruptcy, insolvency, reorganisation, winding-up, composition for adjustment of debts or analogous proceedings;
- (c) consent to or fail to contest in a timely and appropriate manner any petition filed against it in an involuntary case under such bankruptcy laws or other laws;
- (d) apply for or consent to, or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of a substantial part of its property, domestic or foreign;

- (e) admit in writing its inability to pay its debts as they become due;
- (f) make a general assignment for the benefit of creditors;
- (g) take any corporate action for the purpose of authorising any of the foregoing; or
- (h) suspend or threaten to suspend making payment on any of its debts or by reason of actual or anticipated financial difficulties commences negotiations with one (1) or more of its creditors with a view to rescheduling any of its indebtedness (other than the Finance Parties in connection with this Agreement).

### **23.7 Insolvency Proceedings**

A case or other proceeding shall be commenced against a Material Subsidiary in any court of competent jurisdiction and such case or proceeding shall continue without dismissal or stay for a period of sixty (60) consecutive days, seeking:

- (a) relief under the federal bankruptcy laws or under other laws, domestic or foreign, relating to bankruptcy, insolvency, reorganisation, winding-up or adjustment of debts or analogous proceedings; or
- (b) the appointment of a trustee, receiver, custodian, liquidator or the like for a Material Subsidiary or for all or any substantial part of their respective assets, domestic or foreign, or an order granting the relief requested in such case or proceeding (including, but not limited to, an order for relief under such federal bankruptcy laws or under other laws, domestic or foreign, relating to bankruptcy, insolvency, reorganisation, winding-up or adjustment of debts or analogous proceedings) shall be entered.

### **23.8 Creditors' Process**

Any attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of a Material Subsidiary having an aggregate value of US\$1,000,000 and is not discharged within twenty (20) Business Days or such longer period of time if such Material Subsidiary is contesting such process in good faith *provided that*, such process:

- (a) is in any event discharged within one hundred and eighty (180) days; and
- (b) does not have or could not reasonably be likely to have a Material Adverse Effect.

### **23.9 Unlawfulness and Invalidity**

- (a) It is or becomes unlawful for an Obligor, or any other member of the Group or the Thermo Group party to an Acceptable Intercreditor Agreement or the Second Lien Intercreditor Agreement, to perform any of its obligations under the Transaction Documents or any Acceptable Intercreditor Agreement to which it is a party or any Lien created or expressed to be created or evidenced by a Security Document ceases to be effective or any subordination under the Second Lien Intercreditor Agreement or any Acceptable Intercreditor Agreement is or becomes unlawful.
- (b) Any obligation or obligations of any Obligor under any Finance Document, or any other member of the Group or the Thermo Group under an Acceptable Intercreditor Agreement or the Second Lien Intercreditor Agreement, are not or cease to be legal, valid, binding

or enforceable and the cessation individually or cumulatively materially and adversely affects the interests of the Lenders under the Finance Documents or Acceptable Intercreditor Agreement.

- (c) Any Transaction Document is terminated or ceases to be in full force and effect or any Lien or subordination created under a Security Document, the Second Lien Intercreditor Agreement or an Acceptable Intercreditor Agreement ceases to be legal, valid, binding, enforceable or effective or is alleged by a party to it (other than a Finance Party) to be ineffective.
- (d) No Event of Default under paragraphs (b) and (c) above will occur in respect of a Finance Document (other than this Agreement, the Second Lien Intercreditor Agreement and an Acceptable Intercreditor Agreement) if the failure to comply is capable of remedy and is remedied within three (3) Business Days of the BPIFAE Agent giving notice to the Borrower or the Borrower becoming aware of the failure to comply.

#### **23.10 Material Adverse Change**

Any event or circumstance occurs which the Majority Lenders reasonably believe has or is reasonably likely to have a Material Adverse Effect *provided that*, no Event of Default shall occur under this Clause 23.10 if such event or circumstance is capable of being remedied and is remedied to the satisfaction of the BPIFAE Agent within thirty (30) days of the BPIFAE Agent giving notice to the Borrower or the Borrower the becoming aware of the occurrence of such event or circumstance.

#### **23.11 Repudiation and Rescission of Agreements**

An Obligor (or any other relevant party) rescinds or purports to rescind or repudiates or purports to repudiate a Transaction Document or evidences an intention to rescind or repudiate a Transaction Document, which has or is likely to have a Material Adverse Effect.

#### **23.12 Expropriation**

The authority or ability of a Material Subsidiary to conduct its business is limited or wholly or substantially curtailed by any seizure, expropriation, nationalisation, intervention, restriction or other action by or on behalf of any governmental, regulatory or other authority or other person in relation to any Material Subsidiary or any of its assets.

#### **23.13 Litigation**

- (a) Any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes are commenced, threatened or continued against any Material Subsidiary or its assets which has or is reasonably likely to have a Material Adverse Effect unless such action is frivolous or vexatious.
- (b) Any material contingent liability known to the Borrower and related to any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes exists (a “**Relevant Liability**”) and:
  - (i) the Relevant Liability is reduced to final judgment or settlement and declared to be payable by the Borrower; and

- (ii) the payment of such Relevant Liability:
  - (A) is not contemplated in the then current Agreed Business Plan (other than any Permitted Supplier Indebtedness that is Permitted Vendor Indebtedness or amounts that might become due and that are approved by the BPIFAE Agent (acting on the instructions of the Majority Lenders)); and
  - (B) would result in a material adverse change to the cash flows of the Borrower, save where appropriate reserves have been allocated to the Relevant Liability.

#### **23.14 Audit Qualification**

The auditors of the Group qualify the audited annual consolidated financial statements of the Group in respect of the calendar year ending 31 December 2013 and all subsequent audited annual consolidated financial statements, to an extent that has or could reasonably be expected to have a Material Adverse Effect.

#### **23.15 ERISA Termination Event**

The occurrence of any of the following events:

- (a) any Obligor or any ERISA Affiliate fails to make full payment when due of all amounts which, under the provisions of any Pension Plan or Multiemployer Plan or Section 412 of the Code, or Section 302 of ERISA, such Obligor or ERISA Affiliate is required to pay as contributions thereto;
- (b) the Borrower or any ERISA Affiliate as an employer under one (1) or more Multiemployer Plans makes a complete or partial withdrawal from any such Multiemployer Plan and the plan sponsor of such Multiemployer Plan notifies such withdrawing employer that such employer has incurred a withdrawal liability requiring payments in an amount exceeding US\$2,500,000; or
- (c) any
  - (i) ERISA Termination Event;
  - (ii) Unfunded Pension Liability (taking into account only Pension Plans with positive Unfunded Pension Liabilities); or
  - (iii) potential withdrawal liability under Section 4201 of ERISA, if any Obligor or ERISA Affiliate were to withdraw completely from any and all Multiemployer Plans,

and the events described in paragraphs (c)(i), (ii) and (iii), either individually or in the aggregate, have resulted, or would be reasonably expected to result, in a material liability of any Obligor or any ERISA Affiliate.

#### **23.16 Environmental**



Any one (1) or more Environmental Claims shall have been asserted against the Borrower or any of its Subsidiaries; the Borrower or any of its Subsidiaries would be reasonably likely to incur liability as a result thereof; and such liability would be reasonably likely, individually or in the aggregate, to have a Material Adverse Effect.

### **23.17 Failure to Bring Satellites in Service**

The Borrower has failed to achieve Final In-Orbit Acceptance by 15 October 2013.

### **23.18 Debt Service Reserve Account**

At any time the Debt Service Reserve Account is not fully funded with the DSRA Required Balance within five (5) Business Days of any drawdown of such Project Account.

### **23.19 [Intentionally Omitted]**

### **23.20 BPIFAE Insurance Policy**

The credit insurance cover under the BPIFAE Insurance Policy extended by BPIFAE in favour of the Lenders in respect of each Facility ceases to be in full force and effect for a reason attributable to the Borrower.

### **23.21 Breach of Subordination Arrangements**

- (a) The Borrower breaches or repudiates any document relating to any notes issued by the Borrower (including the Convertible Notes), including, but not limited to, any subordination arrangements relating to such notes.
- (b) Any enforcement action is taken by any noteholder in violation of any subordination arrangement relating to any of the Convertible Notes (*but excluding* any action in which the Borrower diligently defends itself, each Finance Party and the subordination arrangement (as applicable) and which is dismissed within sixty (60) days or such longer period as the BPIFAE Agent may agree) or any noteholder obtains an adverse judgment by a court of relevant jurisdiction (whether or not subject to appeal) that has not been stayed as to the invalidity, unenforceability or other ineffectiveness of any subordination arrangement in respect of any of the Convertible Notes.
- (c) Any:
  - (i) third party providing funds to the Group pursuant to an Equity Commitment;
  - (ii) party to an Acceptable Intercreditor Agreement (other than a Finance Party); or
  - (iii) other person providing Subordinated Indebtedness,in each case, breaches or repudiates any subordination agreement entered into by such third party.

### **23.22 Equity Commitments**

- (a) Any member of the Thermo Group (or any relevant third party) fails to make available to the Borrower the Equity Commitments when required at the times and in the manner contemplated by the First Global Deed of Amendment and Restatement, the First Thermo

Group Undertaking Letter, the Second Global Amendment and Restatement Agreement, or the Second Thermo Group Undertaking Letter (as the case may be).

- (b) Any member of the Thermo Group (or any relevant third party) terminates, breaches (other than a breach referred to in paragraph (a) above) or repudiates any document evidencing any Equity Commitment, *provided that* no Event of Default shall occur under this paragraph (b):
  - (i) in relation to any breach by a third party in circumstances where a member of the Thermo Group assumes such third party's obligations under such document within twenty (20) days and on no more onerous terms for the Borrower; or
  - (ii) once the Equity Commitment has been fulfilled.

### 23.23 Convertible Notes

- (a) Other than as provided in paragraph (f) below, the Borrower or any Subsidiary makes a payment to or for the benefit of any holder of any of the Convertible Notes in cash (rather than equity) or the Borrower exercises the call right in respect of the 8% New Notes exercisable in December 2013 or in 2017, in each case, without the prior written consent of the Majority Lenders.
- (b) Any Subsidiary enters into or delivers to the holders of the 8% New Notes a guarantee in a manner or in circumstances inconsistent with the provisions of Clause 22.1 (*Limitations on Financial Indebtedness*).
- (c) Any of the 8% Old Notes or the 5% Notes are redeemed (in whole or in part) prior to the Final Discharge Date. For the avoidance of doubt, non-payment of the 8% Old Notes or the 5% Notes at maturity shall not constitute an Event of Default for the purposes of Clause 23.5 (*Cross Default*).
- (d) James Monroe III, Thermo, the Borrower, any Subsidiary Guarantor or any of their respective Affiliates (directly, indirectly or beneficially) exercises any put option with respect to the 8% New Notes.
- (e) Other than as provided in paragraph (f) below, any put option is exercised by the relevant noteholders under the 8% New Notes, the 8% Old Notes or the 5% Notes as a result of the occurrence of a "*Fundamental Change*" (as such term is defined in the Fourth Supplemental Indenture).
- (f) For the avoidance of doubt, paragraphs (a) and (e) do not relate to the put options in respect of the 8% New Notes which may be exercised in April 2018 or April 2023.

### 23.24 Termination of Trading

The occurrence of any "*Termination of Trading*" (as such term is defined in the Fourth Supplemental Indenture).

### 23.25 Purchase Notice

Any Purchase Notice is delivered by James Monroe III, Thermo, any Subsidiary Guarantor or any of their respective Affiliates pursuant to the terms of the Fourth Supplemental Indenture without any waiver of this provision from the Majority Lenders.

### **23.26 Certification**

Any certification by an Obligor under, or as required by, any of the Finance Documents is incorrect in any material respect when delivered.

### **23.27 [Intentionally Omitted]**

### **23.28 2021 Equity Issuance**

If:

- (a) by no later than 30 March 2021, the Borrower has not received new cash contributions in the Collection Account pursuant to an Equity Issuance:
  - (i) in an amount at least equal to the 2021 Equity Issuance Amount; and
  - (ii) the terms of which do not require a member of the Group to make a Shareholder Distribution prior to the Final Discharge Date, (the “2021 Equity Issuance”); and
- (b) on 30 March 2021, the Borrower has failed to demonstrate to the BPIFAE Agent satisfaction of Clause 20.2(a) (*Minimum Liquidity*).

### **23.29 Thermo Loan Agreement**

Any failure to convert all amounts outstanding under the Thermo Loan Agreement into Capital Stock consisting of common shares of the Borrower by 30 June 2022.

## **24. Remedies Upon an Event of Default**

### **24.1 Acceleration**

On and at any time after the occurrence of an Event of Default (other than an Event of Default as set out in Clauses 23.6(a), (b), (c), (d), (f) and (g) (*Insolvency*) and 23.7(a) (*Insolvency Proceedings*)) which is continuing, the BPIFAE Agent may, and it shall if so directed by the Majority Lenders:

- (a) by notice to the Borrower:
  - (i) cancel the Total Commitments whereupon they shall immediately be cancelled and no further Utilisations shall be requested or made under a Facility; and/or
  - (ii) declare that all or part of the Loans, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon the same shall become immediately due and payable; and/or

- (iii) declare that all or part of the Loans are payable on demand, whereupon they shall become immediately due and payable; and/or
- (b) without notice to the Borrower:
  - (i) exercise or direct the Security Agent or the Offshore Account Bank to exercise any or all of its rights, remedies, powers or discretions under the Finance Documents; and/or
  - (ii) exercise all other contractual and legal rights of the Finance Parties in respect of any Liens; and/or
  - (iii) take any other action and pursue any other remedies available under Applicable Law or under the Finance Documents.

## **24.2 Automatic Acceleration**

Following the occurrence of an Event of Default as set out in Clauses 23.6(a), (b), (c), (d), (f) and (g) (*Insolvency*), 23.7(a) (*Insolvency Proceedings*) or upon the occurrence of a Change of Control, the obligations of the Borrower shall be automatically accelerated without any requirement for notice from the Finance Parties whereupon:

- (a) the Total Commitments shall be immediately cancelled and no further Utilisations shall be requested or made under a Facility;
- (b) the Loans, together with accrued interest and all other amounts accrued and outstanding under the Finance Documents (including the BPIFAE 2013 Deferred Fee Premium and the Restructuring Fee) shall become immediately due and payable;
- (c) the Security Agent shall be entitled to exercise any or all of its right, remedies, powers or discretions under the Finance Documents;
- (d) the Finance Parties shall be entitled to exercise all other contractual and legal rights of the Finance Parties in respect of any Liens; and
- (e) the Finance Parties shall be entitled to take any other actions and pursue any other remedies available under Applicable Law or under the Finance Documents.

## **25. Security**

Unless expressly provided to the contrary, the Security Agent holds any security created by a Security Document for the Finance Parties on the terms set out in Schedule 6 (*The Security Agent*).

## **26. Changes to the Lenders**

### **26.1 Assignments and Transfers by the Lenders**

Subject to this Clause 26 (*Changes to the Lenders*), a Lender (the “**Existing Lender**”) shall be entitled to assign any of its rights or transfer any of its rights and obligations under the Finance Documents to any person (the “**New Lender**”) with the prior written consent of:

- (a) the Borrower (such consent not to be unreasonably withheld or delayed in excess of five (5) Business Days commencing on the day upon which the Existing Lender requests such consent, after which such consent shall be deemed to have been given); *provided that*, no such consent is required for an assignment or transfer:
  - (i) required by any Applicable Law;
  - (ii) to a Qualifying Lender or to an existing Lender (or any of its Affiliates);
  - (iii) to an Affiliate or other group member of that Lender;
  - (iv) to a trust, a special purpose securitisation vehicle or any other entity as part of a securitisation or covered bond transaction;
  - (v) to a fund, financial institution or insurance company which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets;
  - (vi) while a Default is continuing;
  - (vii) to BPIFAE; or
  - (viii) made to a “*Second Lien Lender*” (as such term is defined in the Second Lien Intercreditor Agreement) pursuant to, and in accordance with, clause 4.10 (*Option to Purchase: Second Lien Lenders*) of the Second Lien Intercreditor Agreement; and
- (b) other than in relation to a transfer or assignment made pursuant to clause 4.10(a)(ii)(B) (*Option to Purchase: Second Lien Lenders*) of the Second Lien Intercreditor Agreement, BPIFAE.

## **26.2 Conditions of Assignment or Transfer**

- (a) The consent of the Borrower to an assignment must not be withheld solely because the assignment or transfer may result in an increase to the Mandatory Cost.
- (b) An assignment will only be effective on:
  - (i) receipt by the BPIFAE Agent (whether in the Assignment Agreement or otherwise) of written confirmation from the New Lender (in form and substance satisfactory to the BPIFAE Agent) that the New Lender will assume the same obligations to the other Finance Parties as it would have been under if it was an Original Lender;
  - (ii) performance by the BPIFAE Agent of all necessary “*know your customer*” or other similar checks under all applicable laws and regulations in relation to such assignment to a New Lender, the completion of which the BPIFAE Agent shall promptly notify to the Existing Lender and the New Lender;

- (iii) when the BPIFAE Agent updates the Register (as defined in Clause 26.8 (*Register*) below) in accordance with the provisions of Clause 26.8 (*Register*) below; and
  - (iv) the New Lender entering into documentation required for it to accede as a party to the Second Lien Intercreditor Agreement; and
- (c) A transfer will only be effective if the New Lender enters into the documentation required for it to accede as a party to the Second Lien Intercreditor Agreement and if the procedure set out in Clause 26.5 (*Procedure for Transfer or Assignment*) is complied with.
- (d) If:
- (i) a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office; and
  - (ii) as a result of circumstances existing at the date the assignment, transfer or change occurs, an Obligor would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause 13 (*Tax gross-up and Indemnities*) or Clause 14 (*Increased Costs*),

then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under those Clauses to the same extent as the Existing Lender or Lender acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred.

- (e) Each New Lender, by executing the relevant Transfer Certificate or Assignment Agreement, confirms, for the avoidance of doubt, that the BPIFAE Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the transfer or assignment becomes effective in accordance with this Agreement and that it is bound by that decision to the same extent as the Existing Lender would have been had it remained a Lender.

### **26.3 Assignment or Transfer Fee**

The New Lender shall, on the date upon which an assignment or transfer takes effect, pay to the BPIFAE Agent (for its own account) a fee of US\$2,000.

### **26.4 Limitation of Responsibility of Existing Lenders**

- (a) Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:
- (i) the legality, validity, effectiveness, adequacy or enforceability of the Finance Documents or any other documents;
  - (ii) the financial condition of the Borrower or the status of the Project;
  - (iii) the performance and observance by the Borrower of its obligations under the Finance Documents or any other documents; or

- (iv) the accuracy of any statements (whether written or oral) made in or in connection with any Finance Document or any other document,

and any representations or warranties implied by law are excluded.

- (b) Each New Lender confirms to the Existing Lender and the other Finance Parties that it:

- (i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Obligor and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender in connection with any Finance Document; and

- (ii) will continue to make its own independent appraisal of the creditworthiness of each Obligor and its related entities whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.

- (c) Nothing in any Finance Document obliges an Existing Lender to:

- (i) accept a re-transfer or reassignment from a New Lender of any of the rights and obligations assigned or transferred under this Clause 26 (*Changes to the Lenders*); or

- (ii) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by any Obligor of its obligations under the Finance Documents or otherwise.

## 26.5 Procedure for Transfer or Assignment

- (a) In respect of any transfer:

- (i) subject to the conditions set out in Clause 26.2 (*Conditions of Assignment or Transfer*) a transfer is effected in accordance with paragraph (iii) below when the BPIFAE Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender and updates the Register (as defined in Clause 26.8 (*Register*) below) in accordance with the provisions of Clause 26.8 (*Register*) below. The BPIFAE Agent shall, subject to paragraph (ii) below, as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Transfer Certificate

- (ii) The BPIFAE Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary “*know your customer*” or other similar checks under all applicable laws and regulations in relation to the transfer to such New Lender.

- (iii) On the Transfer Date:

- (A) to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by novation its rights and obligations under the Finance Documents each of the Obligors and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and their respective rights against one another under the Finance Documents shall be cancelled (being the “**Discharged Rights and Obligations**”);
  - (B) the Borrower and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as that Obligor and the New Lender have assumed and/or acquired the same in place of that Obligor and the Existing Lender;
  - (C) the BPIFAE Agent, the Security Agent, each Mandated Lead Arranger, the New Lender and other Lenders shall acquire the same rights and assume the same obligations between themselves as they would have acquired and assumed had the New Lender been an Original Lender with the rights and/or obligations acquired or assumed by it as a result of the transfer and to that extent the BPIFAE Agent, each Mandated Lead Arranger, the Security Agent and the Existing Lender shall each be released from further obligations to each other under the Finance Documents; and
  - (D) the New Lender shall become a Party as a “Lender”.
- (iv) For the avoidance of doubt, for the purposes of *article 1278* of the French Civil Code and only in relation to the Borrower Pledge of Bank Accounts, the Borrower Additional Pledge of Bank Accounts and the Holding Account Pledge Agreement it is expressly agreed that the Pledge of Bank Accounts shall be preserved for the benefit of the New Lender and all other Finance Parties.
- (b) In respect of any assignment:
- (i) subject to the conditions set out in Clause 26.2 (*Conditions of Assignment or Transfer*) an assignment may be effected in accordance with paragraph (iii) below when the BPIFAE Agent executes an otherwise duly completed Assignment Agreement delivered to it by the Existing Lender and the New Lender. The BPIFAE Agent shall, subject to paragraph (ii) below, as soon as reasonably practicable after receipt by it of a duly completed Assignment Agreement appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Assignment Agreement.
  - (ii) The BPIFAE Agent shall only be obliged to execute an Assignment Agreement delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary “*know your customer*” or other similar checks under all applicable laws and regulations in relation to the assignment to such New Lender.



- (iii) On the Transfer Date:
  - (A) the Existing Lender will assign absolutely to the New Lender the rights under the Finance Documents expressed to be the subject of the assignment in the Assignment Agreement;
  - (B) the Existing Lender will be released by each Obligor and the other Finance Parties from the obligations owed by it (the “**Relevant Obligations**”) and expressed to be the subject of the release in the Assignment Agreement; and
  - (C) the New Lender shall become a Party as a “*Lender*” and will be bound by obligations equivalent to the Relevant Obligations.
- (iv) Lenders may utilise procedures other than those set out in this Clause 26.5 to assign their rights under the Finance Documents (but not, without the consent of the relevant Obligor or unless in accordance with this Clause 26.5, to obtain a release by that Obligor from the obligations owed to that Obligor by the Lenders nor the assumption of equivalent obligations by a New Lender) *provided that* they comply with the conditions set out in Clause 26.2 (*Conditions of Assignment or Transfer*).

#### **26.6 Copy of Transfer Certificate or Assignment Agreement to Borrower**

The BPIFAE Agent shall, as soon as reasonably practicable after it has executed a Transfer Certificate or an Assignment Agreement, send to the Borrower a copy of that Transfer Certificate or Assignment Agreement.

#### **26.7 Disclosure of Information**

Any Lender may disclose to any of its Affiliates and any other person:

- (a) to (or through) whom that Lender assigns or transfers (or may potentially assign or transfer) all or any of its rights and obligations under this Agreement;
- (b) with (or through) whom that Lender enters into (or may potentially enter into) any sub-participation in relation to, or any other transaction under which payments are to be made by reference to, this Agreement or any Obligor; or
- (c) to whom, and to the extent that, information is required to be disclosed by any applicable law or regulation,

any information about the Borrower, the Thermo Group, the Group and the Finance Documents as that Lender shall consider appropriate if, in relation to paragraphs (a) and (b) above, the person to whom the information is to be given has entered into a Confidentiality Undertaking.

#### **26.8 Register**

- (a) The Borrower hereby designates the BPIFAE Agent, and the BPIFAE Agent agrees, to serve as the Borrower’s agent, solely for purposes of this Clause 26.8, to maintain a register (the “**Register**”) on which it will record the Commitments from time to time of

each of the Lenders and each repayment in respect of the principal amount of the Loans of each Lender.

- (b) Failure to make any such recordation, or any error in such recordation shall not affect the Borrower's obligations in respect of such Loans.
- (c) With respect to any Lender, the transfer or assignment of the Commitments of such Lender and the rights to the principal of, and interest on, any Loan made pursuant to such Commitments shall not be effective until:
  - (i) the Transfer Certificate has been executed by the BPIFAE Agent; and
  - (ii) such transfer is recorded on the Register maintained by the BPIFAE Agent with respect to ownership of such Commitments and Loans. Prior to such recordation all amounts owing to the transferor with respect to such Commitments and Loans shall remain owing to the transferor.
- (d) The registration of an assignment or transfer of all or part of any Commitments and Loans shall be recorded by the BPIFAE Agent on the Register only upon the acceptance by the BPIFAE Agent of a properly executed and delivered Transfer Certificate pursuant to this Clause 26.8.
- (e) The Borrower agrees to indemnify the BPIFAE Agent from and against any and all losses, claims, damages and liabilities of whatsoever nature which may be imposed upon, asserted against or incurred by the BPIFAE Agent in performing its duties under this Clause 26.8 except to the extent resulting from the gross negligence or wilful misconduct of the BPIFAE Agent (as determined by a court of competent jurisdiction in a final and non-appealable decision).

## **26.9 Liens over Lenders' rights**

- (a) In addition to the other rights provided to Lenders under this Clause 26 (*Changes to the Lenders*), each Lender may without consulting with or obtaining consent from the Borrower or the other Lenders, at any time charge, assign or otherwise create a Lien in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of that Lender including, without limitation:
  - (i) any charge, assignment or other Lien (including pursuant to Article L 211-38 et seq. of the French monetary and financial code and pursuant to the European Financial Collateral Directive) to secure obligations to a federal reserve or central bank, or to an Affiliate of a Lender or a special purpose vehicle or any entity set up in connection with a dedicated refinancing scheme for buyer credits in the country of any Lender or in connection with covered bonds programs or to a fund, financial institution or insurance company providing funds dedicated to export credits; and
  - (ii) in the case of any Lender which is a fund, any charge, assignment or other Lien granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by that Lender as security for those obligations or securities,

except that no such charge, assignment or Lien shall:

- (A) release a Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant charge, assignment or Lien for the Lender as a party to any of the Finance Documents; or
  - (B) require any payments to be made by the Borrower or grant to any person any more extensive rights than those required to be made or granted to the relevant Lender under the Finance Documents; *provided that*, this sub-clause (ii) would not be applicable to any Borrower's grossing-up obligation arising whenever an Affiliate of a Lender which would be a "*société de crédit foncier*" would become a Lender further to the implementation of a security interest granted in or over all or any rights of such Lender under any Finance Document in favour of such Affiliate.
- (b) The Borrower undertakes to comply with all necessary formalities, if any, and take all necessary steps in order for the assignment, charge or Lien over the relevant Lender's rights to be created

## **27. Changes to the Borrower**

The Borrower may not assign any of its rights or transfer any of its rights or obligations under the Finance Documents.

## **28. Role of the BPIFAE Agent, the Security Agent and the Mandated Lead Arrangers**

### **28.1 Appointment of the BPIFAE Agent and the Security Agent**

- (a) Each other Finance Party (other than the Security Agent) appoints the BPIFAE Agent to act as its agent under and in connection with the Finance Documents.
- (b) Each other Finance Party (other than the BPIFAE Agent) appoints the Security Agent:
  - (i) to act as its security agent and security trustee under and in connection with the Finance Documents; and
  - (ii) to enforce any Security expressed to be created under the Security Documents as agent (or as otherwise provided) on its behalf, subject always to the terms of the Finance Documents.
- (c) Each other Finance Party authorises the BPIFAE Agent and the Security Agent to exercise the rights, powers, authorities and discretions specifically given to the BPIFAE Agent and the Security Agent under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.

### **28.2 Appointment of the Security Agent (France)**

- (a) Each Finance Party (other than the Security Agent) as “*mandants*” under French law irrevocably:
- (i) appoints the Security Agent to act as agent (*mandataire*) pursuant to article 1984 of the French *Code Civil* for the purpose of executing any French Security Documents in its name, including, if required, the appointment of a custodian which shall hold assets on its behalf in custody under any French Security Documents, and the Security Agent accepts such appointment;
  - (ii) confirms its approval of the French Security Documents creating or expressed to create a Lien benefiting it and any Lien created or to be created pursuant thereto; and
  - (iii) irrevocably authorises, empowers and directs the Security Agent (by itself or by such person as it may nominate) on its behalf, to perform the duties and to exercise the rights, powers and discretions that are specifically delegated to it under or in connection with the French Security Documents, to take any action and exercise any right, power, authorities and discretion upon the terms and conditions set out in this Agreement under or in connection with the French Security Documents, in each case, together with any other rights, powers and discretions which are incidental thereto, it being understood that each Finance Party (other than the Security Agent) shall issue special powers of attorneys in all cases where the exercise of powers granted under this Agreement requires the issuance of any such special powers of attorney, and the Security Agent accepts such appointment.
- (b) The Security Agent will act solely for itself and as agent for the other Finance Parties in carrying out its functions as agent under the French Security Documents.
- (c) The Security Agent shall not have, nor be deemed to have, assumed any obligations to, or trust or fiduciary relationship with, any party to this Agreement other than those for which specific provision is made by the French Security Documents and, to the extent permissible under French law, the other provisions of this Agreement, which shall be deemed to be incorporated in this Clause 28.2, where reference is made to the French Security Documents.
- (d) Notwithstanding Clause 39 (*Governing Law*), this Clause 28.2 shall be governed by, and construed in accordance with, French law. Notwithstanding Clause 40.1 (*Jurisdiction*), any dispute arising out of this Clause 28.2 shall be submitted to the *Tribunal de Commerce de Paris*.
- (e) Each Finance Party, the Security Agent and the Borrower irrevocably acknowledge that the existence and extent of the Security Agent’s authority resulting from this Clause 28.2 and the effects of the Security Agent’s exercise of this authority shall be governed by French law.

### **28.3 Duties of the BPIFAE Agent and the Security Agent**

- (a) Each of the BPIFAE Agent and the Security Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the BPIFAE Agent or the Security Agent for that Party by any other Party.
- (b) Without prejudice to Clause 26.6 (*Copy of Transfer Certificate or Assignment Agreement to Borrower*), paragraph (a) shall not apply to any Transfer Certificate or to any Assignment Agreement.
- (c) Except where a Finance Document specifically provides otherwise, neither the BPIFAE Agent nor the Security Agent is obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (d) If the BPIFAE Agent or the Security Agent receives notice from a Party referring to this Agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the Finance Parties.
- (e) If the BPIFAE Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Finance Party (other than the BPIFAE Agent, the Security Agent or a Mandated Lead Arranger) under this Agreement it shall promptly notify the other Finance Parties.
- (f) The BPIFAE Agent's and the Security Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
- (g) The BPIFAE Agent and the Security Agent shall only have those duties, obligations and responsibilities specified in the Finance Documents to which it is expressed to be a party (and no other shall be implied).

#### **28.4 Role of the Mandated Lead Arrangers**

Except as specifically provided in the Finance Documents, no Mandated Lead Arranger has any obligations of any kind to any other Party under or in connection with any Finance Document.

#### **28.5 No Fiduciary Duties**

- (a) Nothing in this Agreement constitutes the BPIFAE Agent, the Security Agent (except as expressly provided in the Finance Documents) or a Mandated Lead Arranger as a trustee or fiduciary of any other person.
- (b) Neither the BPIFAE Agent, the Security Agent (except as expressly provided in the Finance Documents) nor the Mandated Lead Arrangers shall be bound to account to any Lender for any sum or the profit element of any sum received by it for its own account.

#### **28.6 Business with the Group**

The BPIFAE Agent, the Security Agent and the Mandated Lead Arrangers may accept deposits from, lend money to and generally engage in any kind of banking or other business with any member of the Group.

#### **28.7 Rights and Discretions of the BPIFAE Agent and the Security Agent**

- (a) Each of the BPIFAE Agent and the Security Agent may rely on:
- (i) any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
  - (ii) any statement made by a director, authorised signatory or employee of any person regarding any matters which may reasonably be assumed to be within his knowledge or within his power to verify;
  - (iii) assume that:
    - (A) any instructions received by it from the Majority Lenders, any Lenders or any group of Lenders are duly given in accordance with the terms of the Finance Documents; and
    - (B) unless it has received notice of revocation, that those instructions have not been revoked; and
  - (iv) rely on a certificate from any person:
    - (A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
    - (B) to the effect that such person approves of any particular dealing, transaction, step, action or thing,as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.
- (b) Each of the BPIFAE Agent and the Security Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Lenders) that:
- (i) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 23.1 (*Non-Payment*));
  - (ii) any right, power, authority or discretion vested in any Party or the Majority Lenders has not been exercised; and
  - (iii) any notice or request made by the Borrower (other than a Utilisation Request) is made on behalf of and with the consent and knowledge of the Borrower.
- (c) Each of the BPIFAE Agent and the Security Agent may engage, pay for and rely on the advice or services of any lawyers, accountants, tax advisors, surveyors or other professional advisors or experts.
- (d) Without prejudice to the generality of paragraph (c) above or paragraph (e) below, the BPIFAE Agent or Security Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the BPIFAE Agent or Security Agent (and so separate from any lawyers instructed by the Lenders) if the BPIFAE Agent or Security Agent in its reasonable opinion deems this to be necessary.

- (e) The BPIFAE Agent or Security Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the BPIFAE Agent or Security Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
- (f) Each of the BPIFAE Agent and the Security Agent may act in relation to the Finance Documents through its personnel and agents and shall not:
  - (i) be liable for any error of judgment made by any such person; or
  - (ii) be bound to supervise, or be in any way responsible for, any loss incurred by reason of misconduct, omission or default on the part of any such person,unless such error or such loss was directly caused by the BPIFAE Agent or the Security Agent's (as applicable) gross negligence or wilful misconduct
- (g) Each of the BPIFAE Agent and the Security Agent may disclose to any other Party any information it reasonably believes it has received as agent under this Agreement.
- (h) Notwithstanding any other provision of any Finance Document to the contrary, none of the BPIFAE Agent, the Security Agent nor a Mandated Lead Arranger is obliged to do or omit to do anything if it would or might in its reasonable opinion constitute a breach of any law, regulation or a breach of a fiduciary duty or duty of confidentiality.
- (i) Notwithstanding any provision of any Finance Document to the contrary, neither the BPIFAE Agent or the Security Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.
- (j) Save as expressly otherwise provided in any Finance Document, the Security Agent may exercise its trusts, powers and authorities under the Finance Documents in its absolute and unconditional discretion.

#### **28.8 Majority Lenders' Instructions**

- (a) Unless a contrary indication appears in a Finance Document, each of the BPIFAE Agent and the Security Agent shall:
  - (i) exercise any right, power, authority or discretion vested in it in accordance with any instructions given to it by the Majority Lenders (or, if so instructed by the Majority Lenders, refrain from exercising any right, power, authority or discretion vested in it); and
  - (ii) not be liable for any act (or omission) if it acts (or refrains from taking any action) in accordance with an instruction of the Majority Lenders.
- (b) Save in the case of decisions stipulated to be a matter for any other Lender or group of Lenders under the relevant Finance Document and unless a contrary indication appears

in a Finance Document, any instructions given to the BPIFAE Agent by the Majority Lenders shall override any conflicting instructions given by any other Parties and will be binding on all the Finance Parties, save for the Security Agent.

- (c) Each of the BPIFAE Agent and the Security Agent may refrain from acting in accordance with the instructions of the Majority Lenders (or, if appropriate, the Lenders) until it has received such indemnification and/or security as it may in its sole discretion require for any cost, loss or liability (together with any associated VAT), and which may be greater in extent than that contained in the Finance Documents and which may include payment in advance) which it may incur in complying with those instructions.
- (d) In the absence of instructions from the Majority Lenders, (or, if appropriate, the Lenders) each of the BPIFAE Agent and the Security Agent may act (or refrain from taking action) as it considers to be in the best interest of the Lenders.
- (e) Each of the BPIFAE Agent and the Security Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Lenders (or, if the relevant Finance Document stipulates the matter is a decision for any other Lender or group of Lenders, from that Lender or group of Lenders) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the BPIFAE Agent and the Security Agent may refrain from acting unless and until it receives any such instructions or clarification that it has requested.
- (f) Neither the BPIFAE Agent nor the Security Agent is authorised to act on behalf of a Lender (without first obtaining that Lender's consent) in any legal or arbitration proceedings relating to any Finance Document. This paragraph (f) shall not apply to any legal or arbitration proceeding relating to the perfection, preservation or protection of rights under the Security Documents or enforcement of the security interests or the Security Documents.
- (g) The Security Agent may assume (unless it has received notice to the contrary in its capacity as Security Agent) that all instructions given to it by the BPIFAE Agent, if required to be approved by the Majority Lenders, have been so approved.

## **28.9 Responsibility for Documentation**

None of the BPIFAE Agent, the Security Agent nor a Mandated Lead Arranger:

- (a) is responsible or liable for the adequacy, accuracy and/or completeness of any information (whether oral or written) supplied by the BPIFAE Agent, the Security Agent, a Mandated Lead Arranger, the Borrower or any other person given in or in connection with any Finance Document or the transactions contemplated in the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; or
- (b) is responsible for the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of or in connection with any Finance Document.

## **28.10 No Duty to Monitor**



Neither the BPIFAE Agent nor the Security Agent shall not be bound to enquire:

- (a) whether or not any Default has occurred;
- (b) as to the performance, default or any breach by any Party of its obligations under any Finance Document; or
- (c) whether any other event specified in any Finance Document has occurred.

#### **28.11 Exclusion of Liability**

- (a) Without limiting paragraph (b) below, neither the BPIFAE Agent nor the Security Agent will be liable (including, without limitation, for negligence or any other category of liability whatsoever) for:
  - (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Finance Document, unless directly caused by its gross negligence or wilful misconduct;
  - (ii) exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Finance Document; or
  - (iii) without prejudice to the generality of paragraphs (i) and (ii) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of:
    - (A) any act, event or circumstance not reasonably within its control; or
    - (B) the general risks of investment in, or the holding of assets in, any jurisdiction,

including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets (including any Disruption Event); breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.

- (b) No Party (other than the BPIFAE Agent or the Security Agent) may take any proceedings against any officer, employee or agent of the BPIFAE Agent or the Security Agent in respect of any claim it might have against the BPIFAE Agent or the Security Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document and any officer, employee or agent of the BPIFAE Agent or the Security Agent may rely on this Clause 28.10 subject to Clause 1.5 (*Third Party Rights*) and the provisions of the Third Parties Act.

- (c) Neither the BPIFAE Agent nor the Security Agent will be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by it if it has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by it for that purpose.
- (d) Nothing in this Agreement shall oblige the BPIFAE Agent, the Security Agent or a Mandated Lead Arranger to carry out:
  - (i) any “*know your customer*” or other checks in relation to any person on behalf of any Lender; or
  - (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Lender, andeach Lender confirms to the BPIFAE Agent, the Security Agent and each Mandated Lead Arranger that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the BPIFAE Agent, the Security Agent and a Mandated Lead Arranger.
- (e) Without prejudice to any provision of any Finance Document excluding or limiting the BPIFAE Agent’s or the Security Agent’s liability, any liability of the BPIFAE Agent or the Security Agent arising under or in connection with any Finance Document shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered (as determined by reference to the date of default of the BPIFAE Agent or the Security Agent (as applicable) or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the BPIFAE Agent or the Security Agent (as applicable) at any time which increase the amount of that loss. In no event shall the BPIFAE Agent or the Security Agent be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the BPIFAE Agent or the Security Agent (as applicable) has been advised of the possibility of such loss or damages.

#### **28.12 Lenders’ Indemnity to the BPIFAE Agent and the Security Agent**

Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify each of the BPIFAE Agent and the Security Agent, within three (3) Business Days of demand, against any cost, loss or liability (including, without limitation, for negligence or any other category of liability whatsoever) incurred by the BPIFAE Agent and the Security Agent (otherwise than by reason of its gross negligence or wilful misconduct) notwithstanding its negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the BPIFAE Agent or the Security Agent in acting as BPIFAE Agent or the Security Agent under the Finance Documents (unless the BPIFAE Agent or the Security Agent has been reimbursed by the Borrower pursuant to a Finance Document).

#### **28.13 Resignation of the BPIFAE Agent and the Security Agent**

- (a) Each of the BPIFAE Agent and the Security Agent may resign and appoint one of its Affiliates as successor by giving notice to the other Finance Parties and the Borrower.
- (b) Alternatively each of the BPIFAE Agent and the Security Agent may resign by giving notice to the other Finance Parties and the Borrower, in which case the Majority Lenders (after consultation with the Borrower) may appoint a successor BPIFAE Agent or Security Agent (as the case may be).
- (c) If the Majority Lenders have not appointed a successor BPIFAE Agent or Security Agent in accordance with Clause 28.12(b) within thirty (30) days after notice of resignation was given, the BPIFAE Agent or the Security Agent (after consultation with the Borrower) may appoint a successor BPIFAE Agent or Security Agent.
- (d) If the BPIFAE Agent or Security Agent wishes to resign because (acting reasonably) it has concluded that it is no longer appropriate for it to remain as agent and the BPIFAE Agent or Security Agent (as applicable) is entitled to appoint a successor under paragraph (c) above, the BPIFAE Agent or Security Agent (applicable) may (if it concludes (acting reasonably) that it is necessary to do so in order to persuade the proposed successor BPIFAE Agent or Security Agent to become a party to this Agreement) agree with the proposed successor BPIFAE Agent or Security Agent (as applicable) amendments to this Clause 28 consistent with then current market practice for the appointment and protection of corporate trustees together with any reasonable amendments to the agency fees payable under this Agreement which are consistent with the successor BPIFAE Agent's or Security Agent's (as applicable) normal fee rates and those amendments will bind the Parties.
- (e) The retiring BPIFAE Agent or Security Agent shall, at its own cost, make available to its successor such documents and records and provide such assistance as its successor may reasonably request for the purposes of performing its functions as BPIFAE Agent or Security Agent under the Finance Documents.
- (f) The BPIFAE Agent's resignation notice shall only take effect upon the appointment of a successor.
- (g) The Security Agent's resignation notice shall only take effect upon:
  - (i) the appointment of a successor; and
  - (ii) the transfer of all of any Lien expressed to be created under the Security Documents to that successor.
- (h) Upon the appointment of a successor, the retiring BPIFAE Agent or Security Agent shall be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of this Clause 28.12 (and any agency fees for the account of the retiring BPIFAE Agent or Security Agent (as applicable) shall cease to accrue from (and shall be payable on) that date). Its successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.

- (i) After consultation with the Borrower, the Majority Lenders may, by notice to the BPIFAE Agent or the Security Agent (as the case may be), require it to resign in accordance with Clause 28.12(a). In this event, the BPIFAE Agent or the Security Agent (as the case may be) shall resign in accordance with Clause 28.12(a).
- (j) The BPIFAE Agent shall resign in accordance with paragraph (b) above (and, to the extent applicable, shall use reasonable endeavours to appoint a successor BPIFAE Agent pursuant to paragraph (c) above) if on or after the date which is three (3) months before the earliest FATCA Application Date relating to any payment to the BPIFAE Agent under the Finance Documents:
  - (i) the BPIFAE Agent fails to respond to a request under Clause 13.7 (*FATCA Information*) and a Lender reasonably believes that the BPIFAE Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;
  - (ii) the information supplied by the BPIFAE Agent pursuant to Clause 13.7 (*FATCA Information*) indicates that the BPIFAE Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or
  - (iii) the BPIFAE Agent notifies the Borrower and the Lenders that the BPIFAE Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date,

and, in each case, a Lender reasonably believes that a Party will be required to make a FATCA Deduction that would not be required if the BPIFAE Agent were a FATCA Exempt Party, and that Lender, by written notice to the BPIFAE Agent, requires it to resign.

#### **28.14 Confidentiality**

- (a) In acting as agent for the Finance Parties, each of the BPIFAE Agent and the Security Agent shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments.
- (b) If information is received by another division or department of the BPIFAE Agent or the Security Agent, it may be treated as confidential to that division or department and neither the BPIFAE Agent nor the Security Agent shall be deemed to have notice of it.

#### **28.15 Relationship with the Lenders**

The BPIFAE Agent may treat each Lender as a Lender, entitled to payments under this Agreement and acting through its Facility Office unless it has received not less than five (5) Business Days prior notice from that Lender to the contrary in accordance with the terms of this Agreement.

#### **28.16 Credit Appraisal by the Lenders**

Without affecting the responsibility of the Borrower for information supplied by it or on its behalf in connection with any Finance Document, each Lender confirms to the BPIFAE Agent, the Security Agent and the Mandated Lead Arrangers that it has been, and will continue to be,

solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document including but not limited to:

- (a) the financial condition, status and nature of the Group;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
- (c) whether that Lender has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and
- (d) the adequacy, accuracy and/or completeness of any information provided by the BPIFAE Agent, the Security Agent, any Party or by any other person under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document.

#### **28.17 Reference Banks**

If a Reference Bank who is also a Lender (or, if a Reference Bank is not a Lender, the Lender of which it is an Affiliate) ceases to be a Lender, the BPIFAE Agent shall (in consultation with the Borrower) appoint another Lender or an Affiliate of a Lender to replace that Reference Bank.

#### **28.18 BPIFAE Agent's and Security Agent's Management Time**

Any amounts payable to the BPIFAE Agent or the Security Agent (as the case may be) under Clause 15.3 (*Indemnity to the BPIFAE Agent*), Clause 15.4 (*Indemnity to the Security Agent*) and Clause 17 (*Costs and Expenses*) shall include the cost of utilising the BPIFAE Agent's or the Security Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the BPIFAE Agent or the Security Agent may notify to the Borrower and the Lenders, and is in addition to any fee paid or payable to the BPIFAE Agent and the Security Agent under Clause 11 (*Fees*).

#### **28.19 Deduction from Amounts Payable by the BPIFAE Agent and the Security Agent**

If any Party owes an amount to the BPIFAE Agent or the Security Agent under the Finance Documents, the BPIFAE Agent or the Security Agent (as the case may be) may, after giving notice to that Party and *provided that* this will not result in breach of any applicable currency control regulations by the Borrower, deduct an amount not exceeding that amount from any payment to that Party which the BPIFAE Agent or the Security Agent would otherwise be obliged to make under the Finance Documents and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Documents, that Party shall be regarded as having received any amount so deducted.

#### **28.20 Security Agent**

- (a) The provisions of Schedule 6 (*The Security Agent*) shall bind each Party.

- (b) The Security Agent shall promptly transfer to the BPIFAE Agent any amounts received by it under the Finance Documents for application by the BPIFAE Agent in accordance with the order set out in Clause 31.6 (*Partial Payments*). The Security Agent shall be obliged to make such transfer only to the extent it has actually received such amount.
- (c) At the request of the Security Agent, the BPIFAE Agent shall notify the Security Agent, and shall provide a copy of such notification to the Borrower, of amounts due to any Party under this Agreement, and the due date for such amounts. The Security Agent may accept such notifications as conclusive evidence of the matters to which they relate.

#### **28.21 No Independent Power**

- (a) The Lenders shall not have any independent power to enforce, or have recourse to, any of the Liens expressed to be created under the Security Documents, or to exercise any rights or powers arising under the Security Documents except through the Security Agent.
- (b) This Clause 28.20 is for the benefit of the Finance Parties only.

#### **28.22 Role of Reference Banks**

- (a) No Reference Bank is under any obligation to provide a quotation or any other information to the BPIFAE Agent.
- (b) No Reference Bank will be liable for any action taken by it under or in connection with any Finance Document, or for any Reference Bank Quotation, unless directly caused by its gross negligence or wilful misconduct.
- (c) No Party (other than the relevant Reference Bank) may take any proceedings against any officer, employee or agent of any Reference Bank in respect of any claim it might have against that Reference Bank or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document, or to any Reference Bank Quotation, and any officer, employee or agent of each Reference Bank may rely on this Clause 28.21 subject to Clause 1.5 (*Third Party Rights*) and the provisions of the Third Parties Act.

### **29. Conduct of Business by the Finance Parties**

No provision of this Agreement will:

- (a) interfere with the right of any Finance Party to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;
- (b) oblige any Finance Party to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or
- (c) oblige any Finance Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

### 30. Sharing among the Finance Parties

#### 30.1 Payments to Finance Parties

If a Finance Party (a “**Recovering Finance Party**”) receives or recovers any amount from an Obligor other than in accordance with Clause 31 (*Payment Mechanics*) and applies that amount to a payment due under the Finance Documents then:

- (a) the Recovering Finance Party shall, within three (3) Business Days, notify details of the receipt or recovery, to the BPIFAE Agent;
- (b) the BPIFAE Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the BPIFAE Agent and distributed in accordance with Clause 31 (*Payment Mechanics*), without taking account of any Tax which would be imposed on the BPIFAE Agent in relation to the receipt, recovery or distribution; and
- (c) the Recovering Finance Party shall, within three (3) Business Days of demand by the BPIFAE Agent, pay to the BPIFAE Agent an amount (the “**Sharing Payment**”) equal to such receipt or recovery less any amount which the BPIFAE Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with Clause 31.6 (*Partial Payments*).

#### 30.2 Redistribution of Payments

The BPIFAE Agent shall treat the Sharing Payment as if it had been paid by the relevant Obligor and distribute it between the Finance Parties (other than the Recovering Finance Party) (the “**Sharing Finance Parties**”) in accordance with Clause 31.6 (*Partial Payments*) towards the obligations of that Obligor to the Sharing Finance Parties.

#### 30.3 Recovering Finance Party’s Rights

On a distribution by the BPIFAE Agent under Clause 30.2 (*Redistribution of Payments*), of a payment received by a Recovering Finance Party from an Obligor, as between the relevant Obligor and the Recovering Finance Party, an amount of the Recovered Amount equal to the Sharing Payment will be treated as not having been paid by that Obligor.

#### 30.4 Reversal of Redistribution

If any part of the Sharing Payment received or recovered by a Recovering Finance Party becomes repayable and is repaid by that Recovering Finance Party, then:

- (a) each Sharing Finance Party shall, upon request of the BPIFAE Agent, pay to the BPIFAE Agent for the account of that Recovering Finance Party an amount equal to the appropriate part of its share of the Sharing Payment (together with an amount as is necessary to reimburse that Recovering Finance Party for its proportion of any interest on the Sharing Payment which that Recovering Finance Party is required to pay) (the “**Redistributed Amount**”); and

- (b) as between the relevant Obligor and each relevant Sharing Finance Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by that Obligor.

### **30.5 Exceptions**

- (a) This Clause 30 shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this Clause, have a valid and enforceable claim against the relevant Obligor.
- (b) A Recovering Finance Party is not obliged to share with any other Finance Party any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:
  - (i) it notified that other Finance Party of the legal or arbitration proceedings; and
  - (ii) that other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

## **31. Payment Mechanics**

### **31.1 Payments to the BPIFAE Agent**

- (a) On each date on which the Borrower or a Lender is required to make a payment under a Finance Document (subject to Clause 31.12 (*Payments to the Security Agent*)), the Borrower or Lender shall make the same available to the BPIFAE Agent (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the BPIFAE Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
- (b) All payments to be made by the Borrower under this Agreement shall be made in Dollars in immediately available funds to the account of the BPIFAE Agent with account No. 0200.194.093.001.36 CHIPS ABA 026 007 689 of BNP Paribas Paris, The Equitable Building, 787 Seventh Avenue, New York, SWIFT code BNPAUS3NXXX, in favour of BNP PARIBAS BOCI-ITO-Paris, 35 rue de la Gare 75019 Paris- France, SWIFT code BNPAFRPPXXX, reference Globalstar USA or to such other account as the BPIFAE Agent may from time to time designate to the Borrower in writing.
- (c) For any payment to be made by the Borrower, the Borrower shall ensure that the BPIFAE Agent receives a swift advice of such payment from the Borrower's bank no later than the Business Day immediately preceding the date of such payment. The swift message shall be sent to BNPAFRPPACH attention BOCI Buyers Credits with references USA/GLOBALSTAR/Loan Agreement dated 5 June 2009 or such other account in the principal financial centre of the country of that currency with such bank as the BPIFAE Agent specifies.

### **31.2 Evidence of Financial Indebtedness**



- (a) Each Loan made by a Lender shall be evidenced by one (1) or more accounts or records maintained by such Lender and by the BPIFAE Agent in the ordinary course of business. The accounts or records maintained by the BPIFAE Agent and each Lender shall be conclusive absent manifest error of the amount of any Loan made by the Lenders to the Borrower and the interest and payments thereon.
- (b) Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower under this Agreement to pay any amount owing with respect to the Obligations. If there is any conflict between the accounts and records maintained by any Lender and the accounts and records of the BPIFAE Agent in respect of such matters, the accounts and records of the BPIFAE Agent shall prevail in the absence of manifest error.
- (c) Upon the request of any Lender or BPIFAE made through the BPIFAE Agent, the Borrower shall immediately execute and deliver to the BPIFAE Agent Promissory Notes which shall be in accordance with the Repayment Schedule previously provided by the Borrower to the Lenders and shall evidence all outstanding Loans (including principal and interest). Each Promissory Note shall be denominated in Dollars and be payable in accordance with Clause 31 (*Payment Mechanics*). The Borrower shall ensure that each Promissory Note shall be governed by English or French law as selected by the BPIFAE Agent and the Borrower waives any right of protest under any Promissory Note to the extent possible under applicable law.
- (d) Any payment which is due to be made under a Promissory Note that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (e) If paragraph (d) above applies, interest shall be payable on the principal up to the date of actual payment by the Borrower.
- (f) Neither the payment date nor the amount of principal and interest specified in the relevant Promissory Note (if any) shall be modified. Notwithstanding that the Promissory Note shall not be modified, the Borrower shall be obliged to make payment in full (including principal and accrued interest) to the BPIFAE Agent in accordance with the provisions of this Clause 31 (*Payment Mechanics*). Notwithstanding the foregoing, the BPIFAE Agent and the Lenders hereby agree not to demand payment under any Promissory Note prior to exercising its rights pursuant to Clause 24 (*Remedies upon an Event of Default*).
- (g) If paragraph (d) applies, at least thirty (30) days prior to any payment under a note the payment date of which has been extended in accordance with paragraph (d) above, the BPIFAE Agent shall send to the Borrower a written statement documenting the additional amount of interest owed by the Borrower at such payment date.
- (h) Following the issue of Promissory Notes under this Clause 31.2, on or before each date on which the Borrower makes a repayment or prepayment of any outstanding Loan, it shall execute and deliver to the BPIFAE Agent replacement Promissory Notes. Each such replacement Promissory Note shall be issued on the terms as set out in paragraph (c) and shall, in aggregate, have a face value equal to the principal amount outstanding in respect of the outstanding Loans following such repayment or prepayment. Upon

receipt of such replacement Promissory Notes, the BPIFAE Agent shall cancel and return to the Borrower all the Promissory Notes held by it before such repayment or prepayment.

### 31.3 Distributions by the BPIFAE Agent

Each payment received by the BPIFAE Agent under the Finance Documents for another Party shall, subject to Clause 31.4 (*Distributions to the Borrower*) and Clause 31.5 (*Clawback*) and Clause 31.12 (*Payments to the Security Agent*), be made available by the BPIFAE Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the BPIFAE Agent by not less than five (5) Business Days' notice with a bank in the principal financial centre of the country of that currency.

### 31.4 Distributions to the Borrower

The BPIFAE Agent and the Security Agent may (with the consent of the Obligor or in accordance with Clause 32 (*Set-off*)) apply any amount received by it for that Obligor in or towards payment (on the date and in the currency and funds of receipt) of any amount due from that Obligor under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

### 31.5 Clawback

- (a) Where a sum is to be paid to the BPIFAE Agent or the Security Agent under the Finance Documents for another Party, the BPIFAE Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.
- (b) If the BPIFAE Agent or the Security Agent pays an amount to another Party and it proves to be the case that the BPIFAE Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the BPIFAE Agent or the Security Agent shall on demand refund the same to the BPIFAE Agent together with interest on that amount from the date of payment to the date of receipt by the BPIFAE Agent or the Security Agent, calculated by it to reflect its cost of funds.

### 31.6 Partial Payments

- (a) If the BPIFAE Agent receives a payment that is insufficient to discharge all the amounts then due and payable by an Obligor under the Finance Documents, the BPIFAE Agent shall apply that payment towards the obligations of that Obligor under the Finance Documents in the following order:
  - (i) **first**, in or towards payment *pro rata* of any unpaid fees, costs and expenses of the BPIFAE Agent, the Security Agent or the Mandated Lead Arrangers under the Finance Documents;
  - (ii) **secondly**, in or towards payment *pro rata* of any accrued interest, fee or commission due to the Finance Parties but unpaid under this Agreement;
  - (iii) **thirdly**, in or towards payment *pro rata* of any principal due but unpaid under this Agreement; and

- (iv) **fourthly**, in or towards payment *pro rata* of any other sum due but unpaid under the Finance Documents.
- (b) The BPIFAE Agent shall, if so directed by the Majority Lenders, vary the order set out in paragraphs (a)(ii) to (iv) above.
- (c) Paragraphs (a) and (b) above will override any appropriation made by an Obligor.

### **31.7 No set-off by the Borrower**

All payments to be made by the Borrower under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

### **31.8 Business Days**

- (a) Any payment which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (b) During any extension of the due date for payment of any principal or Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

### **31.9 Currency of Account**

- (a) Subject to paragraphs (b) and (c) below, Dollars is the currency of account and payment for any sum due from the Borrower under any Finance Document.
- (b) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
- (c) Any amount expressed to be payable in a currency other than Dollars shall be paid in that other currency.

### **31.10 Change of Currency**

- (a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
  - (i) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the BPIFAE Agent (after consultation with the Borrower); and
  - (ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the BPIFAE Agent (acting reasonably).
- (b) If a change in any currency of a country occurs, this Agreement will, to the extent the BPIFAE Agent (acting reasonably and after consultation with the Borrower) specifies

to be necessary, be amended to comply with any generally accepted conventions and market practice in the London interbank market and otherwise to reflect the change in currency.

### **31.11 Disruption to Payment Systems etc.**

If either the BPIFAE Agent determines (in its discretion) that a Disruption Event has occurred or the BPIFAE Agent is notified by the Borrower that a Disruption Event has occurred:

- (a) the BPIFAE Agent may, and shall if requested to do so by the Borrower, consult with the Borrower with a view to agreeing with the Borrower such changes to the operation or administration of the Facility as the BPIFAE Agent may deem necessary in the circumstances;
- (b) the BPIFAE Agent shall not be obliged to consult with the Borrower in relation to any changes mentioned in paragraph (a) if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;
- (c) the BPIFAE Agent may consult with the Finance Parties in relation to any changes mentioned in paragraph (a) but shall not be obliged to do so if, in its opinion, it is not practicable to do so in the circumstances;
- (d) any such changes agreed upon by the BPIFAE Agent and the Borrower shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents notwithstanding the provisions of Clause 37 (*Amendments and Waivers*);
- (e) the BPIFAE Agent shall not be liable for any damages, costs or losses whatsoever (including, without limitation for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the BPIFAE Agent) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this Clause 31.11 (*Disruption to Payment Systems etc.*); and
- (f) the BPIFAE Agent shall notify the Finance Parties of all changes agreed pursuant to paragraph (d) above.

### **31.12 Payments to the Security Agent**

Notwithstanding any other provision of any Finance Document, after a notice has been given to the Borrower under Clause 24 (*Remedies Upon an Event of Default*), and at any time after any Liens created by or pursuant to any Security Document becomes enforceable, the Security Agent may require the Borrower to pay all sums due under any Finance Document as the Security Agent may direct for application in accordance with the terms of the Security Documents.

## **32. Set-off**

If an Event of Default has occurred and is continuing, a Finance Party may set-off any matured obligation due from the Borrower under the Finance Documents (to the extent beneficially owned by that Finance Party) against any matured obligation owed by that Finance Party to the Borrower,

regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off. Following the exercise of a right of set-off under this Agreement, the relevant Finance Party shall notify the Borrower.

### **33. Notices**

#### **33.1 Communications in Writing**

Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by fax or letter.

#### **33.2 Addresses**

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with the Finance Documents is:

(a) in the case of the Borrower:

Address: Globalstar, Inc.  
1351 Holiday Square Boulevard  
Covington  
LA 70433  
United States of America

Attention: James Monroe III / Tim Taylor

Facsimile: +001 985 335-1900;

(b) in the case of each Lender, that notified in writing to the BPIFAE Agent on or prior to the date on which it becomes a Party; and

(c) in the case of the BPIFAE Agent and the Security Agent:

Address: BNP Paribas  
CIB-Global Banking EMEA  
Export Finance - CSLI  
ACI: CVA05A1  
35, rue de la Gare  
75019 PARIS  
France

Attention: Mrs Sylvie Caset-Carricaburu / Mrs. Béatrice Sohier

Telephone: + 33(0) 1 43 16 81 69 / +33(0) 1 43 16 81 74

Facsimile: + 33(0) 1 43 16 81 84

or any substitute address or fax number or department or officer as the Party may notify to the BPIFAE Agent (or the BPIFAE Agent may notify to the other Parties, if a change is made by the BPIFAE Agent) by not less than five (5) Business Days' notice.

### **33.3 Delivery**

(a) Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:

- (i) if by way of fax, when received in legible form; or
- (ii) if by way of letter, when it has been left at the relevant address or five (5) Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address;

and, if a particular department or officer is specified as part of its address details provided under Clause 33.2 (*Addresses*), if addressed to that department or officer.

(b) Any communication or document to be made or delivered to the BPIFAE Agent, the Security Agent or the Mandated Lead Arrangers will be effective only when actually received by the BPIFAE Agent, the Security Agent or such Mandated Lead Arranger and then only if it is expressly marked for the attention of the department or officer identified with the BPIFAE Agent's, the Security Agent's or such Mandated Lead Arranger's signature below (or any substitute department or officer as the BPIFAE Agent, the Security Agent or such Mandated Lead Arranger shall specify for this purpose).

(c) All notices from or to an Obligor shall be sent through the BPIFAE Agent.

(d) Any communication or document made or delivered to the Borrower in accordance with this Clause 33 will be deemed to have been made or delivered to each of the Obligors.

(e) Any communications or document which becomes effective in accordance with paragraphs (a) to (d) above, after 5:00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

### **33.4 Notification of Address and Fax Number**

Promptly upon receipt of notification of an address or fax number or change of address or fax number pursuant to Clause 33.2 (*Addresses*) or changing its own address or fax number, the BPIFAE Agent shall notify the other Parties.

### **33.5 Electronic Communication**

- (a) Any communication to be made between any two Parties under or in connection with the Finance Documents may be made by electronic mail or other electronic means to the extent that these two Parties agree that, unless and until notified to the contrary, this is to be accepted form of communication and if those two parties:
  - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
  - (ii) notify each other of any change to their address or any other such information supplied by them by no less than five (5) Business Days' notice.
- (b) Any electronic communication made between those two Parties will be effective only when actually received in readable form and in the case of any electronic communication made by a Party to the BPIFAE Agent only if it is addressed in such a manner as the BPIFAE Agent shall specify for this purpose.
- (c) Any electronic communication which becomes effective, in accordance with paragraph (b) above, after 5.00pm in the place of receipt shall be deemed only to become effective on the following day.

### **33.6 English Language**

- (a) Any notice given under or in connection with any Finance Document must be in English.
- (b) All other documents provided under or in connection with any Finance Document must be:
  - (i) in English; or
  - (ii) if not in English, and if so required by the BPIFAE Agent, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

## **34. Calculations and Certificates**

### **34.1 Accounts**

In any litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by a Finance Party are *prima facie* evidence of the matters to which they relate.

### **34.2 Certificates and Determinations**

Any certification or determination by a Finance Party of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

### **34.3 Day Count Convention**

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of three hundred and sixty (360) days or, in any case where the practice in the London interbank market differs, in accordance with that market practice.

### **35. Partial Invalidity**

If, at any time, any provision of the Finance Documents is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

### **36. Remedies and Waivers**

No:

- (a) failure to exercise, nor any delay in exercising, on the part of any Finance Party, any right or remedy under the Finance Documents shall operate as a waiver of any such right or remedy or constitute an election to affirm any of the Finance Documents; and
- (b) election to affirm any of the Finance Documents on the part of any Finance Party shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

### **37. Amendments and Waivers**

#### **37.1 Required Consents**

- (a) Subject to Clause 37.3 (*Exceptions*) any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and the Obligors and following consultation by the BPIFAE Agent with BPIFAE. Any such amendment or waiver will be binding on all Parties.
- (b) The BPIFAE Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause 37.
- (c) Unless otherwise agreed, no amendment or waiver may be made before the date falling ten (10) Business Days after the terms of that amendment or waiver have been notified by the BPIFAE Agent to the Lenders. The BPIFAE Agent shall notify the Lenders reasonably promptly of any amendments or waivers proposed by the Borrower.

#### **37.2 Replacement of Screen Rate**

Subject to paragraph (a) of Clause 37.3 (*Exceptions*), if a Screen Rate Replacement Event has occurred, any amendment or waiver which relates to:



- (a) providing for the use of a Replacement Benchmark in place of the Screen Rate; and
- (b)
  - (i) aligning any provision of any Finance Document to the use of that Replacement Benchmark;
  - (ii) enabling that Replacement Benchmark to be used for the calculation of interest under this Agreement (including, without limitation, any consequential changes required to enable that Replacement Benchmark to be used for the purposes of this Agreement);
  - (iii) implementing market conventions applicable to that Replacement Benchmark;
  - (iv) providing for appropriate fallback (and market disruption) provisions for that Replacement Benchmark; or
  - (v) adjusting the pricing to reduce or eliminate, to the extent reasonably practicable, any transfer of economic value from one Party to another as a result of the application of that Replacement Benchmark (and if any adjustment or method for calculating any adjustment has been formally designated, nominated or recommended by the Relevant Nominating Body, the adjustment shall be determined on the basis of that designation, nomination or recommendation),

may be made with the consent of the Agent (acting on the instructions of the Majority Lenders) and the Borrower.

### 37.3 Exceptions

- (a) An amendment or waiver that has the effect of changing or which relates to:
  - (i) the definition of “*Majority Lenders*” in Clause 1.1 (*Definitions*);
  - (ii) an extension to the date of payment of any amount under the Finance Documents;
  - (iii) a reduction in the Applicable Margin or a reduction in the amount of any payment of principal, interest, fees or commission payable;
  - (iv) an increase in or an extension of any Commitment or any requirement that a cancellation of Commitments reduces the Commitments of the Lenders rateably under the relevant Facility;
  - (v) a change to an Obligor;
  - (vi) any provision which expressly requires the consent of all the Lenders;
  - (vii) Clause 2.2 (*Finance Parties’ Rights and Obligations*), Clause 18.26 (*Anti-bribery, Anti-corruption and Anti-money Laundering*), Clause 18.27 (*Sanctions*), Clause 21.24 (*Anti-bribery, Anti-corruption and Anti-money Laundering*), Clause 22.20 (*Anti-bribery, Anti-corruption and Anti-money Laundering*), Clause 22.21 (*Sanctions*), Clause 26 (*Changes to the Lenders*) or this Clause 37;

- (viii) the nature or scope of the assets of the Borrower which from time to time are, or are expressed to be, the subject of a Lien under the Security Documents; or
- (ix) the release of any Lien granted in accordance with the Security Documents or the granting of any Lien required under the terms of this Agreement,

shall not be made without the prior consent of all the Lenders.

- (b) An amendment or waiver which relates to the rights or obligations of the BPIFAE Agent, the Security Agent, and/or a Mandated Lead Arranger may not be effected without the consent of the BPIFAE Agent, the Security Agent, and/or the Mandated Lead Arranger (as the case may be).
- (c) If the BPIFAE Agent or a Lender reasonably believes that an amendment or waiver may constitute a “*material modification*” for the purposes of FATCA that may result (directly or indirectly) in a Party being required to make a FATCA Deduction and the BPIFAE Agent or that Lender (as the case may be) notifies the Borrower and the BPIFAE Agent accordingly, that amendment or waiver may not be effected without the consent of the BPIFAE Agent or that Lender (as the case may be).

#### **37.4 Payment of Waiver or Amendment Fees**

- (a) Subject to paragraph (d) below, the Borrower shall pay to:
  - (i) the BPIFAE Agent (for the account of each Lender) a waiver fee in an amount equal to US\$15,000 for each Lender; and
  - (ii) the BPIFAE Agent (for its own account) a waiver fee in an amount equal to US\$10,000,(each fee, a “**Waiver Fee**”) if, following the First Effective Date any amendments or waivers (howsoever described) are required in respect of the Finance Documents.
- (b) Each Waiver Fee shall be due from the date on which the Borrower delivers the waiver and/or amendment request to the BPIFAE Agent and is payable within thirty (30) days of such request.
- (c) Each payment by the Borrower of a Waiver Fee shall be made in accordance with Clause 30 (*Payment Mechanics*) and the other provisions of the Finance Documents.
- (d) No Waiver Fee shall be payable in respect of any amendment requested by the Borrower in connection with:
  - (i) the Third Global Amendment and Restatement Agreement (but without prejudice to the payment of the “*Amendment Fee*” as such term is defined therein);
  - (ii) the ability of the Borrower to incur additional Financial Indebtedness in connection with Permitted Vendor Financings in an aggregate amount above the threshold set out in Clause 22.1(k) (*Limitations on Financial Indebtedness*); or

- (iii) the ability of the Borrower to incur additional Financial Indebtedness in connection with cash paying Subordinated Indebtedness above the amounts as set out in the then current Agreed Business Plan; or
  - (iv) any adjustment to the numerator of the financial covenant set out in Clause 20.5 (*Net Debt to Adjusted Consolidated EBITDA*) in order to take into account the revised levels of Financial Indebtedness permitted following any amendment requests of the types set out in paragraphs (a) and (b) above (for which separate amendment requests shall be required).
- (e) In connection with any requested amendment under paragraph (d)(iv) above in accordance with the provisions of this Clause 37 (*Amendments and Waivers*), the Borrower shall provide to the BPIFAE Agent a substitute table for the purposes of Clause 20.5 (*Net Debt to Adjusted Consolidated EBITDA*) on the same basis as the existing table but reflecting the appropriate numerator for the financial covenant. Upon agreement by the Lenders and the Borrower with the substitute table, the substitute table will be deemed to replace the then existing table applicable for the purposes of Clause 20.5 (*Net Debt to Adjusted Consolidated EBITDA*) and all determinations in respect of compliance with such financial covenant shall be made in accordance with the substitute table.

### **37.5 Voting**

- (a) The Lenders hereby acknowledge that, pursuant to the terms of the BPIFAE Insurance Policy, BPIFAE shall be entitled to direct the manner in which voting rights or any other rights, powers, authorities and discretions held by the Lenders with respect to the Facilities are exercised.
- (b) The BPIFAE Agent shall seek the instructions of BPIFAE with respect to any matter on which any Lender is entitled to vote or exercise any right, power, authority or discretion (whether under this Agreement, any other Finance Document or any related agreements). The BPIFAE Agent shall notify the Lenders of the instructions of BPIFAE in respect thereof.

### **37.6 Second Lien Intercreditor Agreement**

This Clause 37 (*Amendments and Waivers*) is subject to the terms of the Second Lien Intercreditor Agreement.

### **38. Counterparts**

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

### **39. Governing Law**

Other than Clause 28.2 (*Appointment of Security Agent (France)*), this Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

## **40. Enforcement**

### **40.1 Jurisdiction**

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a “**Dispute**”).
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) This Clause 40.1 (*Jurisdiction*) is for the benefit of the Finance Parties only. As a result, no Finance Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Finance Parties may take concurrent proceedings in any number of jurisdictions.
- (d) This Clause 40 does not apply to Clause 28.2 (*Appointment of Security Agent (France)*).

### **40.2 Service of Process**

Without prejudice to any other mode of service allowed under any relevant law, the Borrower:

- (a) irrevocably appoints WFW Legal Services Limited of 15 Appold Street, London EC2A 2HB as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document; and
- (b) agrees that failure by a process agent to notify the Borrower of the process will not invalidate the proceedings concerned.

### **40.3 Waiver of Immunity**

To the extent that the Borrower may in any jurisdiction claim for itself or its assets or revenues immunity from suit, execution, attachment (whether in aid of execution, before judgment or otherwise) or other legal process and to the extent that in any such jurisdiction there may be attributed to itself, its assets or revenues such immunity (whether or not claimed), the Borrower irrevocably agrees not to claim, and irrevocably waives, such immunity to the full extent permitted by the laws of such jurisdiction.

## **41. Confidentiality**

### **41.1 Confidential Information**

Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 41.2 (*Disclosure of Confidential Information*), and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

### **41.2 Disclosure of Confidential Information**

Any Finance Party may disclose:

(a) to any of its Affiliates and any of its or their officers, directors, employees, professional advisers, auditors and partners such Confidential Information as that Finance Party shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;

(b) to any person:

(i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents and to any of that person's Affiliates and professional advisers;

(ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or one or more Obligors and to any of that person's Affiliates and professional advisers;

(iii) appointed by any Finance Party or by a person to whom paragraph (b)(i) or (ii) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf;

(iv) who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraph (b)(i) or (b)(ii) above;

(v) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;

(vi) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;

(vii) who is a Party; or

(viii) with the consent of the Borrower;

in each case, such Confidential Information as that Finance Party shall consider appropriate if:

(A) in relation to paragraphs (b)(i), (b)(ii) and (b)(iii) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional

adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;

(B) in relation to paragraph (b)(iv) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;

(C) in relation to paragraphs (b)(v) and (b)(vi) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of that Finance Party, it is not practicable so to do in the circumstances; and

(D) to any person appointed by that Finance Party or by a person to whom paragraph (b)(i) or (b)(ii) above applies to provide administration or settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (c) if the service provider to whom the Confidential Information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Company and the relevant Finance Party.

#### **41.3 Entire agreement**

This Clause 41 (*Confidentiality*) constitutes the entire agreement between the Parties in relation to the obligations of the Finance Parties under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

#### **41.4 Inside information**

Each of the Finance Parties acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and each of the Finance Parties undertakes not to use any Confidential Information for any unlawful purpose.

#### **41.5 Notification of disclosure**

Each of the Finance Parties agrees (to the extent permitted by law and regulation) to inform the Company:

(a) of the circumstances of any disclosure of Confidential Information made pursuant to paragraph (b)(v) of Clause 41.2 (*Disclosure of Confidential Information*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and

(b) upon becoming aware that Confidential Information has been disclosed in breach of this Clause 41 (*Confidentiality*).

#### **41.6 Continuing obligations**

The obligations in this Clause 41 (*Confidentiality*) are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of twelve months from the earlier of:

(a) the date on which all amounts payable by the Obligor under or in connection with this Agreement have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and

(b) the date on which such Finance Party otherwise ceases to be a Finance Party.

## **42. Confidentiality of Funding Rates and Reference Bank Quotations**

### **42.1 Confidentiality and Disclosure**

(a) The BPIFAE Agent and each Obligor agree to keep each Funding Rate (and, in the case of the BPIFAE Agent, each Reference Bank Quotation) confidential and not to disclose it to anyone, save to the extent permitted by paragraphs (b), (c) and (d) below.

(b) The BPIFAE Agent may disclose:

(i) any Funding Rate (but not, for the avoidance of doubt, any Reference Bank Quotation) to the Borrower pursuant to Clause 8.4 (*Notification of Rates of Interest*); and

(ii) any Funding Rate or any Reference Bank Quotation to any person appointed by it to provide administration services in respect of one or more of the Finance Documents to the extent necessary to enable such service provider to provide those services if the service provider to whom that information is to be given has entered into a confidentiality agreement in a form agreed between the BPIFAE Agent and the relevant Lender or Reference Bank, as the case may be.

(c) The BPIFAE Agent may disclose any Funding Rate or any Reference Bank Quotation, and each Obligor may disclose any Funding Rate, to:

(i) any of its Affiliates and any of its or their officers, directors, employees, professional advisers, auditors, partners and representatives if any person to whom that Funding Rate or Reference Bank Quotation is to be given pursuant to this paragraph is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the

confidentiality of that Funding Rate or Reference Bank Quotation or is otherwise bound by requirements of confidentiality in relation to it;

- (ii) any person to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation if the person to whom that Funding Rate or Reference Bank Quotation is to be given is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the BPIFAE Agent or the relevant Obligor, as the case may be, it is not practicable to do so in the circumstances;
  - (iii) any person to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes if the person to whom that Funding Rate or Reference Bank Quotation is to be given is informed in writing of its confidential nature and that it may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of the BPIFAE Agent or the relevant Obligor, as the case may be, it is not practicable to do so in the circumstances; and
  - (iv) any person with the consent of the relevant Lender or Reference Bank, as the case may be.
- (d) The BPIFAE Agent's obligations in this Clause 42 relating to Reference Bank Quotations are without prejudice to its obligations to make notifications under Clause 8.4 (*Notification of rates of interest*) provided that (other than pursuant to paragraph (b)(i) above) the BPIFAE Agent shall not include the details of any individual Reference Bank Quotation as part of any such notification.

#### **42.2 Related Obligations**

- (a) The BPIFAE Agent and each Obligor acknowledge that each Funding Rate (and, in the case of the BPIFAE Agent, each Reference Bank Quotation) is or may be price-sensitive information and that its use may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and the BPIFAE Agent and each Obligor undertake not to use any Funding Rate or, in the case of the BPIFAE Agent, any Reference Bank Quotation for any unlawful purpose.
- (b) The BPIFAE Agent and each Obligor agree (to the extent permitted by law and regulation) to inform the relevant Lender or Reference Bank, as the case may be:
  - (i) of the circumstances of any disclosure made pursuant to paragraph (c)(ii) of Clause 42.1 (*Confidentiality and Disclosure*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
  - (ii) upon becoming aware that any information has been disclosed in breach of this Clause 42.



### 42.3 No Event of Default

No Event of Default will occur under Clause 23.3 (*Other Obligations*) by reason only of an Obligor's failure to comply with this Clause 42.

## 43. Subrogation and Reimbursement

### 43.1 BPIFAE Insurance Policy – Subrogation

The Parties acknowledge and agree that:

- (a) BPIFAE shall automatically be subrogated to the rights of the Lenders under this Agreement and each other Finance Document (including its rights with respect to voting) upon, and to the extent of, any payment made by it under or in respect of the BPIFAE Insurance Policy; and
- (b) the Obligations in respect of which any such payment was made shall, notwithstanding such payment, be treated as being outstanding to BPIFAE for the purposes of the Finance Documents until such time as they would have been discharged had BPIFAE not made that payment.

### 43.2 Subrogation

- (a) Without prejudice to Clause 42.3 (*Reimbursement*) and any right of indemnification or subrogation BPIFAE may have at law, in equity or otherwise, each Party agrees that BPIFAE will, subject to and in accordance with Clause 43.1 (*BPIFAE Insurance Policy - Subrogation*), be subrogated to the rights of the Lenders under this Agreement upon the making of any payment by, or on behalf of, BPIFAE under the BPIFAE Insurance Policy and the Lenders shall act in accordance with the instructions of BPIFAE in the enforcement of their rights under this Agreement and the other Finance Documents following such subrogation.
- (b) The Parties agree that the right of subrogation under paragraph (a) above shall arise irrespective of, and prevail over, any inconsistency with any right of subrogation arising under the BPIFAE Insurance Policy, or under the laws of France, and notwithstanding any conduct on the part of BPIFAE or the Lenders.

### 43.3 Reimbursement

- (a) Without prejudice to Clause 42.2 (*Subrogation*), the Borrower agrees that it will promptly upon receipt of notice thereof reimburse BPIFAE for any payment made by BPIFAE under the BPIFAE Insurance Policy, whether by direct payment or offset, in respect, and to the extent, of the Borrower's obligations to the Lenders under this Agreement (such amounts, the "**BPIFAE Insurance Policy Payments**").
- (b) The obligations of the Borrower to reimburse BPIFAE will be due and payable in the currency of payment by BPIFAE within five (5) Business Days of written demand in an amount equal to (without double counting):
  - (i) the BPIFAE Insurance Policy Payments; and

- (ii) all previously paid BPIFAE Insurance Policy Payments which remain unreimbursed, together with any commission on any and all amounts remaining unreimbursed from and including the date on which such amounts become due until and including the date on which such amounts are paid in full determined in accordance with Clause 8.3 (*Default Interest*).

#### **44. Contractual recognition of bail-in**

Notwithstanding any other term of any Finance Document or any other agreement, arrangement or understanding between the Parties, each Party acknowledges and accepts that any liability of any Party to any other Party under or in connection with the Finance Documents may be subject to Bail-In Action by the relevant Resolution Authority and acknowledges and accepts to be bound by the effect of:

- (a) any Bail-In Action in relation to any such liability, including (without limitation):
  - (i) a reduction, in full or in part, in the principal amount, or outstanding amount due (including any accrued but unpaid interest) in respect of any such liability;
  - (ii) a conversion of all, or part of, any such liability into shares or other instruments of ownership that may be issued to, or conferred on, it; and
  - (iii) a cancellation of any such liability; and
- (b) a variation of any term of any Finance Document to the extent necessary to give effect to any Bail-In Action in relation to any such liability.

#### **45. GDPR**

- (a) Each Party shall comply with all applicable data protection legislation to the extent it receives any personal data.
- (b) The terms of Schedule 34 (*Personal Data (Natixis)*) shall apply to the processing of any personal data collected in connection with this Agreement by Natixis.

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

## Schedule 1

### Lenders and Commitments

#### Part 1

#### Facility A

<b>Facility A Original Lenders</b>	<b>Facility A Commitments US\$</b>
BNP Paribas	140,356,164
Société Générale	140,356,164
Natixis	116,963,470
Crédit Agricole Corporate and Investment Bank	93,570,776
Crédit Industriel et Commercial	72,052,546
<b>Total:</b>	<b>563,299,120</b>

**Part 2**  
**Facility B**

**Facility B Original Lenders**

**Facility B Commitments US\$**

BNP Paribas	5,741,550
Société Générale	5,741,550
Natixis	4,784,626
Crédit Agricole Corporate and Investment Bank	3,827,700
Crédit Industriel et Commercial	2,947,454
<b>Total:</b>	<b>23,042,880</b>

## Schedule 2

### Conditions Precedent

#### 1. Obligors

- (a) A copy of the constitutional documents of each Obligor.
- (b) A copy of a resolution of the board of directors of each Obligor:
  - (i) approving the terms of, and the transactions contemplated by, the Transaction Documents to which it is a party and resolving that it execute the Transaction Documents to which it is a party;
  - (ii) authorising a specified person or persons to execute the Transaction Documents to which it is a party on its behalf; and
  - (iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Utilisation Request) to be signed and/or despatched by it under or in connection with the Transaction Documents to which it is a party.
- (c) A specimen of the signature of each person authorised by the resolution referred to in paragraph (b) above.
- (d) A certificate of each Obligor (other than Thermo) (signed by an authorised signatory) confirming that the borrowing or guaranteeing, as appropriate, contemplated by the Finance Documents would not cause any borrowing, guaranteeing or similar limit binding on any Obligor (other than Thermo) to be exceeded.
- (e) A certificate from a Responsible Officer of the Borrower certifying that, as of Financial Close:
  - (i) each copy document relating to an Obligor specified in this Schedule 2 (*Conditions Precedent*) is correct, complete and in full force and effect as at a date no earlier than the date of Financial Close;
  - (ii) all representations and warranties of the Obligors contained in the Finance Documents are true, correct and complete in all material respects (*provided that*, any representation or warranty that is qualified by materiality or by reference to Material Adverse Effect shall be true, correct and complete in all respects);
  - (iii) none of the Obligors is in violation of any of the covenants contained in the Finance Documents;
  - (iv) after giving effect to the transactions contemplated by this Agreement, no Default or Event of Default has occurred and is continuing; and
  - (v) each of the Obligors has satisfied each of the conditions set out in this Schedule 2 (*Conditions Precedent*) and Clause 4.2 (*Further Conditions Precedent*).

- (f) Certificates as of a recent date of the good standing of each Obligor under the laws of its jurisdiction of organisation and, to the extent requested by the BPIFAE Agent, each other jurisdiction where such Obligor is qualified to do business.

## 2. **Legal opinions**

- (a) A legal opinion of White & Case LLP (advisers to the Lenders) as to matters of the laws of England and confirming, among other things, the validity and enforceability of the Finance Documents governed by English law).
- (b) A legal opinion of White & Case LLP (advisers to the Lenders) as to matters of the laws of France and confirming, among other things, the validity and enforceability of the French Security Documents.
- (c) A legal opinion of Taft Stettinius & Hollister LLP (advisers to the Borrower) confirming, among other things, the due authorisation of each Obligor, no conflict with the convertible notes, and confirming the validity and enforceability of those Security Documents governed by New York law.
- (d) A legal opinion of Haynes & Boone (advisers to the Lenders) as to matters of the laws of Texas and confirming, among other things, the validity and enforceability of those Security Documents governed by Texas law.
- (e) A legal opinion of K&L Gates (advisers to the Lenders) as to matters of the laws of Alaska and confirming, among other things, the validity and enforceability of those Security Documents governed by Alaska law.
- (f) A legal opinion of Wilmer Cutler Pickering Hale and Dorr LLP in respect of each Obligor's FCC Communications Licences.
- (g) A legal opinion of in-house counsel or external counsel of the Supplier confirming, among other things, that the Supplier has been duly authorised to enter into each of the Finance Documents to which it is a party.
- (h) A legal opinion of in-house counsel or external counsel of the Launch Services Provider confirming, among other things, that the Launch Services Provider has been duly authorised to enter into each of the Finance Documents to which it is a party.
- (i) Such other favourable legal opinions of counsel to the Obligors addressed to the BPIFAE Agent (for and on behalf of itself and the other Finance Parties) with respect to the Obligors, the Finance Documents and such other matters as the BPIFAE Agent shall reasonably request, including, without limitation, FCC matters.

## 3. **Finance documents**

An original (duly executed by each of the parties thereto) of:

- (a) this Agreement; and
- (b) each of the other Finance Documents (other than the Mortgages and each Landlord Waiver and Consent Agreement).

4. **Personal property collateral**

The BPIFAE Agent shall have received:

- (a) original stock certificates and other certificates evidencing the Capital Stock pledged pursuant to the Security Documents, together with an undated stock power for each such certificate duly executed in blank by the registered owner thereof; and
- (b) each original promissory note pledged pursuant to the Security Documents.

5. **Security matters**

- (a) Certified copies of all notices of assignment and/or charge required to be delivered pursuant to the Security Documents.
- (b) Each Obligor shall have duly authorised, executed and delivered:
  - (i) proper financing statements (Form UCC-1 or such other financing statements or similar notices as shall be required by local law) fully executed for filing under the UCC or other appropriate filing offices of each jurisdiction as may be necessary to perfect a Lien purported to be created by the Security Documents;
  - (ii) certified copies of requests for information or copies (Form UCC-11), or equivalent reports, listing all judgement liens, tax liens or effective financing statements that name the Obligors or any of their Subsidiaries, or a division or other operating unit of any such person, as debtor and that are filed in the jurisdictions referred to in paragraph (i) above, together with copies of such other financing statements evidencing any Lien permitted by Clause 22.2 (*Limitations on Liens*);
  - (iii) evidence of the completion of all other recordings and filings of, or with respect to, the Security Documents as may be necessary to perfect any Lien intended to be created by the Security Documents;
  - (iv) each irrevocable payment instruction (if any); and
  - (v) evidence that all other actions necessary to perfect and protect any Lien purported to be created by the Security Document have been taken.

6. **Governmental and other authorisations**

The Borrower has obtained, and provided to the BPIFAE Agent, certified copies of all Authorisations listed in Schedule 15 (*Communication Licences*) together with:

- (a) in the case of paragraphs (i), (iii) and (iv) below, all other Authorisations; and
- (b) in the case of paragraph (ii) below, all other material Authorisations,

in each case, not listed in those clauses that may become necessary for:

- (i) each Loan;

- (ii) the business of the Borrower as it is presently carried on and is contemplated to be carried out;
- (iii) the due execution, delivery, validity and enforceability of, and performance by an Obligor of its obligations under this Agreement and each other Transaction Document to which it is a party, and any other documents necessary or desirable to the implementation of any of those agreements or documents; and
- (iv) the remittance to any Finance Party (or its assigns) of all monies payable or owing to such Finance Party (or its assigns) under any Finance Document in the currencies specified in such Finance Document,

and all those Authorisations are in full force and effect.

## 7. **Commercial contracts**

The following documents shall have been delivered to the BPIFAE Agent:

- (a) a copy, certified as true and complete by an Authorised Signatory of the Supplier and the Launch Services Provider, of each Commercial Contract;
- (b) a certificate of incumbency and authority, signed by a director of the Supplier and the Launch Services Provider specifying the names and titles of each of the Authorised Signatories of the Supplier and the Launch Services Provider:
  - (i) whose signature(s) appear on each Commercial Contract and Transaction Document to which it is a party; and
  - (ii) who shall sign all other certificates (including each Qualifying Certificate), notices and documents referred to in this Agreement on behalf of the Supplier and the Launch Services Provider (as the case may be);
- (c) a certificate, signed by an Authorised Signatory of the Supplier, certifying that the Satellite Construction Contract is in full force and effect, with the date of such entry into full force and effect, and has not been suspended, interrupted, cancelled or terminated, amended or modified and no arbitration or other legal proceedings have been initiated between the Borrower and the Supplier in respect of the Satellite Construction Contract;
- (d) a certificate, signed by an Authorised Signatory of the Launch Services Provider, certifying that the Launch Services Contract is in full force and effect, with the date of such entry into full force and effect, and has not been suspended, interrupted, cancelled or terminated, amended or modified and no arbitration or other legal proceedings have been initiated between the Borrower and the Launch Services Provider in respect of the Launch Services Contract; and
- (e) written evidence received from:
  - (i) the Supplier of the payment by the Borrower to the Supplier of the Advance Payment in respect of the Satellite Construction Contract; and



- (ii) the Launch Services Provider of the payment by the Borrower to the Launch Services Provider of the Advance Payment in respect of the Launch Services Contract.

8. **BPIFAE insurance policy**

Each BPIFAE Insurance Policy is in full force and effect and is in form and substance satisfactory to the BPIFAE Agent (acting on the instructions of all the Lenders) and the BPIFAE Agent (acting on the instructions of all the Lenders) is satisfied that all conditions of each BPIFAE Insurance Policy are fulfilled and that all the requisite approvals of the French Authorities have been obtained.

9. **No material adverse effect**

Since the date of this Agreement nothing has occurred which has or could reasonably be expected to have a Material Adverse Effect.

10. **Equity / subordinated debt**

Evidence that Thermo has converted into share capital of the Borrower all of the Financial Indebtedness owed by the Borrower (including pursuant to the Thermo Facility Agreement), together with a pay off letter (in form and substance satisfactory to the BPIFAE Agent) evidencing the termination of all obligations under the Thermo Facility Agreement.

11. **Equity contribution**

Evidence that prior to Financial Close, Thermo (or any other third party) has contributed to the Borrower at least US\$75,000,000 (in aggregate) of equity by way of share capital or subordinated shareholder loans, as follows:

- (a) since the date of this Agreement, Thermo (or any other third party) has contributed to the Borrower at least US\$45,000,000 of equity by way of share capital or subordinated shareholder loans (excluding the equity issued to Thermo as described in paragraph 10 (*Equity / Subordinated Debt*) above); and
- (b) since 1 December 2008 to the date of Financial Close, Thermo has contributed to the Borrower US\$30,000,000 of equity by way of share capital.

12. **Debt service reserve account**

Evidence that the Debt Service Reserve Account has been opened and is funded with the DSRA Required Balance.

13. **Insurances**

- (a) A report from the Insurance Consultant.
- (b) The insurance provisions in each of the Commercial Contracts have been amended in form and substance satisfactory to the BPIFAE Agent (acting in consultation with the Insurance Consultant).

- (c) The BPIFAE Agent shall have received:
- (i) evidence of payment of all insurance premiums (as required within the applicable credit terms agreed with insurers) for the current policy year of each Insurance (naming BPIFAE, the BPIFAE Agent and the Lenders as additional insured on all certificates for “*all risks property insurance*” and also the Security Agent as first Loss Payee on the Launch Insurance and as additional named insured on the Launch third party liability insurance);
  - (ii) in relation to the “*all risks property insurance*”, a certified copy of the Insurance Documentation (including evidence of transit insurance), copies (certified by a Responsible Officer of the Supplier) in the form required under the Security Documents and otherwise in form and substance reasonably satisfactory to the BPIFAE Agent; and
  - (iii) a certified copy of a certificate from the Supplier in respect of its third party liability insurance in the same form to be provided pursuant to Article 31 of the Satellite Construction Contract.

14. **Know your customer requirements**

The BPIFAE Agent shall have received each of the documents referred to in Schedule 7 (*Know Your Customer Requirements*).

15. **No injunction, etc.**

- (a) No action, proceeding, investigation, regulation or legislation shall have been instituted, threatened or proposed by any Governmental Authority to enjoin, restrain, or prohibit, or to obtain substantial damages in respect of, or which is related to or arises out of the Finance Documents or the consummation of the transactions contemplated thereby, or which, in the BPIFAE Agent’s sole discretion, would make it inadvisable to consummate the transactions contemplated by the Finance Documents or the consummation of the transactions contemplated thereby.
- (b) The BPIFAE Agent shall be reasonably satisfied that no proceeding shall be pending or threatened which may result in the loss, revocation, material modification, non-renewal, suspension or termination of any Material Communications Licence, the issuance of any cease or desist order or the imposition of any fines, forfeitures or other administrative actions by the FCC with respect to any operations of the Borrower and its Subsidiaries.
- (c) The BPIFAE Agent shall be reasonably satisfied that no proceeding shall be pending or threatened which may result in the denial by the FCC of any pending material applications of the Borrower or any Subsidiary thereof, if such denial could reasonably be expected to have a Material Adverse Effect.

16. **Group structure chart**

A certified copy of the Group Structure Chart.

17. **Accounts**

Evidence that:

- (a) the Project Accounts (other than the Collection Account) have each been opened and continue to be maintained with the Offshore Account Bank; and
- (b) the Collection Account has been opened and continues to be maintained with the Onshore Account Bank.

18. **Other documents and evidence**

- (a) Evidence that any process agent referred to in Clause 40.2 (*Service of Process*) (and any other equivalent provision in the other Finance Documents) has accepted its appointment.
- (b) A copy of any other Authorisation or other document, opinion or assurance which the Lender considers to be necessary in connection with the entry into and performance of the transactions contemplated by any Finance Document or for the validity and enforceability of any Finance Document.
- (c) Copies of the following financial statements:
  - (i) the annual audited financial statements issued by the Borrower for the financial year ended 31 December 2008; and
  - (ii) the unaudited financial statements issued by the Borrower for the period ended 31 March 2009.
- (d) Evidence that fees, costs and expenses as at the date of the first Utilisation due from the Borrower pursuant to the Finance Documents have been paid or will be paid by the first Utilisation Date.
- (e) Evidence that the Borrower has purchased the Interest Rate Cap Agreements with each Original Lender in proportion to its Commitment.
- (f) Evidence of the conversion of not less than US\$78,200,000 of the 5.75% Notes.
- (g) [*Intentionally Omitted*].
- (h) [*Intentionally Omitted*]
- (i) [*Intentionally Omitted*].

## Schedule 3

### Utilisation Request

From: [Borrower]

To: [BPIFAE Agent]

Cc: [the Supplier] / [the Launch Services Provider]

Dated: [●]

Dear Sirs,

#### **BPIFAE Facility Agreement dated 5 June 2009 (as amended and restated from time to time) (the “Agreement”)**

1. We refer to the Agreement. This is a Utilisation Request for a [disbursement] / [reimbursement]. Terms defined in the Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.

2. We wish to borrow a [Facility A] / [Facility B] Loan on the following terms:

Proposed Utilisation Date: [●] (or, if that is not a Business Day, the next Business Day)

Amount: [[●] [[Dollars] (US\$[●])] or, if less, the Available Facility

Interest Period: Six (6) Months

Use of Proceeds: [US\$[●] payable to Thales Alenia Space France for payment of the Invoice dated [●] in relation to the Satellite Construction Contract.]

[US\$[●] payable to Arianespace for payment of the Invoice dated [●] in relation to the Launch Services Contract.]

[US\$[●] payable to the Borrower as reimbursement for payment to the Supplier and to the Launch Services Provider in relation to part of the Eligible Amount according to the Invoices separately provided to the BPIFAE Agent.]

[[Dollars] (US\$[●]) payable to the BPIFAE Agent for payment of the BPIFAE Insurance Premia.]

3. We confirm that each condition specified in Clause 4.2 (*Further Conditions Precedent*) [and Clause 4.3 (*Conditions Precedent to Certain Utilisations*)] [is] [are] satisfied on the date of this Utilisation Request.

4. The proceeds of this Loan should be credited to [insert relevant bank account details].

5. This Utilisation Request is irrevocable.

Yours faithfully

authorised signatory for  
**Globalstar, Inc.**

**Schedule 4**

**Maximum Covenant Capital Expenditure**

**Part A**

**Maximum Covenant Capital Expenditures**

1	2	3	4	5	6	7	8
Relevant Period A	Business Plan Capex B	10% Buffer A + B = C	Maximum Capex Covenant D	Minimum Capex – Not Available for Rollover C – D = E	Capex Available for Rollover F	Cumulative Rollover C + F	Maximum Cumulative Capex
2H 2013	\$31,305,815	\$3,130,582	\$34,436,397	\$20,000,000	\$14,436,397	\$0	\$34,436,397
2014	\$38,466,992	\$3,846,699	\$42,313,691	\$30,000,000	\$12,313,691	\$14,436,397	\$56,750,088
2015	\$17,090,846	\$1,709,085	\$18,799,931	\$10,000,000	\$8,799,931	\$26,750,088	\$45,550,018
2016	\$12,000,000	\$1,200,000	\$13,200,000	\$5,000,000	\$8,200,000	\$35,550,018	\$48,750,018
2017	\$2,400,000	N/A	\$15,000,000	N/A	N/A	\$43,750,018	\$58,750,018
2018	\$2,400,000	N/A	\$15,000,000	N/A	N/A	N/A	\$15,000,000
2019	\$15,000,000	N/A	\$15,000,000	N/A	N/A	N/A	\$15,000,000
2020	\$15,000,000	N/A	\$15,000,000	N/A	N/A	N/A	\$15,000,000
2021	\$15,000,000	N/A	\$15,000,000	N/A	N/A	N/A	\$15,000,000
2022	\$15,000,000	N/A	\$15,000,000	N/A	N/A	N/A	\$15,000,000

**Part B****Maximum Covenant Capital Expenditures for Excess Cash Flow Calculation**

<b>Relevant Period</b>	<b>Maximum Covenant Capex for Excess Cash Flow Calculation</b>
2H 2013	US\$34,436,397
1H 2014	US\$10,688,587
2H 2014	US\$31,625,105
1H 2015	US\$9,644,886
2H 2015	US\$9,155.045
1H 2016	US\$6,600.000
2H 2016	US\$6,600.000
1H 2017	US\$2,500.000
2H 2017	US\$2,500.000
1H 2018	US\$2,500.000
2H 2018	US\$2,500.000
1H 2019	US\$2,500.000
2H 2019	US\$2,500.000
1H 2020	US\$2,500.000
2H 2020	US\$2,500.000
1H 2021	US\$2,500.000
2H 2021	US\$2,500.000
1H 2022	US\$2,500.000
2H 2022	US\$2,500.000





## Schedule 5

### Form of Transfer Certificate and Assignment Agreement

#### Part A

#### Form of Transfer Certificate

To: [●] as BPIFAE Agent, [●] as Security Agent

From: [*The Existing Lender*] (the “Existing Lender”) and [*The New Lender*] (the “New Lender”)

Dated: [●]

#### **BPIFAE Facility Agreement dated 5 June 2009 (as amended and restated from time to time) (the “Agreement”)**

1. We refer to the Agreement and the Second Lien Intercreditor Agreement (as defined in the Agreement). This is a Transfer Certificate for the purposes of the Agreement and a [Creditor Accession Undertaking] for the purposes of the Second Lien Intercreditor Agreement. Terms defined in the Agreement have the same meaning in this Transfer Certificate unless given a different meaning in this Transfer Certificate.
2. We refer to clause 26.5 (*Procedure for Transfer or Assignment*) of the Agreement:
  - (a) The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation, and in accordance with clause 26.5 (*Procedure for Transfer or Assignment*), all of the Existing Lender’s rights and obligations under the Agreement and the other Finance Documents which relate to that portion of the Existing Lender’s Commitment(s) and participation in Loans under the Agreement as specified in the Schedule.
  - (b) The proposed Transfer Date is [●].
  - (c) The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of clause 33.2 (*Addresses*) of the Agreement are set out in the Schedule.
3. The New Lender expressly acknowledges the limitations on the Existing Lender’s obligations set out in paragraph (c) of clause 26.4 (*Limitation of Responsibility of Existing Lenders*) of the Agreement.
4. The New Lender confirms that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is a Qualifying Lender.
5. This Transfer Certificate may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Transfer Certificate.
6. This Transfer Certificate and any non-contractual obligations arising out of or in connection with it are governed by English law.

7. For the purposes of *Article 1278* and *seq.* of the French Civil Code, it is agreed that the security interest created pursuant to the Borrower Pledge of Bank Accounts, the Borrower Additional Pledge of Bank Accounts and the Holding Account Pledge Agreement shall be preserved for the benefit of the New Lender and all other Finance Parties.
8. We refer to clause 20 (*Changes to the Parties*) of the Second Lien Intercreditor Agreement. In consideration of the New Lender being accepted as a Senior Lender (as defined in the Second Lien Intercreditor Agreement) for the purposes of the Second Lien Intercreditor Agreement. The New Lender confirms that, as from the Transfer Date, it intends to be party to the Second Lien Intercreditor Agreement as a Senior Lender, and undertakes to perform all the obligations expressed in the Second Lien Intercreditor Agreement to be assumed by a Senior Lender and agrees that it shall be bound by all the provisions of the Second Lien Intercreditor Agreement, as if it had been an original party to the Second Lien Intercreditor Agreement.

**The Schedule**

**Commitment/rights and obligations to be transferred**

*[insert relevant details]*

*[Facility Office address, fax number and attention details for notices and account details for payments,]*

**[Existing Lender]**

**[New Lender]**

By: [●]

By: [●]

This certificate is accepted as a Transfer Certificate for the purposes of the Agreement by the BPIFAE Agent, the Transfer Date is confirmed as [●].

[BPIFAE Agent]

By: [●]

[Security Agent]

By: [●]

**Part B**

**Form of Assignment Agreement**

To: [●] as BPIFAE Agent, [●] as Security Agent and [●] as Borrower, for and on behalf of each Obligor

From: [the Existing Lender] (the "Existing Lender") and [the New Lender] (the "New Lender")

Dated: [●]

**[Borrower] - [●] Facility Agreement  
dated [●] (the "Agreement")**

1. We refer to the Agreement and the Second Lien Intercreditor Agreement (as defined in the Agreement). This is an Assignment Agreement for the purposes of the Agreement and a [Creditor Accession Undertaking] for the purposes of the Second Lien Intercreditor Agreement. Terms defined in the Agreement have the same meaning in this Assignment Agreement unless given a different meaning in this Assignment Agreement.
2. We refer to clause 26.5 (*Procedure for Transfer or Assignment*):
  - (a) The Existing Lender assigns absolutely to the New Lender all the rights of the Existing Lender under the Agreement and the other Finance Documents which relate to that portion of the Existing Lender's Commitment(s) and participations in Loans under the Agreement as specified in the Schedule.
  - (b) The Existing Lender is released from all the obligations of the Existing Lender which correspond to that portion of the Existing Lender's Commitment(s) and participations in Loans under the Agreement specified in the Schedule.
  - (c) The New Lender becomes a Party as a Lender and is bound by obligations equivalent to those from which the Existing Lender is released under paragraph (b) above.
3. The proposed Transfer Date is [●].
4. On the Transfer Date the New Lender becomes:
  - (a) Party to the Finance Documents (other than the Second Lien Intercreditor Agreement) as a Lender; and
  - (b) Party to the Second Lien Intercreditor Agreement as a Senior Lender (as defined in the Second Lien Intercreditor Agreement).
5. The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of clause 33.2 (*Addresses*) are set out in the Schedule.
6. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in paragraph (c) of clause 26.4 (*Limitation of Responsibility of Existing Lenders*).
7. The New Lender confirms, for the benefit of the BPIFAE Agent and without liability to any Obligor, that it is:
  - (a) [a Qualifying Lender;]
  - (b) [not a Qualifying Lender].

8. This Assignment Agreement acts as notice to the COACE Agent (on behalf of each Finance Party) and, upon delivery in accordance with clause 26.6 (*Copy of Transfer Certificate or Assignment Agreement to Borrower*), to the Borrower (on behalf of each Obligor) of the assignment referred to in this Assignment Agreement.
9. We refer to clause [●] (*Change of Senior Lender*) of the Second Lien Intercreditor Agreement. In consideration of the New Lender being accepted as a Senior Lender Agreement (and as defined in the Second Lien Intercreditor Agreement) for the purposes of the Second Lien Intercreditor Agreement, the New Lender confirms that, as from the Transfer Date, it intends to be party to the Second Lien Intercreditor Agreement as a Senior Lender, and undertakes to perform all the obligations expressed in the Second Lien Intercreditor Agreement to be assumed by a Senior Lender and agrees that it shall be bound by all the provisions of the Second Lien Intercreditor Agreement, as if it had been an original party to the Second Lien Intercreditor Agreement.
10. This Assignment Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Assignment Agreement.
11. This Assignment Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.
12. This Assignment Agreement has been entered into on the date stated at the beginning of this Assignment Agreement.

**THE SCHEDULE**  
**Rights to be assigned and obligations to be released and undertaken**

[insert relevant details]

[Facility office address, fax number and attention details for notices and account details for payments]

[Existing Lender]

[New Lender]

By:

By:

This Assignment Agreement is accepted by the BPIFAE Agent and the Transfer Date is confirmed as [●].

Signature of this Assignment Agreement by the BPIFAE Agent constitutes confirmation by the BPIFAE Agent of receipt of notice of the assignment referred to herein, which notice the BPIFAE Agent receives on behalf of each Finance Party.

[BPIFAE Agent]

By:

## Schedule 6

### The Security Agent

#### 1. Security agent as holder of liens

(a) In this Clause:

“**Finance Party Claim**” means any amount which an Obligor owes to a Finance Party under or in connection with the Finance Documents; and

“**Security Agent Claim**” means any amount which an Obligor owes to the Security Agent under this Clause.

(b) Unless expressly provided to the contrary in any Finance Document, the Security Agent holds:

(i) any security created by a Security Document governed by any relevant law;

(ii) the benefit of any Security Agent Claims; and

(iii) any proceeds of security,

for the benefit, and as the property, of the Finance Parties.

(c) The Security Agent will separately identify in its records the property rights referred to in paragraph (b) above.

(d) The Borrower must pay the Security Agent, as an independent and separate creditor, an amount equal to each Finance Party Claim on its due date.

(e) The Security Agent may enforce performance of any Security Agent Claim in its own name as an independent and separate right. This includes any suit, execution, enforcement of security, recovery of guarantees and applications for and voting in respect of any kind of insolvency proceeding.

(f) Each Finance Party must, at the request of the Security Agent, perform any act required in connection with the enforcement of any Security Agent Claim. This includes joining in any proceedings as co-claimant with the Security Agent.

(g) Unless the Security Agent fails to enforce a Security Agent Claim within a reasonable time after its due date, a Finance Party may not take any action to enforce the corresponding Finance Party Claim unless it is requested to do so by the Security Agent.

(h) The Borrower irrevocably and unconditionally waives any right it may have to require a Finance Party to join in any proceedings as co-claimant with the Security Agent in respect of any Security Agent Claim.

(i) (A) Discharge by the Borrower of a Finance Party Claim will discharge the corresponding Security Agent Claim in the same amount; and  
(B) Discharge by the

Borrower of a Security Agent Claim will discharge the corresponding Finance Party Claim in the same amount.

- (j) The aggregate amount of the Security Agent Claims will never exceed the aggregate amount of Finance Party Claims.
- (k) (A) A defect affecting a Security Agent Claim against the Borrower will not affect any Finance Party Claim; and (B) A defect affecting a Finance Party Claim against the Borrower will not affect any Security Agent Claim.
- (l) If the Security Agent returns to the Borrower, whether in any kind of insolvency proceedings or otherwise, any recovery in respect of which it has made a payment to a Finance Party, that Finance Party must repay an amount equal to that recovery to the Security Agent.

2. **Responsibility**

- (a) The Security Agent is not liable or responsible to any other Finance Party for:
  - (i) any failure in perfecting or protecting the security created by any Security Document; or
  - (ii) any other action taken or not taken by it in connection with any Security Document,unless caused by its gross negligence or wilful misconduct.
- (b) The Security Agent is not responsible for:
  - (i) the right or title of any person in or to, or the value of, or sufficiency of any part of the security created by the Security Documents;
  - (ii) the priority of any security created by the Security Documents; or
  - (iii) the existence of any other Lien affecting any asset secured under a Security Document.

3. **Title**

The Security Agent may accept, without enquiry, the title (if any) the Borrower may have to any asset over which security is intended to be created by any Security Document.

4. **Possession of documents**

The Security Agent is not obliged to hold in its own possession any Security Document, title deed or other document in connection with any asset over which security is intended to be created by a Security Document. Without prejudice to the above, the Security Agent may allow any bank providing safe custody services or any professional adviser to the Security Agent to retain any of those documents in its possession.



5. **Investments**

Except as otherwise provided in any Security Document, all moneys received by the Security Agent under a Security Document may be:

- (a) invested in the name of, or under the control of, the Security Agent in any investment for the time being authorised by any relevant law for the investment by trustees of trust money or in any other investments which may be selected by the Security Agent with the consent of the Majority Lenders; or
- (b) placed on deposit in the name of, or under the control of, the Security Agent at any bank or institution (including any Finance Party) and on such terms as the Security Agent may agree.

6. **Approval**

Each Finance Party:

- (a) confirms its approval of each Security Document; and
- (b) authorises and directs the Security Agent (by itself or by such person(s) as it may nominate) to enter into and enforce the Security Documents as trustee (or agent) or as otherwise provided (and whether or not expressly in the names of the Finance Parties) on its behalf.

7. **Conflict with security documents**

If there is any conflict between this Agreement and any Security Document with regard to instructions to, or other matters affecting, the Security Agent, this Agreement will prevail.

8. **Release of security**

- (a) If a disposal of any asset subject to security created by a Security Document is made to a person (which is and will remain) outside the Group in the following circumstances:
  - (i) all the Lenders agree to the disposal;
  - (ii) the disposal is being made at the request of the Security Agent in circumstances where any security created by the Security Documents has become enforceable;
  - (iii) the disposal is allowed by the terms of the Finance Documents and will not result or could not reasonably be expected to result in any Default; and
  - (iv) the disposal is being effected by enforcement of a Security Document, the asset(s) being disposed of will be released from any security over it created by a Security Document.
- (b) Any release under this Subclause will not become effective until the date of the relevant disposal or otherwise in accordance with the consent of all the Lenders.
- (c) If a disposal is not made, then any release relating to that disposal will have no effect, and the obligations of the Borrower under the Finance Documents will continue in full force and effect.

- (d) If the Security Agent so requests pursuant to a release under this Subclause, (at the request and expense of the Borrower) each Finance Party must enter into any document and do all such other things which are reasonably required to achieve that release. Each other Finance Party irrevocably authorises the Security Agent to enter into any such document.

9. **Co-security agent**

- (a) The Security Agent may appoint a separate security agent or a co-security agent in any jurisdiction:
- (i) if the Security Agent considers that without the appointment the interests of the Lenders under the Finance Documents might be materially and adversely affected;
  - (ii) for the purpose of complying with any law, regulation or other condition in any jurisdiction; or
  - (iii) for the purpose of obtaining or enforcing a judgment or enforcing any Finance Document in any jurisdiction.
- (b) Any appointment under this Subclause will only be effective if the security agent or co-security agent confirms to the Security Agent and the Borrower in form and substance satisfactory to the Security Agent that it is bound by the terms of this Agreement as if it were the Security Agent.
- (c) The Security Agent may remove any security agent or co-security agent appointed by it and may appoint a new security agent or co-security agent in its place.

10. **Information**

Each Finance Party and the Borrower must supply the Security Agent with any information that the Security Agent may reasonably specify as being necessary or desirable to enable it to perform its functions under this Clause.

11. **Perfection of security**

Borrower must (at its own cost) take any action and enter into and deliver any document which is required by the Security Agent so that a Security Document provides for effective and perfected security in favour of any successor Security Agent.

## Schedule 7

### Know Your Customer Requirements

The Borrower shall provide the following documents to the BPIFAE Agent, upon the request of a Finance Party, in original or certified copy form:

1. **Formation Documents:** original or certified copies of the certificate of commercial registration, memorandum of association or any other equivalent formation documents in English that have been filed with the relevant business registry in the jurisdiction of formation of the Borrower and any other trading names;
2. **List of Directors:** a certified list of all directors of the Borrower including:
  - (a) names;
  - (b) nationalities;
  - (c) dates of birth; and
  - (d) business addresses;
3. **Passports:** a certified copy of the passports of the persons signing each of the Finance Documents for and on behalf of the Borrower;
4. **Financials:** most recent annual audited financial reports (if any) and the latest unaudited statement of accounts; and
5. **Listing:** evidence that the Borrower is a listed entity.

## Schedule 8

### Form of Compliance Certificate

To: BNP Paribas as BPIFAE Agent

From: [Borrower]

Dated: [●]

Dear Sirs

#### **Globalstar BPIFAE Facility Agreement dated 5 June 2009 (as amended and restated from time to time) (the “Agreement”)**

1. We refer to the Agreement. This is a Compliance Certificate. Terms defined in the Agreement have the same meaning in this Compliance Certificate unless given a different meaning in this Compliance Certificate.
2. We confirm that: *[Insert details of financial covenants in Clause 20 (Financial Covenants) to be certified]*.
3. We confirm that the amounts as of the date of this Compliance Certificate in each of the Project Accounts are as follows:
  - (a) the Collection Account – US\$[●];
  - (b) the Debt Service Account – US\$[●];
  - (c) the Debt Service Reserve Account – US\$[●];
  - (d) the Equity Proceeds Account – US\$[●]; and
  - (e) the Insurance Proceeds Account – US\$[●].
4. We confirm that: *[insert details of any Spectrum Cash Flow and/or Spectrum Sale proceeds]*.
5. We confirm that: *[insert detailed calculations for the purposes of calculating the amounts of the cash sweeps in Clause 7 (Prepayment and Cancellation)]*.
6. We confirm that: *[insert detailed calculation of the Adjusted Consolidated EBITDA Reconciliation and the reconciliation of the Excess Cash Flow]*.
7. We confirm that since the date of the last Compliance Certificate no new Subsidiaries have been created or equity interests issued other than as disclosed in writing to the BPIFAE Agent.
8. We confirm that the shareholders of record of the Borrower are as follows: *[insert list of current shareholders of record of the Borrower]*.
9. We confirm that the Borrower has complied with the terms of the Accounts Agreement.
10. [We confirm that no Default is continuing.]\*

Signed:

Director

Of

[*Borrower*]

Director

Of

[*Borrower*]

## **Schedule 9**

### **ERISA Plans**

1. Globalstar, Inc. Savings Plan (401(k));
2. Globalstar, Inc. Pension Plan (Retirement); and
3. Globalstar, Inc. Comprehensive Welfare Benefits Plan document.

## Schedule 10

### Form of Confidentiality Undertaking

To:

--

*[insert name of Potential Lender]*

Re: The Facility

Borrower: Amount: BPIFAE Agent:
---------------------------------------

Dear Sirs,

We understand that you are considering participating in the Facility. In consideration of us agreeing to make available to you certain information, by your signature of a copy of this letter you agree as follows:

#### 1. Confidentiality Undertaking

You undertake:

- (a) to keep the Confidential Information confidential and not to disclose it to anyone except as provided for by paragraph 2 below and to ensure that the Confidential Information is protected with security measures and a degree of care that would apply to your own confidential information;
- (b) to use the Confidential Information only for the Permitted Purpose; and
- (c) to use all reasonable endeavours to ensure that any person to whom you pass any Confidential Information (unless disclosed under paragraph 2(b) below) acknowledges and complies with the provisions of this letter as if that Person were also a party to it.

#### 2. Permitted Disclosure

We agree that you may disclose Confidential Information:

- (a) to members of the Participant Group and their officers, directors, employees and professional advisers to the extent necessary for the Permitted Purpose and to any auditors of members of the Participant Group;
- (b) (i) where requested or required by any court of competent jurisdiction or any competent judicial, governmental, supervisory or regulatory body, (ii) where required by the rules of any stock exchange on which the shares or other securities of any member of the Participant Group are listed or (iii) where required by the laws or regulations of any country with jurisdiction over the affairs of any member of the Participant Group; or

(c) with the prior written consent of us and the Borrower.

3. **Notification of Required or Unauthorised Disclosure**

You agree (to the extent permitted by law and except where disclosure is to be made to any competent supervisory or regulatory body during the ordinary course of its supervisory or regulatory function over you) to inform us of the full circumstances of any disclosure under paragraph 2(b) or upon becoming aware that Confidential Information has been disclosed in breach of this letter.

4. **Return of Copies**

If we so request in writing, you shall return all Confidential Information supplied to you by us and destroy or permanently erase (to the extent technically practicable) all copies of Confidential Information made by you and use all reasonable endeavours to ensure that anyone to whom you have supplied any Confidential Information destroys or permanently erases (to the extent technically practicable) such Confidential Information and any copies made by them, in each case save to the extent that you or the recipients are required to retain any such Confidential Information by any applicable law, rule or regulation or by any competent judicial, governmental, supervisory or regulatory body or in accordance with internal policy, or where the Confidential Information has been disclosed under paragraph 2(b) above.

5. **Continuing Obligations**

The obligations in this letter are continuing and, in particular, shall survive the termination of any discussions or negotiations between you and us. Notwithstanding the previous sentence, the obligations in this letter shall cease on the earlier of (a) the date you become a party to or otherwise acquire (by assignment, sub participation or otherwise) an interest, direct or indirect in the Facility and (b) twelve (12) Months after you have returned all Confidential Information supplied to you by us and destroyed or permanently erased (to the extent technically practicable) all copies of Confidential Information made by you (other than any such Confidential Information or copies which have been disclosed under paragraph 2 above (other than sub-paragraph 2(a)) or which, pursuant to paragraph 4 above, are not required to be returned or destroyed).

6. **No Representation; Consequences of Breach, etc**

You acknowledge and agree that:

- (a) neither we, nor any member of the Group nor any of our or their respective officers, employees or advisers (each a “**Relevant Person**”)
  - (i) make any representation or warranty, express or implied, as to, or assume any responsibility for, the accuracy, reliability or completeness of any of the Confidential Information or any other information supplied by us or the assumptions on which it is based or
  - (ii) shall be under any obligation to update or correct any inaccuracy in the Confidential Information or any other information supplied by us or be otherwise liable to you or any other Person in respect to the Confidential Information or any such information; and
- (b) we or members of the Group may be irreparably harmed by the breach of the terms of this letter and damages may not be an adequate remedy; each Relevant Person may be



granted an injunction or specific performance for any threatened or actual breach of the provisions of this letter by you.

7. **No Waiver; Amendments, etc**

This letter sets out the full extent of your obligations of confidentiality owed to us in relation to the information the subject of this letter. No failure or delay in exercising any right, power or privilege under this letter will operate as a waiver thereof nor will any single or partial exercise of any right, power or privilege preclude any further exercise thereof or the exercise of any other right, power or privileges under this letter. The terms of this letter and your obligations under this letter may only be amended or modified by written agreement between us.

8. **Inside Information**

You acknowledge that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and you undertake not to use any Confidential Information for any unlawful purpose.

9. **Nature of Undertakings**

The undertakings given by you under this letter are given to us and (without implying any fiduciary obligations on our part) are also given for the benefit of the Borrower and each other member of the Group.

10. **Third Party Rights**

- (a) Subject to this paragraph 10 and to paragraph 6 and paragraph 9, a person who is not a party to this letter has no right under the Contracts (Rights of Third Parties) Act 1999 (the “**Third Parties Act**”) to enforce or enjoy the benefit of any term of this letter.
- (b) The Relevant Persons may enjoy the benefit of paragraphs 6 and 9 subject to and in accordance with this paragraph 10 and the provisions of the Third Parties Act.
- (c) The parties to this letter do not require the consent of any Relevant Person to rescind or vary this letter at any time.

11. **Governing Law and Jurisdiction**

This letter (including the agreement constituted by your acknowledgement of its terms) shall be governed by and construed in accordance with the laws of England and the parties submit to the non-exclusive jurisdiction of the English courts.

12. **Definitions**

In this letter (including the acknowledgement set out below) terms defined in the Facility shall, unless the context otherwise requires, have the same meaning and:

“**Confidential Information**” means any information relating to the Borrower, the Group, and the Finance Documents, provided to you by us or any of our affiliates or advisers, in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such

information but excludes information that (a) is or becomes public knowledge other than as a direct or indirect result of any breach of this letter or (b) is known by you before the date the information is disclosed to you by us or any of our affiliates or advisers or is lawfully obtained by you after that date, other than from a source which is connected with the Group and which, in either case, as far as you are aware, has not been obtained in violation of, and is not otherwise subject to, any obligation of confidentiality;

“**Group**” means the Borrower and each of its holding companies and subsidiaries and each subsidiary of each of its holding companies (as each such term is defined in the Companies Act 1985);

“**Participant Group**” means you, each of your holding companies and subsidiaries and each subsidiary of each of your holding companies (as each such term is defined in the Companies Act 1985); and

“**Permitted Purpose**” means considering and evaluating whether to enter into the Facility.

Please acknowledge your agreement to the above by signing and returning the enclosed copy.

Yours faithfully

.....

For and on behalf of  
Mandated Lead Arranger  
To: [Mandated Lead Arranger]  
The Borrower and each other member of the Group  
We acknowledge and agree to the above:

.....

For and on behalf of  
[Potential Lender]

## Schedule 11

### Payment Terms

Each payment under this Agreement shall be payable:

- (a) to the Supplier and/or the Launch Services Provider, as the case may be; or
- (b) in the case of a reimbursement to the Borrower, to the Borrower,

against presentation of:

- (i) a copy of a duly certified Invoice and a Qualifying Certificate;
- (ii) in the case of payments to the Supplier only, a certificate of completion, as provided for in the Satellite Construction Contract, duly signed by the Borrower;
- (iii) a Utilisation Request; and
- (iv) in relation to a reimbursement to the Borrower, a certificate signed by a Responsible Officer of the Borrower confirming to the BPIFAE Agent:
  - (A) that the Borrower has made the payment in respect of which the reimbursement is required; and
  - (B) the purpose for which the Loan shall be applied.

## Schedule 12

### Material Contracts

1. Radio Access Network and User Terminal Subsystem Contract between the Borrower and Hughes, effective as of 1 May 2008.
  - (a) Amendment No. 1 to Radio Access Network and User Terminal Subsystem Contract, effective as of 16 June 2009.
  - (b) Amendment No. 2 to Radio Access Network and User Terminal Subsystem Contract, effective as of 28 August 2009.
  - (c) Amendment No. 3 to Radio Access Network and User Terminal Subsystem Contract, effective as of 21 September 2009.
  - (d) Amendment No. 4 to Radio Access Network and User Terminal Subsystem Contract, effective as of 24 March 2010.
  - (e) Amendment No. 5 to Radio Access Network and User Terminal Subsystem Contract, effective as of 5 April 2011.
  - (f) Amendment No. 6 to Radio Access Network and User Terminal Subsystem Contract, effective as of 4 November 2011.
  - (g) Amendment No. 7 to Radio Access Network and User Terminal Subsystem Contract, effective as of 1 February 2012.
  - (h) Amendment No. 8 to Radio Access Network and User Terminal Subsystem Contract, effective as of 6 September 2012.
  - (i) Letter Agreements for deferral of payment under the Radio Access Network and User Terminal Subsystem Contract, dated 30 March 2011 as further amended on 14 October 2011, 30 December 2011, 30 March 2012, 26 June 2012, 27 September 2012, 20 December 2012, 26 March 2013, 28 June 2013, 7 August 2013 and 30 May 2014.
  - (j) Radio Access Network and User Terminal Subsystem Contract Exhibit A, dated 6 September 2012.
  - (k) Radio Access Network and User Terminal Subsystem Contract Exhibit C, dated 6 September 2012.
  - (l) Amendment No. 9 to Contract between Globalstar and Hughes Network Systems LLC, effective as of January 13, 2013.
  - (m) Amendment No. 10 to Contract between Globalstar and Hughes Network Systems LLC, effective as of 7 August 2013.
  - (n) Amendment No. 11 to Contract between Globalstar and Hughes Network Systems LLC, effective as of 17 December 2013.

- (o) Letter Agreement regarding equity payment by and between Globalstar, Inc. and Hughes Network Systems, LLC, dated as of 30 May 2014, as further amended 3 December 2015, 7 March 2016, 14 June 2016, 21 September 2016 and 6 December 2016.
  - (p) Amendment No.12 to Contract between Globalstar, Inc. and Hughes Network Systems LLC, effective as of 16 October 2014.
  - (q) Amendment No.13 to Contract between Globalstar, Inc. and Hughes Network Systems LLC, effective as of 16 July 2015.
  - (r) Amendment No.14 to Contract between Globalstar, Inc. and Hughes Network Systems LLC, effective as of 16 December 2016.
  - (s) Amendment No. 15 to Contract between Globalstar, Inc. and Hughes Network Systems, LLC, effective as 1 June 2017.
2. Core Network Purchase Agreement between the Borrower and Ericsson, dated as of 22 July 2014.
- (a) Amendment No.1 to Contract between Globalstar, Inc. and Ericsson Inc., effective as of 2 April 2015.
  - (b) Amendment No. 2 to Contract between Globalstar, Inc. and Ericsson Inc., effective as of 11 August 2015.
3. Senior Indenture between the Borrower and U.S. Bank, National Association, dated as of 15 April 2008.
- (a) First Supplemental Indenture to Senior Indenture, dated as of 15 April 2008;
  - (b) Amendment to First Supplemental Indenture dated, as of 1 December 2008;
  - (c) Second Supplemental Indenture to Senior Indenture, dated as of 19 June 2009;
  - (d) Third Supplemental Indenture to Senior Indenture, dated as of 14 June 2011; and
  - (e) Fourth Supplemental Indenture to Senior Indenture, dated as of 20 May 2013.
4. The Finance Documents.
5. Master Manufacturing and Supply Agreement between the Borrower and BYD (Huizhou) Co., Ltd, effective as of 10 June 2011.
6. Manufacturing Agreement between the Borrower and Creation Technologies Texas, LLC effective as of 8 July 2019.
7. Gateway Operation and Maintenance Agreement between the Borrower and Singapore Telecommunications Limited, dated 7 May 2008.
- (a) Supplemental Agreement to the Operation and Maintenance Agreement, dated 9 September 2009.
  - (b) Supplemental Agreement No.2 to the Operation and Maintenance Agreement, dated 1 September 2011.

- (c) Supplemental Agreement No. 3 to the Operation and Maintenance Agreement, dated 6 May 2013.
  - (d) Supplemental Agreement No. 4 to the Operation and Maintenance Agreement, dated 23 September 2013.
  - (e) Supplemental Agreement No. 5 to the Operation and Maintenance Agreement, dated 24 January 2014.
  - (f) Supplemental Agreement No. 6 to the Operation and Maintenance Agreement, dated 1 April 2014.
  - (g) Supplemental Agreement No. 7 to the Operation and Maintenance Agreement, dated 1 July 2014.
  - (h) Supplemental Agreement No. 8 to the Operation and Maintenance Agreement, dated 16 December 2014.
  - (i) Supplemental Agreement No. 9 to the Operation and Maintenance Agreement, dated 10 May 2015.
  - (j) Supplemental Agreement No. 10 to the Operation and Maintenance Agreement, dated 1 August 2016.
  - (k) Supplemental Agreement No. 11 to the Operation and Maintenance Agreement, dated 1 February 2019.
- 8. Settlement Agreement between the Borrower, Thales Alenia Space France, Thermo Funding Company, dated 24 June 2012.
  - 9. Lease Agreement between the Borrower and Thermo Covington, LLC, dated 1 February 2019.
  - 10. Guaranty Agreement to Senior Indenture and Fourth Supplemental Indenture between the Borrower, certain subsidiaries of the Borrower, and U.S. Bank National Association, dated 27 December 2013.
  - 11. Thermo Loan Agreement.
  - 12. Second Lien Facility Agreement.

## **Schedule 13**

### **Labour and Collective Bargaining Agreements**

A labour and collective bargaining agreement dated 1 May 2019, and entered in between Sinttel/RJ (Sindicato dos Trabalhadores em Empresas de Telecomunicações, Transmissão de Dados e Correio Eletrônico, Telefonia Móvel Celular, Serviços Troncalizados de Comunicação, Rádiochamadas, Telemarketing, Projeto, Construção, Instalação e Operação de Mesas Telefônicas no Estado do Rio de Janeiro) and Globalstar do Brasil Ltda.

## Schedule 14

### Financial Indebtedness and Guarantee Obligations

1. Open end promissory note in the maximum principal amount of US\$10,000,000, dated 23 March 2006 from Globalstar Canada Satellite Co. to Globalstar de Venezuela, C.A., having a balance outstanding of US\$4,700,868.93 as of 30 September 2019.
2. Open end line of credit promissory note in the maximum principal amount of US\$50,000,000, dated 30 June 2007 and amended 31 December 2008 from Globalstar Canada Satellite Co. to the Borrower, having a balance outstanding of US\$0 as of 31 May 2017.
3. Fourth Supplemental Indenture in respect of 8.00% Convertible Senior Notes due 2028, dated as of 30 September 2019.
4. Thermo Loan Agreement.
5. The Second Lien Facility Agreement.



## Communication Licences

**Licenses and Authorizations Regulated by the Federal Communications Commission  
Held by Globalstar, Inc. and its Subsidiaries  
Active as of October 2019**

Licensee (Holder)	Call Sign	Expiration Date	Description and Authorizing Order(s) and/or File Number(s)
Globalstar Licensee LLC	S2115	10/04/2024	<p><i>NGSO Satellite Authorization:</i></p> <p>Authority to Construct, Launch, and Operate Globalstar, a Low Earth Orbit Satellite System to Provide Mobile Satellite Services in the Big LEO Band at 1610-1618.725 MHz (“Lower Big LEO band,” for uplink operations) and 2483.5-2500 MHz (“Upper Big LEO band,” for downlink operations), per Order and Authorization, 10 FCC Rcd 2333 (IB 1995) (DA 95-128), and Second Order on Reconsideration, 22 FCC Rcd 19733 (2007) (FCC 07-194) (<i>see also</i> File Nos. SAT-A/O-19910603-00010, formerly 19-DSS-0-91(48); SAT- SAT-ASG-20060724-00078).</p> <p>Authority to operate space stations using transmitting frequencies for feeder downlinks at 6875-7055 MHz and for reception of feeder uplinks at 5091-5250 MHz, per Order and Authorization, 11 FCC Rcd 16410 (IB 1996) (DA 98-1924).</p> <p>License term for first-generation U.S.-licensed space stations extended to Oct. 4 2024 by File No. SAT-MOD-20130314-00030 (granted Sept. 18, 2014); <i>see</i> Public Notice, Report No. SAT-01042 (DA 14-1355) (IB) 2014).</p> <p>Authority to operate Globalstar’s second-generation NGSO MSS satellites licensed through the Republic of France (Globalstar 2.0, ITU Name HIBLEO-X) within the United States granted under File Nos. SAT-MOD-20080904-000165 and SAT-AMD-20091221-00147, per Order, 26 FCC Rcd 3948 (IB 2011) (DA 11-520).</p> <p>Modification of Globalstar’s Ancillary Terrestrial Component (ATC) of its Mobile-Satellite Service (MSS) system operating in the Big LEO S-band, using Globalstar’s licensed spectrum at 2483.5-2495 MHz to deploy a terrestrial low-power broadband network, enabled by Report and Order, 31 FCC Rcd 13801 (2016) (FCC 16-181); <i>see also</i> modification applications, File Nos. SAT-MOD-20170411-00061 and SES-MOD-20170412-00422, (granted August 2017); <i>see</i> Public Notice, DA 17-756, at 1 (Aug. 11 2017); Public Notice, Report No. SES-01982, at 5-7 (Aug. 16, 2017); Notice of Minor Modification, File No. SAT-MOD-20171020-00141 (accepted Oct. 31, 2017); Public Notice, Report No. SAT-02190, at 2 (Dec. 15, 2017).</p>

GUSA Licensee LLC	E970381	10/04/2024	<i>Mobile Earth Terminals – Blanket License</i> Authority for mobile satellite service handsets / mobile earth terminals within 1610 – 1618.7250 MHz and 2483.5 – 2500 MHz – File No. SES-MOD-20160412-00344 granted July 5, 2016; see Public Notice, Report No. SES-01865. See also MSS Ancillary Terrestrial Component (ATC) Leasing Licence, granted Oct. 31, 2008.
GUSA Licensee LLC	E000342	03/22/2026	<i>Fixed Earth Station – Site ID: CLFN-2 (Clifton, TX)</i> Authority within 5091-5250 MHz and 6875-7055 MHz – File No. SES-MFS-20091221-01608 granted March 18, 2011; see Order, 26 FCC Rcd 3948 (2011) (DA 11-520).
GUSA Licensee LLC	E000343	03/22/2026	<i>Fixed Earth Station – Site ID: CLFN-3 (Clifton, TX)</i> Authority within 5091-5250 MHz and 6875-7055 MHz – File No. SES-MFS-20091221-01609 granted March 18, 2011; see Order, 26 FCC Rcd 3948 (2011) (DA 11-520).
GUSA Licensee LLC	E000344	03/22/2026	<i>Fixed Earth Station – Site ID: CLFN-4 (Clifton, TX)</i> Authority within 5091-5250 MHz and 6875-7055 MHz – File No. SES-MFS-20091221-01610 granted March 18, 2011; see Order, 26 FCC Rcd 3948 (2011) (DA 11-520).
GUSA Licensee LLC	E000345	03/22/2026	<i>Fixed Earth Station – Site ID: CLFN-5 (Clifton, TX)</i> Authority within 5091-5250 MHz and 6875-7055 MHz – File No. SES-MFS-20091221-01611 granted March 18, 2011; see Order, 26 FCC Rcd 3948 (2011) (DA 11-520).
GUSA Licensee LLC	E030266	10/14/2025	<i>Fixed Earth Station – Site ID: CLFN-IOT (Clifton, TX)</i> Authority within 1610-1618.725 MHz and 2483.5-2500 MHz – File No. SES-MOD-20120308-00251 granted May 7, 2012; see Public Notice, Report No. SES-01448.
GUSA Licensee LLC	E050097	01/04/2022	<i>Fixed Earth Station – Site ID: SBRG-1 (Sebring, FL)</i> Authority within 5091-5250 MHz and 6875-7055 MHz – File No. SES-MFS-20101108-01412 granted June 6, 2011; see Public Notices, Report Nos. SES-01354 and SES-01405.
GUSA Licensee LLC	E050098	01/04/2022	<i>Fixed Earth Station – Site ID: SBRG-2 (Sebring, FL)</i> Authority within 5091-5250 MHz and 6875-7055 MHz – File No. SES-MFS-20101108-01411 granted June 7, 2011; see Public Notices, Report Nos. SES-01354 and SES-01405.
GUSA Licensee LLC	E050099	01/04/2022	<i>Fixed Earth Station – Site ID: SBRG-3 (Sebring, FL)</i> Authority within 5091-5250 MHz and 6875-7055 MHz – File No. SES-MFS-20101108-01410 granted June 7, 2011; see Public Notices, Report Nos. SES-01354 and SES-01405.
GUSA Licensee LLC	E050100	01/04/2022	<i>Fixed Earth Station – Site ID: SBRG-4 (Sebring, FL)</i> Authority within 5091-5250 MHz and 6875-7055 MHz – File No. SES-MFS-20101108-01409 granted June 7, 2011; see Public Notices, Report Nos. SES-01354 and SES-01405.
GUSA Licensee LLC	E050345	01/04/2022	<i>Fixed Earth Station – Site ID: WSLA-3 (Wasilla, AK)</i> Authority within 5091-5250 MHz and 6875-7055 MHz – File No. SES-MFS-20101108-01413 granted June 7, 2011; see Public Notices, Report Nos. SES-01354 and SES-01405.
GUSA Licensee LLC	E050346	01/04/2022	<i>Fixed Earth Station – Site ID: 1 (Wasilla, AK)</i> Authority within 5091-5250 MHz and 6875-7055 MHz – File No. SES-MFS-20101108-01414 granted June 7, 2011; see Public Notices, Report Nos. SES-01354 and SES-01405.

GUSA Licensee LLC	E050347	01/04/2022	<i>Fixed Earth Station – Site ID: WSLA-1 (Wasilla, AK)</i> Authority within 5091-5250 MHz and 6875-7055 MHz – File No. SES-MFS-20101108-01415 granted June 7, 2011; <i>see</i> Public Notices, Report Nos. SES-01354 and SES-01405.
GUSA Licensee LLC	E970199	02/27/2023	<i>Fixed Earth Station – Site ID: CLFN-1 (Clifton, TX)</i> Authority within 5091-5250 MHz and 6875-7055 MHz – File No. SES-MOD-20170112-00029 granted Feb. 7, 2017; <i>see</i> Public Notice, Report No. SES-01927.
GCL Licensee LLC	E050237	10/17/2020	<i>Fixed Earth Station – Site ID: LPMA-4 (Cabo Rojo, PR)</i> Authority within 5091-5250 MHz and 6875-7055 MHz – File No. SES-MFS-20091221-01606 granted March 18, 2011; <i>see</i> Order, 26 FCC Rcd 3948 (2011) (DA 11-520).
GCL Licensee LLC	E990335	06/23/2025	<i>Fixed Earth Station – Site ID: LPMA-3 (Cabo Rojo, PR)</i> Authority within 5091-5250 MHz and 5875-7055 MHz – File No. SES-MFS-20091221-01605 granted March 18, 2011; <i>see</i> Order, 26 FCC Rcd 3948 (2011) (DA 11-520).
GCL Licensee LLC	E990336	06/23/2025	<i>Fixed Earth Station – Site ID: LPMA-2 (Cabo Rojo, PR)</i> Authority within 5091-5250 MHz and 6900-7055 MHz – File No. SES-MFS-20091221-01604 granted March 18, 2011; <i>see</i> Order, 26 FCC Rcd 3948 (2011) (DA 11-520).
GCL Licensee LLC	E990337	06/23/2025	<i>Fixed Earth Station – Site ID: LPMA-1 (Cabo Rojo, PR)</i> Authority within 5091-5250 MHz and 6900-7055 MHz – File No. SES-MOD-20170112-00030 granted Feb. 7, 2017; <i>see</i> Public Notice, Report No. SES-01927.
Globalstar, Inc.	WH2XNQ	01/01/2020	<i>Experimental License – Mobile and Fixed Base Stations – Locations: San Mateo, CA; Washington, DC (two sites); Herndon, VA; New York, NY; Chicago, IL.</i> Authority in 2484 MHz – File No. 0501-EX-RR-2015 granted Nov. 10, 2015 (effective Jan. 1, 2016).
Globalstar, Inc.	WJ2XYD	10/01/2019	<i>Experimental License – Mobile – Location: Non-geostationary.</i> Authority in 2483.5-2500 MHz – File No. 0523-EX-CN-2017 granted Oct. 24, 2017.
Globalstar, Inc.	WJ2XLN	05/01/2020	<i>Experimental License – Mobile – Location: Non-geostationary space station.</i> Authority in 2483.5-2495 MHz – File No. 0595-EX-CN-2017 granted Apr. 26, 2018.
Globalstar, Inc.	WJ2XLL	05/01/2020	<i>Experimental License – Mobile – Location: Globalstar LEO.</i> Authority in 2483.5-2495 MHz – File No. 0941-EX-CN-2017 granted Apr. 26, 2018.
Globalstar, Inc.	WJ2XLM	05/01/2020	<i>Experimental License – Mobile – Location: Globalstar LEO, non-GEO.</i> Authority in 2483.5-2495 MHz – File No. 0014-EX-CN-2018 granted Apr. 26, 2018.
Globalstar, Inc.	WJ2XJC	03/01/2020	<i>Experimental License – Mobile – Location: Globalstar, FCC Reg HIBLEO-4.</i> Authority in 2483.5-2495 MHz – File No. 0017-EX-CN-2018 granted Mar. 12, 2018.
Globalstar, Inc.	WJ2XJD	03/01/2020	<i>Experimental License – Mobile – Location: Globalstar, FCC Reg HIBLEO-4.</i> Authority in 2483.5-2500 MHz – File No. 0095-EX-CN-2018 granted Mar. 12, 2018.
Globalstar, Inc.	WJ2XOR	07/01/2020	<i>Experimental License – Mobile – Location: Globalstar, FCC Reg HIBLEO-4.</i> Authority in 2483.5-2495 MHz – File No. 0305-EX-CN-2018 granted June 28, 2018.

Globalstar, Inc.	WJ2XZE	02/01/2021	<i>Experimental License – Mobile – Location:</i> Globalstar, FCC Reg HIBL EO-4. Authority in 2483.5-2495 MHz – File No. 0400-EX-CN-2018 granted Feb. 12, 2019.
Globalstar, Inc.	WJ2XTR	10/01/2020	<i>Experimental License – Mobile – Location:</i> Globalstar, FCC Reg HIBL EO-4. Authority in 2483.5-2500 MHz – File No. 0578-EX-CN-2018 granted Oct. 2, 2018.
Globalstar, Inc.	WJ2XSB	09/01/2020	<i>Experimental License – Mobile – Location:</i> Globalstar, FCC Reg HIBL EO-4. Authority in 2483.5-2500 MHz – File No. 0579-EX-CN-2018 granted Sept. 13, 2018.
Globalstar, Inc.	WJ2XVX	11/01/2019	<i>Experimental License – Mobile – Location:</i> Globalstar, FCC Reg HIBL EO-4. Authority in 2483.5-2500 MHz – File No. 0783-EX-CN-2018 granted Nov. 7, 2018.
Globalstar, Inc.	WK2XFU	05/01/2020	<i>Experimental License – Mobile – Location:</i> Globalstar, FCC Reg HIBL EO-4. Authority in 2483.5-2500 MHz – File No. 0192-EX-CN-2019 granted May 13, 2019.
Globalstar USA, LLC	ITC-214-19990728-00484	None	<i>International Section 214 Authorization – Global Facilities Based and Resale Service – see Public Notice, Report No. TEL-00131 (DA 99-1782); Public Notice, DA 04-628.</i>
Globalstar USA, LLC	ITC-214-19991229-00795	None	<i>International Section 214 Authorization – Global Facilities Based and Resale Service – see Public Notice, Report No. TEL-00191 (DA 00-361); Public Notice, DA 04-628.</i>
Globalstar USA, LLC	ITC-214-20000615-00356	None	<i>International Section 214 Authorization – Global Facilities Based and Resale Service – see Public Notice, Report No. TEL-00261 (DA 00-1614); Public Notice, DA 04-628.</i>

Schedule 16

Satellites

Orbital Plane	In-Plane Slot Location	Satellite Flight Model Number	Transponder Frequency	Satellite Status as of November 5, 2019
A	1	M092	See Transponder Frequency Table	Operational in-orbit
A	2	M073		Operational in-orbit
A	3	M077		Operational in-orbit
B	1	M079		Operational in-orbit
B	2	M076		Operational in-orbit
B	3	M074		Operational in-orbit
C	1	M075		Operational in-orbit
C	2	M089		Operational in-orbit
C	3	M094		Operational in-orbit
D	1	M085		Operational in-orbit
D	2	M096		Operational in-orbit
D	3	M081		Operational in-orbit
E	1	M097		Operational in-orbit
E	2	M093		Operational in-orbit
E	3	M091		Operational in-orbit
F	1	M095		Operational in-orbit
F	2	M078		Operational in-orbit
F	3	M088		Operational in-orbit
G	1	M086		Operational in-orbit
G	2	M090		Operational in-orbit
G	3	M082		Operational in-orbit
H	1	M083		Operational in-orbit
H	2	M084		Operational in-orbit
H	3	M080		Operational in-orbit
B	Spare	M070		Operational in-orbit
C	Spare	M069		Operational in-orbit
C	Spare	M071		Operational in-orbit
D	Spare	M065		Operational in-orbit
E	Spare	M072	Operational in-orbit	
G	Spare	M066	Operational in-orbit	
Orbital Plane	In-Plane Slot Location	Satellite Flight Model Number	Satellite Status as of 5-Nov-19	
A	1	92	In-service	
	2	73	In-service	
	3	77	In-service	
B	1	79	In-service	
	2	76	In-service	
	3	74	In-service	
C	1	75	In-service	

	2	89	In-service
	3	94	In-service
D	1	85	In-service
	2	96	In-service
	3	81	In-service
E	1	97	In-service
	2	93	In-service
	3	91	In-service
F	1	95	In-service
	2	78	In-service
	3	88	In-service
G	1	86	In-service
	2	90	In-service
	3	82	In-service
H	1	83	In-service
	2	84	In-service
	3	80	In-service
S	1	70	In-service
	2	69	In-service
	3	71	In-service
	4	65	In-service
	5	72	In-service
	6	66	In-service

**Transponder Frequency Table**  
*(all frequencies in MHz)*

	Forward Link					
	C-Band Uplink			S-Band Downlink		
	low limit	center	high limit	low limit	center	high limit
1	5096.9600	5105.2100	5113.4600	2483.5000	2491.7500	2500.0000
2	5116.3400	5124.5900	5132.8400			
3	5135.7200	5143.9700	5152.2200			
4	5155.1000	5163.3500	5171.6000			
5	5174.4800	5182.7300	5190.9800			
6	5193.8600	5202.1100	5210.3600			
7	5213.2400	5221.4900	5229.7400			
8	5232.6200	5240.8700	5249.1200			

Command Frequency		
5091.0000	5091.5000	5092.0000

	Return Link					
	L-Band Uplink			C-Band Downlink		
	low limit	center	high limit	low limit	center	high limit
1	1610.0000	1618.2500	1626.5000	6900.7400	6908.9900	6917.2400
2				6920.1200	6928.3700	6936.6200
3				6939.5000	6947.7500	6956.0000
4				6958.8800	6967.1300	6975.3800
5				6978.2600	6986.5100	6994.7600
6				6997.6400	7005.8900	7014.1400
7				7017.0200	7025.2700	7033.5200
8				7036.4000	7044.6500	7052.9000

Telemetry Frequency		
6875.9000	6877.5000	6879.1000

## Schedule 17

### Existing Liens

1. Delaware - UCC-1 Financing Statements to name BNP Paribas, as agent, as secured party filed 18 June 2009:
  - (a) Globalstar, Inc., 91950739;
  - (b) Globalstar USA, LLC, 91951547;
  - (c) Globalstar C, LLC, 91950895;
  - (d) Globalstar Leasing LLC, 91953501;
  - (e) Globalstar Security Services, LLC, 91951836;
  - (f) ATSS Canada, Inc., 91951976;
  - (g) GSSI, LLC, 91951281;
  - (h) Globalstar Licensee LLC, 91953584;
  - (i) GUSA Licensee LLC, 91951059;
  - (j) GCL Licensee LLC, 91951158; and
  - (k) Globalstar Brazil Holdings, L.P., 91951695.
2. Colorado Secretary of State UCC-1 Financing Statement 2009F052197 filed against Spot LLC, with BNP Paribas as agent, 18 June 2009.
3. Form 3C Personal Property Security Registrations filed against the Borrower and Subsidiary Guarantors in favour of the administrative agent with the Ontario, Canada Ministry of Consumer and Business Services on 17 January 2008:
  - (a) Globalstar, Inc. <625298679;
  - (b) Globalstar USA, LLC <625298661;
  - (c) Globalstar C, LLC <625298607;
  - (d) Globalstar Leasing LLC <625298598;
  - (e) Globalstar Security Services, LLC <625298625;
  - (f) ATSS Canada, Inc. <625298643; and
  - (g) GSSI, LLC <625298634.
4. Delaware Secretary of State UCC-1 Financing Statement filed against Globalstar Broadband Services Inc., with BNP Paribas as agent filed June 25, 2012, 22445536.



5. Louisiana Secretary of State UCC-1 Financing Statement filed against Globalstar Media, L.L.C., with BNP Paribas as agent filed 25 June 2012, 52-64212.
6. Delaware Secretary of State UCC-1 Financing Statement filed against Globalstar International, LLC, with BNP Paribas as agent filed June 4, 2019, 20193840423.
7. Delaware Secretary of State UCC-1 Financing Statement filed against Globalstar Holding US, LLC, with BNP Paribas as agent filed June 4, 2019, 20193840647.
8. United States Patent and Trademark Office filings against the Borrower's Patents.
9. United States Patent and Trademark Office filings against the Borrower's Trademarks.
10. Regarding the Clifton, Texas real property:
  - (a) Deed of Trust, Security Agreement, Assignment of Leases, Rents and Profits, Financing Statement and Fixture Filing granted by Globalstar USA, LLC to BNP Paribas regarding Clifton, Texas real property dated as of 9 July 2009 and recorded on 28 July 2009 as Instrument No. 2009-00002393 with the County Clerk of Bosque County, Texas, as amended on or about the date hereof by that certain Modification of Deed of Trust, Security Agreement, Assignment of Leases, Rents and Profits, Financing Statement and Fixture Filing;
  - (b) mineral reservation as set forth in the deed dated 10 June 1954 and recorded in volume 172, page 298 of the Deed Records of Bosque County, Texas;
  - (c) the following oil and gas leases as recorded in the Deed Records of Bosque County, Texas: volume 16, page 439; volume 134, page 301; volume 14, page 370; volume 134, page 369; and
  - (d) items shown on the survey prepared by David Lane, RPLS #5233 dated 14 August 2006.
11. Regarding Wasilla, Alaska real property:
  - (a) Deed of Trust, Security Agreement, Assignment of Leases, Rents and Profits, Financing Statement and Fixture Filing granted by Globalstar USA, LLC to BNP Paribas regarding Wasilla, Alaska real property dated as of 9 July 2009 and recorded on 29 July 2009 as Instrument No. 2009-016786-0 in Palmer Recording District, Alaska, as amended on or about the date hereof by that certain Modification of Deed of Trust, Security Agreement, Assignment of Leases, Rents and Profits, Financing Statement and Fixture Filing;
  - (b) reservations or exceptions in patents or in acts authorizing the issuance thereof, recorded 1 April 1963 at Book 45, page 284, Palmer Recording District, Alaska;
  - (c) items shown on the plats of Discovery Hill Subdivision filed under Plat Number 2003-46 and Plat Number 98-134, Palmer Recording District, Alaska;
  - (d) items shown on the As-Built Survey prepared by John Shadrach, PLS dated 18 August 2005;

- (e) Right of Way Easements granted to Matanuska Electric Association, Inc. recorded in Book 29, Page 86; Book 325, Page 353; Book 913, Page 542; as Serial Number 2005-029959-0, each in Palmer Recording District, Alaska; and
  - (f) Easement in favor of Enstar Natural Gas Company, recorded in Book 944, Page 145, Palmer Recording District, Alaska.
12. Lien in favor of NFS Leasing Inc. and Peoples United Bank with Globalstar, Inc. listed as debtor, for all equipment and peripherals leased by Globalstar, Inc. under that certain Master Lease # 2015-413, as described in the UCC-1 filed on 19 February 2016 with the Delaware Department of State (Initial Filing No. 2016 1015922).
  13. Lien in favor of Electro Rent Corporation with Globalstar, Inc. listed as debtor, for a signal and spectrum analyzer, Asset #1734309D, Serial #103743, as described in the UCC-1 filed on 2 July 2018 with the Delaware Department of State (Initial Filing No. 2018 4523722).
  14. Lien in favor of Dell Financial Services L.L.C. with Globalstar, Inc. listed as debtor, for all computer equipment and peripherals and other equipment financed under the Payment Plan Agreement entered into between Globalstar, Inc. and Dell Financial Services L.L.C., as described in the UCC-1 filed on 13 April 2017 with the Caddo Clerk of Court (09-1327337).
  15. Lien in favor of Dell Financial Services L.L.C. with Globalstar, Inc. listed as debtor, for all computer equipment and peripherals and other equipment financed under the Payment Plan Agreement entered into between Globalstar, Inc. and Dell Financial Services L.L.C., as described in the UCC-1 filed on 15 February 2017 with the Caddo Clerk of Court (09-1321841).
  16. Lien in favor of Toyota Industries Commercial Finance, Inc. with Globalstar, Inc. listed as debtor, for one Toyota Forklift, Model #8BWS10, Serial #11586, as described in the UCC-1 filed on 25 February 2019 with the Caddo Clerk of Court (09-1387856).
  17. Lien in favor of Cisco Systems Capital Corporation with Globalstar USA, LLC listed as debtor, for all right, title, and interest in and to, among other things, the equipment subject to that Agreement to Lease Equipment No. 12020-MM001-0 entered into between Cisco Systems Capital Corporation and Globalstar USA, LLC, as described in the UCC-1 filed on 2 September 2015 with the Delaware Department of State (Initial Filing No. 2015 3856514).

## Schedule 18

### Qualifying Certificate

To: BPIFAE Agent

CC: Borrower

From: [Supplier] / [Launch Services Provider]

Date [●]

Dear Sirs,

#### Re: BPIFAE Facility Agreement - Globalstar

We refer to the facility agreement dated 5 June 2009 (as amended and restated from time to time) and made between Globalstar Inc., as Borrower, BNP Paribas, Natixis, Crédit Industriel et Commercial, Crédit Agricole Corporate and Investment Bank and Société Générale as Mandated Lead Arrangers, BNP Paribas as BPIFAE Agent, the Lenders and others (the “**BPIFAE Facility Agreement**”). Terms defined in the BPIFAE Facility Agreement have the same meanings herein.

1. We refer to the utilisation request issued by [the Borrower] and dated [●] (the “**Utilisation Request**”).
2. We confirm that the copy of the [transportation documents / acceptance certificates] attached to the Utilisation Request have been issued for the payment of the attached Invoices.
3. We confirm that:
  - (a) [We have received from the Borrower a payment of one hundred *per cent.* (100%) of the Invoices in respect of the Eligible Portion to be reimbursed in accordance with the Utilisation Request and such amount does not include:
    - (i) any sum in respect of any payment you may already have made to us;
    - (ii) any amount in respect of which we have already issued a Qualifying Certificate; and
    - (iii) any sum in respect of goods and services which are not eligible for financing under the Facility.

We attach bank credit advice confirming that a payment of one hundred *per cent.* (100%) of the attached Invoices have already been made.]

- (b) All documents supplied by us in support of this Qualifying Certificate are true copies of the originals and are in all material respects in conformity with the [Satellite Construction Contract] / [Launch Services Contract] and you may rely on the accuracy and completeness of all information and documents contained in or supplied with this Qualifying Certificate;

- (c) The goods and services to be financed by the Loan requested in the Utilisation Request are goods and services included in the attached Invoices, and:
- (i) the portion of the amount referred to in paragraph 3(a) above attributable to goods and services of French origin is [●].
  - (ii) the portion of the amount referred to in paragraph 3(a) above attributable to goods and services of foreign origin eligible for financing under the limits and under the conditions determined by the French Authorities and which have been approved for financing by the French Authorities is [●].

We attach corresponding supporting documents.

- (d) The [*Satellite Construction Contract*] / [*Launch Services Contract*] is in full force and effect and no default by us has occurred and is continuing since the date of the last Utilisation Request (or, if none, the date of the BPIFAE Facility Agreement);
- (e) The amount referred to in paragraph 3(a) above does not include any amount in respect of any matter which is the subject of any legal proceedings, nor to the best of our actual knowledge and belief will it become the subject of legal proceedings; and
- (f) We undertake to supply you with such information and documentation, and such clarification, as you advise us is necessary in connection with the BPIFAE Insurance Policy and we agree we shall not hold you responsible for any delay in meeting this request for a Loan occasioned by our making such request for information.

Yours faithfully,

For and on behalf of [*Thales Alenia Space, France*] / [*Arianespace, France*]

.....

**(Authorised Signatory)**

## Schedule 19

### Key Performance Indicators

#### North America

Key Performance Indicators	Quarter Ended
Subscribers (by product line)	
Gross Additions (by product line)	
Net Additions (by product line)	
Churn (by product line)	
ARPU (by product line)	
Minutes of Use	

#### Rest of the World

Key Performance Indicators	Quarter Ended
Subscribers (by product line)	
Gross Additions (by product line)	
Net Additions (by product line)	
Churn (by product line)	
ARPU (by product line)	
Minutes of Use	

## Schedule 20

### Transactions with Affiliates

1. See Schedule 22 for a description of the Equity Plan (defined therein).
2. Transactions with Thermo
  - (a) Settlement Agreement with Thermo and Other Shareholders
    - (i) On 14 December 2018, the Borrower, Thermo and other unaffiliated shareholders entered a stipulation and agreement of settlement, compromise and release of stockholder derivative action to settle all claims asserted against all defendants in the shareholder action filed on 25 September 2018.
  - (b) General & Administrative & Non-cash expenses
    - (i) Certain general and administrative expenses are incurred by Thermo on behalf of the Borrower. These expenses, which include non-cash expenses, relate to services provided by certain executive officers of Thermo and expenses incurred by Thermo on behalf of the Borrower which are charged to the Borrower. The expenses charged are based on actual amounts (with no mark-up) incurred by Thermo or upon allocated employee time.
  - (c) Second Lien Facility Agreement.
  - (d) The Borrower is issuing a Common Stock Purchase Warrant to Thermo in connection with the Second Lien Facility Agreement.
  - (e) Thermo Loan Agreement.
3. Thermo Covington, LLC
  - (a) On 1 February 2019, the Borrower entered into a Lease Agreement for provision of its headquarters with Thermo Covington, LLC with an annual rent payment of \$1,400,000 subject to annual increases of 2.5%.

## Schedule 21

### Existing Loans, Investments and Advances

1. Open end line of credit promissory note in the maximum principal amount of US\$50,000,000, dated 30 June 2007 and amended December 31, 2008 from Globalstar Canada Satellite Co. to the Borrower, having a balance outstanding of \$0 as of 30 September 2019.
2. Open end promissory note in the maximum principal amount of US\$10,000,000 dated 23 March 2006 from Globalstar Canada Satellite Co. to Globalstar de Venezuela, C.A., having a balance outstanding of US\$4,700,868.93 as of 30 September 2019.
3. As of the First Effective Date, the Borrower owned 225,000,000 ordinary shares of Globaltouch (West Africa) Limited pursuant to a Share Purchase Agreement between the Borrower and Globaltouch (West Africa) Limited dated 16 October 2007.
4. Joint venture agreement, dated as of 21 January 2010, between the Borrower and Arion Communications Co., pursuant to which the Borrower has advanced a total of US\$1,457,381 to Globalstar Asia Pacific.
5. On April 7, 2011, the Borrower purchased 1,000,000 Series B Convertible Preferred Stock and 250,000 warrants of TRAFFICCAST INTERNATIONAL, INC. at an Aggregate Purchase Price of US\$500,000.
6. On March 23, 2015, the Borrower entered into an agreement with CROC 684 (Proprietary) Limited T/A BBI Wireless @ Home. The Borrower retains a 74% economic interest and CROC 684 (Proprietary) Limited T/A BBI Wireless @ Home holds the remaining 26%. Operations are conducted through the entity The World's End Proprietary Limited, which is a subsidiary of the Borrower's parent company, Globalstar Inc. As of 30 September 2019, the initial shareholder loan from CROC 684 (Proprietary) Limited T/A BBI Wireless @ Home to The World's End has a balance of \$104,000 and the loan from Globalstar, Inc. to the World's End has a balance of \$296,000.
7. On 16 April 2014 and 25 June 2014, the Borrower entered into separate Loan Agreements totalling \$575,000 with VehSmart, a simplex VAR providing a tracking solution for the Ministry of Agriculture and Fishing in Ecuador. These loans are secured by all inventory held at VehSmart.
8. Acquisition of capital stock of Yippy, Inc. ("**Yippy**"), pursuant to a stock issuance agreement, dated 15 December 2015, between the Borrower and Yippy, which, among other things, provides Yippy access to the Borrower's network to sell certain Yippy services. In lieu of cash consideration, as consideration for such access, the Borrower received 19.99% of Yippy's total outstanding shares of capital stock with certain anti-dilutive protections.
9. In October 2018, Globalstar Satellite Services (Pty) Ltd. loaned US\$50,000 to Miles Hilton to partially finance his purchase of 45 of its shares and loaned US\$100,000 to Roxsanne Dyssell to finance her purchase of 45 of its shares.

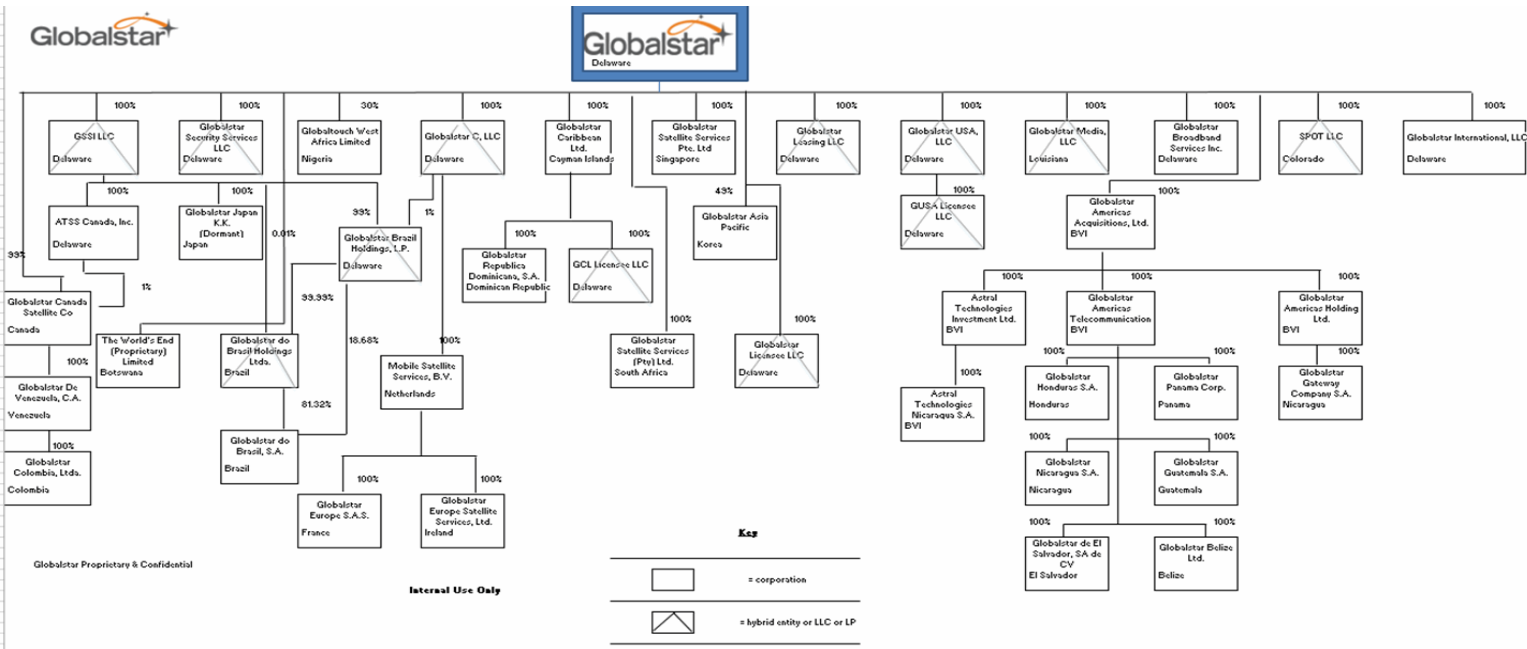




### Incentive Plan

1. *Third Amended and Restated Globalstar 2006 Equity Incentive Plan.* The Borrower's 2006 Equity Incentive Plan (the "Equity Plan") is a broad based, long-term retention programme intended to attract and retain talented employees and align stockholder and employee interests. The Equity Plan was originally approved by the Board of Directors and the holders of a majority of our outstanding common stock on 12 July 2006 and became effective upon the registration of our common stock under the Securities Act of 1933 on 1 November 2006. The Plan was amended and restated at the 2008 Annual Meeting of Stockholders and further amended and restated at each of the 2016 and 2018 Annual Meetings of Stockholders. The number of shares of the Borrower's common stock authorized for issuance under the Equity Plan is subject to yearly increases each 1 January equal to the lesser of a) two percent of the number of shares of the Borrower's common stock issued and outstanding on the immediately preceding 31 December or b) such other amount determined by the Borrower's Board of Directors. As of 30 September 2019, 83,200,000 shares of the Borrower's common stock were authorized under the Equity Plan.
2. *Globalstar Key Employee Bonus Plans.* The Borrower has an annual bonus plan designed to reward designated key employees' efforts to exceed the Borrower's financial performance goals for the designated calendar year ("Plan Year"). The bonus pool available for distribution is determined based on the Borrower's adjusted EBITDA performance during the Plan Year. The bonus may be paid in cash or the Borrower's common stock, as determined by the Compensation Committee.
3. *Letter Agreement with Barbee Ponder and David Milla, dated 27 November 2018.* Mr. Ponder and Mr. Milla have a letter agreement in connection with obtaining certain international spectrum authorities. They will each receive restricted stock awards or cash for each license obtained.
4. *Letter Agreement with David Kagan dated 4 September 2018.* In 2018, Mr. Kagan was granted 3,000,000 restricted stock awards of which 1,250,000 have a graded vesting schedule whereby ten percent of the awards vest on the first anniversary of the grant date, fifteen percent vest on the second anniversary of the grant date, twenty-five percent vest on the third anniversary of the grant date and the remaining fifty percent vest on the fourth anniversary of the grant date; these equity awards are designed to recognize performance and encourage retention. The remaining 1,750,000 have vesting conditions that are contingent upon his achievement of certain performance milestones.
5. *Letter Agreement with Jim Kilfeather dated 26 September 2018.* Mr. Kilfeather has a letter agreement, which states that he will receive restricted stock awards in connection with reaching certain performance milestones.

Group Structure Chart



## Schedule 24

### Disclosures

The disclosures set out in schedule 8 (*Disclosures*) of the First Global Deed of Amendment, schedule 5 (*Disclosures*) of the Second Global Amendment and Restatement Agreement, schedule 4 (*Disclosures*) of the Third Global Amendment and Restatement Agreement, and schedule 4 (*Disclosures*) of the Fourth Global Amendment and Restatement Agreement are, in each case, incorporated by reference into this Schedule 24 (*Disclosures*).

**Schedule 25**

**Form of Promissory Note**

Note P n° ..... US\$ .....

(amount in figures)

..... , .....

(place and date of issue)

For .....

(date of payment)

We hereby agree to pay against this note to the order of BNP PARIBAS..... the amount of..... US Dollars (amount in letters).

This note is expressly exempted from protest.

This note is governed by [English / French law].

Issued under the BPIFAE Facility Agreement dated June 5<sup>th</sup>, 2009 (as amended and restated from time to time)

Issuer
GLOBALSTAR, INC 1351 Holiday Square Boulevard, Covington LA 70433 United States of America
Domiciliation
BNP PARIBAS 16, bd des Italiens 75009 Paris (France)

For : **GLOBALSTAR, INC.**

Name : .....

Title : .....”

## Schedule 26

### Subsidiary Guarantors

1. GSSI, LLC, a limited liability company organised in Delaware, United States of America, with organisational identification number 3732317 and whose chief executive office is at 1351 Holiday Square Boulevard, Covington, LA 70433, United States of America;
2. Globalstar Security Services, LLC, a limited liability company organised in Delaware, United States of America, with organisational identification number 3747502 and whose chief executive office is at 1351 Holiday Square Boulevard, Covington, LA 70433, United States of America;
3. Globalstar C, LLC, a limited liability company organised in Delaware, United States of America, with organisational identification number 3732313 and whose chief executive office is at 1351 Holiday Square Boulevard, Covington, LA 70433, United States of America;
4. Globalstar USA, LLC, a limited liability company organised in Delaware, United States of America, with organisational identification number 2663064 and whose chief executive office is at 1351 Holiday Square Boulevard, Covington, LA 70433, United States of America;
5. Globalstar Leasing LLC, a limited liability company organised in Delaware, United States of America, with organisational identification number 3731109 and whose chief executive office is at 1351 Holiday Square Boulevard, Covington, LA 70433, United States of America;
6. Spot LLC, a limited liability company organised in Colorado, United States of America, with organisational identification number 20071321209 and whose chief executive office is at 1351 Holiday Square Boulevard, Covington, LA 70433, United States of America;
7. ATSS Canada, Inc., a corporation incorporated in Delaware, United States of America, with organisational identification number 2706412 and whose chief executive office is at 1351 Holiday Square Boulevard, Covington, LA 70433, United States of America;
8. Globalstar Brazil Holdings, L.P., a limited partnership formed in Delaware, United States of America, with organisational identification number 2453576 and whose chief executive office is at 1351 Holiday Square Boulevard, Covington, LA 70433, United States of America;
9. GCL Licensee LLC, a limited liability company organised in Delaware, United States of America, with organisational identification number 4187922 and whose chief executive office is at 1351 Holiday Square Boulevard, Covington, LA 70433, United States of America;
10. GUSA Licensee LLC, a limited liability company organised in Delaware, United States of America, with organisational identification number 4187919 and whose chief executive office is at 1351 Holiday Square Boulevard, Covington, LA 70433, United States of America;
11. Globalstar Licensee LLC, a limited liability company organised in Delaware, United States of America, with organisational identification number 4187920 and whose chief executive office is at 1351 Holiday Square Boulevard, Covington, LA 70433, United States of America;

12. Globalstar Media, L.L.C., a limited liability company organised in Louisiana, United States of America, with organisational identification number 40224959k and whose chief executive office is at 1351 Holiday Square Boulevard, Covington, LA 70433, United States of America;
13. Globalstar Broadband Services Inc. a corporation incorporated in Delaware, United States of America, with organisational identification number 4833062 and whose chief executive office is at 1351 Holiday Square Boulevard, Covington, LA 70433, United States of America;
14. Globalstar International, LLC, is a limited liability company organized in Delaware, United States of America, with organisational identification number 6438610 and whose chief executive office is at 1351 Holiday Square Boulevard, Covington, LA 70433; and
15. Globalstar Holding US, LLC, a limited liability company organised in Delaware, United States of America, with organisational identification number 6508346 and whose chief executive office is at Globalstar, Inc., 1351 Holiday Square Boulevard, Covington, LA 70433.

## Schedule 27

### Investment Policy

#### 1. Purpose

This document outlines the Borrower's Corporate Investment policy. The main objectives of the investment policy are:

- (a) To ensure the safety and preservation of principal. The Borrower shall only invest in instruments and accounts with the lowest level of default and volatility risk. The Borrower shall use other methods to minimize risk such as diversifying the investment portfolio to minimize the adverse effects of the failure of any one issuer or broker.
- (b) To coincide with its short-term liquidity needs. The Borrower's investment policy contemplates buying only the securities that have active secondary markets to provide immediate liquidity, when needed.
- (c) To offer maximum return without compromising the Borrower's stated investment objectives.
- (d) To provide fiduciary control.

#### 2. Approved Investment Vehicles

In order to meet the Borrower's stated investment objectives, it must choose between several different investment options available to it. The following options have been identified for the Borrower for meeting its investment objectives as stated above.

- (a) Corporate Savings Accounts. The account must be fully collateralized by instruments issued by the US Treasury.
- (b) Corporate Money Market Funds, Repurchase Agreements, and Commercial Paper. The funds must meet the following criteria:
  - (i) the investment objectives and policies must be substantially similar to those set forth in this guideline, i.e., principal preservation and risk mitigation;
  - (ii) the funds must offer immediate redemption of shares upon request; and
  - (iii) the funds load or sales charges are not excessive, relative to those of other potential investments meeting the objectives.

#### 3. US Government obligations

T-Bills or bonds of short-term or medium-term maturity. At any given time, the Borrower may have invested in one or all of the above mentioned investment vehicles. However, under no circumstances will the Borrower make investment decisions contrary to its investment objectives.

4. **Credit Quality**

Except for US Treasury, all securities must be rated by S & P's or Moody's, and shall be of high credit quality (A-1 and P-1 or better).

5. **Marketability**

All holdings should be sufficient in size and held in issues which are traded actively to facilitate timely transactions at a minimum cost and accurate market evaluation.

6. **Trading**

All purchases and sales shall be executed at the best net price with principal dealers and banks in the particular securities. All securities purchased shall be in the name of the Globalstar, Inc. or its designate.

7. **Responsibility and Authorization**

The Chief Financial Officer has reviewed this investment policy. Revisions to this policy will be initiated by the Chief Financial Officer and implemented upon approval of the Borrower's Chief Executive Officer and the President.

The Chief Financial Officer of the Borrower shall have the authority to:

- (a) open accounts with brokers, investment banks, commercial bank, and mutual funds companies;
- (b) establish safekeeping accounts or other arrangements concerning the custody of the securities; and
- (c) execute documents to effect the above, as necessary.

In addition, the Chief Financial Officer or his or her designate is expected to monitor the portfolio and cash management policy for suitability in light of then-current corporate and market conditions. The Borrower may use the services of investment firms, brokers, or mutual funds companies for its investment program. All investment firms, brokers, and mutual fund companies must be personally approved by the Chief Financial Officer of the Borrower.



## Schedule 28

### Loss Payee Clause

#### Loss Payments

The insured irrevocably shall authorise and instruct the insurer to pay, all claims, return premiums, *ex gratia* settlements and any other monies payable to the insured, under or in relation to this policy, to the account in the name of the insured and opened on the books of the following Account Bank:

Bank – BNP Paribas

Account Name – Insurance Proceeds Account

Account Number – 30004 05658 0000034085H 59

or to such other account as the Security Agent, as loss payee may specify in writing, and that no instruction, whether by the insured or by any person other than the Security Agent, to make any payment to any other person or account shall be honoured by the Security Agent and the insurer unless given or countersigned by the Security Agent, or such other person as that the Security Agent may notify to the insurer in writing.

All such payments shall be made by the insurer without any deduction or set-off on any account or of any kind, other than in respect of unpaid premiums. A payment to the loss payee in accordance with this clause shall, to the extent of that payment, discharge the liability of the insurer to pay the insured or other claimant insured party.

**Schedule 29**

**Repayment Schedule**

Repayment Date	Principal Repayment	Cumulative – Principal Repayment
	US\$	US\$
31 December 2014	4,045,759	4,045,759
30 June 2015	3,224,880	7,270,639
31 December 2015	3,224,880	10,495,519
30 June 2016	16,417,573	26,913,092
31 December 2016	16,417,573	43,330,665
30 June 2017	21,694,651	65,025,316
29 December 2017	54,060,724	119,086,040
29 June 2018	38,933,103	158,019,143
31 December 2018	38,933,103	196,952,246
28 June 2019	47,435,060	244,387,306
31 December 2019	147,635,060	392,022,366
30 June 2020	0	392,022,366
31 December 2020	0	392,022,366
30 June 2021	44,800,000	436,822,366
31 December 2021	20,000,000	456,822,366
30 June 2022	20,000,000	476,822,366
30 December 2022	109,519,550	586,341,917
<b>Total</b>	<b>US\$586,341,917</b>	

**Schedule 30**

**Form of Quarterly Health Report**

**Part 1**

**Satellite Status**

<b>Orbital Plane</b>	<b>In-Plane Slot Location</b>	<b>Satellite Flight Model Number</b>	<b>Satellite Status as of</b> [•]
[•]	[•]	[•]	[•]

**Part 2**

**Band Status**

<b>Satellite Flight Model Number</b>	<b>L-Band Status</b>	<b>S-Band Status</b>	<b>Status of Command Telemetry Receiver</b>
[•]	[•]	[•]	[•]

**Part 3**

**Material Events**

[Attached is a letter providing details of material or unusual events that have occurred with respect to the Satellites since the delivery to the BPIFAE Agent of the last quarterly report.]

**Schedule 31**

**Satellite Performance Criteria**

<b>IOT Criteria to Declare Satellite Stabilization Bus</b>			
<b>Parameter</b>	<b>Status</b>		
SHM acquisition- check satellite configuration	NOMINAL/FAIL		
Solar Array Wings Deployed	NOMINAL/FAIL		
Telemetry Transmitters "ON"	NOMINAL/FAIL		
Telemetry Tx EIRP (Nominal Unit) within 3dB of prediction	YES/NO	Value	
Telemetry Tx EIRP (Redundant Unit) within 3dB of prediction	YES/NO	Value	
Telemetry Signal Successfully Received by Ground Station	NOMINAL/FAIL		
Command Rx Sensitivity (Nominal Unit) with in 3dB of prediction	YES/NO	Value	
Command Rx Sensitivity (Redundant Unit) within 3dB of prediction	YES/NO	Value	
EAM acquisition after SHM	NOMINAL/FAIL		
NOM acquisition after EAM	NOMINAL/FAIL		
Heaters "ON"	NOMINAL/FAIL		
Successful orbit raising to 1414 km orbit (thruster check)	NOMINAL/FAIL		
Expended 100K or fewer thruster pulses; 90kg of propellant	YES/NO	Value	
Battery DOD less than 15%	YES/NO	Value	
<b>PAYLOAD</b>			
<b>Good health check of transponders</b>	<b>Turn On</b>	<b>Nominal operations</b>	
<b>Test all 16 beams of C-S Transponder</b>	<b>1.1V</b>	<b>2.65V</b>	<b>4.0V</b>
X1	NOMINAL/FAIL	NOMINAL/FAIL	NOMINAL/FAIL
X2			
X3			
X4			
X5			
X6			
X7			
X8			
Y1			
Y2			
Y3			
Y4			
Y5			
Y6			
Y7			
Y8			
<b>Test all 16 beams of L-C Transponder</b>			
X5	NOMINAL/FAIL		
X7			
Y1			
X3			
Y5			
X4			
Y7			
X1			
Y6			
X2			
Y4			
X8			
Y3			
X6			
Y2			
Y8			

## Schedule 32

### Form of Auditors Report

To the Audit Committee and Management of Globalstar, Inc.:

We have performed the procedures enumerated below, which were agreed to by the audit committee, management of Globalstar Inc. (“**Globalstar**”) and the Finance Parties (as such term is defined in the Facility Agreement) solely to assist you with respect to the [insert date] Compliance Certificate required to be issued pursuant to clause 19.4 (*Compliance Certificate*) of the facility agreement dated September 5, 2009 (as amended and restated) (the “**Facility Agreement**”). Globalstar’s management is responsible for the Compliance Certificate. This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of those parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

Procedures performed:

1. Agreed the financial information contained in the Compliance Certificate to the general ledger or underlying accounting records prepared by management.
2. Mathematically recomputed the calculations in the Compliance Certificate to make sure they are arithmetically accurate.
3. Compared each individual financial component of the Compliance Certificate to the definition included within the Facility Agreement.

We were not engaged to, and did not conduct an examination, the objective of which would be the expression of an opinion on the Compliance Certificate. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of the audit committee, management of Globalstar and the Finance Parties (as such term is defined in the Facility Agreement) and is not intended to be and should not be used by anyone other than these specified parties.

[insert name of auditor]

[insert address of auditor and date]

## Schedule 33

### Security Documents

#### Part 1 Definition of Security Documents

“**Security Documents**” or “**Senior Facility Security Documents**” means:

- (a) the Collateral Agreement;
- (b) the Joinder Agreement;
- (c) the Security Amendment and Restatement Agreement;
- (d) the Borrower Pledge of Bank Accounts;
- (e) the Borrower Additional Pledge of Bank Accounts;
- (f) the Holding Account Pledge Agreement;
- (f) the Thermo Pledge of Bank Accounts;
- (g) each Account Control Agreement;
- (i) each Stock Pledge Agreement;
- (h) each Delegation Agreement;
- (i) United States Trademarks Security Agreement;
- (j) United States Patents Security Agreement;
- (k) each Mortgage;
- (l) each Landlord Waiver and Consent Agreement;
- (m) all other agreements conferring, or purporting to confer, security in favour of the Finance Parties with respect to the obligations of the Borrower under the Finance Documents entered into after the date of this Agreement as required by the terms of this Agreement;
- (n) all agreements and other documents executed from time to time pursuant to any of the foregoing; and
- (o) any other agreement or document which the Security Agent and the Borrower (acting reasonably) from time to time designate as a “*Senior Facility Security Document*” for the purposes of this Agreement.

#### Part 2 Defined Terms

“**Account Control Agreements**” means:

- (a) the control agreement regarding deposit accounts dated 22 June 2009 between the Deposit Account Bank (as such term is defined therein), the Borrower and the Security Agent;

- (b) the control agreements regarding deposit accounts (Lockbox) dated 22 June 2009 between the Deposit Account Bank (as such term is defined therein), the Borrower and the Security Agent;
- (c) the account control agreement dated 22 June 2009 between the Customer, Secured Party and Securities Intermediary (as each term is defined therein);
- (d) the control agreement regarding deposit accounts dated 30 October 2009 between the Deposit Account Bank (as such term is defined in each Account Control Agreement), the Borrower and the Security Agent;
- (e) the notice and acknowledgement of assignment dated 5 January 2010 from the Security Agent to Union Bank, N.A. (with a copy to the Borrower and Spot, LLC) in relation to certain bank accounts of Spot LLC; and
- (f) any other account control agreement entered into between any other deposit account bank, a member of the Group and the Security Agent (in form and substance satisfactory to the BPIFAE Agent).

**“Borrower Additional Pledge of Bank Accounts”** means the French law *“Convention de Nantissement de Comptes Bancaires”* dated 22 August 2013 between the Borrower, the Offshore Account Bank and the Security Agent.

**“Borrower Pledge of Bank Accounts”** means the French law *“Convention de Nantissement de Comptes Bancaires”* dated 5 June 2009 between the Borrower, the Offshore Account Bank and the Security Agent.

**“Collateral Agreement”** means the security agreement dated 22 June 2009 (as supplemented by the Joinder Agreement and as amended and restated by the Security Amendment and Restatement Agreement) between the Borrower, each Domestic Subsidiary and the Security Agent.

**“Delegation Agreement”** means:

- (a) the French law delegation agreement dated 5 June 2009 between the Borrower, the Supplier and the Security Agent (as amended by an amendment agreement dated 22 August 2013 pursuant to the First Global Deed of Amendment and Restatement between the Borrower, the Security Agent and the Supplier); and
- (b) the French law delegation agreement dated 24 June 2009 between the Borrower, the Launch Services Provider and the Security Agent (as amended by an amendment agreement dated 22 August 2013 between the Borrower, the Security Agent and the Launch Services Provider).

**“Holding Account Pledge Agreement”** means the French law *“Convention de Nantissement de Compte Bancaire”* dated 22 August 2013 and made between the Borrower and the Security Agent.

**“Joinder Agreement”** means the joinder agreement dated 5 August 2010 entered into by the Subsidiary Guarantors set out in paragraphs 12 and 13 of Schedule 26 (*Subsidiary Guarantors*) in favour of the Security Agent in connection with the Collateral Agreement and the Stock Pledge Agreement.

**“Landlord Waiver and Consent Agreements”** means:

- (a) any landlord waiver and consent agreement entered into between Four Sierra, LLC as landlord and the Security Agent;

- (b) any landlord waiver and consent agreement entered into between Orinda Equity Partners, LLC as landlord and the Security Agent;
- (c) any landlord waiver and consent agreement entered into between Sebring Airport Authority as landlord and the Security Agent; and
- (d) any other agreement or document which the Security Agent and the Borrower (acting reasonably) from time to time designate as a “*Landlord Waiver and Consent Agreement*” for the purposes of this Agreement.

“**Mortgages**” means the collective reference to each mortgage, deed of trust or other real property security document, encumbering all real property now or hereafter owned by the Borrower or any Subsidiary, in each case, in form and substance reasonably satisfactory to the Security Agent and executed by the Borrower or any Subsidiary in favour of the Security Agent (for and on behalf of itself and the other Finance Parties), as any such document may be amended, restated, supplemented or otherwise modified from time to time.

“**Security Amendment and Restatement Agreement**” means the security amendment and restatement agreement in respect of the Collateral Agreement and the Stock Pledge Agreement entered into on 8 August 2013 between the Borrower, each Domestic Subsidiary and the Security Agent.

“**Stock Pledge Agreements**” means:

- (a) the stock pledge agreement dated 22 June 2009 (as supplemented by the Joinder Agreement and as amended and restated by the Security Amendment and Restatement Agreement) between the Borrower, each Domestic Subsidiary and the Security Agent;
- (b) the joinder of amended and restated pledge agreement dated 13 November 2015 made by the Borrower in favour of the Security Agent, as acknowledged and agreed to by The World’s End (Proprietary) Limited;
- (c) the amended and restated agreement regarding uncertificated securities dated 6 October 2009 and made between Mobile Satellite Services, B.V. (as issuer), the Security Agent and Globalstar C, LLC (as pledgor);
- (d) the amended and restated agreement regarding limited liability company interests dated 6 October 2009 and made between Globalstar do Brasil Holdings, Ltda. (as issuer), the Security Agent and Globalstar Brazil Holdings L.P. (as pledgor);
- (e) the amended and restated agreement regarding limited liability company interests dated 6 October 2009 and made between Globalstar do Brasil Holdings, Ltda. (as issuer), the Security Agent and GSSI, LLC (as pledgor);
- (f) the amended and restated agreement regarding uncertificated securities dated 6 October 2009 and made between Globalstar Satellite Services (Pty) Ltd. (as issuer), the Security Agent and the Borrower (as pledgor);
- (g) the amended and restated agreement regarding uncertificated securities dated 6 October 2009 and made between Globalstar do Brasil Holdings, Ltda. (as issuer), the Security Agent and Globalstar Brazil Holdings L.P. (as pledgor);



- (h) the quota pledge agreement dated 30 November 2009 and made between the Borrower, Globalstar do Brasil Holdings, Ltda. (as pledged company), the Security Agent and Globalstar Brazil Holdings L.P. and GSSI, LLC (as pledgors);
- (i) the share pledge agreement dated 30 November 2009 and made between Globalstar Brazil Holdings L.P. (as pledger), the Security Agent, Globalstar do Brasil S.A. (as pledged company) and the Borrower;
- (j) the agreement regarding limited liability company interests dated 5 August 2010 and made between the Borrower (as pledgor), the Security Agent and Globalstar Media, L.L.C. (as issuer); and
- (k) any other stock pledge agreement (howsoever described) entered into between any other deposit account bank, a member of the Group and the Security Agent (in form and substance satisfactory to the BPIFAE Agent).

“**Thermo Pledge of Bank Accounts**” means the French law “*Convention de Nantissement de Comptes Bancaires*” dated 5 June 2009 between Thermo, the Offshore Account Bank, the BPIFAE Agent and the Security Agent.

“**United States Patents Security Agreements**” means:

- (a) the agreement relating to the grant of a security interest in United States patents dated 22 June 2009 and made between the Borrower and the Security Agent;
- (b) the agreement relating to the grant of a security interest in United States patents dated 9 September 2010 and made between the Borrower and the Security Agent; and
- (c) any other patents security agreement entered into between any other deposit account bank, a member of the Group and the Security Agent (in form and substance satisfactory to the BPIFAE Agent).

“**United States Trademarks Security Agreements**” means:

- (a) the agreement relating to the grant of a security interest in United States trademarks dated 22 June 2009 and made between the Borrower and the Security Agent;
- (b) the agreement relating to the grant of a security interest in United States trademarks dated 9 September 2010 and made between the Borrower and the Security Agent; and
- (c) any other trademarks security agreement entered into between any other deposit account bank, a member of the Group and the Security Agent (in form and substance satisfactory to the BPIFAE Agent).

## Schedule 34

### Personal Data (Natixis)

1. As part of the signature and performance of this contract, and more generally our business relationship, Natixis will collect certain information about you. Information explaining why and how Natixis intends to use this information, how long it will be retained and the rights you have on your data are available here: <https://fr.gtb.natixis.com/donnees-personnelles>.
2. Natixis will communicate in due course the changes made to this information.

# **Second Lien Facility Agreement**

between

**Globalstar, Inc.**

as Borrower

**Global Loan Agency Services Limited**

as the Agent

**GLAS Trust Corporation Limited**

as the Security Agent

and

**The Parties**

listed in Schedule 1  
as the Original Lenders

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This Agreement (the “**Agreement**”) is dated 26 November 2019 and made

**Between:**

- (1) **Globalstar, Inc.**, a corporation duly organised and validly existing under the laws of the State of Delaware, with its principal office located at 1351 Holiday Square Boulevard, Covington, LA 70433, United States of America (the “**Borrower**”);
- (2) **Global Loan Agency Services Limited**, a limited liability company registered in England and Wales with number 8318601, acting in its capacity as the facility agent for and on behalf of the Finance Parties (the “**Agent**”); and
- (3) **GLAS Trust Corporation Limited**, a limited liability incorporated in England and Wales with registered number 7927175, acting in its capacity as the security agent for and on behalf of the Finance Parties (the “**Security Agent**”); and
- (4) The parties listed in Schedule 1 (*Lenders and Commitments*) as lenders (the “**Original Lenders**”).

## 1. Definitions and Interpretation

### 1.1 Definitions

In this Agreement:

“**5.75% Notes Term Sheet**” means the term sheet attached as schedule 1 to the Restructuring, Support and Consent Agreement in respect of the restructuring of the 5.75% notes which were exchanged or redeemed in full by the Borrower on or prior to 26 June 2013.

“**8% New Notes**” means the 8% convertible senior notes issued by the Borrower pursuant to the Original Indenture as supplemented by the Fourth Supplemental Indenture in an aggregate principal amount (including, for the avoidance of doubt, any capitalized payment-in-kind interest) not to exceed US\$1,750,000.

“**2013 Closing Commitment**” means the equity commitment made by Thermo in respect of the Borrower on or prior to the First Effective Date pursuant to the Restructuring Support and Consent Agreement in an aggregate amount of cash equal to US\$20,000,000 less the aggregate amount of cash actually received by the Borrower in connection with the Initial Minimum Cash Commitment (as such amount may be reduced by the amount of any proceeds received by the Borrower from any financing pursuant to third party Equity Issuances (*but excluding* any Equity Issuance involving Terrapin)).

“**2013 Year-End Commitment**” means the equity commitment made or to be made by Thermo or any other member of the Thermo Group in respect of the Borrower pursuant to the First Global Deed of Amendment and Restatement or the First Thermo Group Undertaking Letter (as the case may be) to be funded on or prior to 26 December 2013 as a condition precedent to the entry into Guarantee Obligations by the Subsidiary Guarantors under Clause 21.1(l) (*Limitations on Financial Indebtedness*), in an aggregate amount of cash equal to US\$20,000,000 (as such amount may be reduced by the amount of any proceeds received by the Borrower from any financing pursuant to third party Equity Issuances (*but excluding* any Equity Issuance involving Terrapin)).

“**2014 Equity Financing**” means the equity commitment made or to be made by Thermo or any other member of the Thermo Group in respect of the Borrower pursuant to the First Global Deed of Amendment and Restatement or the First Thermo Group Undertaking Letter (as the case may be) to be funded on or prior to 31 December 2014 in an aggregate amount of cash equal to US\$20,000,000 less the amount by which the amount of cash actually received by the Borrower in connection with the Initial Minimum Cash Commitment, the 2013 Closing Commitment and the 2013 Year-End Commitment exceeds US\$40,000,000 (as such amount may be reduced by the amount of any proceeds received by the Borrower from any financing pursuant to third party Equity Issuances (*but excluding* any Equity Issuance involving Terrapin)).

“**2019 Bridge Facility Agreement**” means the US\$62,000,000 unsecured bridge facility agreement dated 2 July 2019 (with an effective date of 28 June 2019) and made between Thermo, [ \* ], [ \* ], [ \* ] and the Borrower.

“**2021 Equity Issuance**” has the meaning given to such term in Clause 22.26(*2021 Equity Issuance*).

“**2021 Equity Raise Amount**” means US\$45,000,000.

“**Acceptable Bank**” means:

- (a) a bank or financial institution which has a rating for its long-term unsecured and non credit-enhanced debt obligations of AA- or higher by S&P or Fitch Ratings Ltd or Aa2 or higher by Moody’s or a comparable rating from an internationally recognised credit rating agency;
- (b) Union Bank, *provided that*, it has a rating for its long-term unsecured and non credit-enhanced debt obligations of A or higher by S&P or A+ by Fitch Ratings Ltd or a comparable rating from an internationally recognised credit rating agency; or
- (c) any other bank or financial institution approved by the Majority Lenders.

“**Acceptable Intercreditor Agreement**” means an intercreditor agreement in form and substance satisfactory to the Majority Lenders to be entered into by the Borrower or any Subsidiary (as the case may be), the Agent (unless the Agent agrees otherwise) and the relevant provider of Subordinated Indebtedness. Such Acceptable Intercreditor Agreement excludes the Intercreditor Agreement but shall include, without limitation, the following provisions, whereby the relevant Subordinated Indebtedness provider shall agree not to:

- (a) seek direct or indirect recovery, payment or repayment of, nor permit direct or indirect payment or repayment of any of the Subordinated Indebtedness or other amounts payable by the Borrower or any Subsidiary (as the case may be) in respect thereof or of any other Subordinated Indebtedness of the Borrower or any Subsidiary (as the case may be);
- (b) demand, sue for or accept from the Borrower or any Subsidiary (as the case may be) any payment in respect of the Subordinated Indebtedness or take any other action to enforce its rights or to exercise any remedies in respect of any Subordinated Indebtedness (whether upon the occurrence or during the occurrence of an event of default (howsoever described) or otherwise) unless requested to do so by the Agent;
- (c) file or join in any petition to commence any winding-up proceedings or an order seeking reorganisation or liquidation of the Borrower or any Subsidiary (as the case may be), or take any other action for the winding-up, dissolution or administration of the Borrower or any Subsidiary (as the case may be) or take, or agree to, any other action which could or might lead to the bankruptcy, insolvency or similar process of the Borrower or any Subsidiary (as the case may be) unless requested to do so by the Agent; and/or
- (d) claim, rank or prove as a creditor of the Borrower or any Subsidiary (as the case may be) in competition with any Finance Party.

“**Account Control Agreement**” has the meaning given to such term in Schedule 31(*Security Documents*).

“**Accounts Agreement**” means the accounts agreement originally dated 5 June 2009 (as amended and restated on 31 July pursuant to the First Global Deed of Amendment and Restatement and on the Third Effective Date pursuant to the Third Global Amendment and Restatement Agreement) and made between, among others, the Borrower, the First Lien Agent, the “Offshore



Account Bank” (as defined in the First Lien Facility Agreement) and the First Lien Security Agent (as supplemented, amended and amended and restated (including pursuant to Paragraph 4(a)(i) of Part 2 of Schedule 2 (*Conditions Precedent*) in accordance with Clause 20.11 (*Conditions Subsequent*)).

“**Adjusted Consolidated EBITDA**” means, for any period, Consolidated EBITDA for such period *provided that*, for the purpose of calculating the Consolidated Net Income component of Consolidated EBITDA, any cash revenue received in that period but not recognised under GAAP shall be included, *plus* (in the case of paragraphs (a), (b) and (c) below only, to the extent deducted in the calculation of Consolidated EBITDA (without double-counting)):

- (a) non-cash stock compensation expenses;
- (b) non-cash asset impairment charges; and
- (c) one time non-cash non-recurring expenses,

*but excluding* the proceeds of any Spectrum Cash Flow (save for, to the extent agreed in writing by the Agent (acting on the instructions of the Majority Lenders), any such proceeds which replace revenue that had otherwise been projected in the then current Agreed Business Plan but which has not been earned due to a change in the strategy of the Group).

“**Adjusted Consolidated EBITDA Reconciliation**” means, for any period, a reconciliation statement prepared by the Borrower in a form reasonably acceptable to the Agent (acting on the instructions of the Majority Lenders) showing a reconciliation of:

- (a) cash revenue received in that period but not recognised under GAAP, as determined in accordance with the definition of Adjusted Consolidated EBITDA; *to*
- (b) revenues recognised for such period, as determined in accordance with GAAP.

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

“**Agreed Business Plan**” means the business plan:

- (a) delivered to the Agent on or prior to the Closing Date pursuant to Paragraph 15(d) of Part 1 of Schedule 2 (*Conditions Precedent*); or
- (b) as updated on an annual basis in accordance with Clause 18.3 (*Annual Business Plan and Financial Projections*).

“**Amendment**” has the meaning given to such term in Clause 21.11(b) (*Restrictive Agreements*).

“**ANFR**” means the Agence Nationale des Fréquences.

“**Applicable Law**” means all applicable provisions of constitutions, laws, statutes, ordinances, rules, treaties, regulations, permits, licences, approvals, interpretation and orders of courts or Governmental Authorities and all orders and decrees of all courts and arbitrators.

“**Applicable Negative Excess Cash Flow**” means for all Payment Periods, the absolute value of such negative Excess Cash Flow for such Payment Period *provided that* if such absolute value

is greater than US\$10,000,000 the Applicable Negative Excess Cash Flow shall be deemed to be US\$10,000,000.

“**Article 55 BRRD**” means Article 55 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms.

“**Asset Disposition**” means the disposition of any or all assets (including the Capital Stock of a Subsidiary or any ownership interest in a joint venture) of any Obligor or any Subsidiary thereof whether by sale, lease, transfer or otherwise. The term “*Asset Disposition*” shall not include any Equity Issuance or any Debt Issuance.

“**Assignment Agreement**” means an agreement substantially in the form set out in Part B (*Form of Assignment Agreement*) of Schedule 5 (*Form of Transfer Certificate and Assignment Agreement*) or any other form agreed between the relevant assignor and assignee.

“**Attributable Indebtedness**” means, on any date:

- (a) in respect of any Finance Lease of any person, the capitalised 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, the capitalised amount or principal 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 Finance Lease.

“**Authorisation**” means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration (including all Governmental Approvals).

“**Authorised Signatory**” means, with respect to the Supplier and the Launch Services Provider, a person authorised to sign any document on its behalf to be delivered pursuant to this Agreement.

“**Available Cash**” means the sum of:

- (a) the Borrower’s consolidated unrestricted cash balance at the beginning of the relevant Payment Period *less* the minimum Liquidity threshold set out in Clause 19.2(*Minimum Liquidity*);
- (b) any Spectrum Cash Flow for the relevant Payment Period; and
- (c) any Excess Cash Flow for the relevant Payment Period.

“**Available Commitment**” means, in relation to the Facility, a Lender’s Commitment under the Facility *minus*:

- (a) the amount of its participation in any outstanding Loans under the Facility; and
- (b) in relation to any proposed Utilisation, the amount of its participation in any Loans that are due to be made under the Facility on or before the proposed Utilisation Date.

“**Available Facility**” means the aggregate for the time being of each Lender’s Available Commitment under the Facility.

“**Bail-In Action**” means the exercise of any Write-down and Conversion Powers.

“**Bail-In Legislation**” means:

- (a) in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 BRRD, the relevant implementing law or regulation as described in the EU Bail-In Legislation Schedule from time to time; and
- (b) in relation to any state other than such an EEA Member Country or (to the extent that the United Kingdom is not such an EEA Member Country) the United Kingdom, any analogous law or regulation from time to time which requires contractual recognition of any Write-down and Conversion Powers contained in that law or regulation.

“**Borrower Pledge of Bank Accounts**” has the meaning given to such term in Schedule 31(*Security Documents*).

“**BPIFAE**” means Bpifrance Assurance Export S.A.S acting for and on behalf of the French state as successor in title to COFACE as referred to in clause 1.5 (*References to COFACE and BPIFAE*) of the Third Global Amendment and Restatement Agreement.

“**BPIFAE 2013 Deferred Fee Premium**” means the premium due to BPIFAE and payable by the Borrower to the BPIFAE Agent (for the account of BPIFAE) in accordance with clause 12.1(c) (*BPIFAE Insurance Premia and BPIFAE 2013 Deferred Fee Premium*) of the First Lien Facility Agreement as of the date hereof in an aggregate amount of US\$20,000,000, the final instalment of which is in an amount equal to US\$12,000,000.

“**BPIFAE Agent**” means BNP Paribas, a société anonyme with a share capital of €2,499,597,122 organised and existing under the laws of the Republic of France, whose registered office is at 16 boulevard des Italiens, 75009 Paris, France registered under number 662 042 449 at the Commercial Registry of Paris, acting in its capacity as facility agent and *Chef de File* for and on behalf of the First Lien Finance Parties.

“**BPIFAE Insurance Policy**” means each credit insurance policy (as amended from time to time) in respect of the First Lien Facility Agreement signed by the BPIFAE Agent and the Original Lenders (as defined in the First Lien Facility Agreement).

“**BPIFAE Insurance Premia**” means the premia due to BPIFAE and payable by the Borrower to the BPIFAE Agent (for the account of BPIFAE) under the BPIFAE Insurance Policy in accordance with clause 12.1(b) (*BPIFAE Insurance Premia and BPIFAE 2013 Deferred Fee Premium*) of the First Lien Facility Agreement as of the date hereof.

“**Business Day**” means a day (other than a Saturday or Sunday) on which banks are open for general business in London, Paris and New York City, as the case may be.

“**Canadian Dollars**” means the lawful currency for the time being of Canada.

“**Capital Assets**” means, with respect to the Borrower and its Subsidiaries any asset that should, in accordance with GAAP, be classified and accounted for as a capital asset on a Consolidated balance sheet of the Borrower and its Subsidiaries *but excluding* any capitalised interest.

**“Capital Expenditures”** means with respect to the Borrower and its Subsidiaries for any period, the aggregate cost of all Capital Assets acquired by the Borrower and its Subsidiaries during such period, as determined in accordance with GAAP.

**“Finance Lease”** means any lease of any property by the Borrower or any of its Subsidiaries, as lessee, that should, in accordance with GAAP, be classified and accounted for as a finance lease on a Consolidated balance sheet of the Borrower and its Subsidiaries.

**“Capital Stock”** means:

- (a) in the case of a corporation, capital stock;
- (b) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of capital stock;
- (c) in the case of a partnership, partnership interests (whether general or limited);
- (d) in the case of a limited liability company, membership interests; and
- (e) any other interest or participation that confers on a person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing person.

**“Cash”** means, at any time, cash denominated in Dollars and the Dollar equivalent of Euros and Canadian Dollars, in hand or at bank and (in the latter case) credited to an account in the name of an Obligor with an Acceptable Bank and to which an Obligor is alone (or together with other Obligors) beneficially entitled and for so long as:

- (a) that cash is repayable on demand;
- (b) repayment of that cash is not (subject to the terms of the Intercreditor Agreement) contingent on the prior discharge of any other indebtedness of any member of the Group or of any other person whatsoever or on the satisfaction of any other condition;
- (c) there is no Lien over that cash except for Liens created pursuant to the Security Documents or any Permitted Lien constituted by a netting or set-off arrangement entered into by members of the Group in the ordinary course of their banking arrangements; and
- (d) the cash is (subject to the terms of the Intercreditor Agreement) freely and immediately available to be applied in repayment or prepayment of the Facility.

**“Cash Equivalent Instruments”** means at any time:

- (a) certificates of deposit maturing within one (1) year after the relevant date of calculation and issued by an Acceptable Bank;
- (b) any investment in marketable debt obligations issued or guaranteed by the government of the United States of America, the United Kingdom, any EEA Member Country or any Participating Member State or by an instrumentality or agency of any of them having an equivalent credit rating, maturing within one (1) year after the relevant date of calculation and not convertible or exchangeable to any other security;

- (c) commercial paper not convertible or exchangeable to any other security:
  - (i) for which a recognised trading market exists;
  - (ii) issued by an issuer incorporated in the United States of America, the United Kingdom, any EEA Member Country or any Participating Member State;
  - (iii) which matures within one (1) year after the relevant date of calculation; and
  - (iv) which has a credit rating of either A-1 or higher by S&P or F1 or higher by Fitch Ratings Ltd or P-1 or higher by Moody's, or, if no rating is available in respect of the commercial paper, the issuer of which has, in respect of its long-term unsecured and non-credit enhanced debt obligations, an equivalent rating;
- (d) any investment in money market funds which:
  - (i) have a credit rating of either A-1 or higher by S&P or F1 or higher by Fitch Ratings Ltd or P-1 or higher by Moody's;
  - (ii) invest substantially all their assets in securities of the types described in paragraphs (a) to (c) above; and
  - (iii) can be turned into cash on not more than thirty (30) days' notice; or
- (e) any other debt or marketable security approved by the Majority Lenders,

in each case, denominated in Dollars and the Dollar equivalent of Euros and Canadian Dollars, and to which any Obligor is alone (or together with other Obligors) beneficially entitled at that time and which is not issued or guaranteed by any member of the Group or subject to any Lien (other than a Lien arising under the Security Documents).

**"Cash Movement Summary Report"** means a report summarising the cash movements of the Group, in the form agreed between the Borrower and the Agent (acting on the instructions of the Majority Lenders) pursuant to paragraph 7(c) (*Other documents and evidence*) of Part 2 (*Conditions Subsequent*) of Schedule 2 (*Conditions Precedent*).

**"Change of Control"** has the meaning given to such term in Clause 7.2 (*Mandatory Prepayment – Exit*).

**"Closing Date"** means the date on which the conditions precedent set forth in Clause 4.1(*Initial Conditions to Utilisation*) have been satisfied or expressly waived in writing by the Lenders (in their sole discretion).

**"Code"** means the US Internal Revenue Code of 1986, and the rules and regulations thereunder, each as amended or modified from time to time.

**"Collateral"** means the collateral security for the Obligations pledged or granted pursuant to the Security Documents.

**"Collateral Agreement"** has the meaning given to such term in Schedule 31(*Security Documents*).

**"Collection Account"** has the meaning given to such term in the Accounts Agreement.

**“Commercial Contracts”** means:

- (a) the Launch Services Contract; and
- (b) the Satellite Construction Contract.

**“Commitment”** means:

- (a) in relation to an Original Lender, the amount in Dollars set opposite its name under the heading “*Commitments US\$*” in Schedule 1 (*Lenders and Commitments*) and the amount of any other Facility Commitment transferred to it under this Agreement; and
- (b) in relation to any other Lender, the amount of any other Commitment transferred to it under this Agreement,

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

**“Communications Licences”** means the licences, permits, authorisations or certificates to construct, own, operate or promote the telecommunications business of the Borrower and its Subsidiaries (including, without limitation, the launch and operation of Satellites) as granted, or to be granted, by the FCC or the ANFR (and any other Governmental Authority), and all extensions, additions and renewals thereto or thereof.

**“Compliance Certificate”** means a certificate substantially in the form set out in Schedule 8 (*Form of Compliance Certificate*).

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

- (a) any member of the Group or any of its advisers; or
- (b) another Finance Party, if the information was obtained by that Finance Party directly or indirectly from any member of the Group or any of its advisers,

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

- (i) is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of Clause 40 (*Confidentiality*);
- (ii) is identified in writing at the time of delivery as non-confidential by any member of the Group or any of its advisers; or
- (iii) is known by that Finance Party before the date the information is disclosed to it in accordance with paragraphs (a) or (b) above or is lawfully obtained by that Finance Party after that date, from a source which is, as far as that Finance Party is aware, unconnected with the Group and which, in either case, as far as that

Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

“**Confidentiality Undertaking**” means a confidentiality undertaking substantially in the form set out in Schedule 10 (*Form of Confidentiality Undertaking*) or in any other form agreed between the Borrower and the Agent (acting on the instructions of the Majority Lenders).

“**Consolidated**” means, when used with reference to financial statements or financial statement items of any person, such statements or items on a consolidated basis in accordance with applicable principles of consolidation under GAAP.

“**Consolidated EBITDA**” means, for any period, the sum of the following determined on a Consolidated basis, without duplication, for the Borrower and its Subsidiaries in accordance with GAAP:

- (a) Consolidated Net Income for such period; *plus*
- (b) the sum of the following to the extent deducted in determining Consolidated Net Income:
  - (i) income and franchise taxes;
  - (ii) Consolidated Interest Expense;
  - (iii) amortisation, depreciation, PIK Interest and other non-cash charges (except to the extent that such non-cash charges are reserved for cash charges to be taken in the future);
  - (iv) extraordinary losses (other than from discontinued operations) and any losses on foreign currency transaction; and
  - (v) any Transaction Costs (*provided that*, in no event shall the aggregate amount of Transaction Costs relating to the negotiation of any Permitted Acquisitions or Permitted Joint Venture Investments which are not consummated added back to net income during any four (4) consecutive fiscal quarter period exceed US\$1,000,000), *less*
- (c) interest income and any extraordinary gains and any gains on foreign currency transactions.

“**Consolidated Interest Expense**” means, with respect to the Borrower and its Subsidiaries for any period, the gross interest expense (including, interest expense attributable to Finance Leases, all net payment obligations pursuant to Hedging Agreements and cash interest in respect of indebtedness (including vendor indebtedness) but excluding any non-cash interest) of the Borrower and its Subsidiaries, all determined for such period on a Consolidated basis, without duplication, in accordance with GAAP.

**“Consolidated Net Income”** means, with respect to the Borrower and its Subsidiaries, for any period of determination, the net income (or loss) of the Borrower and its Subsidiaries for such period, determined on a Consolidated basis in accordance with GAAP, *provided that* there shall be excluded (without double counting) from the calculation of income:

- (a) the net income (or loss) of any person (other than a Subsidiary which shall be subject to paragraph (c) below), in which the Borrower or any of its Subsidiaries has a joint interest with a third party, except to the extent such net income is actually paid in cash to the Borrower or any of its Subsidiaries by dividend or other distribution during such period;
- (b) the net income (or loss) of any person accrued prior to the date it becomes a Subsidiary of such person or is merged into or consolidated with such person or any of its Subsidiaries or that person’s assets are acquired by such person or any of its Subsidiaries except to the extent included pursuant to the foregoing paragraph (a);
- (c) the net income (if positive) of any Subsidiary to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary to the Borrower or any of its Subsidiaries of such net income is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute rule or governmental regulation applicable to such Subsidiary; and
- (d) the proceeds of any Equity Issuances and/or Subordinated Indebtedness.

**“Consultation Period”** has the meaning given to such term in Clause 18.3(c) (*Annual Business Plan and Financial Projections*).

**“Convertible Notes”** means:

- (a) the 8% New Notes; and
- (d) any other convertible notes issued by the Borrower (or its Subsidiaries) after the date of this Agreement in compliance with the terms of this Agreement.

**“Covenant Capital Expenditure”** means any Capital Expenditures, including (but not limited to), for the avoidance of doubt, any Capital Expenditures funded with the Net Cash Proceeds received in connection with:

- (a) any Insurance and Condemnation Event;
- (b) any Asset Disposition; and
- (c) any Equity Issuance or funded by the issuance of Capital Stock of the Borrower to the seller (or an affiliate thereof) of the related Capital Asset,

*but excluding*, any Capital Expenditure funded with the Net Cash Proceeds received in connection with an Insurance and Condemnation Event or an Asset Disposition *provided that* such Net Cash Proceeds are reinvested in “*like-for-like*” replacement assets in accordance with Clause 7.5(*Mandatory Prepayment – Insurance and Condemnation Events*) or Clause 7.6(*Mandatory Prepayment – Asset Dispositions*) of this Agreement or the First Lien Facility Agreement (as the case may be).



“**Current Assets**” has the meaning given to such term under GAAP but *deducting* Cash and Cash Equivalent Instruments (*excluding* any Cash and Cash Equivalent Instruments subject to any Lien, including Liens created pursuant to the Security Documents).

“**Current Liabilities**” has the meaning given to such term under GAAP but *excluding* the current portion of any long-term Financial Indebtedness outstanding on the date of calculation.

“**Debt Issuance**” means any issuance of any Financial Indebtedness for borrowed money by the Borrower or any of its Subsidiaries. The term “*Debt Issuance*” shall not include any Equity Issuance or any Asset Disposition.

“**Debt Service**” means the aggregate Dollar amount of principal, interest, and, if any, fees and other sums required to be paid by the Borrower pursuant to the Finance Documents and pursuant to all the Borrower’s Financial Indebtedness incurred from time to time, including all amounts which have become due and payable as at the date of calculation but which have not been paid on such date for the Relevant Period, *provided that*, for the avoidance of doubt, when calculating the “*Debt Service Coverage Ratio*” the term “*Debt Service*” shall include, for the Relevant Period, all amounts required to be applied in prepayment of the Loans pursuant to Clause 7.4 (*Mandatory Prepayment – Excess Cash Flow*) during that Relevant Period.

“**Debt Service Coverage Ratio**” means, on any date, the ratio of:

- (a) Adjusted Consolidated EBITDA (without double-counting),
  - (i) *plus*, any Liquidity (in an amount exceeding US\$4,000,000) at the beginning of any relevant period of calculation (which solely during the First Lien Facility Period, for the purposes of this paragraph (a)(i), shall exclude any amounts held in the Debt Service Reserve Account and the Insurance Proceeds Account) *plus* the cash proceeds of any Equity Issuance or Subordinated Indebtedness raised during the relevant period not committed, or required to be applied, for any other purpose under the Finance Documents but, solely during the First Lien Facility Period, including monies standing to the credit of the Collection Account which are not required to be applied for any other purpose;
  - (ii) *less* the sum of the following (without double-counting);
    - (A) any Covenant Capital Expenditure;
    - (B) any changes in Working Capital; and
    - (C) any cash taxes,

to

- (b) Debt Service,

in each case, during the relevant period of calculation.

“**Debt Service Reserve Account**” has the meaning given to such term in the Accounts Agreement.

**“Default”** means an Event of Default or any event or circumstance specified in Clause 22 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default.

**“Delegation Agreement”** has the meaning given to such term in Clause 21.11(b) (*Restrictive Agreements*).

**“Direct Agreement”** has the meaning given to such term in Clause 21.11(b) (*Restrictive Agreements*).

**“Disruption Event”** means either or both of:

- (a) a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the Facility (or otherwise in order for the transactions contemplated by the Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties; or
- (b) the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a Party preventing that, or any other Party:
  - (i) from performing its payment obligations under the Finance Documents; or
  - (ii) from communicating with other Parties in accordance with the terms of the Finance Documents,

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

**“Dollar”** and **“US\$”** means the lawful currency for the time being of the United States of America.

**“Domestic Subsidiary”** means any Subsidiary organised under the laws of any state of the United States or the District of Columbia, other than GCL Licensee LLC.

**“DSRA Required Balance”** means the “DSRA Required Balance” as such term is defined in the First Lien Facility Agreement as of the date hereof.

**“Earth Station”** means any earth station (gateway) licenced for operation by the FCC or by a Governmental Authority outside the United States that is owned and operated by the Borrower or any of its Subsidiaries.

**“EEA Member Country”** means any member state of the European Union, Iceland, Liechtenstein and Norway.

**“Employee Benefit Plan”** means any employee benefit plan within the meaning of Section 3(3) of ERISA which:

- (a) is maintained or contributed to by any Obligor or any ERISA Affiliate, or to which any Obligor or ERISA Affiliate has an obligation to contribute; or

- (b) has at any time within the preceding six (6) years been maintained or contributed to by any Obligor or any current or former ERISA Affiliate, or with respect to which any Obligor or any such ERISA Affiliate has had an obligation to contribute (or is deemed under Section 4069 of ERISA to have maintained or contributed, or to have had an obligation to contribute, or otherwise to have liability).

“**Environmental Claims**” means any and all administrative, regulatory or judicial actions, suits, demands, demand letters, claims, judgments, liens, accusations, allegations, notices of non-compliance or violation, investigations (other than internal reports prepared by any person in the ordinary course of trading and not in response to any third party action or request of any kind) or proceedings relating in any way to any actual or alleged violation of or liability under any Environmental Law or relating to any Environmental Permit issued, or any approval given, under any such Environmental Law, including any and all claims by Governmental Authorities for enforcement, clean-up, removal, response, remedial or other actions or damages, contribution, indemnification cost recovery, penalties, fines, compensation or injunctive relief resulting from Hazardous Materials or arising from alleged injury or threat of injury to human health or the environment.

“**Environmental Laws**” means any and all federal, foreign state, state, regional, provincial and local laws, statutes, ordinances, codes, rules, standards and regulations, common law, permits, licences, approvals, interpretations and orders of courts or Governmental Authorities, and amendments thereto, relating to the protection of human health or the environment, including, but not limited to, requirements pertaining to the manufacture, processing, distribution, use, treatment, storage, disposal, transportation, handling, reporting, licensing, permitting, emission, release or threatened release, investigation or remediation of Hazardous Materials. For the purposes of this definition, the term “*Environmental Laws*” shall include but not be limited to:

- (a) the US Comprehensive Environmental Response, Compensation and Liability Act, as amended (42 U.S.C. Section 9601, *et seq.*); and
- (b) the US Resource Conservation and Recovery Act, as amended (42 U.S.C. Section 6901, *et seq.*).

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

“**Equity Commitments**” means:

- (a) the Initial Minimum Cash Commitment;
- (b) the First Effective Date Commitment;
- (c) the 2013 Closing Commitment;
- (d) the 2013 Year-End Commitment;
- (e) the 2014 Equity Financing;
- (f) the Second Effective Date Commitment;

- (g) the Third Effective Date Commitment; and
- (h) the Thermo Commitment.

“**Equity Cure Contribution**” means cash funds contributed to the Borrower from the issuance of shares in the Borrower’s Capital Stock and/or Subordinated Indebtedness after the Closing Date (*but excluding* the 2021 Equity Issuance) in the amounts as set out in Clause 22.2(c) (*Financial Covenants*).

“**Equity Issuance**” means any issuance by the Borrower or any Subsidiary to any person of:

- (a) shares of its Capital Stock;
- (b) any shares of its Capital Stock pursuant to the exercise of options or warrants; or
- (c) any shares of its Capital Stock pursuant to the conversion of any debt securities to equity.

The term “*Equity Issuance*” shall not include any Asset Disposition, any Debt Issuance, the conversion of any of the Convertible Notes or the issuance of any other Capital Stock pursuant to the Fourth Supplemental Indenture in circumstances where the Borrower (or any Subsidiary) does not receive any cash proceeds.

“**Equity Linked Securities**” has the meaning given to such term in the First Global Deed of Amendment and Restatement.

“**Equity Proceeds Account**” has the meaning given to such term in the Accounts Agreement.

“**Ericsson**” means Ericsson Federal Inc. a Delaware corporation with a place of business at 1595 Spring Hill Road, Vienna, VA 22182, United States.

“**ERISA**” means the US Employee Retirement Income Security Act of 1974, and the rules and regulations thereunder, each as amended or modified from time to time.

“**ERISA Affiliate**” means any person who together with any Obligor is treated as a single employer within the meaning of Section 414(b), (c), (m) or (o) of the Code or Section 4001(b) of ERISA.

“**ERISA Termination Event**” means:

- (a) a “*Reportable Event*” described in Section 4043 of ERISA with respect to a Pension Plan for which the notice requirement has not been waived by the PBGC; or
- (b) the withdrawal of any Obligor or any ERISA Affiliate from a Pension Plan during a plan year in which it was a “*substantial employer*” as defined in Section 4001(a)(2) of ERISA; or
- (c) the termination of a Pension Plan, the filing of a notice of intent to terminate a Pension Plan or the treatment of a Pension Plan amendment as a termination, under Section 4041 of ERISA, if such termination would require material additional contributions in order to be considered a standard termination within the meaning of Section 4041(b) of ERISA, or the filing under Section 4041(a)(2) of ERISA of a notice of intent to terminate any

Pension Plan or the termination of any Pension Plan under Section 4041(c) of ERISA; or

- (d) the institution of proceedings to terminate, or the appointment of a trustee with respect to, any Pension Plan by the PBGC; or
- (e) any other event or condition which would reasonably be expected to constitute grounds under Section 4042(a) of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; or
- (f) the failure to make a required contribution to any Pension Plan that would reasonably be expected to result in the imposition of a Lien or the provision of security under Section 430 of the Code or Section 303 or 4068 of ERISA, or the arising of such a Lien; the failure to satisfy the minimum funding standard under section 412 of the Code or section 302 of ERISA, whether or not waived; or the filing of any request for or receipt of a minimum funding waiver under Section 412 of the Code or Section 302 of ERISA with respect to any Pension Plan, or that such filing may be made; or a determination that any Pension Plan is, or is expected to be, considered an at-risk plan within the meaning of Section 430 of the Code or Section 303 of ERISA; or
- (g) the partial or complete withdrawal of any Obligor of any ERISA Affiliate from a Multiemployer Plan if withdrawal liability is asserted by such plan; or
- (h) any event or condition which results, or is reasonably expected to result, in the reorganisation or insolvency of a Multiemployer Plan under Sections 4241 or 4245 of ERISA; or
- (i) any event or condition which results, or is reasonably expected to result, in the termination of a Multiemployer Plan under Section 4041A of ERISA or the institution by PBGC of proceedings to terminate a Multiemployer Plan under Section 4042 of ERISA; or
- (j) the receipt by any Obligor or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from any Obligor or any ERISA Affiliate of any notice, that a Multiemployer Plan is in endangered or critical status under Section 432 of the Code or Section 305 of ERISA.

“**EU Bail-In Legislation Schedule**” means the document described as such and published by the Loan Market Association (or any successor person) from time to time.

“**Euro**” or “**€**” means the single currency of the Participating Member States.

“**Event of Default**” means any event or circumstance specified as such in Clause 22 (*Events of Default*).

“**Exceptional Items**” means any material items of an unusual or non-recurring nature which represent gains or losses including those arising on:

- (a) the restructuring of the activities of an entity and reversals of any provisions for the cost of restructuring;

- (b) disposals, revaluations, write downs or impairment of non-current assets or any reversal of any write down or impairment;
- (c) disposals of assets associated with discontinued operations; or
- (d) other exceptional items reasonably determined in good faith:
  - (i) by the First Lien Agent solely during the First Lien Facility Period; and
  - (ii) thereafter, by the Agent (acting on the instructions of the Majority Lenders).

“**Excess Cash Flow**” means, for any period of determination, the sum of the following determined on a Consolidated basis, without duplication, for the Borrower and its Subsidiaries in accordance with GAAP:

- (a) Adjusted Consolidated EBITDA for such period;

*minus*

- (b) (to the extent not already deducted in the calculation of Adjusted Consolidated EBITDA):
    - (i) cash taxes and Consolidated Interest Expense paid in cash for such period;
    - (ii) all scheduled principal payments made in respect of Financial Indebtedness during such period;
    - (iii) the lesser of:
      - (A) all Covenant Capital Expenditures made during the relevant period; and
      - (B) in respect of the calendar years:
        - (1) 2013 through to 2016 (inclusive), the amount set out in column 2 (*Maximum Covenant Capex for Excess Cash Flow Calculation*) of the table in Part B (*Maximum Covenant Capital Expenditures for Excess Cash Flow Calculation*) of Schedule 4 (*Maximum Covenant Capital Expenditure*); or
        - (2) 2017 and onwards, US\$2,500,000 per relevant period,
- (except in each case to the extent funded directly through the incurrence of Financial Indebtedness or equity contributions or investments);
- (iv) any increase in Working Capital during such period;
  - (v) any amount applied to fund any scheduled cash reserve required under the Finance Documents, including the DSA Required Balance and the DSRA Required Balance in such period;
  - (vi) voluntary, mandatory and other non-scheduled principal payments with respect to any Loans or other Financial Indebtedness in such period (except for any mandatory payments made pursuant to clauses 7.3 (*Mandatory Prepayment – Cash Sweep of Spectrum Cash Flow*), 7.4 (*Mandatory Prepayment – Excess*

Cash Flow), 7.8 (Mandatory Prepayment – Cash Sweep following Spectrum Sale) and 7.9 (Mandatory Prepayment – Cash Sweep following Equity Issuance and Debt Issuance) of the First Lien Credit Agreement or Clauses 7.3 (Mandatory Prepayment – Cash Sweep of Spectrum Cash Flow), 7.4 (Mandatory Prepayment – Excess Cash Flow), 7.7 (Mandatory Prepayment – Cash Sweep following Spectrum Sale) and 7.8 (Mandatory Prepayment – Cash Sweep following Equity Issuance and Debt Issuance) and any payments that constitute or with the passage of time or giving of notice or both would constitute a Default or an Event of Default);

- (vii) to the extent included in Adjusted Consolidated EBITDA, Spectrum Cash Flow and any other monetization of the Group's Spectrum rights;
- (viii) any cash payments in respect of the Restructuring Fee, and the BPIFAE 2013 Deferred Fee Premium;
- (ix) any cash payments during such period in respect of any Exceptional Items;
- (x) Transaction Costs during such period (solely to the extent added back to net income in the calculation of Adjusted Consolidated EBITDA);
- (xi) any non-cash income recognized during such period;
- (xii) any cash utilized during such period in respect of amounts expensed in a prior period;
- (xiii) any non-cash extraordinary losses and any losses on foreign currency transactions; and
- (xiv) the portion of the purchase price and other reasonable acquisition related costs paid during such period to make Permitted Acquisitions and investments, except to the extent financed with proceeds of Financial Indebtedness, Equity Issuances or insurance or casualty payments,

*plus*

- (c) (to the extent not already added in the calculation of Adjusted Consolidated EBITDA and without double counting):
  - (i) any decrease in Working Capital during such period;
  - (ii) any amount received as a result of decreasing cash reserves required under the Finance Documents, including the DSA Required Balance and the DSRA Required Balance in such period;
  - (iii) any cash receipts in respect of Exceptional Items;
  - (iv) any cash income whereby cash is received but the recognition of GAAP income is deferred during such period to another period;
  - (v) any expense recognized during such period in respect of amounts paid in a prior period; and

(vi) any cash received during such period in respect of extraordinary gains and any gains on foreign currency transactions.

“**Exchange Act**” has the meaning given to such term in paragraph (i) of the definition of “*Borrower Change of Control*” in Clause 7.2(a) (*Mandatory Prepayment – Exit*).

“**Facility**” has the meaning given to such term in Clause 2.1(a) (*Facility*).

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

“**FATCA**” means:

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

“**FATCA Application Date**” means, in relation to a:

- (a) “*withholdable payment*” described in section 1473(1)(A)(i) of the Code (which relates to payments of interest and certain other payments from sources within the US), 1 July 2014;
- (b) “*withholdable payment*” described in section 1473(1)(A)(ii) of the Code (which relates to “*gross proceeds*” from the disposition of property of a type that can produce interest from sources within the U.S.), 1 January 2017; or
- (c) “*passthru payment*” described in section 1471(d)(7) of the Code not falling within paragraphs (a) or (b) above, 1 January 2017, or, in each case, such other date from which such payment may become subject to a deduction or withholding required by FATCA as a result of any change in FATCA after the date of this Agreement.

“**FATCA Deduction**” means a deduction or withholding from a payment under a Finance Document required by FATCA.

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

“**FCC**” shall mean the Federal Communications Commission.

“**FDIC**” means the Federal Deposit Insurance Corporation.

“**Fee Letter**” means any letter or letters entered into by the Borrower setting out any of the fees referred to in Clause 10 (*Up-front Fee*) and Clause 11 (*Agency Fees*);



**“Final Discharge Date”** means the date on which all of the Loans have been unconditionally and irrevocably paid and the obligations of each Obligor under the Finance Documents have been discharged in full and none of the Finance Parties is under any obligation (whether actual or contingent) to make advances or provide other financial accommodation to the Borrower under the Finance Documents.

**“Final Maturity Date”** means the sixth (6) anniversary of the first Utilisation Date with respect to the Facility.

**“Finance Documents”** means:

- (a) this Agreement;
- (b) any Fee Letters;
- (c) [reserved];
- (d) the Accounts Agreement;
- (e) any Direct Agreement;
- (f) each Security Document;
- (g) each Guarantee Agreement;
- (h) any Transfer Certificate and/or Assignment Agreement;
- (i) each Promissory Note (if any);
- (j) any Acceptable Intercreditor Agreement;
- (k) the Intercreditor Agreement;
- (l) each Warrant Agreement;
- (m) Warrant Certificates;
- (n) Registration Rights Agreement;
- (o) any Interest Adjustment Letter; and
- (p) any other document designated in writing as a “*Finance Document*” by the Agent and the Borrower (acting reasonably).

**“Finance Parties”** means:

- (a) the Agent;
- (b) the Security Agent; and
- (c) the Lenders.

**“Financial Conduct Authority”** means the body responsible for regulating the financial services industry in the United Kingdom.

**“Financial Indebtedness”** means, with respect to the Borrower and its Subsidiaries at any date and without duplication, the sum of the following calculated in accordance with GAAP:

- (a) all liabilities, obligations and indebtedness for borrowed money including, but not limited to, obligations evidenced by bonds, debentures, notes or other similar instruments of any such person;
- (b) all obligations of the Borrower or any of its Subsidiaries to pay the deferred purchase price of property or services (including, without limitation, all obligations under non-competition, earn-out or similar agreements) and any Permitted Vendor Indebtedness, in each case, to the extent classified as debt in accordance with GAAP, except trade payables arising in the ordinary course of trading:
  - (i) not more than ninety (90) days past due; or
  - (ii) being duly contested by the Borrower in good faith;
- (c) the Attributable Indebtedness of the Borrower or any of its Subsidiaries with respect to the obligations of the Borrower or such Subsidiary in respect of Finance Leases and Synthetic Leases (regardless of whether accounted for as indebtedness under GAAP);
- (d) all Financial Indebtedness of any third party secured by a Lien on any asset owned or being purchased by the Borrower or any of its Subsidiaries (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by the Borrower or any of its Subsidiaries or is limited in recourse;
- (e) all Guarantee Obligations of the Borrower or any of its Subsidiaries;
- (f) all obligations, contingent or otherwise, of the Borrower or any of its Subsidiaries relative to the face amount of letters of credit, whether or not drawn, including without limitation, any banker’s acceptances issued for the account of the Borrower or any of its Subsidiaries;
- (g) all obligations of the Borrower or any of its Subsidiaries to redeem, repurchase exchange, defease or otherwise make payments in respect of Capital Stock of such person; and
- (h) all Net Hedging Obligations.

**“First Effective Date”** means 22 August 2013, which was the *“Effective Date”* as such term is defined in the First Global Deed of Amendment and Restatement.

**“First Effective Date Commitment”** means the equity commitment made by Thermo in respect of the Borrower prior to the First Effective Date pursuant to the Restructuring Support and Consent Agreement in an amount equal to US\$25,000,000.

**“First Global Deed of Amendment and Restatement”** means the global amendment and restatement agreement dated 31 July 2013 between, among others, the Parties.

**“First Half Payment Period”** means the period from 1 January to 30 June (inclusive) in any calendar year.

**“First Lien Agent”** means the “BPIFAE Agent” as such term is defined in the First Lien Facility Agreement.

**“First Lien Facility”** means the facility made available under the First Lien Facility Agreement, as of the Closing Date, with an outstanding principal amount of \$341,954,611.

**“First Lien Facility Agreement”** means the BPIFAE facility agreement entered into with, among others, BNP Paribas, Société Générale, Natixis, Crédit Agricole Corporate and Investment Bank and Crédit Industriel Et Commercial as original lenders and BNP Paribas as the BPIFAE Agent and the Security Agent originally dated June 5, 2009 (as amended and restated on the date hereof and as further amended in accordance with the Intercreditor Agreement).

**“First Lien Finance Documents”** means the documents described as “Finance Documents” in the First Lien Facility Agreement.

**“First Lien Finance Parties”** means each of the “Finance Parties” as such term is defined in the First Lien Facility Agreement.

**“First Lien Facility Period”** means the period from and including the date of the First Lien Facility Agreement to and including the date on which the Total Commitments (as such term is defined in the First Lien Facility Agreement) in respect of the First Lien Facility have reduced to zero and all indebtedness of the Obligors under the First Lien Finance Documents have irrevocably and unconditionally been fully paid and discharged.

**“First Lien Lenders”** means each of the “Lenders” as such term is defined in the First Lien Facility Agreement.

**“First Lien Obligations”** means the “Obligations” as defined in the First Lien Facility Agreement.

**“First Lien Security Agent”** means the “Security Agent” as such term is defined in the First Lien Facility Agreement.

**“First Lien Security Documents”** means any Lien granted by the Obligors to secure the First Lien Facility Agreement and which are approved pursuant to the Intercreditor Agreement.

**“First Terrapin Purchase Agreement”** means the common stock purchase agreement dated 28 December 2012 between the Borrower and Terrapin.

**“First Thermo Group Undertaking Letter”** means the undertaking letter dated 22 August 2013 entered into by each of the members of the Thermo Group in favour of the BPIFAE Agent.

**“Fiscal Year”** means the fiscal year of the Borrower and its Subsidiaries ending on 31 December.

**“Foreign Investment Limitation”** means, as of any date of determination, an amount equal to the sum of:

- (a) US\$25,000,000; *less*
- (b) the aggregate amount of:

- (i) Financial Indebtedness permitted pursuant to Clause 21.1(f)(iii) (*Limitations on Financial Indebtedness*) outstanding as of such date of determination; less
- (ii) all investments in Foreign Subsidiaries (valued as of the initial date of such investment without regard to any subsequent changes in value thereof) made after the date of this Agreement and prior to such date of determination pursuant to Clause 21.3(a)(ii)(B) (*Limitations on Loans, Investments and Acquisitions*); less
- (iii) all investments (valued as of the initial date of such investment without regard to any subsequent change in value thereof) in Foreign Subsidiaries (or any entities that would constitute Foreign Subsidiaries if the Borrower or one of its Subsidiaries owned more than fifty *per cent.* (50%) of the outstanding Capital Stock of such entity) made after the date of this Agreement and prior to such date of determination pursuant to Clause 21.3(c) (*Limitations on Loans, Investments and Acquisitions*),

provided that, any investment of non-cash consideration constituting stock in the Borrower (howsoever described):

- (A) in the case of a single transaction, that does not exceed US\$10,000,000 in value; and
  - (B) which transactions in aggregate since the date of this Agreement do not exceed US\$50,000,000 in aggregate,
- shall be excluded from the determination of the Foreign Investment Limitation.

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

**“Fourth Effective Date”** means the *“Effective Date”* as such term is defined in the Fourth Global Amendment and Restatement Agreement.

**“Fourth Global Amendment and Restatement Agreement”** means the global amendment and restatement agreement dated on the date of this Agreement, between, among others, the Parties.

**“Fourth Supplemental Indenture”** means the fourth supplemental indenture dated 20 May 2013 in respect of the 8% New Notes between the Borrower and U.S. Bank National Association.

**“French Authorities”** means the *“Direction Générale du Trésor et de la Politique Economiques (DGTPE)”* of the French Ministry of Finance, any successors thereto, or any other Governmental Authority in or of France involved in the provision, management or regulation of the terms, conditions and issuance of export credits including, among others, such entities to whom authority in respect of the extension or administration of export financing matters have been delegated, such as BPIFAE.

**“French Security Documents”** means:

- (a) the Borrower Pledge of Bank Accounts;
- (b) each Delegation Agreement;

- (c) the Holding Account Pledge Agreement; and
- (d) any other Security Document governed by French law.

“**Funds Flow Statement**” means a funds flow statement in agreed form by the Borrower, the Agent and the Majority Lenders.

“**GAAP**” means generally accepted accounting principles, as recognised by the American Institute of Certified Public Accountants and the Financial Accounting Standards Board, consistently applied and maintained on a consistent basis for the Borrower and its Subsidiaries throughout the period indicated and consistent with the prior financial practice of the Borrower and its Subsidiaries.

“**Governmental Approvals**” means all authorisations, consents, approvals, permits, licences and exemptions of, registrations and filings with, and reports to, all Governmental Authorities.

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

“**Group**” means the Borrower and its Subsidiaries from time to time.

“**Group Structure Chart**” means the group structure chart set out in Schedule 21 (*Group Structure Chart*).

“**Guarantee Agreements**” means:

- (a) the guarantee agreement dated as of the date hereof and made between the Security Agent and each Subsidiary Guarantor;
- (b) each guarantee agreement (to be in substantially the same form as the guarantee agreement referred to in paragraph (a) above) to be entered into by a Subsidiary Guarantor in accordance with Clause 20.5 (*Additional Domestic Subsidiaries*) and/or a Licence Subsidiary in accordance with Clause 21.12 (*Nature of Business*) (as the case may be).

“**Guarantee Obligations**” means, with respect to the Borrower and its Subsidiaries, without duplication, any obligation, contingent or otherwise, of any such person pursuant to which such person has directly or indirectly guaranteed any Financial Indebtedness of any other person and, without limiting the generality of the foregoing, any obligation, direct or indirect, contingent or otherwise, of any such person:

- (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Financial Indebtedness (whether arising by virtue of partnership arrangements, by agreement to keep well, to purchase assets goods, securities or services to take-or-pay, or to maintain financial statement condition or otherwise); or

- (b) entered into for the purpose of assuring in any other manner the obligee of such Financial Indebtedness of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part),

*provided that*, the term Guarantee Obligation shall not include endorsements for collection or deposit in the ordinary course of trading. The amount of any Guarantee Obligation shall be deemed equal to the lesser of the stated or determinable amount of the primary obligation or the maximum liability of the person giving the Guarantee Obligation.

**“Hazardous Materials”** means any substances or materials:

- (a) which are or become defined as hazardous wastes, hazardous substances, pollutants, contaminants, chemical substances or mixtures or toxic substances under any Environmental Law;
- (b) which are toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise harmful to human health or the environment and are or become regulated by any Governmental Authority;
- (c) the presence of which require investigation or remediation under any Environmental Law;
- (d) the possession, use, storage, discharge, emission or release of which requires a permit or licence under any Environmental Law or other Authorisation;
- (e) the presence of which could be deemed to constitute a nuisance or a trespass or threatens to pose a health or safety hazard to persons or neighbouring properties;
- (f) which consist of underground or above ground storage tanks, whether empty, filled or partially filled with any substance; or
- (g) which contain, without limitation, asbestos, polychlorinated biphenyls, urea formaldehyde foam insulation, petroleum hydrocarbons, petroleum derived substances or waste, crude oil, nuclear fuel, natural gas or synthetic gas.

**“Hedging Agreement”** means any agreement with respect to any Interest Rate Contract, forward rate agreement, commodity swap, forward foreign exchange agreement, currency swap agreement, cross-currency rate swap agreement, currency option agreement or other agreement or arrangement designed to alter the risks of any person arising from fluctuations in interest rates, currency values or commodity prices, all as amended, restated, supplemented or otherwise modified from time to time.

**“Hedging Obligations”** means all existing or future payment and other obligations owing by the Borrower under any Hedging Agreement with any person approved by the Majority Lenders.

**“Holding Account Pledge Agreement”** has the meaning given to such term in Schedule 31(*Security Documents*).

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

“**Hughes**” means Hughes Network Systems LLC a limited liability company organised under the laws of Delaware with its principal place of business at 11717 Exploration Lane, Georgetown, Maryland 20876, USA.

“**Incapacity**” means absence of the legal right to enter into binding contractual relations (other than pursuant to a civil or criminal sanction (including without limitation, personal bankruptcy or analogous proceedings)).

“**Initial Minimum Cash Commitment**” means the equity commitment made by Thermo in respect of the Borrower to fund on or before the First Effective Date pursuant to the Restructuring Support and Consent Agreement an amount of up to US\$20,000,000.

“**Insurance and Condemnation Event**” means the receipt by the Borrower or any of its Subsidiaries of any cash insurance proceeds or condemnation award payable by reason of theft, loss, physical destruction, damage or similar event with respect to any of their respective property or assets.

“**Insurance Consultant**” means Jardine Lloyd Thompson Limited.

“**Insurance Proceeds Account**” has the meaning given to such term in the Accounts Agreement.

“**Insurances**” means the insurances required by Clause 20.4 (*Insurance*).

“**Intellectual Property**” has the meaning given to such term at Clause 17.7(a) (*Intellectual Property Matters*).

“**Intercreditor Agreement**” means the intercreditor agreement dated as of the date hereof, among each Finance Party, the Borrower and each other party to the First Lien Facility Agreement in form and substance satisfactory to each Finance Party.

“**Interest Adjustment Letter**” means an interest adjustment letter dated the date of this Agreement, entered into by the Borrower and any Lender.

“**Interest Period**” means:

- (a) in relation to a Loan, each period determined in accordance with Clause 9 (*Interest Periods*); and
- (b) in relation to an Unpaid Sum, each period determined in accordance with Clause 8.3 (*Default Interest*).

“**Interest Rate Cap Agreement**” means the “Interest Rate Cap Agreement” as such term is defined in the First Lien Facility Agreement as of the date hereof.

“**Interest Rate Contract**” means any interest rate swap agreement, interest rate cap agreement, interest rate floor agreement, interest rate collar agreement, interest rate option or other agreement regarding the hedging of interest rate risk exposure executed in connection with hedging the interest rate exposure of any person and any confirming letter executed pursuant to such agreement, all as amended, restated, supplemented or otherwise modified from time to time.

**“Key Agreements”** means:

- (a) each Material Contract set out in Schedule 11 (*Material Contracts*) other than those Material Contracts referred to in paragraphs 7 and 8 of Schedule 11 (*Material Contracts*); and
- (b) each other Material Contract entered into after the date of this Agreement.

**“Landlord Waiver and Consent Agreements”** has the meaning given to such term in Schedule 31 (*Security Documents*).

**“Launch”** means the disconnection of the lift-off plug of the SOYUZ launch vehicle, if such event follows the ignition of the first (strap-on boosters) and second (core stage) stage liquid engines of the launch vehicle.

**“Launch Failure”** has the meaning given to such term in the Launch Services Contract.

**“Launch Insurance”** means *“Launch Insurance”* as such term is defined in the First Lien Facility Agreement as of the date hereof.

**“Launch Services Contract”** means the launch services contract dated 5 September 2007 (as amended and restated on 9 March 2010 and from time to time and as further amended) and made between the Borrower and the Launch Services Provider for the launching into low earth orbit of the Satellites through four (4) SOYUZ launch vehicles, with an option for four (4) other similar launches.

**“Launch Services Provider”** means Arianespace, a French *société anonyme* registered at the *Registre du Commerce et des Sociétés of Evry* under registration number 318 516 457, whose registered office is at Boulevard de l’Europe, 91006 Evry, France.

**“Lender”** means:

- (a) any Original Lender; and
- (b) any bank, financial institution, trust, fund or other entity which has become a Party in accordance with Clause 25 (*Changes to the Lenders*),

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

**“Licence Subsidiary”** means any single purpose Wholly-Owned Subsidiary of the Borrower or of another Subsidiary of the Borrower, the sole business and operations of which single purpose Subsidiary is to hold one (1) or more Communications Licences, except where it is a mandatory condition of a Communications Licence in the relevant jurisdiction that any such entity is not such a vehicle (*provided that*, this exception shall not apply to any Communications Licence issued by the FCC or the ANFR).

**“Lien”** means, with respect to any asset, any mortgage, leasehold mortgage, lien, pledge, charge, security interest, hypothecation or encumbrance of any kind in respect of such asset. For the purposes of this Agreement, a person shall be deemed to own subject to a Lien any asset which it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, Finance Lease or other title retention agreement relating to such asset.



“**Liquidity**” means the sum of Cash and Cash Equivalent Instruments held by any of the Obligor, but excluding any amounts held in:

- (a) the Debt Service Reserve Account; and
- (b) the Insurance Proceeds Account.

“**Loans**” means a loan made or to be made under the Facility pursuant to Clause 2.1 (*Facility*) or the principal amount outstanding for the time being of that loan.

“**Majority Lenders**” means:

- (a) if there are no Loans then outstanding, a Lender or Lenders whose Commitments aggregate more than seventy five *per cent.* (75%) of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than seventy five *per cent.* (75%) of the Total Commitments immediately prior to the reduction); or
- (b) at any other time, a Lender or Lenders whose participations in the Loans then outstanding aggregate more than seventy five *per cent.* (75%) of all the Loans then outstanding.

“**Mandatory Cost**” means any fee or cost payable by banks arising from any regulation imposed by:

- (a) the European Central Bank;
- (b) the Financial Conduct Authority; or
- (c) the Prudential Regulation Authority,

in each case, similar to those customarily considered to be “*mandatory costs*”.

“**Margin**” means fourteen *per cent.* (14%) per annum.

“**Material Adverse Effect**” means with respect to the Borrower or any of its Subsidiaries, a material adverse effect on:

- (a) the properties, business, operations, prospects or condition (financial or otherwise) of the Borrower and its Subsidiaries, taken as a whole; or
- (b) the legality, validity or enforceability of any provision of any Transaction Document; or
- (c) the rights and remedies of any Finance Party under any of the Finance Documents; or
- (d) the security interests provided under the Security Documents or the value thereof; or
- (e) its ability to perform any of its obligations under the Finance Documents,

*provided that*, existing and future first-generation satellite constellation degradation or failure issues and the effects thereof (which, for the avoidance of doubt, shall exclude any Satellite delivered under the Satellite Construction Contract) on the Borrower and its Subsidiaries, taken individually or collectively, shall not constitute a Material Adverse Effect.

**“Material Communications Licence”** means any Communications Licence, the loss, revocation, modification, non-renewal, suspension or termination of which, could be reasonably expected to have a Material Adverse Effect.

**“Material Contract”** means:

- (a) any contract or other agreement, written or oral, of the Borrower or any of its Subsidiaries involving monetary liability of or to any such person in an amount in excess of US\$10,000,000 per annum; or
- (b) any other contract or agreement, written or oral, of the Borrower or any of its Subsidiaries the failure to comply with which could reasonably be expected to have a Material Adverse Effect,

but excluding in either case any contract or other agreement that the Borrower or such Subsidiary may terminate on less than ninety (90) days’ notice without material liability.

**“Material Subsidiary”** means:

- (a) the Borrower;
- (b) each Subsidiary Guarantor;
- (c) Globalstar Canada Satellite Co.;
- (d) each Licence Subsidiary (including, GCL Licensee LLC);
- (e) any Subsidiary of the Borrower which, in the opinion of the Agent or the Majority Lenders (in each case, acting reasonably), is of material operational or strategic importance to the business of the Group;
- (f) any Subsidiary of the Borrower which has gross assets (excluding intra group items) representing ten *per cent.* (10%) or more of the gross assets of the Group; and
- (g) any Subsidiary of the Borrower which has gross revenues per annum from all sources including intra-company revenues which are allocated to such Subsidiary of US\$10,000,000 or more in aggregate.

For the purpose of paragraphs (f) and (g) above:

- (i) subject to paragraph (ii) below:
  - (A) the contribution of a Subsidiary of the Borrower will be determined from its financial statements which were consolidated into the latest relevant financial statements; and
  - (B) the financial condition of the Group will be determined from the latest relevant financial statements;

- (ii) if a Subsidiary of the Borrower becomes a member of the Group after the date on which the latest relevant financial statements were prepared:
  - (A) the contribution of the Subsidiary will be determined from its latest financial statements; and
  - (B) the financial condition of the Group will be determined from the latest relevant financial statements but adjusted to take into account any subsequent acquisition or disposal of a business or a company (including that Subsidiary);
- (iii) the contribution of a Subsidiary will, if it has Subsidiaries, be determined from its consolidated financial statements;
- (iv) if a Material Subsidiary disposes of all or substantially all of its assets to another member of the Group, it will immediately cease to be a Material Subsidiary and the other member of the Group (if it is not the Borrower or already a Material Subsidiary) will immediately become a Material Subsidiary;
- (v) a Subsidiary of the Borrower (if it is not already a Material Subsidiary) will become a Material Subsidiary on completion of any other intra-Group transfer or reorganisation if it would have been a Material Subsidiary had the intra-Group transfer or reorganisation occurred on the date of the latest relevant financial statements; and
- (vi) except as specifically mentioned in paragraph (iv) above, a member of the Group will remain a Material Subsidiary until the next relevant financial statements show otherwise under paragraph (i) above.

If there is a dispute as to whether or not a member of the Group is a Material Subsidiary, a determination by the Majority Lenders will be, in the absence of manifest error, conclusive.

“**Minimum Contribution Amount**” has the meaning given to such term in Clause 22.2(c)(*Financial Covenants*).

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

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

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

“**Monthly Report**” has the meaning given to such term in Clause 18.5(d)(*Other Reports*)

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

“**Mortgages**” has the meaning given to such term in Schedule 31(*Security Documents*).

“**Multiemployer Plan**” means a “*multiemployer plan*” as defined in Section 4001(a)(3) of ERISA to which any Obligor or any ERISA Affiliate is making, or is accruing an obligation to make, or has accrued an obligation to make contributions, and each such plan for the six (6) year period immediately following the latest date on which any Obligor or ERISA Affiliate contributed to or had an obligation to contribute to such plan.

“**Net Cash Proceeds**” means, as applicable:

- (a) with respect to any Equity Issuance, any Asset Disposition or any Debt Issuance, the gross cash proceeds received by the Borrower or any of its Subsidiaries therefrom *less* all legal, underwriting, placement agents and other commissions, discounts, premiums, fees and expenses incurred in connection therewith; and
- (b) with respect to any Insurance and Condemnation Event, the gross cash proceeds received by the Borrower or any of its Subsidiaries *less* the sum of:
  - (i) all fees and expenses in connection therewith; and
  - (ii) the principal amount of, premium, if any, and interest on any Financial Indebtedness secured by a Lien on the asset (or a portion thereof) subject to such Insurance and Condemnation Event, which Financial Indebtedness is expressly permitted under this Agreement and required to be repaid in connection therewith.

“**Net Debt**” means, in respect of the Group at any time, the consolidated amount of all Financial Indebtedness, in each case, in cash and including:

- (a) any vendor financings (howsoever described); and
- (b) any Relevant Subordinated Indebtedness,

in each case, with a stated maturity or put date on or prior to the Final Maturity Date (including, without limitation, all Financial Indebtedness arising in respect of the Facility), but:

- (i) deducting the aggregate amount of Liquidity (which, for the purposes of this paragraph (b)(i), shall exclude any amounts held in the Debt Service Reserve Account and the Insurance Proceeds Account) at that time; and
- (ii) excluding any Subordinated Indebtedness that does not constitute Relevant Subordinated Indebtedness.

“**Net Hedging Obligations**” means, as of any date, the Termination Value of any such Hedging Agreement on such date.

“**New Lender**” has the meaning given to such term in Clause 25.1 (*Assignments and Transfers by the Lenders*).

**“Obligations”** means, in each case, whether now in existence or hereafter arising:

- (a) the principal of and interest on (including interest accruing after the filing of any bankruptcy or similar petition) the Loans;
- (b) all Hedging Obligations; and
- (c) all other fees and commissions (including attorneys’ fees), charges, indebtedness, loans, liabilities, financial accommodations, obligations, covenants and duties owing by the Borrower or any of its Subsidiaries to the Finance Parties, in each case under any Finance Documents or otherwise, with respect to any Loan direct or indirect, absolute or contingent, due or to become due, contractual or tortuous, liquidated or unliquidated, and whether or not evidenced by any note.

**“Obligors”** means:

- (a) the Borrower; and
- (b) each Subsidiary Guarantor.

**“OFAC”** means the US Department of the Treasury’s Office of Foreign Assets Control.

**“Operating Expenditure”** means all operating and maintenance costs, expenses and liabilities (including inventory purchases) incurred by a member of the Group and including any VAT in respect of any such amount (excluding any capital expenditure (other than maintenance capital expenditure)) and any other costs and expenses agreed between (i) solely during the First Lien Facility Period, the First Lien Agent and the Borrower and (ii) thereafter, the Majority Lenders and the Borrower.

**“Operating Lease”** means, as to any person as determined in accordance with GAAP, any lease of property (whether real, personal or mixed) by such person as lessee which is not a Finance Lease.

**“Original Indenture”** means the indenture dated as of 15 April 2008 between the Borrower as issuer and U.S. Bank National Association as trustee.

**“Original Lenders”** has the meaning given to such term in the Recitals.

**“Participating Member State”** means any member state of the European Union that has the Euro as its lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union, other than Slovakia, Slovenia, Malta and Cyprus.

**“Party”** means a party to this Agreement.

**“Payment Period”** means a First Half Payment Period or a Second Half Payment Period, as the case may be.

**“PBGC”** means the Pension Benefit Guaranty Corporation or any successor agency.

**“Pension Plan”** means any Employee Benefit Plan, other than a Multiemployer Plan, which is subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA.

**“Permitted Acquisition”** means any investment by the Borrower, any Subsidiary Guarantor or Globalstar Canada Satellite Co. in the form of acquisition of all or substantially all of the business or a line of business (whether by the acquisition of Capital Stock, assets or any combination thereof) of any other person (a **“Target Company”**) if each such acquisition meets each of the following requirements:

- (a) no less than fifteen (15) days prior to the proposed closing date of such acquisition, the Borrower shall have delivered written notice and financial details of such acquisition to the Agent, which notice shall include the proposed closing date of such acquisition;
- (b) the Borrower shall have certified on or before the closing date of such acquisition, in writing and in a form reasonably acceptable to the Agent (acting on the instructions of the Majority Lenders), that such acquisition has been approved by the board of directors or equivalent governing body of the Target Company;
- (c) the Target Company shall be in a substantially similar line of business as the Borrower and its Subsidiaries pursuant to Clause 21.12 (*Nature of Business*) or a parallel business the acquisition of which would be of commercial or strategic importance to such business;
- (d) if such proposed transaction is a merger with respect to the Borrower or any Subsidiary Guarantor, the Borrower shall have received the prior written consent of the Agent (acting on the instructions of the Majority Lenders) to such transaction;
- (e) such proposed transaction shall not include or result in any actual or contingent liabilities that could reasonably be expected to be material to the business, financial condition, operations or prospects of the Borrower and its Subsidiaries, taken as a whole;
- (f) if such proposed transaction is in respect of a Target Company which has negative Adjusted Consolidated EBITDA, the prior written consent of the Agent (acting on the instructions of the Majority Lenders) shall be required unless:
  - (i) such proposed transaction:
    - (A) is in respect of a Target Company which is an international gateway operator; and
    - (B) the cash consideration of such transaction does not exceed US\$5,000,000 in value,

*provided that*, the Borrower shall only be permitted to enter into two (2) transactions of the type described in this paragraph (f)(i) in each Fiscal Year; or
  - (ii) the relevant Target Company (other than an international gateway operator) has for the twelve (12) Month period prior to the date of the proposed transaction a negative Adjusted Consolidated EBITDA no greater than US\$2,000,000 in aggregate when taking into account all other acquisitions with negative Adjusted Consolidated EBITDA made following the date of this Agreement.

For the purpose of the calculations required to be made in respect of this paragraph (f) only:

- (A) any reference to “*the Borrower and its Subsidiaries*” in the definitions of Consolidated EBITDA, Consolidated Net Income, Equity Issuance, Subordinated Indebtedness, Consolidated Interest Expense and Finance Lease (and any other definition used in the calculation of Adjusted Consolidated EBITDA) shall be construed as being a reference to “*the Target Company and its Subsidiaries*”;
  - (B) any reference to “*the Borrower*” in the definitions of Consolidated EBITDA, Consolidated Net Income, Equity Issuance, Subordinated Indebtedness, Consolidated Interest Expense and Finance Lease (and any other definition used in the calculation of Adjusted Consolidated EBITDA) shall be construed as being a reference to “*the Target Company*”; and
  - (C) any reference to “*Subsidiary*” in the definitions of Consolidated EBITDA, Consolidated Net Income, Equity Issuance, Subordinated Indebtedness, Consolidated Interest Expense and Finance Lease (and any other definition used in the calculation of Adjusted Consolidated EBITDA) shall be construed as being a reference to a Subsidiary of a Target Company;
- (g) the Borrower shall have delivered to the Agent:
- (i) no less than fifteen (15) days prior to the proposed closing date of such acquisition, forward looking financial statements taking into account the proposed transaction and demonstrating to the satisfaction of the Agent, compliance with each of the financial covenants set out in Clause 19 (*Financial Covenants*) on the proposed closing date of such acquisition and on a twelve (12) Month projected basis; and
  - (ii) such other documents reasonably requested by the Agent or the Majority Lenders;
- (h) no Event of Default shall have occurred and be continuing both before and after giving effect to such acquisition; and
- (i) such acquisition is not in violation of Sanctions applicable to any member of the Group.

“**Permitted Joint Venture Investments**” means any investment by the Borrower, any Subsidiary Guarantor or Globalstar Canada Satellite Co. in joint ventures and partnerships if each such investment meets all of the following requirements:

- (a) no less than fifteen (15) days prior to the proposed closing date (in the case where the consent of the Agent (acting on the instructions of the Majority Lenders) is required) or after the closing date (in the case where no consent is required) of any such investment of more than US\$10,000,000, the Borrower shall have delivered written notice of such

investment to the Agent, which notice shall include the proposed closing date (or actual closing date, applicable) of such investment;

- (b) such joint venture or partnership shall be in a substantially similar line of business as the Borrower and its Subsidiaries pursuant to Clause 21.12 (*Nature of Business*) or a parallel business which is of commercial or strategic importance to such business;
- (c) the Borrower shall have delivered to the Agent:
  - (i) such documents reasonably requested by the Agent or any Finance Party (through the Agent) pursuant to Clause 20.5 (*Additional Domestic Subsidiaries*) to be delivered at the time required pursuant to Clause 20.5 (*Additional Domestic Subsidiaries*);
  - (ii) forward looking financial statements taking into account the proposed transaction and demonstrating to the satisfaction of the Agent, compliance with each of the financial covenants set out in Clause 19 (*Financial Covenants*) on the proposed closing date of such investment and on a twelve (12) Month projected basis;
- (d) no Event of Default shall have occurred and be continuing both before and after giving effect to such investment;
- (e) if such investment is as a general partner, such investment shall be made by a Subsidiary that has no assets other than such investment; and in any case, such investment shall not include or result in any contingent liabilities that could reasonably be expected to be material to the business, financial condition, operations or prospects of the Borrower and its Subsidiaries, taken as a whole; and
- (f) the Borrower shall have obtained the prior written consent of the Agent (acting on the instructions of the Majority Lenders) prior to the consummation of such investment if the amount (including all cash and non-cash consideration paid by or on behalf of the Borrower and its Subsidiaries in connection with such investment) of such investment (or series of related investments), together with all other investments in joint ventures and partnerships consummated during the term of this Agreement, exceeds US\$30,000,000 in aggregate (excluding any portion of such investment consisting of Capital Stock of the Borrower).

“**Permitted Liens**” means the Liens permitted pursuant to Clauses 21.2(a) to 21.2(u) (*Limitations on Liens*).

“**Permitted Supplier Indebtedness**” means any Financial Indebtedness of the Borrower or any Subsidiary owing to the Supplier and relating to the Satellite Construction Contract.

“**Permitted Vendor Indebtedness**” means:

- (a) any Permitted Supplier Indebtedness; and
- (b) any Financial Indebtedness of the Borrower or any Subsidiary;



- (i) owing to Ericsson pursuant to the purchase agreement between the Borrower and Ericsson dated 1 October 2008, as amended or any other agreement which replaces such agreement;
- (ii) owing to Hughes pursuant to the agreement between the Borrower and Hughes dated 1 May 2008, as amended or any other agreement which replaces such agreement;
- (iii) owing to a Satellite vendor or Satellite launch vendor or Affiliate thereof (in each case, other than the Supplier) for:
  - (A) the procurement, construction, launch and insurance of all or part of one or more Satellites or Satellite launches for such Satellites; or
  - (B) a ground or in-orbit space intended for future use or associated improvements to the ground portion of the network of the Borrower and its Subsidiaries;
- (iv) owing to any other supplier or vendor in respect of any Capital Expenditure (*but excluding* the Supplier); or
- (v) otherwise approved in writing by the Agent (acting on the instructions of all the Lenders),

*provided that*, in each case (other than paragraph (b)(v) above and unless stated to the contrary):

- (A) in the case of paragraph (a) above only, such Permitted Supplier Indebtedness:
  - (1) does not exceed €17,530,000 (the “**Relevant Amount**”) and the Borrower must have consented to the payment to the Supplier of the Relevant Amount (or any lesser amount), it being acknowledged that the Borrower has no obligation to pay the Relevant Amount to the Supplier; and
  - (2) is on such terms as may be approved by the Agent (acting on the instructions of each Lender in their absolute discretion);
- (B) in the case of paragraphs (b)(i) to (iv) (inclusive) only, such Financial Indebtedness does not exceed (either under any individual agreement or in aggregate) US\$25,000,000 (unless approved in writing by the Agent (acting on the instructions of all the Lenders));
- (C) the issuance of such Financial Indebtedness shall not cause, and could not reasonably be expected to cause, a Default;
- (D) any interest payable in respect of such Financial Indebtedness does not exceed ten *per cent.* (10%) per annum;
- (E) such Financial Indebtedness is not evidenced by any promissory note; and

- (F) such Financial Indebtedness is not secured by any Lien (other than a Permitted Lien) on any asset or property of the Borrower or any Subsidiary thereof.

“**PIK Interest**” means interest paid by the Borrower or any Subsidiary in respect of a debt instrument by the issuance of:

- (a) shares in the Borrower’s Capital Stock issued for the sole purpose of a making a dividend to the shareholders of the Borrower; and/or
- (b) additional debt securities,

in each case:

- (i) which debt securities will not mature or become payable prior to the maturity date of such instrument and the Final Discharge Date; and
- (ii) no cash payment is made by the Borrower or any Subsidiary prior to the Final Discharge Date.

“**Post-Closing Document**” has the meaning given to such term in Part 2 (*Conditions Subsequent*) of Schedule 2 (*Conditions Precedent*).

“**Project**” means:

- (a) the supply of twenty-five (25) Satellites plus the long lead items for six (6) subsequent Satellites by the Supplier pursuant to the Satellite Construction Contract; and
- (b) the launching of such Satellites by the Launch Services Provider pursuant to the terms of the Launch Services Contract,

to form for the Borrower the second generation satellite constellation.

“**Project Accounts**” has the meaning given to such term in the Accounts Agreement.

“**Promissory Notes**” means a promissory note made by the Borrower in accordance with Clause 30.2(c)(*Evidence of Financial Indebtedness*) in substantially (and in all material respects in) the same form as set out in Schedule 23 (*Form of Promissory Note*) and amendments, supplements and modifications thereto, any substitutes therefor, and any replacements, restatements, renewals or extension thereof, in whole or in part.

“**Property All Risks Insurance**” means the insurance to be procured by the Borrower in accordance with Clause 20.4(c)(i) (*Insurance*).

“**Proposed Assignment Notice**” means written notice from a Lender setting forth the terms and conditions, in reasonable detail, of a Proposed Loan Transfer.

“**Proposed Loan Transfer**” means any proposed participation, assignment or any other transfer of any portion of any rights and obligations under the Finance Documents proposed by any Prospective Transferor.

**“Prospective Transferee”** means any person that is not a Lender to whom a Prospective Transferor proposes to make a Proposed Loan Transfer. A Prospective Transferee shall not include, in the case of a Lender, an Affiliate or approved fund of such Lender.

**“Prospective Transferor”** means any Lender that proposes to sell a participation, to make an assignment or to otherwise transfer any Loan to any Person.

**“Prospective Transferred Loans”** has the meaning given to such term in Clause 25.10(a) (*Right of First Refusal*).

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

**“Prudential Regulation Authority”** means the Bank of England body responsible for the prudential regulation and supervision of banks, building societies, credit unions, insurers and major investment firms.

**“Purchase Notice”** has the meaning given to such term in the Fourth Supplemental Indenture.

**“Qualifying Lender”** means a Lender which is:

- (a) a United States person (as defined in Section 7701(a)(30) of the Code);
- (b) engaged in a US trade or business with which such interest is “*effectively connected*” within the meaning of the Code;
- (c) entitled in respect of payments of interest receivable by it under this Agreement to the benefit of a double taxation agreement with the United States which makes provision for full exemption from Tax imposed by the United States on interest; or
- (d) entitled to the benefit of the “*portfolio interest*” exemption under Section 871(h) or 881(c) of the Code.

**“Registration Rights Agreement”** means the registration right agreement dated on or about the date of this Agreement and entered into between the Borrower and the Initial Holders named therein relating to the Warrants and the Voting Common Stock of the Borrower issuable on exercise thereof.

**“Relevant Contribution”** has the meaning given to such term in Clause 22.2(c) (*Financial Covenants*).

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

**“Relevant EIPs”** means the employee incentive plans set out in Schedule 20 (*Incentive Plans*).

**“Relevant Period”** means each period of six (6) Months or twelve (12) Months (as the case may be) referred to in each of the columns titled “*Relevant Period*” or “*Column 1 – Relevant Period*” (as applicable) in the tables contained in Schedule 4 (*Maximum Covenant Capital*

*Expenditure*), 19.3 (*Adjusted Consolidated EBITDA*), 19.4 (*Debt Service Coverage Ratio*) and 19.5 (*Net Debt to Adjusted Consolidated EBITDA*).

**“Relevant Subordinated Indebtedness”** means any Subordinated Indebtedness the terms of which require the payment of:

- (a) cash interest; or
- (b) any fees *but excluding* any fees payable to an administrative agent of, or trustee for, any noteholders.

For the avoidance of doubt, the 8% New Notes shall constitute Relevant Subordinated Indebtedness.

**“Repeating Representations”** means each of the representations set out in Clauses 17.1 (*Status*), 17.2 (*Binding Obligations*), 17.3 (*Non-Conflict with other Obligations*), 17.4 (*Power and Authority*), 17.6 (*Authorisations*), 17.10 (*Margin Stock*), 17.11 (*Government Regulation*), 17.13 (*Employee Relations*), 17.14 (*Burdensome Provisions*), 17.18 (*Titles to Properties*), 17.23(a) (*Satellites*), 17.26 (*Anti-bribery, Anti-corruption and Anti-money Laundering*), 17.27 (*Sanctions*), 17.28 (*Governing Law and Enforcement*), 17.32 (*No Misleading Information*) and 17.34 (*No Immunity*).

**“Reporting Date”** means, in relation to a Monthly Report, the last day of the Month which immediately follows the Month to which such Monthly Report relates.

**“Reservations”** means:

- (a) the principle that equitable remedies may be granted or refused at the discretion of a court;
- (b) the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors;
- (c) the time barring of claims under applicable statutes of limitation;
- (d) the possibility that an undertaking to assume liability for or indemnify a person against non-payment of stamp duty may be void;
- (e) defences of set-off or counterclaim;
- (f) a court construing a Lien expressed to be created by way of fixed security as being floating security;
- (g) any additional interest imposed pursuant to any relevant agreement may be held to be irrecoverable on the grounds that it is a penalty;
- (h) an English court may not give effect to any indemnity for legal costs incurred by an unsuccessful litigant; and
- (i) equivalent principles, rights and defences under the laws of any relevant jurisdiction.

**“Resolution Authority”** means any body which has authority to exercise any Write-down and Conversion Powers.

**“Responsible Officer”** means the chief executive officer, president, chief financial officer, controller, treasurer or assistant treasurer of an Obligor or any other officer of an Obligor reasonably acceptable to the Agent. Any document delivered under this Agreement that is signed by a Responsible Officer of an Obligor shall be conclusively presumed to have been authorised by all necessary corporate, partnership and/or other action on the part of such Obligor and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Obligor.

**“Restructuring Fee”** has the meaning given to such term in clause 11.5 (*Restructuring Fee*) of the First Lien Facility Agreement as of the date hereof.

**“Restructuring Support and Consent Agreement”** means the equity commitment, restructuring, support and consent agreement dated 20 May 2013 between the Borrower, the Subsidiary Guarantors, the First Lien Security Agent, the BPIFAE Agent, the First Lien Lenders and Thermo.

**“Right of First Refusal”** means the right, but not the obligation, to purchase or to participate in some or all of the rights and obligations subject to a Proposed Loan Transfer, on the terms and conditions specified in the Proposed Assignment Notice.

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

**“Sanctions”** means any economic or trade sanctions or restrictive measures enacted, administered, imposed or enforced by the U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC), the U.S. Department of State, the United Nations Security Council, and/or the European Union and/or the French Republic and/or Her Majesty’s Treasury or any other such sanctions authority in a jurisdiction that is relevant to the Facility.

**“Satellite”** shall mean any single non-geostationary satellite, or group of substantially identical non-geostationary satellites, delivered or to be delivered by the Supplier to the Borrower pursuant to the Satellite Construction Contract and owned by, leased to or for which a contract to purchase has been entered into by, the Borrower or any of its Subsidiaries, whether such satellite is in the process of manufacture, has been delivered for Launch or is in orbit (whether or not in operational service) and including any replacement satellite of the Borrower following a Launch Failure delivered or to be delivered by:

- (a) the Supplier to the Borrower pursuant to the Satellite Construction Contract; or
- (b) a French supplier (other than the Supplier) pursuant to an agreement entered into by the Borrower with such French supplier which is permitted by the Finance Documents.

**“Satellite Construction Contract”** means the satellite construction contract dated 30 November 2006 and made between the Borrower and the Supplier for the construction of forty eight (48) satellites, as amended and supplemented from time to time (and as further amended and restated on or about the date of this Agreement and delivered in satisfaction of the condition precedent set out at paragraph 7 (*Commercial contracts*) of schedule 2 (*Conditions Precedent*) of the First Lien Facility Agreement as of the date hereof) for the purpose of, among other things, detailing a new phasing of the contract for the first twenty five (25) satellites and a final phase of twenty three (23) satellites.

“**Satellite Performance Criteria**” means the criteria set out at Schedule 29 (*Satellite Performance Criteria*).

“**SCF Amount**” has the meaning given to such term in Clause 7.3(a) (*Mandatory Prepayment – Cash Sweep of Spectrum Cash Flow*).

“**Second Effective Date Commitment**” means the equity commitment made by Thermo in respect of the Borrower pursuant to the Second Global Amendment and Restatement Agreement in an amount equal to US\$30,000,000.

“**Second Global Amendment and Restatement Agreement**” means the global amendment and restatement agreement dated 7 August 2015 between, among others, the Parties.

“**Second Half Payment Period**” means the period from 1 July to 31 December (inclusive) in any calendar year.

“**Second Terrapin Purchase Agreement**” means the common stock purchase agreement dated 7 August 2015 between the Borrower and Terrapin.

“**Second Thermo Group Undertaking Letter**” means the undertaking letter dated 7 August 2015 entered into by each of the members of the Thermo Group in favour of the BPIFAE Agent.

“**Security Amendment and Restatement Agreement**” has the meaning given to such term in Schedule 31(*Security Documents*).

“**Security Documents**” has the meaning given to such term in Schedule 31 (*Security Documents*).

“**Shareholder Distributions**” means:

- (a) any dividend paid, made or declared, other than a dividend paid exclusively in Capital Stock or rights to acquire Capital Stock which, in each case, no cash payment is made by the Borrower;
- (b) any payment by way of return on or repayment of share capital;
- (c) any payment of cash interest or capitalised interest by the Borrower to any member of the Thermo Group under any distribution (whether in cash or in kind), including, without limitation, any distribution of assets or other payment whatsoever in respect of share capital whether directly or indirectly *but excluding*:
  - (i) any distributions or other payments pursuant to any employee stock incentive plan (howsoever described) expressly permitted under the terms of this Agreement;
  - (ii) any PIK Interest relating to:
    - (A) the Thermo Loan Agreement; or
    - (B) any Convertible Note held by Thermo; and
    - (C) this Agreement;

- (iii) any cash interest relating to any Convertible Note held by Thermo and permitted by the terms of this Agreement; and
- (iv) any payment relating to this Agreement permitted by the terms of the Intercreditor Agreement;
- (d) any redemption, cancellation or repurchase of the Borrower's shares or any class of its shares other than any conversion on mandatory repurchase or redemption of any of the Convertible Notes in accordance with their terms or in connection with any employee stock incentive plan (howsoever described) expressly permitted under the terms of this Agreement; and
- (e) any payments under a subordinated loan permitted under this Agreement (including interest and fees).

“**Solvent**” and “**Solvency**” means, with respect to any person on any date of determination, that on such date:

- (a) the fair value of the assets of such person is greater than the total amount of liabilities, including contingent liabilities, of such person;
- (b) the present fair saleable value of the assets of such person is not less than the amount that will be required to pay the probable liability of such person on its debts as they become absolute and matured;
- (c) such person does not intend to, and does not believe that it will, incur debts or liabilities beyond such person's ability to pay such debts and liabilities as they mature;
- (d) such person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such person's assets would constitute an unreasonably small capital; and
- (e) such person is able to pay its debts and liabilities, contingent obligations and other commitments as they mature in the ordinary course of business.

The amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

“**Spectrum**” means spectrum in specific frequency bands that are subject to a Communications Licence issued to the Borrower or an Affiliate, and in the case of spectrum licensed by the FCC, this refers to, without limitation, spectrum that is licensed to the Borrower or an Affiliate in the 1610-1618.725 and the 2483.5 – 2500 MHz frequency bands.

“**Spectrum Cash Flow**” means any cash received by a member of the Group from monetizing (howsoever defined) the Group's Spectrum rights, including, but not limited to, upfront payments, operating lease payments, and any other payments to a member of the Group associated with the commercial use of any Spectrum by any third parties: *less*

- (a) any capital or operating expenses incurred (or reasonably expected to be incurred) by the Borrower in direct connection with such Spectrum Cash Flow; and

(b) any payments received by a member of the Group under such Spectrum Cash Flow which are to be “*passed through*” to any third party, *provided that* all such deductions (including deducted expenses incurred and “*passed through*” payments) must:

- (i) be directly related to the corresponding monetization of Spectrum rights;
- (ii) be approved in good faith by the Agent (acting on the instructions of the Majority Lenders) in the exercise of their commercially reasonable judgment; and
- (iii) not have been deducted from the calculation of Excess Cash Flow (without double counting).

“**Spectrum Plan**” means the plan relating to the Group’s Spectrum rights, which shall include the information required pursuant to Clause 18.14(*Spectrum Plan*) (as updated and supplemented from time to time pursuant to each Monthly Report).

“**Spectrum Sale**” means any sale or other disposition of title (legal or equitable) of any of the Group’s Spectrum rights.

“**Spot Rate of Exchange**” means the exchange rate between Euros and Dollars as notified by the Agent to the Borrower and calculated on the basis of the official fixing rate (as between Euros and Dollars) of the European Central Bank quoted on Reuter’s page ECB37, more or less two (2) basis points, on the date that is two (2) Business Days prior to the relevant Utilisation Date. If the agreed page is replaced or the service ceases to be available, the Agent may specify another page or service displaying the appropriate rate.

“**Stock Pledge Agreement**” has the meaning given to such term in Schedule 31 (*Security Documents*).

“**Subordinated Indebtedness**” means any Financial Indebtedness of the Borrower or any Subsidiary:

- (a) subordinated in right and time of payment to the Obligations pursuant to the Intercreditor Agreement or any other Acceptable Intercreditor Agreement;
- (b) to be applied by the Borrower or the relevant Subsidiary (as the case may be) towards:
  - (i) financing costs directly arising from the construction and Launch of the Satellites or additional satellites;
  - (ii) financing payments due by the Borrower to second generation ground segment vendors; and/or
  - (iii) payment of the Borrower’s working capital and general corporate purposes;
- (c) containing such other terms and conditions, in each case as are reasonably satisfactory to the Agent (acting on the instructions of the Majority Lenders); and
- (d) the issuance of such Financial Indebtedness shall not cause, and could not reasonably be expected to cause, a Default.



“**Subsidiary**” means, as to any person, any company of which more than fifty *per cent.* (50%) of the outstanding Capital Stock having ordinary voting power to elect a majority of the board of directors or other managers of such person is at the time owned (directly or indirectly) by, or the management is otherwise controlled by, such person (irrespective of whether, at the time, Capital Stock of any other class or classes of such person shall have or might have voting power by reason of the occurrence of any contingency). Unless otherwise qualified, references to “**Subsidiary**” or “**Subsidiaries**” in this Agreement shall refer to those of the Borrower.

“**Subsidiary Guarantor**” means each direct or indirect Domestic Subsidiary of the Borrower:

- (a) set out in Schedule 24 (*Subsidiary Guarantors*); or
- (b) which becomes a party to a Guarantee Agreement pursuant to Clause 20.5 (*Additional Domestic Subsidiaries*).

“**Supplier**” means Thales Alenia Space France, a French *société par actions simplifiée* registered at the *Registre du Commerce et des Sociétés* of Toulouse under registration number 414 725 101, whose registered office is at 26, Avenue Jean François Champollion, 31100 Toulouse, France.

“**Synthetic Lease**” means any synthetic lease, tax retention operating lease, off-balance sheet loan or similar off-balance sheet financing product where such transaction is considered borrowed money indebtedness for tax purposes but is classified as an Operating Lease in accordance with GAAP.

“**Target Company**” has the meaning given to such term in the definition of “*Permitted Acquisition*”.

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

“**Tax Credit**” means a credit against, relief or remission for, or repayment of any Tax.

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

“**Tax Payment**” means either the increase in a payment made by the Borrower to a Finance Party under Clause 12.1 (*Tax Gross-up*) or a payment under Clause 12.2 (*Tax Indemnity*).

“**Termination Value**” means, in respect of any one (1) or more Hedging Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Hedging Agreements:

- (a) for any date on or after such Hedging Agreements 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 paragraph (a), the amount(s) determined as the mark-to-market value(s) for such Hedging Agreements, as determined based upon one (1) or more mid-market or other readily available quotations provided by any recognised dealer in such Hedging Agreements (which may include a Lender or an Affiliate of a Lender).

“**Terrapin**” means Terrapin Opportunity, L.P.

“**Thermo**” means Thermo Funding Company LLC.

“**Thermo Commitment**” has the meaning given to such term in the Third Global Amendment and Restatement Agreement.

“**Thermo Group**” means:

- (a) Globalstar Satellite LP;
- (b) Thermo;
- (c) FL Investment Holdings LLC (formerly known as Globalstar Holdings LLC); and
- (d) Thermo Funding II LLC.

“**Thermo Loan Agreement**” means the loan agreement dated 25 June 2009 between the Borrower as borrower and Thermo as lender, as the same may be amended from time to time, and the subordinated promissory note evidencing such loan.

“**Third Effective Date**” means the “*Effective Date*” as such term is defined in the Third Global Amendment and Restatement Agreement.

“**Third Effective Date Commitment**” has the meaning given to such term in the Third Thermo Group Undertaking Letter.

“**Third Global Amendment and Restatement Agreement**” means the global amendment and restatement agreement dated 30 June 2017 between, among others, the Parties.

“**Third Parties Act**” has the meaning given to such term in Clause 1.5(a)(*Third Party Rights*).

“**Third Thermo Group Undertaking Letter**” means the undertaking letter dated on or around the Third Effective Date entered into by each of the members of the Thermo Group in favour of the BPIFAE Agent.

“**Total Commitments**” means the aggregate of the Commitments, being US\$198,959,010.29 as at the date of this Agreement.

“**Transaction Costs**” means all transaction fees, charges and other amounts related to the Facility or the First Lien Facility or any transaction which, if consummated, would be a Permitted Acquisition or a Permitted Joint Venture Investment (including, without limitation, any financing fees, merger and acquisition fees, legal fees and expenses, due diligence fees or any other fees and expenses in connection therewith).

“**Transaction Documents**” means:

- (a) each Finance Document;
- (b) the Fourth Global Amendment and Restatement Agreement;
- (c) each Commercial Contract;
- (d) any Acceptable Intercreditor Agreement; and

(e) each Material Communications Licence.

“**Transfer Certificate**” means a certificate substantially in the form set out in Part A (*Form of Transfer Certificate*) of Schedule 5 (*Form of Transfer Certificate and Assignment Agreement*) or any other form agreed between the Agent (acting at the direction of the Majority Lenders) and the Borrower (acting reasonably).

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

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

“**UCC**” means the Uniform Commercial Code as in effect in the State of New York, as amended or modified from time to time.

“**UK Bail-In Legislation**” means (to the extent that the United Kingdom is not an EEA Member Country which has implemented, or implements, Article 55 BRRD) Part I of the United Kingdom Banking Act 2009 and any other law or regulation applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (otherwise than through liquidation, administration or other insolvency proceedings).

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

“**Unpaid Sum**” means any sum due and payable but unpaid by the Borrower under the Finance Documents.

“**United States**” or “**US**” means the United States of America.

“**US Tax Obligor**” means:

- (a) a borrower which is resident for Tax purposes in the United States of America; or
- (b) an Obligor some or all of whose payments under the Finance Documents are from sources within the United States for US federal income Tax purposes.

“**Utilisation**” means a utilisation of the Facility.

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

“**Utilisation Request**” means a notice substantially in the form set out in Schedule 3 (*Utilisation Request*).

“**VAT**” means:

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

“**Warrant**” means each common stock purchase warrant dated on or about the date of this Agreement between the Holder named therein and the Borrower.

“**Warrant Certificate**” means each certificate relating to a Warrant.

“**Wholly-Owned**” means, with respect to a Subsidiary, that all the shares of the Capital Stock of such Subsidiary are, directly or indirectly, owned or controlled by the Borrower and/or one (1) or more of its Wholly-Owned Subsidiaries (except for directors’ qualifying shares or other shares required by Applicable Law to be owned by a person other than the Borrower).

“**Withholding Forms**” means United States Internal Revenue Service (“**IRS**”) Form *W-8BEN-E*, *W-8BEN*, *W-8ECI* or *W-9* (or, in each case, any successor form and, in each case, attached to an IRS Form *W-8IMY* if required) or any other IRS form by which a person may claim an exemption from withholding of US federal income tax on interest payments to that person and, in the case of a person claiming an exemption under the “*portfolio interest exemption*”, a statement certifying that such person is not a “*bank*” within the meaning of Section 881(c)(3)(A) of the Internal Revenue Code of 1986, as amended.

“**Working Capital**” means, on any date, Current Assets *less* Current Liabilities.

“**Write-down and Conversion Powers**” means, in relation to:

- (a) any Bail-In Legislation described in the EU Bail-In Legislation Schedule from time to time, the powers described as such in relation to that Bail-In Legislation in the EU Bail-In Legislation Schedule;
- (b) any other applicable Bail-In Legislation:
  - (i) any powers under that Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers; and
  - (ii) any similar or analogous powers under that Bail-In Legislation; and
- (c) UK Bail-In Legislation:

- (iii) any powers under that UK Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that UK Bail-In Legislation that are related to or ancillary to any of those powers; and
- (iv) any similar or analogous powers under that UK Bail-In Legislation.

## 1.2 Construction

- (a) Unless a contrary indication appears, any reference in this Agreement to:
  - (i) “**annual**” means a period of twelve (12) Months;
  - (ii) an “**agreement**” includes a deed and an instrument;
  - (iii) the “**Agent**”, any “**Finance Party**”, any “**Lender**”, an “**Obligor**”, any “**Party**”, the “**Security Agent**” or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
  - (iv) “**assets**” includes present and future properties, revenues and rights of every description;
  - (v) “**determines**” or “**determined**” means a determination made in the absolute discretion of the person making the determination;
  - (vi) “**disposal**” means a sale, transfer, assignment, grant, lease, licence or other disposal, whether voluntary or involuntary, and “**dispose**” shall be construed accordingly;
  - (vii) the “**equivalent**” on any given date in one currency (the “**first currency**”) of an amount denominated in another currency (the “**second currency**”) is a reference to the amount of the first currency which could be purchased with the second currency at the Spot Rate of Exchange for the purchase of the first currency with the second currency;
  - (viii) a “**Finance Document**” or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
  - (ix) “**guarantee**” means (other than in relation to a Guarantee Agreement) any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is

assumed in order to maintain or assist the ability of such person to meet its indebtedness;

- (x) “**include**” or “**including**” are to be construed without limitation;
- (xi) “**indebtedness**” includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (xii) a “**judgment**” includes any order, injunction, determination, award or other judicial or arbitral measure in any jurisdiction;
- (xiii) a “**notice**” includes any notice, request, instruction, demand or other communication;
- (xiv) any “**obligation**” of any person under this Agreement or any other agreement or document shall be construed as a reference to an obligation expressed to be assumed by or imposed on it under this Agreement or, as the case may be, that other agreement or document (and “**due**”, “**owing**”, “**payable**” and “**receivable**” shall be similarly construed);
- (xv) “**pari passu**” shall mean, in relation to indebtedness due to more than one person, that the payment or repayment thereof shall be made *pro rata* in the proportion which each such indebtedness bears to the aggregate indebtedness owed to both or all of such persons, subject to the provisions of this Agreement;
- (xvi) a “**payment**” includes a distribution, prepayment or repayment and references to “**pay**” include distribute, repay or prepay;
- (xvii) a “**person**” includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
- (xviii) a “**regulation**” includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
- (xix) “**rights**” includes rights, authorities, discretions, remedies, liberties, powers, easements, quasi-easements and appurtenances (in each case, of any nature whatsoever);
- (xx) a “**share**” in a company includes a share, participation, participating interest or any other analogous ownership interest;
- (xxi) words importing the singular include the plural and vice versa;
- (xxii) a provision of law is a reference to that provision as amended or re-enacted; and
- (xxiii) a time of day is a reference to London time, unless the case or context shall otherwise dictate.

- (b) Section, Clause and Schedule headings are for ease of reference only.
- (c) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.
- (d) A Default (other than an Event of Default) is “**continuing**” if it has not been remedied or waived, and an Event of Default is “**continuing**” if it has not been waived in writing in accordance with Clause 36 (*Amendments and Waivers*).

### 1.3 Accounting Terms

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 audited financial statements required by Clause 18.2 (*Annual Financial Statements*), except as otherwise specifically prescribed in this Agreement.

### 1.4 UCC Terms

Terms defined in the UCC in effect on the date of this Agreement and not otherwise defined in this Agreement shall, unless the context otherwise indicates, have the meanings provided by those definitions. Subject to the foregoing, the term “UCC” refers, as of any date of determination, to the UCC then in effect in the applicable state or other jurisdiction.

### 1.5 Third Party Rights

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

### 1.6 Conflict

- (a) This Agreement is entered into subject to, and with the benefit of, the terms of the Intercreditor Agreement.
- (b) Notwithstanding anything to the contrary in this Agreement, the terms of the Intercreditor Agreement will prevail if there is a conflict between the terms of this Agreement and the terms of the Intercreditor Agreement.
- (c) The fact that a provision of this Agreement is expressed to be subject to the terms of the Intercreditor Agreement does not mean, and will not be taken to mean, that any other provision of this Agreement is not so subject.

## **2. The Facility**

### **2.1 Facility**

- (a) Subject to the terms of this Agreement, the Lenders shall make available to the Borrower on the Closing Date a Dollar a term loan facility in an aggregate amount equal to the Total Commitments (the “**Facility**”).
- (b) The Loans will be distributed to the Borrower as specified in the Funds Flow Statement.

### **2.2 Finance Parties’ Rights and Obligations**

- (a) The obligations of each Finance Party (other than the Lenders) under the Finance Documents are several. Failure by a Finance Party (other than a Lender) to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Finance Party (other than a Lender) is responsible for the obligations of any other Finance Party (other than a Lender) under the Finance Documents.
- (b) The obligations of each Lender under the Finance Documents are joint and several. Each Party agrees that this Clause 2.2(b) (*Finance Parties’ Rights and Obligations*) is for the benefit of the Lenders only and the Borrower acknowledges that it has no rights of any kind whatsoever under this Clause 2.2(b) (*Finance Parties’ Rights and Obligations*).
- (c) The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from an Obligor shall be a separate and independent debt.
- (d) A Finance Party may, except as otherwise stated in the Finance Documents, separately enforce its rights under the Finance Documents.

### **2.3 Commercial Contracts**

Each Party acknowledges that the Finance Parties shall have no responsibility or liability whatsoever regarding any performance or non-performance by any party to a Commercial Contract and that the Finance Parties shall have no obligation to intervene in any dispute in connection with or arising out of such performance or non-performance. Any such dispute shall not affect the Borrower’s performance under this Agreement nor entitle the Borrower to any suspension or other claim towards the Finance Parties.

## **3. Purpose**

### **3.1 Purpose**

The Borrower shall apply all amounts borrowed by it under the Facility towards:

- (a) repayment of the full amount outstanding under the 2019 Bridge Facility Agreement; and
- (b) repayment of the loans under the First Lien Facility Agreement in the maximum aggregate amount of US\$151,594,070.29,



in each case, in accordance with the terms of this Agreement and as described in the Funds Flow Statement.

### **3.2 Monitoring**

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

## **4. Conditions of Utilisation**

### **4.1 Initial Conditions Precedent**

The Lenders will only be obliged to comply with Clause 5.5 (*Lenders' Participation*) in relation to the Utilisation if on or before the Utilisation Date the Agent has received all of the documents and other evidence listed in Part 1 (*Conditions Precedent*) of Schedule 2 (*Conditions Precedent*) in form and substance satisfactory to the Agent. The Agent shall notify the Borrower and the Lenders promptly upon being so satisfied.

### **4.2 [Reserved]**

### **4.3 Failure to Satisfy Conditions Precedent**

- (a) The Borrower agrees that all the initial conditions precedent referred to in Clause 4.1 (*Initial Conditions Precedent*) must be fulfilled within sixty (60) days of the date of this Agreement.
- (b) If the Borrower is unable to fulfil any such conditions precedent within such sixty (60) day time period, each Lender's Commitment shall be immediately cancelled and each Lender shall have no further obligations under this Agreement.

## **5. Utilisation**

### **5.1 Delivery of a Utilisation Request**

The Borrower may utilise the Facility by delivery to the Agent of a duly completed Utilisation Request not later than 11:00 a.m. (London time) four (4) Business Days (or such other time reasonably acceptable to the Agent) prior to the proposed Utilisation Date.

### **5.2 Examination of Documents**

The Agent and the Lenders shall not be responsible for any delay in making available any Loans resulting from any requirement for the delivery of further information or documents required by the Agent to confirm the relevant conditions precedent in this Agreement have been met.

### **5.3 Completion of a Utilisation Request**

- (a) The Utilisation Request for a Loan is irrevocable and will not be regarded as having been duly completed unless:
  - (i) the proposed Utilisation Date is a Business Day; and

(ii) the currency and amount of the Utilisation comply with Clause 5.4 (*Currency and Amount*).

- (b) Only one (1) Loan may be requested in the Utilisation Request.
- (c) The Borrower may only deliver one (1) Utilisation Request in respect of the Facility.

#### **5.4 Currency and Amount**

- (a) The currency specified in any Utilisation Request must be Dollars.
- (b) The amount of the proposed Utilisation of the Facility must be an amount which is not more than the Available Facility and which is a minimum of US\$1,000,000 or, if less, the Available Facility.

#### **5.5 Lenders' Participation**

- (a) Each Lender shall make its participation in each Loan available by the Utilisation Date through its Facility Office.
- (b) The amount of each Lender's participation in each Loan will be equal to the proportion borne by its Available Commitment to the Available Facility immediately prior to making the Loan.
- (c) The Agent shall notify each Lender of the amount of each Loan and the amount of its participation in that Loan by 11:00 a.m. (London time) on a Business Day which is three (3) Business Days prior to the proposed Closing Date.

#### **5.6 Cancellation of Commitment**

The Total Commitments which are not utilised on the Closing Date shall automatically and immediately be cancelled at the end of the Closing Date.

### **6. Repayment**

#### **6.1 Repayment**

The Borrower shall repay the Loans made to it in full on the Final Maturity Date.

#### **6.2 Reborrowing**

The Borrower may not reborrow any part of the Facility which is repaid.

### **7. Prepayment and Cancellation**

This Clause 7 shall be subject to the Intercreditor Agreement which shall apply in relation to all mandatory prepayments made in respect of the period prior to the end of the First Lien Facility Period.

#### **7.1 Illegality**

If in any applicable jurisdiction it becomes unlawful for any Lender to perform any of its obligations as contemplated by this Agreement or to fund or maintain its participation in any Loan or it becomes unlawful for any Affiliate of a Lender for that Lender to do so:

- (a) that Lender shall promptly notify the Agent upon becoming aware of that event;
- (b) upon the Agent notifying the Borrower, the Commitment of that Lender will be immediately cancelled; and
- (c) the Borrower shall repay that Lender's participation in the Loans made to the Borrower on the last day of the Interest Period for each Loan occurring after the Agent has notified the Borrower or, if earlier, the date specified by the Lender in the notice delivered to the Agent (being no earlier than the last day of any applicable grace period permitted by law).

## 7.2 Mandatory Prepayment - Exit

- (a) For the purposes of this Clause 7.2 (*Mandatory Prepayment - Exit*):

**“Acting in Concert”** means acting together pursuant to an agreement or understanding (formal or informal).

**“Borrower Change of Control”** means:

- (i) the Thermo Group shall at any time and for any reason fail to own and control (without being subject to a voting trust, voting agreement, shareholders agreement or any other agreement limiting or affecting the voting of such stock other than any agreement entered into among the members of Thermo Group and their Affiliates which agreement is not otherwise inconsistent with this Agreement), free and clear of any Lien, at least fifty one *per cent.* (51%) of both the economic and voting interests in the Borrower's Capital Stock (assuming that all convertible instruments, warrants or options then outstanding have been exercised); or
- (ii) any *“person”* (other than the Thermo Group) together with its Affiliates owns or acquires (together with all stock that such person or Affiliate has the right to acquire whether such right is exercisable immediately or only after the passage of time), directly or indirectly, twenty five *per cent.* (25%) or more of the economic or voting interests in the Borrower's Capital Stock (assuming that all convertible instruments, warrants or options then outstanding have been exercised); or
- (iii) any *“person”* or *“group”* (as such terms are used in Sections 13(d) and 14(d) of the US Securities Exchange Act of 1934 (the **“Exchange Act”**)), Acting in Concert or otherwise (other than Thermo Group), is or shall become the *“beneficial owner”* (as defined in Rules 13(d)-3 and 13(d)-5 under the Exchange Act, except that a person shall be deemed to have beneficial ownership of all stock that such person has the right to acquire whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of thirty three *per cent.* (33%) or more of the economic or voting interests in the

Borrower's Capital Stock (assuming that all convertible instruments, warrants or options then outstanding have been exercised); or

- (iv) the board of directors of the Borrower shall cease to consist of a majority of Continuing Directors.

**"Change of Control"** means either a Borrower Change of Control or a Thermo Change of Control.

**"Continuing Directors"** means the directors of the Borrower and/or Thermo Group (as the case may be) on the date of this Agreement and each other director if such director's nomination for election to the board of directors of the Borrower and/or Thermo Group (as the case may be) is recommended by a majority of the then Continuing Directors.

**"Thermo Change of Control"** means:

- (i) James Monroe III (or, in the event of his death or Incapacity, his executors, trustees, heirs or legal representatives) shall at any time and for any reason fail to own and control (without being subject to a voting trust, voting agreement, shareholders agreement or any other agreement limiting or affecting the voting of such stock), free and clear of any Lien, at least fifty one *per cent.* (51%) of both the economic and voting interests in any member of the Thermo Group's Capital Stock (assuming that all convertible instruments, warrants or options then outstanding have been exercised); or
  - (ii) any "*person*" or "*group*" (as such terms are used in the Exchange Act, Acting in Concert or otherwise, other than James Monroe III (or, in the event of his death or Incapacity, his executors, trustees, heirs or legal representatives), is or shall become the "*beneficial owner*" (as defined in Rules 13(d)-3 and 13(d)-5 under the Exchange Act, except that a person shall be deemed to have beneficial ownership of all stock that such person has the right to acquire whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of twenty five *per cent.* (25%) or more of the economic or voting interests in any member of the Thermo Group's Capital Stock (assuming that all convertible instruments, warrants or options then outstanding have been exercised); or
  - (iii) the board of directors (or its equivalent) of any member of the Thermo Group shall cease to consist of a majority of Continuing Directors; or
  - (iv) James Monroe III (or, in the event of his death or Incapacity, his executors, trustees, heirs or legal representatives) shall cease to have the power to elect or remove a majority of the board of directors (or its equivalent) of any member of the Thermo Group; or
  - (v) any "*change of control*" or similar event shall occur under any document with respect to any equity or debt instrument issued or incurred by the Thermo Group.
- (b) The Borrower must promptly notify the Agent if it becomes aware that the circumstances referred to in paragraph (c) below have occurred or are likely to occur.

- (c) Upon the occurrence of a Change of Control, the Total Commitments shall be cancelled and all outstanding Loans, together with accrued interest and all other amounts accrued under the Finance Documents, shall become immediately due and payable.

### 7.3 Mandatory Prepayment – Cash Sweep of Spectrum Cash Flow

- (a) The Borrower shall prepay the Loans (in the order set out in Clause 7.12(*Application of Mandatory Prepayments*)) in an amount equal to seventy five *per cent.* (75%) of any Spectrum Cash Flow received by the Group at any time (the “**SCF Amount**”), *provided that* if the Excess Cash Flow for the Payment Period during which the Spectrum Cash Flow is realised is negative, the amount to be prepaid by the Borrower shall be the greater of:
- (i) an amount equal to the Available Cash; and
  - (ii) the SCF Amount *minus* the Applicable Negative Excess Cash Flow,
- unless the Available Cash referred to in paragraph (a)(i) above is greater than the SCF Amount, in which case, the amount to be prepaid by the Borrower shall be the SCF Amount.
- (b) The prepayment referred to in paragraph (a) above shall be made within:
- (i) forty-five (45) days following the end of a First Half Payment Period, if the Spectrum Cash Flow is realised by a member of the Group during such First Half Payment Period; or
  - (ii) seventy-five (75) days following the end of a Second Half Payment Period if the Spectrum Cash Flow is realised by a member of the Group during such Second Half Payment Period.
- (c) Any mandatory prepayment arising as a result of any Spectrum Sale shall be made in accordance with Clause 7.7 (*Mandatory Prepayment – Cash Sweep following Spectrum Sale*).

### 7.4 Mandatory Prepayment – Excess Cash Flow

- (a) No later than 8 January 2020, the Borrower shall apply an amount equivalent to one hundred *per cent.* (100%) of:
- (i) the Group’s consolidated unrestricted cash balance calculated on 31 December 2019 and as calculated by the Agent (acting reasonably) in consultation with the Borrower by reference to the applicable Cash Movement Summary Report, the Borrower’s bank account statements and such other information that the Agent may reasonably request; *less*
  - (ii) the amount required to ensure that such prepayment will not result in the minimum Liquidity requirement set out in Clause 19.2 (*Minimum Liquidity*) being breached for the succeeding thirty (30) days after such prepayment, provided that, the Borrower delivers to the Agent a certified copy of the

calculations confirming such projected Liquidity requirements at least 5 Business Days prior to such prepayment; and

- (b) from and including 30 June 2020 and no later than:
  - (i) forty-five (45) days after the end of any First Half Payment Period; and
  - (ii) seventy-five (75) days after the end of any Second Half Payment Period,

the Borrower shall, in each case, apply seventy-five *per cent.* (75%) of all Excess Cash Flow calculated as of the last day of such Payment Period, or such lesser amount required to ensure that such prepayment will not result in the minimum Liquidity requirement set out in Clause 19.2 (*Minimum Liquidity*) being breached,

in each case, in mandatory prepayment of the Loans in accordance with the provisions of Clause 7.12 (*Application of Mandatory Prepayments*).

#### **7.5 Mandatory Prepayment - Insurance and Condemnation Events**

- (a) Subject to Clause 7.5(b) below, the Borrower shall prepay the Loans (in the order set out in Clause 7.12(*Application of Mandatory Prepayments*)) in an amount equal to one hundred *per cent.* (100%) of the aggregate Net Cash Proceeds from any Insurance and Condemnation Event and other extraordinary recoveries by the Borrower or any of its Subsidiaries.
- (b) Such prepayments shall be made within three (3) Business Days after receipt of the Net Cash Proceeds from any Insurance and Condemnation Event by the Borrower or any of its Subsidiaries, *provided that* so long as no Event of Default has occurred and is continuing (and so long as no action is being taken under Clause 23 (*Remedies Upon an Event of Default*)), no prepayment shall be required:
  - (i) in connection with such Insurance and Condemnation Event yielding in aggregate less than US\$500,000 in Net Cash Proceeds; or
  - (ii) with respect to any such Net Cash Proceeds which are committed by the Borrower to be reinvested in replacement assets of French suppliers or the procurement or Launch of a Satellite or Satellites acquired or planned to be acquired pursuant to the then current Agreed Business Plan of the Borrower (as evidenced by a contractual agreement for the purchase or acquisition of assets) within six (6) Months after receipt of such Net Cash Proceeds and the proceeds arising out of the relevant Insurance are placed into the Insurance Proceeds Account and, *provided that* no action is being taken under Clause 23 (*Remedies Upon an Event of Default*), will be applied by the Agent in payment to a supplier of such replacement asset or replacement Satellite, any long lead items, launch services, insurances or other costs directly arising in relation to such purchase or Launch in accordance with the terms and conditions agreed between the Borrower and the Supplier.

#### **7.6 Mandatory Prepayments – Asset Dispositions**

- (a) The Borrower shall prepay the Loans (in the order set out in Clause 7.12 (*Application of Mandatory Prepayments*)) in an amount equal to one hundred *per cent.* (100%) of the aggregate Net Cash Proceeds from any Asset Disposition by the Borrower or any of its Subsidiaries.
- (b) Such prepayment shall be made within three (3) days after the date of receipt of the Net Cash Proceeds of any such transaction by the Borrower or any of its Subsidiaries, *provided that*, so long as no Default has occurred and is continuing, no prepayment shall be required pursuant to this Clause 7.6 (*Mandatory Prepayment – Asset Dispositions*):
- (i) in connection with such Asset Dispositions yielding less than US\$50,000 per disposal in Net Cash Proceeds (*provided that* any such disposal shall be deemed to include the Net Cash Proceeds from any related disposal or series of disposals), and in any event subject to an annual aggregate of US\$200,000 and a total aggregate of US\$1,000,000; or
  - (ii) with respect to any such Net Cash Proceeds which are:
    - (A) reinvested within six (6) Months after receipt of such Net Cash Proceeds by such person in replacement assets (useful to the Borrower and its Subsidiaries in the conduct of business in accordance with Clause 21.12 (*Nature of Business*)); or
    - (B) committed (as evidenced by a contractual agreement for the purchase or acquisition of assets with a vendor of such assets) within six (6) Months after receipt of such Net Cash Proceeds by such person to be reinvested in the procurement or Launch of a Satellite or Satellites acquired or to be acquired pursuant to the then current Agreed Business Plan of the Borrower,

*provided further that* the Borrower shall procure that all such Net Cash Proceeds referred to in this paragraph (b)(ii) shall, immediately upon receipt thereof by the Borrower, be paid into the Holding Account.
- (c) [Reserved].
- (d) Prior to any application of the Net Cash Proceeds in accordance with paragraphs (b)(ii)(A) and (B) above, the Borrower shall deliver to the Agent a certificate satisfactory in all respects to the Agent and signed by a Responsible Officer providing details of the intended use of such Net Cash Proceeds.
- (e) Any application of the Net Cash Proceeds in accordance with paragraphs (b)(ii)(A) and (B) above shall be made in a manner consistent with the then current Agreed Business Plan.
- (f) Solely for the purposes of this Clause 7.6 (*Mandatory Prepayment – Asset Dispositions*), the term Asset Disposition shall exclude any Spectrum Sale and any disposal of inventory in the ordinary course of trading (but shall include any disposal of obsolete, damaged, worn-out or surplus assets).

#### 7.7 Mandatory Prepayment – Cash Sweep following Spectrum Sale

- (a) The Borrower shall prepay the Loans (in the order set out in Clause 7.12(*Application of Mandatory Prepayments*)) in an amount equal to one hundred *per cent.* (100%) of the aggregate Net Cash Proceeds from any Spectrum Sale.
- (b) Such prepayment shall be made within three (3) Business Days after receipt of the Net Cash Proceeds from any Spectrum Sale by the Borrower or such other member of the Group.
- (c) Any Liens held by the Agent in respect of any Spectrum which is the subject of a Spectrum Sale shall only be released upon the Agent being satisfied that:
  - (i) all Net Cash Proceeds in respect of such Spectrum Sale have been applied in accordance with Clause 7.12 (*Application of Mandatory Prepayments*);
  - (ii) no amount being prepaid is, or shall be, the subject of any clawback or restitution claim; and
  - (iii) no Default is continuing (unless otherwise agreed by the Majority Lenders).

#### 7.8 Mandatory Prepayment – Cash Sweep following Equity Issuance and Debt Issuance

- (a) Subject to paragraph (b) below, in the case of:
  - (i) any Debt Issuance occurring on or after the date of this Agreement; or
  - (ii) any Equity Issuance (other than the 2021 Equity Issuance) occurring on or after 1 January 2020,any Net Cash Proceeds raised by the Borrower pursuant to any such Equity Issuance or any Debt Issuance (*but excluding* any Net Cash Proceeds raised pursuant to any Equity Commitments) which exceed, in aggregate, an amount of US\$145,000,000 shall be prepaid by the Borrower in accordance with the provisions of Clause 7.12 (*Application of Mandatory Prepayments*) in the following amounts in respect of any Net Cash Proceeds raised pursuant to any relevant:
  - (A) Equity Issuance (including any Equity Linked Securities), in an amount equal to fifty *per cent.* (50%) of such Net Cash Proceeds; and
  - (B) Debt Issuance, in an amount equal to seventy five *per cent.* (75%) of such Net Cash Proceeds.
- (b) On the later of (x) the repayment, in full, of the First Lien Facility and (y) 1 July 2021, any remaining proceeds standing to the credit of the Equity Proceeds Account shall be prepaid by the Borrower:
  - (i) immediately; and
  - (ii) in accordance with the provisions of Clause 7.12 (*Application of Mandatory Prepayments*) (with such prepayment being made immediately).
- (c) Any prepayment made in relation to paragraph (a) above shall be made:



- (i) in respect of any relevant Equity Issuance, within three (3) Business Days of the completion of such Equity Issuance; or
- (ii) in respect of any relevant Debt Issuance, simultaneously with the funding of such Debt Issuance.

### **7.9 Voluntary Cancellation**

The Borrower may, if it:

- (a) gives the Agent not less than twenty (20) Business Days' (or such shorter period as the Majority Lenders may agree) prior notice; and
- (b) delivers to the Agent a certificate signed by a Responsible Officer demonstrating that the Borrower has sufficient funds to finance the Project to the satisfaction of the Agent after any such cancellation,

cancel the whole or any part (being a minimum amount of US\$1,000,000) of the Available Facility. Any cancellation under this Clause 7.9 (*Voluntary Cancellation*) shall reduce the Commitments of the Lenders in inverse order of maturity.

### **7.10 Voluntary Prepayment of the Loans; Call Protection**

- (a) The Borrower may, if it gives the Agent not less than twenty (20) Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, prepay the whole or any part of the Loans (but, if in part, being an amount that reduces the amount of the Loans by a minimum amount of US\$1,000,000).
- (b) [Reserved].
- (c) [Reserved].
- (d) Any prepayment under this Clause 7.10 (*Voluntary Prepayment of the Loans; Call Protection*) shall be applied in inverse order of maturity across the remaining scheduled repayments under the Facility.
- (e) In the event all or any portion of the Loans are prepaid through any voluntary prepayments:
  - (i) on or prior to the first anniversary of the Closing Date, such prepayment will be made at 103.0% of the principal amount so prepaid;
  - (ii) after the first anniversary of the Closing Date, but on or prior to the second anniversary of the Closing Date, such prepayment will be made at 102.0% of the principal amount so prepaid; and
  - (iii) after the second anniversary of the Closing Date, but on or prior to the third anniversary of the Closing Date, such prepayment will be made at 101.0% of the principal amount so prepaid.

### **7.11 Right of Repayment and Cancellation in relation to a Single Lender**

- (a) If:
- (i) any sum payable to any Lender by the Borrower is required to be increased under paragraph (c) of Clause 12.1 (*Tax Gross-up*); or
  - (ii) any Lender claims indemnification from the Borrower under Clause 12.2 (*Tax Indemnity*) or Clause 13.1 (*Increased Costs*),
- the Borrower may, whilst the circumstance giving rise to the requirement for indemnification continues, give the Agent notice of cancellation of the Commitment of that Lender and its intention to procure the repayment of that Lender's participation in the Loans.
- (b) On receipt of a notice of cancellation referred to in paragraph (a) above, the Commitment of that Lender shall immediately be reduced to zero (0).
- (c) On the last day of each Interest Period which ends after the Borrower has given notice of cancellation under paragraph (a) above (or, if earlier, the date specified by the Borrower in that notice), the Borrower shall repay that Lender's participation in that Loan.

#### **7.12 Application of Mandatory Prepayments**

Other than in respect of any prepayment under Clause 7.1 (*Illegality*), all other mandatory prepayments under this Clause 7 (*Prepayment and Cancellation*) shall be applied in prepayment in inverse order of maturity across the remaining scheduled repayments under the Facility.

#### **7.13 Restrictions**

- (a) Any notice of cancellation or prepayment given by the Borrower under this Clause 7 (*Prepayment and Cancellation*) shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.
- (b) [Reserved].
- (c) The Borrower may not reborrow any part of the Facility which is prepaid.
- (d) The Borrower shall not repay or prepay all or any part of the Loans or cancel all or any part of the Commitments except at the times and in the manner expressly provided for in this Agreement.
- (e) No amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.
- (f) If the Agent receives a notice under this Clause 7 (*Prepayment and Cancellation*) it shall promptly forward a copy of that notice to either the Borrower or the affected Lender, as appropriate.
- (g) The Borrower shall promptly notify the Agent (but in any event no later than three (3) Business Days) of any payment pursuant to this Clause 7 (*Prepayment and*

*Cancellation*), and the Agent shall promptly notify the Lenders (but in any event no later than five (5) Business Days) of the same.

#### **7.14 Mandatory Prepayment – 2021 Equity Issuance**

The Borrower shall prepay the Loans, from the Net Cash Proceeds of the 2021 Equity Issuance, in accordance with the provisions of Clause 7.12 (*Application of Mandatory Prepayments*) in an amount equal to at least US\$45,000,000 within three (3) Business Days of the completion of the 2021 Equity Issuance.

#### **7.15 Mandatory Prepayment – Intercreditor Agreement**

If:

- (a) any:
- (i) party to the Intercreditor Agreement (other than a Finance Party or an Obligor) fails to comply with the provisions of, or does not perform its obligations under, the Intercreditor Agreement; or
  - (ii) representation or warranty given by that party in the Intercreditor Agreement is incorrect in any material respect, and, if the non-compliance or circumstances giving rise to the misrepresentation are capable of remedy, it is not remedied within ten (10) Business Days of the earlier of the Agent giving notice to that party or that party becoming aware of the noncompliance or misrepresentation; or
- (b) any party to the Intercreditor Agreement rescinds or purports to rescind or repudiates or purports to repudiate that agreement in whole or in part where to do so has or is, in the reasonable opinion of the Majority Lenders, likely to have a material adverse effect on the interests of the Lenders under the Finance Documents,

the Agent shall (acting on the instructions of the Majority Lenders), have the right to issue a Blocking Notice (as such term is defined in the Accounts Agreement) and/or request that the Total Commitments shall be cancelled and all outstanding Loans, together with accrued interest and all other amounts accrued under the Finance Documents, shall become immediately due and payable.

## **8. Interest**

### **8.1 Calculation of Interest**

The rate of interest on each Loan for each Interest Period is the percentage rate per annum which is equal to the Margin.

### **8.2 Payment and capitalisation of Interest**

The Borrower shall pay accrued interest on each Loan on the last day of each Interest Period in cash, provided that the Borrower may elect that any part of such accrued interest shall be capitalised and added to the outstanding principal amount of the Loan and any such accrued

interest shall, after being so capitalised, (a) be treated as part of the principal amount of the Loan and (b) bear interest in accordance with Clause 8.1 (*Calculation of Interest*).

### **8.3 Default Interest**

- (a) If an Obligor fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to paragraph (b) below, is two *per cent.* (2%) higher than the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a Loan in the currency of the overdue amount for successive Interest Periods, each of a duration selected by the Agent (acting reasonably). Any interest accruing under this Clause 8.3 (*Default Interest*) shall be immediately payable by the Borrower on demand by the Agent.
- (b) If any overdue amount consists of all or part of a Loan which became due on a day which was not the last day of an Interest Period relating to that Loan:
  - (i) the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period relating to that Loan; and
  - (ii) the rate of interest applying to the overdue amount during that first Interest Period shall be two *per cent.* (2%) higher than the rate which would have applied if the overdue amount had not become due.
- (c) Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.

## **9. Interest Periods**

### **9.1 Interest Periods**

- (a) The Interest Period for which any Loan is outstanding shall be divided into successive Interest Periods each of which shall start on the last day of the preceding such Interest Period.
- (b) The initial Interest Period for each Loan shall start on (and include) the Closing Date and end on (but excluding) December 31, 2019. Thereafter, each Interest Period shall start on (and include) the last day of the previous Interest Period and end on (but excluding) March 31, June 30, September 30 and December 31 of each Fiscal Year.

### **9.2 Duration**

- (a) The duration of each Interest Period shall, save as otherwise provided in this Agreement, be three (3) Months or such other period as the Majority Lenders may agree, *provided that* any Interest Period that would otherwise extend beyond the Final Maturity Date shall be of such duration that it shall end on the Final Maturity Date.
- (b) An Interest Period for a Loan shall not extend beyond the Final Maturity Date.

### **9.3 Non-Business Days**

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

### **9.4 Consolidation of Loans**

If two (2) or more Interest Periods:

- (a) relate to Loans; and
- (b) end on the same date,

those Loans will be consolidated into, and treated as, a single Loan on the last day of the Interest Period.

## **10. Upfront Fee**

The Borrower shall pay an up-front fee in the amount and at the times agreed in a Fee Letter.

## **11. Agency Fees**

### **11.1 Agent Fees**

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

### **11.2 Security Agent Fees**

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

### **11.3 Non-Refundable**

Each of the fees set out in this Clause 11 (*Agency Fees*) once paid are non-refundable and non-creditable against other fees payable in connection with the Project.

## **12. Tax gross-up and Indemnities**

### **12.1 Tax Gross-up**

- (a) The Borrower shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.
- (b) The Borrower shall, promptly upon becoming aware that it must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Agent accordingly. Similarly, a Lender shall notify the Agent on becoming so aware in respect of a payment payable to that Lender. If the Agent receives such notification from a Lender it shall notify the Borrower.

- (c) If a Tax Deduction is required by law to be made by the Borrower, the amount of the payment due from the Borrower shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.
- (d) If the Borrower is required to make a Tax Deduction, it shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.
- (e) Within thirty (30) days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Borrower making that Tax Deduction shall deliver to the Agent for the Finance Party entitled to the payment evidence reasonably satisfactory to that Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.
- (f) A payment shall not be increased under paragraph (c) above by reason of a Tax Deduction on account of Tax, if on the date on which the payment falls due:
  - (i) the payment could have been made to the relevant Lender without a Tax Deduction if the Lender had been a Qualifying Lender, but on that date that Lender is not, or has ceased to be, a Qualifying Lender other than as a result of any change after the date it became a Lender under this Agreement:
    - (A) in (or in the interpretation, administration, or application of) any law or double taxation agreement, or any published practice or published concession of any relevant authority; or
    - (B) in the circumstance of the Borrower; or
  - (ii) the Borrower is able to demonstrate that the payment could have been made to the Lender without the Tax Deduction had that Lender complied with its obligations under paragraph (g) below.
- (g) Each Lender agrees to use reasonable efforts (consistent with legal and regulatory restrictions and subject to overall policy considerations of such Lender) to file any Withholding Forms as requested by the Borrower that may be necessary to establish an exemption from withholding of US federal income taxes.

## **12.2 Tax Indemnity**

- (a) The Borrower shall (within three (3) Business Days of demand by the Agent) pay to a Protected Party an amount equal to the loss, liability or cost which that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Finance Document.
- (b) Paragraph (a) above shall not apply with respect to any Tax assessed on a Finance Party:
  - (i) under the law of the jurisdiction in which that Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which that Finance Party is treated as resident for Tax purposes; or

- (ii) under the law of the jurisdiction in which that Finance Party's Facility Office is located in respect of amounts received or receivable in that jurisdiction,

if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by that Finance Party or to the extent a loss, liability or cost:

- (A) is compensated for by an increased payment under Clause 12.1 (*Tax Gross-up*);
  - (B) would have been compensated for by an increased payment under Clause 12.1 (*Tax Gross-up*) but was not so compensated solely because one of the exclusions in paragraph (f) of Clause 12.1 (*Tax Gross-up*) applied; or
  - (C) relates to a FATCA Deduction required to be made by a Party.
- (c) A Protected Party making, or intending to make a claim under paragraph (a) above shall promptly notify the Agent of the event which will give, or has given, rise to the claim, following which the Agent shall notify the Borrower.
  - (d) A Protected Party shall, on receiving a payment from the Borrower under this Clause 12.2 (*Tax Indemnity*), notify the Agent.

### **12.3 Tax Credit**

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

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

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

- (i) any Finance Party may determine, in its sole discretion consistent with the policies of such Finance Party, whether to seek a Tax Credit;
- (ii) if such Tax Credit is subsequently disallowed or reduced, the Borrower shall indemnify the Finance Party for such amount; and
- (iii) nothing in this Clause 12.3 (*Tax Credit*) shall require a Finance Party to disclose any Confidential Information to the Borrower (including, without limitation, its tax returns or its calculations).

### **12.4 Stamp Taxes**

The Borrower shall pay and, within three (3) Business Days of demand, indemnify each Finance Party against any cost, loss or liability that Finance Party incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document.

#### **12.5 Value Added Tax**

- (a) All amounts expressed to be payable under a Finance Document by any Party to a Finance Party which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply, and accordingly, subject to paragraph (b) below, if VAT is or becomes chargeable on any supply made by any Finance Party to any Party under a Finance Document and such Finance Party is required to account to the relevant tax authority for the VAT, that Party must pay to such Finance Party (in addition to and at the same time as paying the consideration for such supply) an amount equal to the amount of the VAT (and such Finance Party must promptly provide an appropriate VAT invoice to that Party).
- (b) Where a Finance Document requires any Party to reimburse or indemnify a Finance Party for any cost or expense, that Party shall reimburse or indemnify (as the case may be) such Finance Party for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that such Finance Party reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.
- (c) In relation to any supply made by a Finance Party to any Party under a Finance Document, if reasonably requested by such Finance Party, that Party must promptly provide such Finance Party with details of that Party's VAT registration and such other information as is reasonably requested in connection with such Finance Party's VAT reporting requirements in relation to such supply.

#### **12.6 Lender Status Confirmation**

Each Lender which becomes a Party to this Agreement after the date of this Agreement shall indicate, in the Transfer Certificate or Assignment Agreement which it executes on becoming a Party, and for the benefit of the Agent and without liability to any Obligor, which of the following categories it falls in:

- (a) not a Qualifying Lender; or
- (b) a Qualifying Lender.

If a New Lender fails to indicate its status in accordance with this Clause 12.6 (*Lender Status Confirmation*) then such New Lender shall be treated for the purposes of this Agreement (including by each Obligor) as if it is not a Qualifying Lender until such time as it notifies the Agent which category applies (and the Agent, upon receipt of such notification, shall inform the Borrower). For the avoidance of doubt, a Transfer Certificate or Assignment Agreement shall not be invalidated by any failure of a Lender to comply with this Clause 12.6 (*Lender Status Confirmation*).

#### **12.7 FATCA Information**



- (a) Subject to paragraph (c) below, each Party shall, within ten (10) Business Days of a reasonable request by another Party:
- (i) confirm to that other Party whether it is:
    - (A) a FATCA Exempt Party; or
    - (B) not a FATCA Exempt Party; and
  - (ii) supply to that other Party such forms, documentation and other information relating to its status under FATCA (including other information required under the US Treasury Regulations or other official guidance including intergovernmental agreements) as that other Party reasonably requests for the purposes of that other Party's compliance with FATCA.
- (b) If a Party confirms to another Party pursuant to Clause 12.7(a)(i) above that it is a FATCA Exempt Party and it subsequently becomes aware that it is not, or has ceased to be a FATCA Exempt Party, that Party shall notify that other Party reasonably promptly.
- (c) Paragraph (a) above shall not oblige any Finance Party to do anything which would or might in its reasonable opinion constitute a breach of:
- (i) any law or regulation;
  - (ii) any fiduciary duty; or
  - (iii) any duty of confidentiality.
- (d) If a Party fails to confirm its status or to supply forms, documentation or other information requested in accordance with paragraph (a) above (including, for the avoidance of doubt, where paragraph (c) above applies), then if that Party failed to confirm whether it is (and/or remains) a FATCA Exempt Party such Party shall be treated for the purposes of the Finance Documents as if it is not a FATCA Exempt Party until such time as the Party in question provides the requested confirmation, forms, documentation or other information.
- (e) If the Borrower is a US Tax Obligor, or where the Agent reasonably believes that its obligations under FATCA require it, each Lender shall, within ten Business Days of:
- (i) where the Borrower is a US Tax Obligor and the relevant Lender is an Original Lender, the date of this Agreement;
  - (ii) where the Borrower is a US Tax Obligor and the relevant Lender is a New Lender, the relevant Transfer Date; or
  - (iii) where the Borrower is not a US Tax Obligor, the date of a request from the Agent,
- supply to the Agent:
- (A) a withholding certificate on Form W-8 or Form W-9 (or any successor form) (as applicable); or

- (B) any withholding statement and other documentation, authorisations and waivers as the Agent may require to certify or establish the status of such Lender under FATCA.

The Agent shall provide any withholding certificate, withholding statement, documentation, authorisations and waivers it receives from a Lender pursuant to this paragraph (e) to the Borrower and shall be entitled to rely on any such withholding certificate, withholding statement, documentation, authorisations and waivers provided without further verification. The Agent shall not be liable for any action taken by it under or in connection with this paragraph (e).

- (f) Each Lender agrees that if any withholding certificate, withholding statement, documentation, authorisations and waivers provided to the Agent pursuant to paragraph (e) above is or becomes materially inaccurate or incomplete, it shall promptly update such withholding certificate, withholding statement, documentation, authorisations and waivers or promptly notify the Agent in writing of its legal inability to do so. The Agent shall provide any such updated withholding certificate, withholding statement, documentation, authorisations and waivers to the Borrower. The Agent shall not be liable for any action taken by it under or in connection with this paragraph (f).

## **12.8 FATCA Deduction**

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

## **13. Increased Costs**

### **13.1 Increased Costs**

- (a) Subject to Clause 13.3 (*Exceptions*) the Borrower shall, within five (5) Business Days of a demand by the Agent, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of:
- (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation;
  - (ii) compliance with any law or regulation made after the date of this Agreement; or
  - (iii) the implementation or application of or compliance with (including any change in the interpretation, administration or application of) the Bank for International Settlements' recommendations on banking laws and regulations published by

the Bank for International Settlements on 16 December 2010 in the form of the consultative documents entitled “A global regulatory framework for more resilient banks and banking systems” and “International Framework for Liquidity Risk Measurement, Standards and Monitoring” (collectively, commonly referred to as “Basel III”) or any other law or regulation which implements Basel III (whether such implementation, application or compliance is by a government, regulator, Finance Party or any of its Affiliates) (“**Basel III**”).

- (b) In this Agreement “**Increased Costs**” means:
- (i) a reduction in the rate of return from the Facility or on a Finance Party’s (or its Affiliate’s) overall capital;
  - (ii) an additional or increased cost; or
  - (iii) a reduction of any amount due and payable under any Finance Document,

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

- (c) For the purposes of this Clause 13(*Increased Costs*), any regulation imposed by the European Central Bank, the Financial Conduct Authority or the Prudential Regulation Authority in effect as of the date of this Agreement with respect to fees and costs payable by banks similar to those customarily considered to be “*Mandatory Costs*” shall be deemed to be an Applicable Law made after the date of this Agreement.

### 13.2 Increased Cost Claims

- (a) Subject to paragraphs (c) below, a Finance Party intending to make a claim pursuant to Clause 13.1 (*Increased Costs*) shall notify the Agent of the event giving rise to the claim, following which the Agent shall promptly notify the Borrower.
- (b) Each Finance Party shall, as soon as practicable after a demand by the Agent, provide a certificate confirming the amount of its Increased Costs.
- (c) A Finance Party intending to make a claim in relation to Mandatory Costs as contemplated by Clause 13.1(c)(*Increased Costs*) shall notify (with a copy to the Agent) the Borrower of its claim in respect of such Mandatory Costs.

### 13.3 Exceptions

Clause 13.1 (*Increased Costs*) does not apply to the extent any Increased Cost is:

- (a) attributable to a Tax Deduction required by law to be made by the Borrower;
- (b) compensated for by Clause 12.2 (*Tax Indemnity*) (or would have been compensated for under Clause 12.2 (*Tax Indemnity*) but was not so compensated solely because any of the exclusions in paragraph (b) of Clause 12.2 (*Tax Indemnity*) applied);

- (c) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation; or
- (d) attributable to a FATCA Deduction required to be made by a Party.

## 14. Other Indemnities

### 14.1 Currency Indemnity

- (a) If any sum due from an Obligor under the Finance Documents (a “**Sum**”), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the “**First Currency**”) in which that Sum is payable into another currency (the “**Second Currency**”) for the purpose of:

- (i) making or filing a claim or proof against an Obligor;
- (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

the Borrower shall as an independent obligation, within three (3) Business Days of demand, indemnify each Finance Party to whom that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between:

- (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency; and
- (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

- (b) The Borrower waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.

### 14.2 Other Indemnities

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

- (a) the occurrence of any Event of Default;
- (b) a failure by the Borrower to pay any amount due under a Finance Document on its due date, including without limitation, any cost, loss or liability arising as a result of Clause 29 (*Sharing among the Finance Parties*);
- (c) funding, or making arrangements to fund, its participation in a Loan requested by the Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by that Lender alone);

- (d) a Loan (or part of a Loan) not being prepaid in accordance with a notice of prepayment given by the Borrower; or
- (e) the breach by the Borrower or any member of the Group of any applicable Environmental Laws or Environmental Permits. Any Affiliate of a Finance Party may rely on this Clause 14.2(e).

#### **14.3 Indemnity to the Agent**

The Borrower shall promptly indemnify the Agent against any cost, loss or liability incurred by the Agent (acting reasonably) as a result of:

- (a) investigating any event which it reasonably believes is a Default;
- (b) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised; or
- (c) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under this Agreement.

#### **14.4 Indemnity to the Security Agent**

- (a) The Borrower shall promptly indemnify the Security Agent against any cost, loss or liability incurred by the Security Agent as a result of:
  - (i) any failure by the Parent to comply with its obligations under Clause 16 (*Costs and expenses*);
  - (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
  - (iii) the taking, holding, protection or enforcement of a Lien expressed to be created under a Security Document;
  - (iv) the exercise of any of the rights, powers, discretions, authorities and remedies vested in the Security Agent by the Finance Documents or by law;
  - (v) any default by the Borrower in the performance of any of the obligations expressed to be assumed by it in the Finance Documents;
  - (vi) acting as Security Agent under the Finance Documents or which otherwise relates to any assets subject to a Lien (otherwise, in each case, than by reason of the Security Agent's gross negligence or wilful misconduct); or
  - (vii) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under this Agreement.
- (b) The Borrower expressly acknowledges and agrees that the continuation of its indemnity obligations under this Clause 14.4 will not be prejudiced by any release or disposal under clause 13 (*Distressed Disposals and Appropriation*) of the Intercreditor Agreement taking into account the operation of that clause.

- (c) The Security Agent may, in priority to any payment to other Finance Parties, indemnify itself out of the assets subject to a Lien expressed to be created under the Security Documents in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this Clause 14.4 and shall have a lien on the proceeds of the enforcement of the a Lien expressed to be created under the Security Documents for all moneys payable to it.

#### **14.5 Winding up of trust**

If the Security Agent, with the approval of each Facility Agent and each Hedge Counterparty, determines that:

- (a) all of the Secured Obligations and all other obligations secured by the Security Documents have been fully and finally discharged; and
- (b) no Secured Party is under any commitment, obligation or liability (actual or contingent) to make advances or provide other financial accommodation to any Debtor pursuant to the Debt Documents,

then:

- (i) the trusts set out in this Agreement shall be wound up and the Security Agent shall release, without recourse or warranty, all of the Transaction Security and the rights of the Security Agent under each of the Security Documents; and
- (ii) any Security Agent which has resigned pursuant to Clause 27.12 (*Resignation of the Agent and the Security Agent*) shall release, without recourse or warranty, all of its rights under each Security Document.

#### **14.6 Powers supplemental to Trustee Acts**

The rights, powers, authorities and discretions given to the Security Agent under or in connection with the Debt Documents shall be supplemental to the Trustee Act 1925 and the Trustee Act 2000 and in addition to any which may be vested in the Security Agent by law or regulation or otherwise.

#### **14.7 Disapplication of Trustee Acts**

Section 1 of the Trustee Act 2000 shall not apply to the duties of the Security Agent in relation to the trusts constituted by this Agreement. Where there are any inconsistencies between the Trustee Act 1925 or the Trustee Act 2000 and the provisions of this Agreement, the provisions of this Agreement shall, to the extent permitted by law and regulation, prevail and, in the case of any inconsistency with the Trustee Act 2000, the provisions of this Agreement shall constitute a restriction or exclusion for the purposes of that Act.

### **15. Mitigation by the Lenders**

#### **15.1 Mitigation**

- (a) Each Finance Party shall, in consultation with the Borrower, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any of Clause 7.1 (*Illegality*), Clause 12 (*Tax gross-up and Indemnities*) or Clause 13 (*Increased Costs*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.
- (b) Paragraph (a) above does not in any way limit the obligations of the Borrower under the Finance Documents.

## 15.2 Limitation of Liability

- (a) The Borrower shall promptly indemnify each Finance Party for all costs and expenses reasonably incurred by that Finance Party as a result of steps taken by it under Clause 15.1 (*Mitigation*).
- (b) A Finance Party is not obliged to take any steps under Clause 15.1 (*Mitigation*) if, in the opinion of that Finance Party (acting reasonably), to do so might be prejudicial to it.

## 16. Costs and Expenses

### 16.1 Transaction Expenses

The Borrower shall promptly on demand pay the Agent, Security Agent, the Lenders, the amount of all costs and expenses (including legal fees) reasonably incurred by any of them in connection with the negotiation, preparation, printing, execution, syndication, preservation and enforcement of:

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

### 16.2 Amendment Costs

If:

- (a) the Borrower requests an amendment, waiver or consent; or
- (b) an amendment is required pursuant to Clause 30.10 (*Change of Currency*),

the Borrower shall, within three (3) Business Days of demand, reimburse the Agent and the Security Agent for the amount of all costs and expenses (including legal fees) incurred by the Agent and the Security Agent in responding to, evaluating, negotiating or complying with that request or requirement.

### 16.3 Enforcement Costs

The Borrower shall, within three (3) Business Days of demand, pay to each Finance Party the amount of all costs and expenses (including legal fees) incurred by that Finance Party in connection with the enforcement of, or the preservation of any rights under, any Finance Document.

#### **16.4 Security Agent Expenses**

The Borrower shall, within three (3) Business Days of demand, pay to the Security Agent the amount of all costs and expenses (including legal fees) incurred by it in connection with the release of any Lien created pursuant to any Security Document.

### **17. Representations**

Subject to the disclosures made by the Borrower set out in Schedule 22 (*Disclosures*), the Borrower makes the representations and warranties set out in this Clause 17 (*Representations*) to each Finance Party on the date of this Agreement and on the Utilisation Date.

#### **17.1 Status**

- (a) It is a corporation, duly incorporated and validly existing (and to the extent applicable, in good standing) under the law of its jurisdiction of incorporation.
- (b) It and each of its Subsidiaries has the power to own its assets and carry on its business as it is being conducted.

#### **17.2 Binding Obligations**

Subject to the Reservations:

- (a) the obligations expressed to be assumed by it in each Transaction Document to which it is a party are legal, valid, binding and enforceable obligations; and
- (b) (without limiting the generality of paragraph (a) above), each Security Document to which it is a party creates the security interests which that Security Document purports to create and those security interests are valid and effective.

#### **17.3 Non-Conflict with other Obligations**

The entry into and performance by it of, and the transactions contemplated by, the Transaction Documents and the granting of the security interests contemplated by the Security Documents do not and will not conflict with:

- (a) any Applicable Law;
- (b) the constitutional documents of any member of the Group; or
- (c) any agreement or instrument binding upon it or any member of the Group or any of its, or any member of the Group's, assets or constitute a default or termination event (however described) under any such agreement or instrument, where such conflict would have or is reasonably likely to have a Material Adverse Effect.

#### **17.4 Power and Authority**

- (a) It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Transaction Documents to



which it is or will be a party and the transactions contemplated by those Transaction Documents.

- (b) No limit on its powers will be exceeded as a result of the borrowing, grant of security or giving of guarantees or indemnities contemplated by the Transaction Documents to which it is a party.

#### **17.5 No Proceedings Pending or Threatened**

No litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency which is not frivolous, vexatious or otherwise an abuse of court process, and which, if adversely determined, could reasonably have a Material Adverse Effect (to the best of its knowledge and belief) have been started against it or any of its Subsidiaries.

#### **17.6 Authorisations**

- (a) Each of the Borrower and its Subsidiaries has all material Authorisations required:
  - (i) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Finance Documents to which it is a party; and
  - (ii) to make the Finance Documents to which it is a party admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect.
- (b) Each of the Borrower and its Subsidiaries:
  - (i) has all Authorisations required for it to conduct its business as currently conducted, each of which is in full force and effect, is final and not subject to review on appeal and is not the subject of any pending or, to the best of its knowledge, threatened attack by direct or collateral proceeding;
  - (ii) is in compliance with each Authorisation applicable to it and in compliance with all other Applicable Laws relating to it or any of its respective properties; and
  - (iii) has filed in a timely manner all material reports, documents and other materials required to be filed by it under all Applicable Laws with any Governmental Authority and has retained all material records and documents required to be retained by it under Applicable Law,

except in each case where the failure to have done so, comply or file could not reasonably be expected to have a Material Adverse Effect.

#### **17.7 Intellectual Property Matters**

- (a) Each of the Borrower and its Subsidiaries owns or possesses rights to use all material franchises, licences, copyrights, copyright applications, patents, patent rights or licences, patent applications, trademarks, trademark rights, service marks, service mark rights, trade names, trade name rights, copyrights and other rights with respect to the foregoing which are reasonably necessary to conduct its business as currently conducted (the “**Intellectual Property**”).

- (b) No event has occurred which permits, or after notice or lapse of time or both would permit, the revocation or termination of any such material rights, and, to the Borrower's knowledge, neither the Borrower nor any Subsidiary thereof is liable to any person for infringement under Applicable Law with respect to any such rights as a result of its business operations except as could not reasonably be expected to have a Material Adverse Effect.

#### **17.8 Environmental Matters**

- (a) The properties owned, leased or operated by the Borrower and its Subsidiaries now or in the past do not contain, and to their knowledge have not previously contained, any Hazardous Materials in amounts or concentrations which:
  - (i) constitute or constituted an unremediated violation of applicable Environmental Laws and Environmental Permits; or
  - (ii) could give rise to a material liability under applicable Environmental Laws and Environmental Permits.
- (b) To the knowledge of the Borrower and its Subsidiaries, the Borrower, each of its Subsidiaries and such properties and all operations conducted in connection therewith are in compliance, and, at all such times when such properties have been owned or operated by the Borrower or any of its Subsidiaries have been in compliance, with all applicable Environmental Laws and Environmental Permits, and there is no contamination at, under or about such properties or such operations which could interfere with the continued operation of such properties or materially impair the fair saleable value thereof.
- (c) Neither the Borrower nor any Subsidiary thereof has received any notice of violation, alleged violation, non-compliance, liability or potential liability regarding environmental matters, Hazardous Materials, or compliance with Environmental Laws or Environmental Permits, nor does the Borrower or any Subsidiary thereof have knowledge or reason to believe that any such notice will be received or is being threatened.
- (d) To the knowledge of the Borrower and its Subsidiaries, Hazardous Materials have not been transported or disposed of to or from the properties owned, leased or operated by the Borrower and its Subsidiaries in violation of, or in a manner or to a location which could give rise to material liability under, Environmental Laws or Environmental Permits, nor have any Hazardous Materials been generated, treated, stored or disposed of at, on or under any of such properties in violation of, or in a manner that could give rise to material liability under, any applicable Environmental Laws.
- (e) No judicial proceedings or governmental or administrative action is pending or, to the knowledge of the Borrower, threatened under any Environmental Law or Environmental Permits to which the Borrower or any Subsidiary thereof is or will be named as a potentially responsible party, nor are there any consent decrees or other decrees, consent orders, administrative orders or other orders, or other administrative or judicial requirements outstanding under any Environmental Law with respect to the Borrower,

any Subsidiary or properties owned, leased or operated by the Borrower or any Subsidiary, now or in the past, that could reasonably be expected to have a Material Adverse Effect.

- (f) There has been no release, nor to the best of the Borrower's knowledge, threat of release, of Hazardous Materials at or from properties owned, leased or operated by the Borrower or any Subsidiary, now or in the past, in violation of or in amounts or in a manner that could give rise to liability under Environmental Laws or Environmental Permits that could reasonably be expected to have a Material Adverse Effect.
- (g) There are no facts, circumstances or conditions relating to the past or present business or operations of the Borrower or any Subsidiary, including the disposal of any wastes, Hazardous Material or other materials, or to the past or present ownership or use of any real property by the Borrower or any Subsidiary, that could reasonably be expected to give rise to an Environmental Claim against or to liability (other than in an immaterial respect) of any Borrower or any Subsidiary under any Environmental Laws or Environmental Permits.

## 17.9 ERISA

- (a) As of the date of this Agreement and the Closing Date, neither an Obligor nor any ERISA Affiliate maintains or contributes to, or has any obligation under, any Employee Benefit Plans other than those identified in Schedule 9 (*ERISA Plans*).
- (b) Each Employee Benefit Plan is in compliance in form and operation with its terms and with ERISA and the Code (including Code provisions compliance with which is necessary for any intended favourable Tax treatment) and all other Applicable Laws, except where any failure to comply would not, individually or in the aggregate, reasonably be expected to result in any material liability of any Obligor or ERISA Affiliate.
- (c) Each Employee Benefit Plan that is intended to be qualified under Section 401(a) of the Code has been determined by the Internal Revenue Service to be so qualified, and each trust related to such plan has been determined by the Internal Revenue Service to be exempt under Section 501(a) of the Code, taking into account all applicable Tax law changes, and nothing has occurred since the date of each such determination that would reasonably be expected to adversely affect such determination (or, in the case of an Employee Benefit Plan with no determination, nothing has occurred that would materially adversely affect the issuance of a favourable determination by the Internal Revenue Service or otherwise materially adversely affect such qualification).
- (d) No liability has been incurred by any Obligor or any ERISA Affiliate which remains unsatisfied for any taxes or penalties with respect to any Employee Benefit Plan or any Multiemployer Plan except for a liability that would not, individually or in the aggregate, reasonably be expected to result in a material liability of such Obligor or ERISA Affiliate.
- (e) Except where the failure of any of the following representations to be correct in all material respects would not, individually or in the aggregate, reasonably be expected to

result in a material liability of any Obligor or any ERISA Affiliate, no Obligor or any ERISA Affiliate has:

- (i) engaged in a non-exempt prohibited transaction described in Section 406 of ERISA or Section 4975 of the Code;
  - (ii) incurred any liability to the PBGC which remains outstanding, or reasonably expects to incur any such liability other than the payment of premiums and there are no premium payments which are within the applicable time limits prescribed by Applicable Law, due and unpaid;
  - (iii) failed to make a required contribution or payment to a Multiemployer Plan within the applicable time limits prescribed by Applicable Law; or
  - (iv) failed to make a required instalment or other required payment under Section 412 of the Code or Section 302 of ERISA.
- (f) No ERISA Termination Event, which individually or in the aggregate would reasonably be expected to result in a material liability of any Obligor or ERISA Affiliate has occurred or is reasonably expected to occur.
- (g) Except where the failure of any of the following representations to be correct in all material respects would not, individually or in the aggregate, reasonably be expected to result in a material liability of any Obligor or any ERISA Affiliate, no proceeding, claim (other than a benefits claim in the ordinary course), lawsuit and/or investigation is existing or, to the best knowledge of the Borrower after due inquiry, threatened concerning or involving any:
- (i) employee welfare benefit plan (as defined in Section 3(1) of ERISA) currently maintained or contributed to any Obligor or any ERISA Affiliate;
  - (ii) Pension Plan; or
  - (iii) Multiemployer Plan.
- (h) There exists no Unfunded Pension Liability with respect to any Pension Plan, except for any such Unfunded Pension Liability that individually or together with any other positive Unfunded Pension Liabilities with respect to any Pension Plans, is not reasonably expected to result in a material liability of any Obligor or ERISA Affiliate.
- (i) If each Obligor and each ERISA Affiliate were to withdraw in a complete withdrawal from all Multiemployer Plans as of the date this assurance is given or deemed given, the aggregate withdrawal liability that would be incurred would not reasonably be expected to result in a material liability of any Obligor or ERISA Affiliate.
- (j) No Pension Plan which is subject to Section 412 of the Code or Section 302 of ERISA has applied for or received an extension of any amortization period, within the meaning of Section 412 of the Code or Section 302 or 304 of ERISA. No Obligor or ERISA Affiliate has ceased operations at a facility so as to become subject to the provisions of Section 4062(e) of ERISA, withdrawn as a substantial employer so as to become subject to the provisions of Section 4063 of ERISA or ceased making contributions to any

Pension Plan subject to Section 4064(a) of ERISA to which it made contributions. No Lien imposed under the Code or ERISA on the assets of any Obligor or any ERISA Affiliate exists or is likely to arise on account of any Pension Plan. No Obligor or ERISA Affiliate has any liability under Section 4069 or 4212(c) of ERISA.

#### **17.10 Margin Stock**

- (a) Neither the Borrower nor any Subsidiary of it is engaged principally or as one of its activities in the business of extending credit for the purpose of “*purchasing*” or “*carrying*” any “*margin stock*” (as each such term is defined or used, directly or indirectly, in Regulation U of the Board of Governors of the Federal Reserve System).
- (b) No part of the proceeds of the Loans will be used for purchasing or carrying margin stock or for any purpose which violates, or which would be inconsistent with, the provisions of Regulation T, U or X of such Board of Governors.

#### **17.11 Government Regulation**

Neither the Borrower nor any Subsidiary is an “*investment company*” or a company “*controlled*” by an “*investment company*” (as each such term is defined or used in the Investment Company Act of 1940, as amended) and neither the Borrower nor any Subsidiary is, or after giving effect to any Utilisation will be, subject to regulation under the Interstate Commerce Act, as amended, or any other Applicable Law which limits its ability to incur or consummate the transactions contemplated under this Agreement.

#### **17.12 Material Contracts**

- (a) Schedule 11 (*Material Contracts*) contains a complete and accurate list of all Material Contracts of the Borrower and its Subsidiaries in effect as of the date of this Agreement and the Closing Date.
- (b) Other than as set out in Schedule 11 (*Material Contracts*), each such Material Contract is, and after giving effect to the consummation of the transactions contemplated by the Finance Documents will be, in full force and effect in accordance with the terms thereof.
- (c) The Borrower and its Subsidiaries have delivered to the Agent a true and complete copy of each Material Contract required to be listed on Schedule 11 (*Material Contracts*) (including all amendments with respect thereto).
- (d) Neither the Borrower nor any Subsidiary (nor, to the knowledge of the Borrower, any other party thereto) is in breach of or in default under any Material Contract in any material respect.

#### **17.13 Employee Relations**

- (a) Each of the Borrower and its Subsidiaries has a work force in place adequate to conduct its business as currently conducted and is not, as of the date of this Agreement or the Closing Date, party to any collective bargaining agreement nor has any labour union been recognised as the representative of its employees except as set out in Schedule 12 (*Labour and Collective Bargaining Agreements*).

- (b) The Borrower knows of no pending, threatened or contemplated strikes, work stoppage or other collective labour disputes involving its employees or those of its Subsidiaries that could reasonably be expected to have a Material Adverse Effect.

#### **17.14 Burdensome Provisions**

No Subsidiary is party to any agreement or instrument or otherwise subject to any restriction or encumbrance that restricts or limits its ability to make dividend payments or other distributions in respect of its Capital Stock to the Borrower or any Subsidiary or to transfer any of its assets or properties to the Borrower or any other Subsidiary in each case other than existing under or by reason of the Finance Documents or Applicable Law.

#### **17.15 Financial Statements**

- (a) The audited and unaudited financial statements most recently delivered pursuant to Schedule 2 (*Conditions Precedent*) or Clause 18 (*Information Undertakings*) are complete and correct and fairly present in all material respects on a Consolidated basis the assets, liabilities and financial position of the Borrower and its Subsidiaries as at such dates, and the results of the operations and changes of financial position for the periods that ended (other than the absence of footnotes and customary year-end adjustments for unaudited financial statements).
- (b) All such financial statements, including the related schedules and notes thereto, have been prepared in accordance with GAAP.
- (c) Such financial statements show all material indebtedness and other material liabilities, direct or contingent, of the Borrower and its Subsidiaries as of the dates thereof, including material liabilities for taxes, material commitments, and Financial Indebtedness, in each case, to the extent required to be disclosed under GAAP.

#### **17.16 No Material Adverse Change**

Since 30 June 2017, there has been no material adverse change in the properties, business, operations, prospects or condition (financial or otherwise) of the Borrower and its Subsidiaries taken as a whole and no event has occurred or condition arisen that could reasonably be expected to have a Material Adverse Effect.

#### **17.17 Solvency**

On the date of this Agreement and after giving effect to each Loan, each Obligor (other than Globalstar Leasing LLC) will be Solvent.

#### **17.18 Titles to Properties**

Each of the Borrower and its Subsidiaries has such title to the real property owned or leased by it as necessary to the conduct of its business as currently conducted and valid and legal title to all of its personal property and assets, including, but not limited to, those reflected on the most recently delivered Consolidated balance sheets of the Borrower and its Subsidiaries delivered pursuant to Clause 18 (*Information Undertakings*), except those which have been disposed of by the Borrower or its Subsidiaries subsequent to the dates of such balance sheets which

dispositions have been in the ordinary course of trading or as otherwise expressly permitted under this Agreement.

#### **17.19 Insurance**

The properties of the Borrower and its Subsidiaries are insured with financially sound and reputable insurance companies which are not Affiliates of the Borrower, in such amounts, with such deductibles and covering such risks as required by this Agreement.

#### **17.20 Liens**

From the Closing Date:

- (a) none of the properties and assets of the Borrower or any Subsidiary thereof is subject to any Lien, except Permitted Liens; and
- (b) neither the Borrower nor any Subsidiary thereof has signed any financing statement or any security agreement authorising any secured party thereunder to file any financing statements, except to perfect Permitted Liens.

#### **17.21 Financial Indebtedness and Guarantee Obligations**

- (a) Schedule 13 (*Financial Indebtedness and Guarantee Obligations*) is a complete and correct listing of all Financial Indebtedness of the Borrower and its Subsidiaries as of the Closing Date in excess of US\$1,000,000.
- (b) As of the Closing Date, the amount of all Financial Indebtedness of the Borrower and its Subsidiaries (and not set out in Schedule 13 (*Financial Indebtedness and Guarantee Obligations*)) is no greater than US\$1,000,000.
- (c) The Borrower and its Subsidiaries have performed and are in compliance with all of the material terms of such Financial Indebtedness and all instruments and agreements relating thereto, and no default or event of default, or event or condition which with notice or lapse of time or both would constitute such a default or event of default on the part of the Borrower or any of its Subsidiaries exists with respect to any such Financial Indebtedness.

#### **17.22 Communication Licences**

- (a) Schedule 14 (*Communication Licences*) accurately and completely lists, as of the Closing Date, for the Borrower and each of its Subsidiaries, all Material Communications Licences (and the expiration dates thereof) granted or assigned to the Borrower or any Subsidiary, including, without limitation for:
  - (i) each Satellite owned by the Borrower or any of its Subsidiaries, all space station licences or authorisations, including placement on the FCC's "*Permitted Space Station List*" for operation of Satellites with C-band links issued or granted by the FCC or the ANFR to the Borrower or any of its Subsidiaries; and
  - (ii) for each Earth Station of the Borrower and its Subsidiaries.

- (b) The Communications Licences set out in Schedule 14 (*Communication Licences*) include all material authorisations, licences and permits issued by the FCC, the ANFR or any other Governmental Authority that are required or necessary for the operation and the conduct of the business of the Borrower and its Subsidiaries, as conducted as of the Closing Date.
- (c) Each Communications Licence is expected to be renewed and the Borrower knows of no reason why such Communications Licence would not be renewed.
- (d) The Borrower and its Subsidiaries have filed all material applications with the FCC or the ANFR necessary for the Launch and operation of the Borrower's second-generation satellite constellation and the Borrower is not aware of any reason why such applications should not be granted.
- (e) Each Communications Licence set out in Schedule 14 (*Communication Licences*) is issued in the name of the Subsidiary indicated on such schedule.
- (f) Each Material Communications Licence is in full force and effect.
- (g) The Borrower has no knowledge of any condition imposed by the FCC, the ANFR or any other Governmental Authority as part of any Communications Licence which is neither set forth on the face thereof as issued by the FCC, the ANFR or any other Governmental Authority nor contained in the rules and regulations of the FCC, the ANFR or any other Governmental Authority applicable generally to telecommunications activities of the type, nature, class or location of the activities in question.
- (h) Each applicable location of the Borrower or any of its Subsidiaries has been and is being operated in all material respects in accordance with the terms and conditions of the Communications Licence applicable to it and Applicable Law, including but not limited to the Communications Act and the rules and regulations issues thereunder.
- (i) No proceedings are pending or, to the Borrower's knowledge are, threatened which may result in the loss, revocation, modification, non-renewal, suspension or termination of any Communications Licence, the issuance of any cease and desist order or the imposition of any fines, forfeitures or other administrative actions by the FCC, the ANFR or any other Governmental Authority with respect to any operations of the Borrower and its Subsidiaries, which in any case could reasonably be expected to have a Material Adverse Effect.

#### **17.23 Satellites**

- (a) All Satellites are owned by the Borrower or a Subsidiary Guarantor.
- (b) Schedule 15 (*Satellites*) accurately and completely lists as of the Closing Date, the flight model number of each of the Satellites owned by the Borrower and its Subsidiaries, and for each Satellite whether it is operational in-orbit or spare in-orbit.

#### **17.24 [Reserved]**

#### **17.25 Pari Passu Ranking**



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

#### 17.26 Anti-bribery, Anti-corruption and Anti-money Laundering

None of the Obligors nor any of their Subsidiaries, directors or officers, or, to the best knowledge of each Obligor, any affiliate, agent or employee of it, has engaged in any activity or conduct which would violate any anti-bribery, anti-corruption or anti-money laundering laws, regulations or rules that are applicable to it in any applicable jurisdiction and each Obligor has instituted and maintains policies and procedures designed to prevent violation of such laws, regulations and rules.

#### 17.27 Sanctions

None of the Obligors, any of their Subsidiaries, directors or officers, or, to the best knowledge of each Obligor, any affiliate, agent or employee each Obligor, is an individual or entity (a "**Person**"), that is, or is owned or controlled by Persons that are:

- (a) the target of any Sanctions (a "**Sanctioned Person**"); or
- (b) located, organised or resident in a country or territory that is, or whose government is, the subject of Sanctions broadly prohibiting dealings with such government, country or territory (a "**Sanctioned Country**").

#### 17.28 Governing Law and Enforcement

- (a) Subject to the Reservations, the choice of governing law of the Finance Documents will be recognised and enforced in its jurisdiction of incorporation.
- (b) Subject to the Reservations, any judgment obtained in relation to a Finance Document in the jurisdiction of the governing law of that Finance Document will be recognised and enforced in its jurisdiction of incorporation.

#### 17.29 No Filing or Stamp Taxes

Under:

- (a) the laws of the Borrower's or any of its Subsidiaries' jurisdiction of incorporation; and
- (b) the federal laws of the United States,

it is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration, notarial or similar Taxes or fees be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents other than:

- (i) delivery of proper financing statements (Form UCC-1 or such other financing statements or similar notices as shall be required by Applicable Law) fully executed for filing under the UCC or other appropriate filing offices of each jurisdiction as may be necessary to perfect a Lien purported to be created by a Security Document; and

- (ii) any recording with the United States Patent and Trademark Office and/or Copyright Office to perfect the Liens on intellectual property created by the Collateral Agreement,

which registrations, filings and fees will be made and paid promptly after the date of the relevant Finance Document.

#### **17.30 Deduction of Tax**

It is not required to make any deduction for or on account of Tax from any payment it may make under any Finance Document.

#### **17.31 No Default**

- (a) No Event of Default and, on the Closing Date, no Default is continuing or is reasonably likely to result from the making of any Loan or the entry into, the performance of, or any transaction contemplated by, any Transaction Document.
- (b) No other event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination or any combination of any of the foregoing, would constitute) a default or termination event (however described) under the Transaction Documents, which has not been waived by the relevant parties hereto.
- (c) No other event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination or any combination of any of the foregoing, would constitute) a default or termination event (however described) under any other agreement or instrument which is binding on it or any of its Subsidiaries or to which its (or any of its Subsidiaries) assets are subject which has or is reasonably likely to have a Material Adverse Effect.

#### **17.32 No Misleading Information**

- (a) All factual information provided in writing by it to the Lenders was true, complete and accurate in all material respects to the best of its knowledge and belief as at the date it was provided or as at the date (if any) at which it is stated.
- (b) All financial projections provided by it have been prepared on the basis of recent historical information and on the basis of reasonable assumptions (in the case of projections made by third parties, to the best of its knowledge and belief).
- (c) To the best of its knowledge and belief, no material information has been given or withheld by it that results in any information provided to the Lenders by it being incomplete, untrue or misleading in any material respect.

#### **17.33 Group Structure Chart**

The Group Structure Chart set out at Schedule 21 (*Group Structure Chart*) is true, complete and accurate in all material respects.

#### **17.34 No Immunity**

None of the members of the Group or any of their assets is entitled to immunity from suit, execution, attachment or other legal process.

#### 17.35 Tax Returns and Payments

- (a) Each of the Borrower and its Subsidiaries has timely filed with the appropriate taxing authority, all returns, statements, forms and reports for taxes (the “**Returns**”) required to be filed by or with respect to the income, properties or operations of the Borrower and/or any of its Subsidiaries.
- (b) The Returns accurately reflect in all material respects all liability for taxes of the Borrower and its Subsidiaries as a whole for the periods covered thereby.
- (c) The Borrower and each of its Subsidiaries have paid all taxes payable by them other than those contested in good faith and adequately disclosed and for which adequate reserves have been established in accordance with generally accepted accounting principles.
- (d) There is no action, suit, proceeding, investigation, audit, or claim now pending or, to the best knowledge of the Borrower or any of its Subsidiaries, threatened by any authority regarding any taxes relating to the Borrower or any of its Subsidiaries which, if adversely determined, could reasonably be expected to have a Material Adverse Effect.
- (e) Neither the Borrower nor any of its Subsidiaries has entered into an agreement or waiver or been requested to enter into an agreement or waiver extending any statute of limitations relating to the payment or collection of taxes of the Borrower or any of its Subsidiaries, or is aware of any circumstances that would cause the taxable years or other taxable periods of the Borrower or any of its Subsidiaries not to be subject to the normally applicable statute of limitations.

#### 17.36 Commercial Contracts

As of the date of this Agreement and the Closing Date, the Borrower has not exercised the “*Optional Launches*” (as such term is defined in the Launch Services Contract) pursuant to the Launch Services Contract.

#### 17.37 [Reserved]

#### 17.38 Repetition

- (a) The Repeating Representations are made by the Borrower by reference to the facts and circumstances then existing on:
  - (i) the date of the Utilisation Request;
  - (ii) the Utilisation Date; and
  - (iii) the first day of each Interest Period.
- (b) The representation in Clause 17.32 (*No Misleading Information*) shall be deemed to be repeated by the Borrower by reference to the facts and circumstances then existing on each date any information is delivered to the Agent pursuant to Clause 18.3 (*Annual*

## **18. Information Undertakings**

The undertakings in this Clause 18 (*Information Undertakings*) remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force. The Borrower will furnish, or cause to be furnished, to the Agent the information required by this Clause 18 (*Information Undertakings*) in sufficient copies for all the Lenders.

### **18.1 Quarterly Financial Statements**

(a) As soon as practicable and in any event within forty five (45) days after the end of each of the first three (3) fiscal quarters of each Fiscal Year (and in the case of paragraph (v) only, after the end of each fiscal quarter of each Fiscal Year) (or, if the date of any required public filing is earlier, no later than the date that is the fifth Business Day immediately following the date of any required public filing thereof after giving effect to any extensions granted with respect to such date):

- (i) Form 10-Q;
- (ii) an unaudited Consolidated balance sheet of the Borrower and its Subsidiaries as of the close of such fiscal quarter;
- (iii) the notes (if any) relating to any of the financial statements delivered under this Clause 18.1;
- (iv) unaudited Consolidated statements of income, retained earnings and cash flows;
- (v) a report with respect to the Borrower's key performance indicators in substantially the same form as Schedule 17 (*Key Performance Indicators*); and
- (vi) a report containing management's discussion and analysis of such financial statements for the fiscal quarter then ended and that portion of the Fiscal Year then ended,

all in reasonable detail setting forth in comparative form the corresponding figures as of the end of and for the corresponding period in the preceding Fiscal Year and prepared by the Borrower in accordance with GAAP and, if applicable, containing disclosure of the effect on the financial position or results of operations of any change in the application of accounting principles and practices during the period, and certified by the chief financial officer of the Borrower to present fairly in all material respects the financial condition of the Borrower and its Subsidiaries on a Consolidated basis as of their respective dates and the results of operations of the Borrower and its Subsidiaries for the respective periods then ended, subject to normal year-end adjustments.

(b) Upon request by the Agent and at the cost of the Borrower, the Borrower shall procure that the Group's management shall meet in person or by telephone (as the Lenders shall

require) with the Lenders on a quarterly basis in order to discuss key strategic, operational, Capital Expenditure, market pricing, customer, distributor and regulatory issues.

## 18.2 Annual Financial Statements

- (a) As soon as practicable and in any event within ninety (90) days after the end of each Fiscal Year (or, if the date of any required public filing is earlier, the date that is no later than the fifth Business Day immediately following the date of any required public filing thereof after giving effect to any extensions granted with respect to such date):
- (i) Form 10-K;
  - (ii) an audited Consolidated balance sheet of the Borrower and its Subsidiaries as of the close of such Fiscal Year;
  - (iii) the notes (if any) relating to any of the financial statements delivered under this Clause 18.2;
  - (iv) audited Consolidated statements of income, retained earnings and cash flows; and
  - (v) a report containing management's discussion and analysis of such financial statements for the Fiscal Year then ended,
- all in reasonable detail setting forth in comparative form the corresponding figures as of the end of and for the preceding Fiscal Year and prepared in accordance with GAAP and, if applicable, containing disclosure of the effect on the financial position or results of operations of any change in the application of accounting principles and practices during the year.
- (b) Such annual financial statements shall be audited by the independent certified public accounting firm separately notified to the Agent prior to the date of this Agreement or such other firm notified to the Agent (and acceptable to the Majority Lenders), and accompanied by a report thereon by such certified public accountants that is not qualified with respect to scope limitations imposed by the Borrower or any of its Subsidiaries or with respect to accounting principles followed by the Borrower or any of its Subsidiaries not in accordance with GAAP.

## 18.3 Annual Business Plan and Financial Projections

- (a) As soon as practicable and in any event no later than 31 March in any calendar year, a draft updated business plan of the Borrower and its Subsidiaries for the ensuing four (4) fiscal quarters ("**Draft Business Plan**"), such Draft Business Plan to be in substantially the same form as the Agreed Business Plan delivered to the Agent on or prior to the Closing Date and prepared, to the extent applicable, in accordance with GAAP and to include, on a quarterly basis, the following:
- (i) information relating to the amounts outstanding under the Convertible Notes;

- (ii) an operating and capital budget in respect of the next three (3) succeeding Fiscal Years;
  - (iii) a projected income statement;
  - (iv) a statement of cash flows on a three (3) year projected basis (including, calculations (in reasonable detail) demonstrating compliance with each of the financial covenants set out in Clause 19 (*Financial Covenants*)) and balance sheet; and
  - (v) a report setting forth management's operating and financial assumptions underlying such projections.
- (b) The Agent shall no later than twenty (20) Business Days after receipt of the Draft Business Plan provide to the Borrower:
- (i) any comments and/or proposed amendments to the Draft Business Plan; or
  - (ii) a confirmation that the Draft Business Plan is the Agreed Business Plan,
- provided that*, during the First Lien Facility Period, the Draft Business Plan approved by the First Lien Lenders shall (subject to any manifest error) be deemed acceptable.
- (c) Subject to paragraph (e) below, in the case of paragraph (b)(i) above, the Borrower shall, in good faith, consider any such comments and/or proposed amendments to the Draft Business Plan and, within five (5) Business Days, confirm to the Agent whether or not the comments and/or amendments proposed by the Agent have been accepted by the Borrower. If such comments and/or proposed amendments are:
- (i) agreed by the Borrower, the Draft Business Plan shall constitute the then current Agreed Business Plan; and
  - (ii) not agreed by the Borrower, then the Borrower and the Lenders shall consult, for a period not exceeding five (5) Business Days (the "**Consultation Period**"), in good faith in order to agree the Draft Business Plan.
- (d) Subject to paragraph (e) below, in the case of paragraph (c)(ii) above, following the end of the Consultation Period the Draft Business Plan agreed to by the Borrower shall constitute the then current Agreed Business Plan.
- (e) Any:
- (i) projections contained in the Draft Business Plan and referred to in the definition of "*Adjusted Consolidated EBITDA*";
  - (ii) level of Permitted Vendor Indebtedness and cash paying Subordinated Indebtedness referred to in Clause 19.5(*Net Debt to Adjusted Consolidated EBITDA*) and contained in the Draft Business Plan;
  - (iii) material known contingent liability related to any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings

or disputes referred to in Clause 22.13(b)(*Litigation*) contemplated by the Draft Business Plan; and

- (iv) change in a Draft Business Plan to the amount of Financial Indebtedness that may be incurred by the Borrower in connection with cash paying Subordinated Indebtedness above the amounts set out in the Agreed Business Plan delivered on or prior to the First Effective Date,

must be satisfactory in all respects to the Agent (acting on the instructions of the Majority Lenders).

- (f) Following the Draft Business Plan becoming the Agreed Business Plan, the Borrower shall deliver promptly to the Agent the Agreed Business Plan accompanied by a certificate from a Responsible Officer of the Borrower to the effect that, to the best of such officer's knowledge, such projections are estimates made in good faith (based on reasonable assumptions) of the financial condition and operations of the Borrower and its Subsidiaries for such four (4) fiscal quarter period and in relation to the operating and capital budget, in respect of the next three (3) succeeding Fiscal Years.

#### **18.4 Compliance Certificate**

At each time:

- (a) financial statements are delivered pursuant to Clause 18.1 (*Quarterly Financial Statements*) or Clause 18.2 (*Annual Financial Statements*);
- (b) the information and other documentation is delivered pursuant to Clause 18.3(h) (*Annual Business Plan and Financial Projections*); and
- (c) at such other times as the Agent shall reasonably request,

a Compliance Certificate signed by a Responsible Officer and, solely in the case of paragraph (a) above, accompanied by a report from the auditors of the Borrower in substantially the form set out in Schedule 30(*Form of Auditors Report*) or such other form as shall be acceptable to the Majority Lenders, confirming compliance by the Borrower with each of the financial covenants set out in Clause 19 (*Financial Covenants*) together with, for the fiscal period covered by such financial statements or information (as the case may be):

- (i) an Adjusted Consolidated EBITDA Reconciliation;
- (ii) a reconciliation of the Excess Cash Flow;
- (iii) details of all Spectrum Cash Flow and Spectrum Sales;
- (iv) details of all relevant amounts for the purposes of the calculation of the cash sweeps set out in Clauses 7.3 (*Mandatory Prepayment – Cash Sweep of Spectrum Cash Flow*), 7.4 (*Mandatory Prepayment – Excess Cash Flow*), 7.7 (*Mandatory Prepayment – Cash Sweep following Spectrum Sale*) and 7.8 (*Mandatory Prepayment – Cash Sweep following Equity Issuance and Debt Issuance*); and
- (v) details of the shareholders of record of the Borrower.

## 18.5 Other Reports

- (a) Upon request by the Agent or any Lender, copies of all relevant public documents required by its independent public accountants in connection with their auditing function, including, without limitation, any management report and any management responses thereto.
- (b) As soon as practicable and in any event no later than 31 March in any calendar year, and at any time upon the reasonable request of the Agent or any Lender, a Satellite health report prepared by the Borrower and certified by a Responsible Officer setting forth the operational status of each Satellite (other than Satellites yet to be launched) based on reasonable assumptions of the Borrower made in good faith and including such information with respect to the projected solar array life based on the total Satellite power requirements, projected battery life based on total Satellite power requirements, projected Satellite life, information concerning the availability of spare Satellites and such other information pertinent to the operation of such Satellite as the Agent or any Lender may reasonably request, it being understood that to the extent that any such Satellite health report contains any forward looking statements, estimates or projections, such statements, estimates or projections are subject to significant uncertainties and contingencies, many of which are beyond the Borrower's control, and no assurance can be given that such forward looking statements, estimates or projections will be realised, *provided that* nothing in this paragraph (b) shall require the Borrower to deliver any information to any Lender to the extent delivery of such information is restricted by Applicable Law or regulation.
- (c) No less than quarterly, a Satellite health report prepared by the Borrower and certified by a Responsible Officer including the following:
  - (i) details of the operational status of each Satellite (other than Satellites yet to be launched) based on reasonable assumptions of the Borrower made in good faith and in substantially the same form contained in Schedule 28 (*Form of Quarterly Health Report*); and
  - (ii) a letter providing details of any material or unusual events that have occurred with respect to the Satellites since the delivery to the Agent of the last quarterly report.
- (d) No later than the Reporting Date, a report prepared by the Borrower and certified by a Responsible Officer with respect to the business of the Group including (but not limited to) details of the following matters:
  - (i) network service levels;
  - (ii) the status of all material processes and negotiations with the FCC and/or ANFR (as the case may be) relating to terrestrial Authorisations;
  - (iii) any Asset Dispositions (*but excluding* any Spectrum Sale and any disposal of inventory in the ordinary course of trading (but including any disposal of obsolete, damaged, worn-out or surplus assets)) from the previous Month;



- (iv) an update to the then applicable Spectrum Plan including any Spectrum Sale or proposed monetisation of the Group's Spectrum rights (including an update and commentary on any relevant process and any key events that have either occurred or are scheduled to occur) together with updated detail on any Spectrum expenditure (both Capital Expenditure and Operating Expenditure) incurred to date, or forecast to be incurred, including a reconciliation of such expenditure against the then applicable Spectrum Plan and compliance with Clause 21.19 (*Expenditure on Group Spectrum Rights*);
- (v) any Equity Issuances, any Debt Issuances or any issuances of Subordinated Indebtedness;
- (vi) any update on the status of any negotiations with the Supplier in connection with any material dispute between the Borrower and the Supplier;
- (vii) any planned new gateway or Earth Station developments;
- (viii) further material expansion into the Latin American market;
- (ix) updates with respect to any material new products;
- (x) compliance with the Agreed Business Plan (as updated on an annual basis in accordance with Clause 18.3 (*Annual Business Plan and Financial Projections*));
- (xi) any Material Contract that the Borrower has entered into (together with a copy thereof);
- (xii) [reserved];
- (xiii) prior to 30 November 2020, an update as to the status of the 2021 Equity Issuance (including an update and commentary on any relevant process and any key events that have either occurred or are scheduled to occur);
- (xiv) solely in relation to the Monthly Report that relates to January 2021, the Borrower shall include all relevant material information (including potential equity subscribers) that evidences, and pertains to, the proposed 2021 Equity Issuance;
- (xv) a Cash Movements Summary Report, together with a certificate from a Responsible Officer of the Borrower confirming that the Borrower has complied with the terms of the Accounts Agreement;
- (xvi) solely in relation to the Monthly Report that relates to September 2020, any such Monthly Report shall contain a summary (together with supporting information) of the Borrower's plans to ensure no Default arises pursuant to Clause 20.23 (*The 2021 Equity Issuance*) in form and substance satisfactory to the Agent (acting reasonably);
- (xvii) solely in relation to the Monthly Report that relates to January 2021, such Monthly Report shall contain, in sufficient detail (as determined by the Agent

(acting reasonably)), the amount, form and proposed participants of the 2021 Equity Issuance (and, if it is reasonably likely that the 2021 Equity Issuance will occur on Issuance date falling prior to 30 March 2021, the Borrower shall provide the information referred to in paragraphs (xviii) and (xx) in such earlier Monthly Reports as the Agent may request);

- (xviii) confirmation of the identity of any advisor appointed to assist the Borrower in the 2021 Equity Issuance and delivery in sufficient detail (as determined by the Agent (acting reasonably)), of the amount, form and the identity of the proposed participants of the 2021 Equity Issuance (and, if it is reasonably likely that the 2021 Equity Issuance will occur on a date falling prior to 30 March 2021, the Borrower shall provide the information referred to in this paragraph (xviii) and paragraph (xx) in such earlier Monthly Reports as the Agent may request);
- (xix) the amount of any cash payments made pursuant to the Relevant EIPs in the Month to which the Monthly Report relates (together with a confirmation as to the amounts in aggregate paid pursuant to the Relevant EIPs in the then current Financial Year); and
- (xx) any other matters or events which are likely to have a material effect (positive or negative) on the Group's operations, prospects and results of operations *provided that* a failure to report on a matter pursuant to this paragraph (d)(xx) shall not constitute an Event of Default if such failure does not have, or could not reasonably be expected to have, a Material Adverse Effect,

(the "**Monthly Report**").

- (e) Such other information regarding the operations, business affairs and financial condition of the Borrower or any of its Subsidiaries as the Agent or any Lender may reasonably request, including, to the extent not already provided, delivery by the Borrower of certified copies of all agreements, instruments, filings and other documents necessary, or otherwise reasonably requested by the Agent, in order to effect the Equity Commitments in accordance with the provisions of the First Global Deed of Amendment and Restatement, the Second Global Amendment and Restatement Agreement or the Third Global Amendment and Restatement Agreement, as applicable.

## **18.6 Notice of Litigation and Other Matters**

Promptly (but in no event later than ten (10) Business Days after any Responsible Officer of the Borrower obtains knowledge thereof) written notice of:

- (a) all documents dispatched by the Borrower to all of its stockholders (or any class thereof) or its creditors generally at the same time as they are dispatched;
- (b) the commencement of all proceedings and investigations by or before any Governmental Authority and all actions and proceedings in any court or before any arbitrator against or involving the Borrower or any Subsidiary thereof or any of their respective properties, assets or businesses that if adversely determined could reasonably be expected to result in a Material Adverse Effect;

- (c) any notice of any violation received by the Borrower or any Subsidiary thereof from any Governmental Authority including, without limitation:
  - (i) any notice of violation of any Environmental Law and the details of any environmental claim, litigation, arbitration or administrative proceedings which are current, threatened or pending against any member of the Group; and
  - (ii) any other notice of violation which in each case could reasonably be expected to have a Material Adverse Effect;
- (d) any labour controversy that has resulted in a strike or other work action against the Borrower or any Subsidiary thereof which in each case could reasonably be expected to have a Material Adverse Effect;
- (e) any attachment, judgment, lien, levy or order exceeding US\$1,000,000 that has been assessed against the Borrower or any Subsidiary thereof;
- (f) any claim for *force majeure* (howsoever described) by a party under a Commercial Contract;
- (g) details of:
  - (i) any delay which has a duration exceeding three (3) Months, to the construction and scheduled delivery dates of the Satellites under the Satellite Construction Contract (as delivered pursuant to schedule 2 (*Conditions Precedent*) of the First Lien Facility Agreement);
  - (ii) any event which could reasonably be expected to result in the last Launch occurring later than the fourth fiscal quarter of 2010; and
  - (iii) suspension, interruption, cancellation or termination of a Commercial Contract;
- (h) any amendments or modifications to a Commercial Contract, together with a copy of such amendment;
- (i) any Default or Event of Default;
- (j) any event which constitutes or which with the passage of time or giving of notice or both would constitute a default or event of default under any Material Contract to which the Borrower or any of its Subsidiaries is a party or by which the Borrower or any Subsidiary thereof or any of their respective properties may be bound which could reasonably be expected to have a Material Adverse Effect;
- (k) any unfavourable determination letter from the US Internal Revenue Service regarding the qualification of an Employee Benefit Plan under Section 401(a) of the Code (along with a copy thereof);
- (l) a copy of each Internal Revenue Service Form 5500 (including the Schedule B or such other schedule as contains actuarial information) filed in respect of a Pension Plan with Unfunded Pension Liabilities;

- (m) any Obligor or ERISA Affiliate obtaining knowledge or a reason to know that any ERISA Termination Event has occurred or is reasonably expected to occur, a certificate of any Responsible Officer of the Borrower describing such ERISA Termination Event and the action, if any, proposed to be taken with respect to such ERISA Termination Event and a copy of any notice filed with the PBGC or the Internal Revenue Service pertaining to such ERISA Termination Event and any notices received by such Obligor or ERISA Affiliate from the PBGC, any other governmental agency or any Multiemployer Plan sponsor with respect thereto; provided that in the case of ERISA Termination Events under paragraph (c) of the definition thereof, in no event shall notice be given later than the occurrence of the ERISA Termination Event;
- (n) any Obligor or ERISA Affiliate obtaining knowledge or a reason to know of:
  - (i) a material increase in Unfunded Pension Liabilities (taking into account only Pension Plans with positive Unfunded Pension Liabilities) since the date the representations hereunder are given or deemed given, or from any prior notice, as applicable;
  - (ii) the existence of potential withdrawal liability under Section 4201 of ERISA, if each Obligor and ERISA Affiliate were to withdraw completely from any and all Multiemployer Plans;
  - (iii) the adoption of, or the commencement of contributions to, any Pension Plan or Multiemployer Plan by any Obligor or ERISA Affiliate, or
  - (iv) the adoption or amendment of any Pension Plan which results in a material increase in contribution obligations of any Obligor or any ERISA Affiliate, a detailed written description thereof from any Responsible Officer of the Borrower;
- (o) if, at any time after the date of this Agreement, any Obligor or any ERISA Affiliate maintains, or contributes to (or incurs an obligation to contribute to), an Employee Benefit Plan or Multiemployer Plan which is not set forth in Schedule 9 (*ERISA Plans*), then the Borrower shall deliver to the Agent an updated Schedule 9 (*ERISA Plans*) as soon as practicable, and in any event within ten (10) days after such Obligor or ERISA Affiliate maintains or contributes (or incurs an obligation to contribute) thereto;
- (p) if, after the date of the First Global Deed of Amendment and Restatement, and other than with respect to any PIK Interest paid in compliance with the terms of this Agreement, James Monroe III, Thermo, the Borrower, any Subsidiary Guarantor or any of such parties' respective Affiliates (directly, indirectly or beneficially):
  - (i) acquires ownership or control of any of the 8% New Notes; or
  - (ii) becomes a party to any written agreement, side-letter, undertaking or understanding relating to such person's ownership of or control of any voting or economic rights associated with the 8% New Notes.

#### **18.7 Notices Concerning Communications Licences**

Promptly (but in no event later than ten (10) Business Days after any Responsible Officer of the Borrower obtains knowledge thereof) written notice of:

- (a) (i) any citation, notice of violation or order to show cause issued by the FCC, the ANFR or any Governmental Authority with respect to any Material Communications Licence; (ii) if applicable, a copy of any notice or application by the Borrower requesting authority to or notifying the FCC, or the ANFR of its intent to cease telecommunications operations for any period in excess of ten (10) days; or (iii) notice of any other action, proceeding or other dispute, which, if adversely determined, could reasonably be expected to result in the loss or revocation of any Material Communications Licence; and
- (b) any lapse, loss, modification, suspension, termination or relinquishment of any Material Communications Licence, permit or other authorisation from the FCC, the ANFR or other Governmental Authority held by the Borrower or any Subsidiary thereof or any failure of the FCC, the ANFR or other Governmental Authority to renew or extend any such Material Communications Licence, permit or other authorisation for the usual period thereof and of any complaint against the Borrower or any of its Subsidiaries or other matter filed with or communicated to the FCC, the ANFR or other Governmental Authority.

#### **18.8 Convertible Notes**

The Borrower shall:

- (a) provide to the Agent upon its request information relating to the amounts outstanding under any Convertible Notes issued by the Borrower; and
- (b) promptly on request, supply to the Agent such further information regarding the Convertible Notes as any Finance Party through the Agent may reasonably request.

#### **18.9 [Reserved]**

#### **18.10 [Reserved]**

#### **18.11 Equity Cure Contribution**

The Borrower shall promptly inform the Agent when an Equity Cure Contribution is to be made (including the details of any Equity Issuance or Subordinated Indebtedness being applied for such purpose).

#### **18.12 Use of Websites**

- (a) The Borrower may satisfy its obligation under this Agreement to deliver any information in relation to those Lenders (the “**Website Lenders**”) who accept this method of communication by posting this information onto an electronic website designated by the Borrower and the Agent (the “**Designated Website**”) if:
  - (i) the Agent expressly agrees (after consultation with each of the Lenders) that it will accept communication of the information by this method;
  - (ii) both the Borrower and the Agent are aware of the address of and any relevant password specifications for the Designated Website; and

(iii) the information is in a format previously agreed between the Borrower and the Agent.

If any Lender (a “**Paper Form Lender**”) does not agree to the delivery of information electronically then the Agent shall notify the Borrower accordingly and the Borrower shall supply the information to the Agent (in sufficient copies for each Paper Form Lender) in paper form. In any event the Borrower shall supply the Agent with at least one (1) copy in paper form of any information required to be provided by it.

(b) The Agent shall supply each Website Lender with the address of and any relevant password specifications for the Designated Website following designation of that website by the Borrower and the Agent.

(c) The Borrower shall promptly upon becoming aware of its occurrence notify the Agent if:

- (i) the Designated Website cannot be accessed due to technical failure;
- (ii) the password specifications for the Designated Website change;
- (iii) any new information which is required to be provided under this Agreement is posted onto the Designated Website;
- (iv) any existing information which has been provided under this Agreement and posted onto the Designated Website is amended; or
- (v) the Borrower becomes aware that the Designated Website or any information posted onto the Designated Website is or has been infected by any electronic virus or similar software.

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

(d) Any Website Lender may request, through the Agent, one (1) paper copy of any information required to be provided under this Agreement which is posted onto the Designated Website. The Borrower shall comply with any such request within ten (10) Business Days.

#### **18.13 “Know your Customer” Checks**

- (a) If:
- (i) the introduction of or any change in (or in the interpretation, administration or application of) any Applicable Law made after the date of this Agreement;
  - (ii) any change in the status of any Obligor after the date of this Agreement; or
  - (iii) a proposed assignment or transfer by a Lender of any of its rights and obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer,

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

- (b) Each Lender shall promptly upon the request of the Agent supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself) in order for the Agent to carry out and be satisfied it has complied with all necessary “*know your customer*” or other similar checks under all Applicable Laws pursuant to the transactions contemplated in the Finance Documents.
- (c) The Borrower shall:
  - (i) on and from 1 January 2021 to the date that is 3 Business Days prior to the 2021 Equity Issuance, promptly notify the Agent of any change to the identity of a proposed participant in the 2021 Equity Issuance promptly upon the Borrower becoming aware of the same; and
  - (ii) confirm at least 3 Business Days prior to the 2021 Equity Issuance, the identity of the actual participants in the 2021 Equity Issuance.

#### **18.14 Spectrum Plan**

- (a) As soon as practicable and in any event no later than the Closing Date, the Borrower shall deliver to the Agent the Spectrum Plan (in a form agreed with the Majority Lenders) setting out in reasonable detail its plan to monetise its Spectrum rights, such Spectrum Plan to include:
  - (i) details of the expenditure (including both Capital Expenditure and Operating Expenditure) it forecasts to incur in connection with the Group’s Spectrum rights, and the source of funds that it proposes to apply towards payment of such expenditure; and
  - (ii) details regarding its process for engaging with potential strategic partners.
- (b) The Spectrum Plan delivered pursuant to paragraph (a) above shall be updated each Month by the Monthly Report in accordance with Clause 18.5(d)(iv) (*Other Reports*).
- (c) If requested by the Agent following the delivery of a Monthly Report, the Borrower shall make itself available promptly to discuss with the Finance Parties the contents of the Spectrum Plan (as updated by the Monthly Report) together with any other issues relating thereto.

- (d) The Borrower shall, in good faith, consider any comments and/or proposed amendments to the Spectrum Plan (as updated by a Monthly Report) made by a Finance Party and, to the extent that any such comments and/or amendments are agreed by the Borrower (acting reasonably), it shall update the Spectrum Plan to reflect such comments and/or amendments.

## **19. Financial Covenants**

### **19.1 Maximum Covenant Capital Expenditures**

- (a) Subject to paragraph (b) below, the Borrower (and its Subsidiaries on a Consolidated basis) will not permit the aggregate amount of all Covenant Capital Expenditures in any Relevant Period to exceed the amount set out in column 4 entitled “*Maximum Capex Covenant D*” in the table contained in Part A (*Maximum Covenant Capital Expenditures*) of Schedule 4 (*Maximum Covenant Capital Expenditure*).
- (b) If, in any Relevant Period, the Covenant Capital Expenditures referred to in paragraph (a) above are less than the permitted Covenant Capital Expenditures in that Relevant Period, any excess of the permitted amount over the actual amount may be added to the maximum amount of permitted Covenant Capital Expenditures for the next (and subsequent) Relevant Periods *provided that* the Borrower (and its Subsidiaries on a Consolidated basis) shall not, in any one year, rollover an amount in excess of the amount set out in column 6 entitled “*Capex Available for Rollover F*” in the table contained in Part A (*Maximum Covenant Capital Expenditures*) of Schedule 4 (*Maximum Covenant Capital Expenditure*) or, for successive rollovers until 2017, shall not rollover a cumulative amount in excess of the amount set out in column 7 entitled “*Cumulative Rollover C+F*” in the table set out in Part A (*Maximum Covenant Capital Expenditures*) of Schedule 4 (*Maximum Covenant Capital Expenditure*).

### **19.2 Minimum Liquidity**

- (a) The Borrower shall at all times maintain a minimum Liquidity of US\$3,600,000.
- (b) At the end of each Month, the Borrower shall provide to the Agent a report detailing the daily Liquidity amounts for such Month, which daily Liquidity amounts shall be not less than the minimum Liquidity set out in paragraph (a) above.
- (c) For the avoidance of doubt, if the Borrower fails to comply with paragraph (a) above it shall deliver a notice to the Agent in accordance with Clause 18.6(i)(*Notice of Litigation and Other Matters*).

### **19.3 Adjusted Consolidated EBITDA**

The Borrower shall ensure that the Adjusted Consolidated EBITDA in respect of any Relevant Period (including (without double-counting) in the calculation of Adjusted Consolidated EBITDA any Equity Cure Contribution made in respect of such period and not including in such calculation any Equity Cure Contribution that was counted towards a calculation of any covenant for any prior Relevant Period) shall not be less than the amount set out in column 2 (*Column 2 – Amount*) below opposite that Relevant Period.



<b>Column 1 – Relevant Period</b>	<b>Column 2 – Amount</b>
Relevant Period commencing on 1 July 2019 and expiring 31 December 2019	US\$19,100,000
Relevant Period commencing on 1 January 2020 and expiring 30 June 2020	US\$16,400,000
Relevant Period commencing on 1 July 2020 and expiring 31 December 2020	US\$21,400,000
Relevant Period commencing on 1 January 2021 and expiring 30 June 2021	US\$18,500,000
Relevant Period commencing on 1 July 2021 and expiring 31 December 2021	US\$24,100,000
Relevant Period commencing on 1 January 2022 and expiring 30 June 2022	US\$21,100,000
Relevant Period commencing on 1 July 2022 and expiring 31 December 2022	US\$27,100,000”

#### 19.4 Debt Service Coverage Ratio

The Borrower shall ensure that the Debt Service Coverage Ratio in respect of any Relevant Period (including (without double-counting) any Equity Cure Contribution made in accordance with Clause 22.2(c)(*Financial Covenants*) provided that any Equity Cure Contribution shall only be counted in the calculation of Liquidity for such purpose) specified in column 1 (*Column 1 – Relevant Period*) below shall not be less than the ratio set out in column 2 (*Column 2 – Ratio*) below opposite that Relevant Period.

<b>Column 1 - Relevant Period</b>	<b>Column 2 - Ratio</b>
Relevant Period commencing on 1 January 2018 and expiring 31 December 2018	0.90:1
Relevant Period commencing on 1 July 2018 and expiring 30 June 2019	0.90:1
Relevant Period commencing on 1 January 2019 and expiring 31 December 2019	0.90:1
Relevant Period commencing on 1 July 2019 and expiring 30 June 2020	0.90:1
Relevant Period commencing on 1 January 2020 and expiring 31 December 2020	0.90:1
Relevant Period commencing on 1 July 2020 and expiring 30 June 2021	0.90:1
Relevant Period commencing on 1 January 2021 and expiring 31 December 2021	0.90:1
Relevant Period commencing on 1 July 2021 and expiring 30 June 2022	0.90:1
Relevant Period commencing on 1 January 2022 and expiring 31 December 2022	0.90:1

#### 19.5 Net Debt to Adjusted Consolidated EBITDA

The Borrower shall ensure that the ratio of Net Debt to Adjusted Consolidated EBITDA in respect of any Relevant Period (including (without double-counting) any Equity Cure Contribution made in accordance with Clause 22.2(c)(*Financial Covenants*) provided that any Equity Cure

Contribution shall only be counted in the calculation of Liquidity for such purpose) specified in column 1 (*Column 1 – Relevant Period*) below shall not be greater than the ratio set out in column 2 (*Column 2 – Ratio*) below opposite that Relevant Period.

<b>Column 1 - Relevant Period</b>	<b>Column 2 - Ratio</b>
Relevant Period commencing on 1 January 2019 and expiring 31 December 2019	5.39:1
Relevant Period commencing on 1 July 2019 and expiring 30 June 2020	4.91:1
Relevant Period commencing on 1 January 2020 and expiring 31 December 2020	4.36:1
Relevant Period commencing on 1 July 2020 and expiring 30 June 2021	2.75:1
Relevant Period commencing on 1 January 2021 and expiring 31 December 2021	2.75:1
Relevant Period commencing on 1 July 2021 and expiring 30 June 2022	2.75:1
Relevant Period commencing on 1 January 2022 and expiring 31 December 2022	2.75:1

#### **19.6 Interest Coverage Ratio**

The Borrower shall ensure that the ratio of Adjusted Consolidated EBITDA to Consolidated Interest Expense in respect of any Relevant Period (including within Adjusted Consolidated EBITDA (without double counting) any Equity Cure Contribution made in accordance with Clause 22.2(*Financial Covenants*) in respect of such period and not including any Equity Cure Contribution that was counted towards a calculation of any covenant for any prior Relevant Period) specified in column 1 (*Column 1 – Relevant Period*) below shall not be less than the ratio set out in column 2 (*Column 2 – Ratio*) below opposite that Relevant Period.

<b>Column 1 - Relevant Period</b>	<b>Column 2 - Ratio</b>
Relevant Period commencing on 1 January 2019 and expiring 31 December 2019	1.35:1
Relevant Period commencing on 1 July 2019 and expiring 30 June 2020	2.12:1
Relevant Period commencing on 1 January 2020 and expiring 31 December 2020	3.27:1
Relevant Period commencing on 1 July 2020 and expiring 30 June 2021	3.44:1
Relevant Period commencing on 1 January 2021 and expiring 31 December 2021	3.94:1
Relevant Period commencing on 1 July 2021 and expiring 30 June 2022	4.73:1
Relevant Period commencing on 1 January 2022 and expiring 31 December 2022	4.73:1

#### **19.7 Financial Testing**

The financial covenants set out in this Clause 19 (*Financial Covenants*) shall be tested by reference to the most recent set of financial statements delivered for the Relevant Period pursuant to Clause 18 (*Information Undertakings*).

## **20. Positive Undertakings**

The undertakings in this Clause 20 (*Positive Undertakings*) remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force. The Borrower shall, and shall cause each of its Subsidiaries, to comply with the undertakings contained in this Clause 20 (*Positive Undertakings*).

### **20.1 Compliance with Laws**

- (a) Observe and remain in compliance in all material respects with all Applicable Laws and maintain in full force and effect all Authorisations, in each case applicable to the conduct of its business except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.
- (b) Without limiting the foregoing, the Borrower shall, and shall cause each of its Subsidiaries to, comply in all material respects with all terms and conditions of all Communications Licences and all federal, state and local laws, all rules, regulations and administrative orders of the FCC, state and local commissions or authorities, the ANFR or any other Governmental Authority that are applicable to the Borrower and its Subsidiaries or the telecommunications operations thereof; *provided that* the Borrower or any Subsidiary may dispute in good faith the applicability or requirements of any such matter so long as such dispute could not reasonably be expected to have a Material Adverse Effect.

### **20.2 Environmental Laws**

In addition to and without limiting the generality of Clause 20.1 (*Compliance with Laws*):

- (a) comply with, and use reasonable endeavours to ensure such compliance by all tenants and sub-tenants with all applicable Environmental Laws and obtain, comply with and maintain, and use reasonable endeavours to ensure that all tenants and subtenants, obtain, comply with and maintain, any and all Environmental Permits;
- (b) conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions required under Environmental Laws, and promptly comply with all lawful orders and directives of any Governmental Authority regarding Environmental Laws; and
- (c) defend, indemnify and hold harmless the Finance Parties, and their respective parents, Subsidiaries, Affiliates, employees, agents, officers and directors, from and against any claims, demands, penalties, fines, liabilities, settlements, judgments, damages, costs and expenses of whatever kind or nature known or unknown, contingent or otherwise, arising out of, or in any way relating to the presence of Hazardous Materials, or the violation of, non-compliance with or liability under any Environmental Laws by the Borrower or any such Subsidiary, or any orders, requirements or demands of Governmental

Authorities related thereto, including, without limitation, reasonable attorneys' and consultants' fees, investigation and laboratory fees, response costs, court costs and litigation expenses, except to the extent that any of the foregoing directly result from the gross negligence or wilful misconduct of the party seeking indemnification therefor, as determined by a court of competent jurisdiction by final non-appealable judgment.

### 20.3 Compliance with ERISA

In addition to and without limiting the generality of Clause 20.1 (*Compliance with Laws*) except where the failure to comply could not, individually or in aggregate, reasonably be expected to have a Material Adverse Effect:

- (a) comply with all material applicable provisions of ERISA and the Code (including Code provisions compliance with which is necessary for any intended favourable Tax treatment) and the regulations and published interpretations respectively thereunder with respect to all Employee Benefit Plans;
- (b) not take any action or fail to take action the result of which could be a liability to the PBGC or to a Multiemployer Plan *provided that* this does not require funding of the pension liabilities at a time or in an amount other than as required by Applicable Law;
- (c) not participate in any prohibited transaction that could result in any civil penalty under ERISA or Tax under the Code;
- (d) operate each Employee Benefit Plan in such a manner that will not incur any Tax liability under Section 4980B of the Code or any liability to any qualified beneficiary as defined in Section 4980B of the Code; and
- (e) furnish to the Agent upon the Agent's request such additional information about any Employee Benefit Plan as may be reasonably requested by the Agent.

### 20.4 Insurance

- (a) Maintain insurance with insurance companies and/or underwriters rated by S&P or AM Best's Rating Agency at no lower than A- against such risks and in such amounts as are:
  - (i) maintained in accordance with prudent business practice and corporate governance; and
  - (ii) as may be required by Applicable Law with amounts and scope of coverage not less than those maintained by the Borrower and its Subsidiaries as of the date of this Agreement.
- (b) On the date of this Agreement and from time to time thereafter the Borrower shall deliver to the Agent upon its request information in reasonable detail as to the insurance then in effect, stating the names of the insurance companies, the amounts and rates of the insurance, the dates of the expiration thereof and the properties and risks covered thereby, *provided that*, with respect to paragraph (a)(i) only, neither the Borrower nor any of its Subsidiaries shall be required to obtain any insurance against the risk of loss of any in-orbit Satellites or against business interruption risks in addition to or with a broader

scope of coverage than is currently maintained by the Borrower and its Subsidiaries as at the date of this Agreement.

- (c) In addition to, and without limiting the foregoing, the Borrower will, and will cause each of its Subsidiaries to, maintain insurance with respect to the Satellites as follows:

(i) ***Property All Risks Insurance***

The Borrower will procure or will cause the Supplier to procure at its own expense and maintain in full force and effect, at all times prior to the Launch of any Satellite purchased by the Borrower or any of its Subsidiaries pursuant to the terms of the Satellite Construction Contract, Property All Risks Insurance upon such terms and conditions satisfactory to the Agent (acting on the instructions of the Majority Lenders) and as are reasonably commercially available and customary in the industry which shall cover any loss of, or damage to, the Satellites and the Satellite and Launch specific ground components, including all components thereof, at all times during the manufacture, testing, storage and transportation of the Satellites and the Satellite and Launch specific ground components up to the time of Launch of the Satellites and until delivery to the Borrower of the Satellite and Launch specific ground components.

The Borrower shall cause the Supplier to name, the Agent and the Lenders as additional insured but only to the extent of those persons' interests in such Satellites; and

(ii) ***[Reserved]***

(iii) ***Third Party Liability Insurance***

The Borrower shall:

- (A) cause the Supplier to subscribe before Launch and/or maintain in full force and effect a third party liability insurance for liabilities arising from bodily injury and loss or damage to third party property ("**Third Party Liability Insurance**");
- (B) cause the Launch Services Provider to subscribe for and maintain Third Party Liability Insurance coverage for liabilities arising from bodily injury and loss or damage to third party property caused by Satellites after Launch in an amount on an annual basis of not less than an aggregate amount equal to:
- (aa) €60,980,000 in respect of a Launch from the Kourou launch site;
- (bb) US\$100,000,000 in respect of the risks covered under article 15.2.1(ii) of the Launch Services Contract, for Launches from the Baïkonur launch site.

in each case, per occurrence, naming the Agent and the Lenders as additional insured thereunder. In accordance with the Satellite

Construction Contract, the Borrower shall use its best efforts to cause the Launch Services Provider to name the Supplier (and its sub-contractors) as additional insureds under the Launch Services Provider's Third Party Liability Insurance; and

- (C) cause the Launch Services Provider to submit a copy of the Third Party Liability Insurance documentation to the Agent as soon as practicable and in any event no less than thirty (30) days prior to the scheduled Launch date for any Launch. Such insurance shall be in full force at the Launch date (as of Intentional Ignition (as such term is defined in the Launch Services Contract)) and shall be maintained for a period equal to the lesser of:
  - (aa) twelve (12) Months; or
  - (bb) so long as all or any part of the Launch Vehicle (as such term is defined in the Launch Services Contract), the Satellite(s) and/or their components remain in orbit.

(d) Each insurance policy shall comply with the Lenders' requirements set out in paragraph (e) below and shall be on terms and conditions which are substantially the same as the insurance policies maintained pursuant to the First Lien Facility Agreement on the date of this Agreement or otherwise on reasonable terms and conditions and with acceptable exclusions and a reasonable level of deductible acceptable to the Agent (acting on the instructions of the Majority Lenders).

(e) **General Insurance Provisions and Requirements**

The Borrower shall:

- (i) provide, or as appropriate, request the Supplier and/or the Launch Services Provider to deliver to the Agent, promptly after issuance of each relevant Insurance, certificate(s) of internationally recognised insurance broker(s) usually involved in space risk insurance and approved by the Lenders, confirming that:
  - (A) the Property All Risks Insurance, the Launch Insurance and the Third Party Liability Insurance, as appropriate, are in full force and effect on the date they are respectively required to be entered into force,
  - (B) the names and percentages of the relevant insurance companies;
  - (C) the sums insured and expiration dates of such Insurances;
  - (D) the premia for the Property All Risks Insurance, the Launch Insurance and the Third Party Liability Insurances shall be payable by the Borrower, the Supplier and the Launch Services Provider, as applicable, in accordance with the terms of credit agreed for each such Insurance; and
  - (E) all premia due at the date of such certificate have been paid in full.

- (ii) use reasonable efforts (having regard to the terms which are reasonably commercially available in the insurance market) to obtain agreement to incorporate in the Insurances the following provisions or provisions substantially similar in content:
- (A) the insurers, either directly or via the insurance broker, and the broker shall also advise the Agent (by facsimile and by e-mail) of any loss or of any default in the payment of any premium and of any event other act or omission on the part of the Borrower, the Supplier and/or the Launch Services Provider, as applicable, of which the broker or the insurers have knowledge and which might result in the invalidation, the lapse or the cancellation in whole or in part of such Insurance;
  - (B) the Agent and/or the Lenders shall have the right (without any obligation) to pay the insurance premia if the relevant party fails to or delays in making any such payment within the time periods specified in the relevant insurance policies. If any payment of the premia is effected by the Agent and/or the Lenders, the Borrower shall on demand reimburse the Agent and/or the Lenders the amount of any premia so paid and all related costs and expenses;
  - (C) if the Borrower, the Supplier and/or the Launch Services Provider (as applicable) fails or delays in filing any notice of proof of loss, the Agent shall have the right to join the Borrower, the Supplier and/or the Launch Services Provider (as applicable) in submitting a notice of proof of any loss within the time periods specified in the applicable insurance policies;
  - (D) the insurers waive:
    - (aa) all rights of set-off and counterclaim against, the Security Agent, the Agent and the Lenders in connection with their rights to make payments under such insurance; and
    - (bb) all rights of subrogation to the rights of the Agent and the Lenders against the Borrower;
  - (E) the insurance be primary and not excess to or contributory to any insurance or self-insurance maintained by the Lenders;
  - (F) the Insurances shall not be permitted to lapse or to be cancelled, without written notice being given by facsimile and e-mail to the Agent at the same time such notices are sent to the Borrower and shall be effective as stated in such notices *provided that*, fifteen (15) days' advance written notice shall be given by the Borrower in the event of notice of cancellation for non-payment of premium; and
  - (G) the insurers will undertake, not to make any material modification or amendment to the terms of such insurance policies without the prior written consent of the Agent (acting on the instructions of all the

Lenders). For the purpose of this paragraph (G), material modification means a modification such that the insurance as modified would not meet any longer the terms and conditions set out in this Agreement.

## 20.5 Additional Domestic Subsidiaries

Notify the Agent of the creation or acquisition of any Domestic Subsidiary and promptly thereafter (and in any event within sixty (60) days), cause such person to:

- (a) become a Subsidiary Guarantor by delivering to the Agent a duly executed Guarantee Agreement or such other document as the Agent shall deem appropriate for such purpose;
- (b) accede to the Intercreditor Agreement as a Debtor, a Subordinated Creditor and a Subordinated Debtor (as each term is defined in the Intercreditor Agreement) pursuant to, and in accordance with, the terms of the Intercreditor Agreement;
- (c) pledge a security interest in all Collateral owned by such Subsidiary (*provided that* if such Collateral consists of Capital Stock of a Foreign Subsidiary, such security interest will be limited to sixty-five *per cent.* (65%) of such Capital Stock (subject to the provisions of clause 3.6 (*Foreign Subsidiaries Security*) of the Stock Pledge Agreement)) by delivering to the Agent a duly executed supplement to each Security Document or such other document as the Agent shall deem appropriate for such purpose and comply with the terms of each Security Document;
- (d) deliver to the Agent such documents and certificates referred to in Schedule 2 (*Conditions Precedent*) as may be reasonably requested by the Agent;
- (e) deliver to the Agent such original Capital Stock or other certificates and stock or other transfer powers evidencing the Capital Stock of such person;
- (f) deliver to the Agent such updated schedules to the Finance Documents as requested by the Agent with respect to such person; and
- (g) deliver to the Agent such other documents as may be reasonably requested by the Agent (including, any “*know your customer*” information), all in form, content and scope reasonably satisfactory to the Agent.

## 20.6 Additional Foreign Subsidiaries

Notify the Agent at the time that any person becomes a Foreign Subsidiary of the Borrower or any Subsidiary, and promptly thereafter (and in any event within sixty (60) days after notification):

- (a) with respect to any Subsidiary that is directly owned by an Obligor, cause the Borrower or the applicable Subsidiary to deliver to the Agent a security document pledging sixty-five *per cent.* (65%) of the total outstanding Capital Stock of such new Foreign Subsidiary (subject to the provisions of clause 3.6 (*Foreign Subsidiaries Security*) of the Stock Pledge Agreement) and a consent thereto executed by such new Foreign Subsidiary (including, without limitation, if applicable, original stock certificates (or the equivalent thereof pursuant to the Applicable Laws and practices of any relevant foreign jurisdiction) evidencing that the Capital Stock of such new Foreign Subsidiary,



together with an appropriate undated stock power for each certificate duly executed in blank by the registered owner thereof);

- (b) cause such person to deliver to the Agent such documents and certificates referred to in Schedule 2 (*Conditions Precedent*) as may be reasonably requested by the Agent;
- (c) cause the Borrower to deliver to the Agent such updated schedules to the Finance Documents as requested by the Agent with regard to such person; and
- (d) cause such person to deliver to the Agent such other documents as may be reasonably requested by the Agent, all in form, content and scope reasonably satisfactory to the Agent.

#### **20.7 Additional Communications Licences**

Notify the Agent within thirty (30) days after the acquisition of any Material Communications Licence and cause any Communications Licence issued by the FCC or the ANFR that is acquired by the Borrower or any Subsidiary thereof after the date of this Agreement to be held by a Licence Subsidiary.

#### **20.8 Owned Real Property**

As soon as practical, and in any event within thirty (30) days following Closing Date (as such date may be extended by the Agent in its reasonable discretion), or at such later time as may be provided below, with respect to all owned real property (to the extent located in the United States) of the Borrower or any of the other Subsidiaries as of the date of this Agreement:

(a) ***Mortgages***

the Agent shall have received a duly authorised, executed and delivered Mortgage in form and substance reasonably satisfactory to the Agent (acting at the direction of the Majority Lenders);

(b) ***Title Insurance***

the Agent shall have received upon its written request therefor a marked-up commitment for a policy of title insurance, insuring the Finance Parties' second priority Liens and showing no Liens (other than those Liens set out in items 7 and 8 of Schedule 16 (*Existing Liens*)), prior to the Finance Parties' Liens other than for *ad valorem* taxes not yet due and payable, with title insurance companies acceptable to the Agent on the property subject to a Mortgage with the final title insurance policy, being delivered within sixty (60) days after the date of this Agreement, as such date may be extended by the Agent in its reasonable discretion. Further, the Borrower agrees to provide or obtain any customary affidavits and indemnities as may be required or necessary to obtain title insurance satisfactory to the Agent (acting at the direction of the Majority Lenders);

(c) ***Title Exceptions***

the Agent shall have received upon its or any Lender's written request therefor copies of all recorded documents creating exceptions to the title policy referred to in Clause 20.8(a) (*Mortgages*);

(d) **Matters Relating to Flood Hazard Properties**

the Agent shall have received upon its or any Lender's written request therefor a certification from the U.S. National Research Centre, or any successor agency thereto, regarding each parcel of real property subject to a Mortgage; and

(e) **Other Real Property Information**

the Agent shall have received such other certificates, documents and information as are reasonably requested by the Agent, including, without limitation, engineering and structural reports, permanent certificates of occupancy and evidence of zoning compliance, each in form and substance satisfactory to the Agent.

**20.9 Leased Real Property**

The Borrower shall use reasonable efforts to cause within thirty (30) days following the written request therefor by the Agent (as such date may be extended by the Agent in its reasonable discretion), with respect to all leased real property (to the extent located in the United States) of the Borrower or any of its Subsidiaries as of the date of this Agreement, the Agent to have received a duly authorized, executed and delivered collateral assignment of lease and related landlord agreement, in each case, in form and substance satisfactory thereto.

**20.10 After Acquired Real Property Collateral**

Notify the Agent, within ten (10) Business Days after the acquisition of any owned or leased real property by any Obligor that is not subject to the existing Security Documents, and within ninety (90) days following request by the Agent, deliver or, in the case of leased real property, use reasonable efforts to deliver, the corresponding documents, instruments and information required to be delivered pursuant to:

- (a) Clause 20.8 (*Owned Real Property*) if such real property is owned; or
- (b) Clause 20.9 (*Leased Real Property*) if such real property is leased.

**20.11 Conditions Subsequent**

The Borrower agrees to deliver to the Agent all of the documents and other evidence listed in Part 2 (*Conditions Subsequent*) of Schedule 2 (*Conditions Precedent*) in form and substance satisfactory to the Agent within the time periods set out therein.

**20.12 Taxation**

- (a) Each Obligor shall (and the Borrower shall ensure that each member of the Group will) pay and discharge all Taxes imposed upon it or its assets within the time period allowed without incurring penalties unless and only to the extent that:
  - (i) such payment is being contested in good faith;
  - (ii) adequate reserves are being maintained for those Taxes and the costs required to contest them which have been disclosed in its latest financial statements delivered to the Agent under Clause 18 (*Information Undertakings*); and

- (iii) such payment can be lawfully withheld and failure to pay those Taxes does not have or is not reasonably likely to have a Material Adverse Effect.

- (b) No Obligor may change its residence for Tax purposes.

#### **20.13 Preservation of Assets**

The Borrower shall (and shall ensure that each member of the Group will) maintain in good working order and condition (ordinary wear and tear excepted) all of its assets necessary in the conduct of its business.

#### **20.14 *Pari Passu* Ranking**

The Borrower shall (and shall ensure that each Obligor will):

- (a) procure that its obligations under the Finance Documents to which it is a party do and will rank at least *pari passu* with all its other present and future unsecured, unsubordinated obligations, save for obligations preferred by operation of Applicable Law; and
- (b) ensure that at all times the claims of each Finance Party against it under the Finance Documents to which it is a party rank at least *pari passu* with the claims of all its unsecured creditors save those whose claims are preferred by any bankruptcy, insolvency, liquidation or similar Applicable Laws of general application.

#### **20.15 Intellectual Property**

The Borrower shall (and shall ensure that each member of the Group will):

- (a) preserve and maintain the subsistence and validity of the Intellectual Property necessary for the business of the relevant Group member;
- (b) use reasonable endeavours to prevent any infringement in any material respect of the Intellectual Property;
- (c) make registrations and pay all registration fees and taxes necessary to maintain the Intellectual Property in full force and effect and record its interest in that Intellectual Property;
- (d) not use or permit the Intellectual Property to be used in a way or take any step or omit to take any step in respect of that Intellectual Property which may materially and adversely affect the existence or value of the Intellectual Property or imperil the right of any member of the Group to use such property; and
- (e) not discontinue the use of the Intellectual Property,

where failure to do so, in the case of paragraphs (a) and (b) above, or, in the case paragraphs (d) and (e) above, such use, permission to use, omission or discontinuation, is reasonably likely to have a Material Adverse Effect.

#### **20.16 Access**

If a Default is continuing or the Agent reasonably suspects a Default is continuing or may occur, each Obligor shall, and the Borrower shall ensure that each member of the Group will permit the Agent and/or the Security Agent and/or accountants or other professional advisers and contractors of the Agent or Security Agent free access at all reasonable times and on reasonable notice at the risk and cost of the Borrower to:

- (a) the premises, assets, books, accounts and records of each member of the Group; and
- (b) meet and discuss matters with management of the Group.

#### **20.17 Further Assurance**

- (a) The Borrower shall (and shall procure that each member of the Group will) promptly do all such acts or execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Security Agent may reasonably specify (and in such form as the Security Agent may reasonably require in favour of the Security Agent or its nominee(s)):
  - (i) to perfect a Lien created or intended to be created under or evidenced by the Security Documents (which may include the execution of a mortgage, charge, assignment or other Lien over all or any of the assets which are, or are intended to be, the subject of the Security Documents) or for the exercise of any rights, powers and remedies of the Security Agent or the Finance Parties provided by or pursuant to the Finance Documents or by Applicable Law;
  - (ii) to confer on the Security Agent or confer on the Finance Parties a Lien over any property and assets of the Group located in any jurisdiction equivalent or similar to a Lien intended to be conferred by or pursuant to the Security Documents; and
  - (iii) to facilitate the realisation of the assets which are, or are intended to be, the subject of a Lien.
- (b) The Borrower shall (and shall procure that each member of the Group shall) take all such action as is available to it (including making all filings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Lien conferred or intended to be conferred on the Security Agent or the Finance Parties by or pursuant to the Finance Documents.
- (c) The Borrower will, and shall procure that any member of the Thermo Group will, in the case of any Subordinated Liabilities which are not evidenced by any instrument, upon the Security Agent's request, ensure that such Subordinated Liabilities shall be evidenced by an appropriate instrument or instruments.
- (d) The Borrower shall, and shall procure that each of Thermo and the Subsidiary Guarantors shall, promptly upon the request of the Security Agent, at its own cost, do all such acts or execute all such documents reasonably deemed necessary or desirable by the Security Agent to confirm or establish the validity and enforceability of the subordination effected by, and the obligations of the Borrower and such party under, the Intercreditor Agreement or any other Acceptable Intercreditor Agreement.

- (e) The Borrower shall promptly, following the First Lien Facility Period, (a) use its reasonable endeavours to procure the transfer by the First Lien Security Agent to the Agent of: the original stock certificates and other certificates evidencing the Capital Stock pledged pursuant to the Security Documents, together with an undated stock power for each such certificate duly executed in blank by the registered owner thereof; and each original promissory note pledged pursuant to the Security Documents, in each case to the extent such Capital Stock or promissory note is outstanding at such time, or (b) cancel any such promissory note or certificate or other evidence of Capital Stock pledged, as applicable, that Borrower is not able to procure pursuant to the forgoing clause (a), and execute and deliver to the Security Agent amended and restated promissory note(s) (along with the corresponding note power(s)) and/or new certificate(s) of Capital Stock (along with the corresponding share power(s)), as applicable.

**20.18 [Reserved]**

**20.19 Equity Commitments**

- (a) The Borrower shall procure that each member of the Thermo Group complies with its obligations in respect of the provision of the Equity Commitments under and in accordance with the provisions of the First Global Deed of Amendment and Restatement, the First Thermo Group Undertaking Letter, the Second Global Amendment and Restatement Agreement, the Second Thermo Group Undertaking Letter, the Third Global Amendment and Restatement Agreement, the Third Thermo Group Undertaking Letter, as applicable.
- (b) The Borrower shall procure that any third party providing funds to the Group for the purposes of satisfaction of all or a part of the Equity Commitments or pursuant to any other instrument of indebtedness (equity linked or otherwise) shall, to the extent the Equity Commitment (or any portion thereof) is evidenced by an instrument of indebtedness, enter into an Acceptable Intercreditor Agreement.

**20.20 Key Agreements**

The Borrower shall:

- (a) duly and punctually perform and comply with its obligations under the Key Agreements, other than any such failure to perform or comply which does not have or could not reasonably be expected to have, a Material Adverse Effect; and
- (b) take all commercially reasonable steps necessary or desirable to protect, maintain, exercise and enforce all its rights with respect to any Key Agreement and use all its commercially reasonable efforts to procure the due performance by each other party to such Key Agreements of such party's respective material obligations under each such Key Agreement.

**20.21 New Subordinated Indebtedness**

- (a) The Borrower shall procure that any new Subordinated Indebtedness entered into by the Borrower or any Subsidiary shall:

- (i) have a maturity that extends beyond the date on which all principal, interest and other amounts due and owing under the Finance Documents have been paid in full; and
  - (ii) be subordinated to the rights of the Finance Parties pursuant to (x) the Intercreditor Agreement, or (y) any other Acceptable Intercreditor Agreement.
- (b) The Borrower shall procure that upon the entry into any guarantee (or joinder to or amendment of any existing guarantee) in respect of the 8% New Notes by the Subsidiary Guarantors pursuant to Clause 21.1(l) (*Limitations on Financial Indebtedness*), a copy of such guarantee is delivered to the Agent together with an opinion from Taft Stettinius & Hollister LLP (or such other law firm as may be acceptable to the Majority Lenders) confirming that the subordination arrangements contained therein are the legal, valid, binding and enforceable obligations of the parties to such guarantee. If any Subsidiary becomes a Subsidiary Guarantor or a guarantor of any other notes issued under the Original Indenture and any supplemental indenture relating thereto, such Subsidiary may execute a joinder to the document evidencing the Guarantee Obligations referred to in Clause 21.1(l) (*Limitations on Financial Indebtedness*), subject to the other provisions of such Clause 21.1(l) (*Limitations on Financial Indebtedness*).

**20.22 [Reserved]**

**20.23 The 2021 Equity Issuance**

If by 30 January 2021 the 2021 Equity Issuance has not occurred, the Borrower shall promptly mandate an independent internationally recognised advisor (with the terms of such appointment and the identity of any such adviser being, in each case, satisfactory to the Agent (at the direction of the Majority Lenders) (acting reasonably)) to assist the Borrower with the 2021 Equity Issuance.

**20.24 Anti-bribery, Anti-corruption and Anti-money Laundering**

Each Obligor shall:

- (a) conduct its businesses in compliance with anti-corruption laws, anti-bribery or anti-money laundering laws, regulations or rules applicable to it in any applicable jurisdiction; and
- (b) maintain policies and procedures designed to promote and achieve compliance with any such laws.

**21. Negative Undertakings**

The undertakings in this Clause 21 (*Negative Undertakings*) remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force. The Borrower shall, and shall cause each of its Subsidiaries to, comply with the undertakings contained in this Clause 21 (*Negative Undertakings*).

**21.1 Limitations on Financial Indebtedness**

Not create, incur, assume or suffer to exist any Financial Indebtedness except:

- (a) the Obligations (excluding any Hedging Obligations permitted pursuant to Clause 21.1(c));
- (b) Financial Indebtedness incurred in connection with the Interest Rate Cap Agreement;
- (c) Financial Indebtedness incurred in connection with a Hedging Agreement required pursuant to Clause 20.11 (*Hedging Agreements*);
- (d) Financial Indebtedness existing as at the date of this Agreement and not otherwise permitted under this Clause 21.1 and set out in Schedule 13 (*Financial Indebtedness and Guarantee Obligations*);
- (e) Guarantee Obligations in favour of the Agent for the benefit of the Agent and the Finance Parties;
- (f) unsecured:
  - (i) Subordinated Indebtedness owed by any Obligor to another Obligor;
  - (ii) Subordinated Indebtedness owed by any Obligor to a Foreign Subsidiary;
  - (iii) Financial Indebtedness owed by a Foreign Subsidiary to any Obligor; *provided that* the aggregate amount of such Financial Indebtedness outstanding at any time pursuant to this paragraph (iii) shall not exceed the Foreign Investment Limitation (calculated without regard to paragraph (b) of the definition of Foreign Investment Limitation) as of any date of determination;
  - (iv) Financial Indebtedness owed by a Foreign Subsidiary to another Foreign Subsidiary; and
  - (v) Guarantee Obligations by the Borrower on behalf of any Obligor or Foreign Subsidiary not to exceed US\$1,000,000 in aggregate;
- (g) Financial Indebtedness pursuant to the following paragraphs (i) to (v) (and any extension, renewal, replacement or refinancing thereof, but not to increase the aggregate principal amount), *provided that* at the time such Financial Indebtedness is incurred, the Agent and the Lenders shall have received from the Borrower a Compliance Certificate in form and substance satisfactory to the Agent (acting on the instructions of the Majority Lenders) (including an Adjusted Consolidated EBITDA Reconciliation for the fiscal period covered by such Compliance Certificate), demonstrating that, after giving effect to the incurrence of any such Financial Indebtedness, the Borrower will be in *pro forma* compliance with the financial covenants set out in Clause 19 (*Financial Covenants*) applicable at such time:
  - (i) Financial Indebtedness of the Borrower and its Subsidiaries incurred in connection with Finance Leases and/or purchase money Financial Indebtedness of the Borrower and its Subsidiaries in an aggregate amount not to exceed US\$25,000,000 on any date of determination;

- (ii) Financial Indebtedness of a person existing at the time such person became a Subsidiary or assets were acquired from such person not exceeding US\$10,000,000, to the extent such Financial Indebtedness was not incurred in connection with or in contemplation of, such person becoming a Subsidiary or the acquisition of such assets, which transactions in aggregate since the date of this Agreement do not exceed at any time US\$25,000,000;
- (iii) subject to paragraph (l) below, Guarantee Obligations with respect to Financial Indebtedness permitted pursuant to paragraph (g) of this Clause 21.1;
- (iv) Financial Indebtedness of Foreign Subsidiaries, not to exceed in the aggregate at any time outstanding US\$2,000,000; and
- (v) Subordinated Indebtedness not otherwise permitted pursuant to this Clause 21.1, provided that, no Event of Default has occurred and is continuing and subject to the prior agreement of an Acceptable Intercreditor Agreement. For the avoidance of doubt, neither a Borrower nor a Subsidiary shall incur any Subordinated Indebtedness which permits any cash payment in respect of Subordinated Indebtedness prior to the Final Maturity Date without the prior written consent of the Agent (acting at the direction of the Majority Lenders);
- (h) Financial Indebtedness incurred in respect of workers' compensation claims, self-insurance obligations, bankers' acceptances, performance, surety and similar bonds and completion guarantees provided by the Borrower or one of its Subsidiaries in the ordinary course of trading, not to exceed in the aggregate at any time outstanding US\$10,000,000;
- (i) Financial Indebtedness arising from the honouring by a bank or other financial institution of a cheque, draft or similar instrument in the ordinary course of trading inadvertently drawn against insufficient funds, *provided however, that* such Financial Indebtedness is extinguished within five (5) Business Days and does not exceed in the aggregate at any time outstanding US\$10,000,000;
- (j) Financial Indebtedness arising from any agreement by the Borrower or any of its Subsidiaries providing for indemnities, guarantees, purchase price adjustments, holdbacks, contingency payment obligations based on the performances of the acquired or disposed assets or similar obligations incurred by any person in connection with the acquisition or disposition of assets or Capital Stock as permitted by this Agreement *provided that* such Financial Indebtedness does not exceed in the aggregate at any time outstanding US\$10,000,000;
- (k) Financial Indebtedness incurred in connection with any Permitted Vendor Indebtedness;
- (l) Guarantee Obligations of the Subsidiary Guarantors in connection with the 8% New Notes *provided that*:
  - (i) with respect to such Guarantee Obligations created or amended (including, for the avoidance of doubt, amendments by joinder) on or after the Closing Date, such Guarantee Obligations are subordinated to the provisions of the Finance Documents;



- (ii) at the time that such Guarantee Obligations are entered into, no member of the Thermo Group is in breach of any of its obligations in respect of the Equity Commitments;
- (iii) the Borrower shall have received the 2013 Closing Commitment and the 2013 Year-End Commitment;
- (iv) no Event of Default has occurred which is continuing;
- (v) the terms of such Guarantee Obligations shall be consistent with, and no less favourable to the Lenders than, the terms set out in the 5.75% Notes Term Sheet;
- (vi) each Subsidiary Guarantor is a party to the Intercreditor Agreement or any other Acceptable Intercreditor Agreement; and
- (vii) the Guarantee Obligations shall not be entered into prior to 26 December 2013;
- (m) [Reserved];
- (n) Financial Indebtedness incurred pursuant to the First Lien Facility Agreement; and
- (o) Financial Indebtedness otherwise approved in writing by the Agent (acting on the instructions of the Majority Lenders).

## 21.2 Limitations on Liens

Not create, incur, assume or suffer to exist, any Lien on or with respect to any of its assets or properties (including, without limitation, shares of Capital Stock), real or personal, whether now owned or hereafter acquired, except:

- (a) Liens of the Security Agent or the Agent (as the case may be) for the benefit of the Finance Parties under the Finance Documents;
- (b) Liens not otherwise permitted by this Clause 21 (*Negative Undertakings*) and in existence on the date of this Agreement and described in Schedule 16 (*Existing Liens*);
- (c) Liens for taxes, assessments and other governmental charges or levies not yet due or as to which the period of grace if any, related thereto has not expired or which are being contested in good faith and by appropriate proceedings if adequate reserves are maintained to the extent required by GAAP;
- (d) the claims of material men, mechanics, carriers, warehousemen, processors or landlords for labour, materials, supplies or rentals incurred in the ordinary course of trading:
  - (i) which are not overdue for a period of more than ninety (90) days; or
  - (ii) which are being contested in good faith and by appropriate proceedings if adequate reserves are maintained to the extent required by GAAP;
- (e) Liens consisting of deposits or pledges made in the ordinary course of trading in connection with, or to secure payment of, obligations under workers' compensation, unemployment insurance or similar legislation;

- (f) Liens constituting encumbrances in the nature of zoning restrictions, easements and rights or restrictions of record on the use of real property, which in the aggregate are not substantial in amount and which do not, in any case, detract from the value of such property or impair the use thereof in the ordinary conduct of trading;
- (g) Liens existing on any asset of any person at the time such person becomes a Subsidiary or is merged or consolidated with or into a Subsidiary which:
  - (i) were not created in contemplation of or in connection with such event; and
  - (ii) do not extend to or cover any other property or assets of the Borrower or any Subsidiary, so long as any Financial Indebtedness related to any such Liens are permitted under Clause 21.1(g)(ii) (*Limitations on Financial Indebtedness*):
- (h) Liens securing Financial Indebtedness permitted under Clause 21.1(g)(i) (*Limitations on Financial Indebtedness*) provided that:
  - (i) such Liens shall be created substantially simultaneously with the acquisition or lease of the related asset;
  - (ii) such Liens do not at any time encumber any property other than the property financed by such Financial Indebtedness;
  - (iii) the amount of Financial Indebtedness secured thereby is not increased; and
  - (iv) the principal amount of Financial Indebtedness secured by any such Lien shall at no time exceed one hundred *per cent.* (100%) of the original purchase price or lease payment amount of such property at the time it was acquired;
- (i) Liens securing Financial Indebtedness permitted under Clause 21.1(g)(iv) (*Limitations on Financial Indebtedness*) provided that such liens do not at any time encumber any property other than that of the applicable Foreign Subsidiary obliged with respect to such Financial Indebtedness;
- (j) Liens to secure the performance of statutory obligations, surety or appeal bonds, performance bonds or other obligations of a like nature incurred in the ordinary course of trading;
- (k) Liens incurred or deposits made in the ordinary course of trading in connection with workers' compensation, unemployment insurance and other types of social security;
- (l) rights of banks to set-off deposits against debts owed to such banks;
- (m) Liens upon specific items of inventory or other goods and proceeds of the Borrower and its Subsidiaries securing their obligations in respect of bankers' acceptances issued or created for the account of any such person to facilitate the purchase, storage or shipment of such inventory or other goods;
- (n) Liens in favour of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

- (o) Liens encumbering property or assets under construction arising from progress or partial payments by a customer of the Borrower or one of its Subsidiaries relating to such property or assets;
- (p) Liens on assets that are the subject of a sale and leaseback transaction permitted by the provisions of this Agreement;
- (q) Liens securing Permitted Vendor Indebtedness, *provided that* such Lien does not attach or encumber any asset or property of the Borrower or any Subsidiary thereof other than the asset or personal property which is the subject of such obligation;
- (r) Liens securing Financial Indebtedness permitted by Clause 21.1(b) or (c) (*Limitations on Financial Indebtedness*);
- (s) Liens not otherwise permitted under this Agreement securing obligations not at any time exceeding in aggregate US\$5,000,000; and
- (t) during the First Lien Facility Period, Liens on the Collateral on a first ranking basis pursuant to the First Lien Security Documents that:
  - (i) are prior ranking in accordance with the Intercreditor Agreement; and
  - (ii) secure the obligations of the Borrower under the Finance Documents and/or the First Lien Finance Documents;
- (u) Liens otherwise approved in writing by the Agent (acting on the instructions of the Majority Lenders).

### **21.3 Limitations on Loans, Investments and Acquisitions**

Not purchase, own, invest in or otherwise acquire, directly or indirectly, any Capital Stock, interests in any partnership or joint venture (including, without limitation, the creation or capitalisation of any Subsidiary), evidence of Financial Indebtedness or other obligation or security, substantially all or a portion of the business or assets of any other person or any other investment or interest whatsoever in any other person, or make or permit to exist, directly or indirectly, any loans, advances or extensions of credit to, or any investment in cash or by delivery of property in, any person except:

- (a) investments:
  - (i) existing on the date of this Agreement in Subsidiaries existing on the date of this Agreement;
  - (ii) after the date of this Agreement in:
    - (A) existing Subsidiaries; and/or

- (B) Subsidiaries formed after the date of this Agreement, *provided that*, in each case of the foregoing Subclauses (A) and (B):
  - (x) the Borrower and its Subsidiaries comply with the applicable provisions of Clause 20.5 (*Additional Domestic Subsidiaries*); and
  - (y) the amount of any such investments in a Foreign Subsidiary shall not exceed the Foreign Investment Limitation as of the date of such investment;
- (iii) the other loans, advances and investments described on Schedule 19 (*Existing Loans, Investments and Advances*) existing on the date of this Agreement;
- (iv) by any Subsidiary in the Borrower;
- (b) investments in:
  - (i) marketable direct obligations issued or unconditionally guaranteed by the United States or any agency thereof maturing within one hundred and twenty (120) days from the date of acquisition thereof;
  - (ii) commercial paper maturing no more than one hundred and twenty (120) days from the date of creation thereof and currently having the highest rating obtainable from either S&P or Moody's;
  - (iii) certificates of deposit maturing no more than one hundred and twenty (120) days from the date of creation thereof issued by commercial banks incorporated under the laws of the United States, each having combined capital, surplus and undivided profits of not less than US\$500,000,000 and having a rating of "A" or better from either S&P or Moody's; *provided that* the aggregate amount invested in such certificates of deposit shall not at any time exceed US\$5,000,000 for any one such certificate of deposit and US\$10,000,000 for any one such bank;
  - (iv) time deposits maturing no more than thirty (30) days from the date of creation thereof with commercial banks or savings banks or savings and loan associations each having membership either in the FDIC or the deposits of which are insured by the FDIC and in amounts not exceeding the maximum amounts of insurance thereunder; and
  - (v) other investments permitted by the Borrower's investment policy as of the date hereof in the form attached at Schedule 25 (*Investment Policy*);
- (c) investments by the Borrower or any of its Subsidiaries in the form of Permitted Joint Venture Investments or, with the prior written consent of the Lenders, Permitted Acquisitions;
- (d) Hedging Agreements permitted pursuant to Clause 20.11 (*Hedging Agreements*) and any Interest Rate Cap Agreement and investments in collateral accounts securing any Hedging Agreements and Interest Rate Cap Agreement;

- (e) purchases of assets in the ordinary course of trading;
- (f) investments in the form of loans and advances to employees in the ordinary course of trading, which, in aggregate, do not exceed at any time US\$500,000;
- (g) intercompany Financial Indebtedness permitted pursuant to Clause 21.1(e) (*Limitations on Financial Indebtedness*);
- (h) loans to one (1) or more officers or other employees of the Borrower or its Subsidiaries in connection with such officers' or employees' acquisition of Capital Stock of the Borrower in the ordinary course of trading, consistent with the Borrower's equity incentive plan, which, in aggregate, do not exceed at any time US\$500,000;
- (i) endorsement of cheques or bank drafts for deposit or collection in the ordinary course of trading;
- (j) performance, surety and appeal bonds;
- (k) investments consisting of non-cash consideration received by the Borrower or any of its Subsidiaries from the sale of assets or Capital Stock of a Subsidiary as permitted by this Agreement;
- (l) investments in Globaltouch (West Africa) Limited *provided that*:
  - (i) the amount of such investment does not exceed US\$5,000,000 including any such investment made prior to the date of this Agreement;
  - (ii) the investment complies with paragraphs (b), (d) and (e) of the definition of Permitted Joint Venture Investments; and
  - (iii) the Borrower shall deliver such information relating to the investment as the Agent may reasonably request.

#### **21.4 Limitations on Mergers and Liquidations**

Not merge, consolidate or enter into any similar combination with any other person or liquidate, wind-up or dissolve itself (or suffer any liquidation or dissolution) except:

- (a) any Wholly-Owned Subsidiary of the Borrower may be merged or consolidated with or into the Borrower (*provided that* the Borrower shall be the continuing or surviving person) or with or into any Subsidiary Guarantor (*provided that* the Subsidiary Guarantor shall be the continuing or surviving person);
- (b) any Wholly-Owned Subsidiary may sell, lease, transfer or otherwise dispose of any or all of its assets (upon voluntary liquidation or otherwise) to the Borrower or any other Wholly-Owned Subsidiary; (*provided that* if the transferor in such a transaction is a Subsidiary Guarantor, then the transferee must either be the Borrower or a Subsidiary Guarantor);
- (c) any Wholly-Owned Subsidiary of the Borrower may merge with or into the person such Wholly-Owned Subsidiary was formed to acquire in connection with a Permitted

Acquisition permitted under Clause 21.3(c) (*Limitations on Loans, Investments and Acquisitions*); and

- (d) any Subsidiary of the Borrower may wind-up into the Borrower or any Subsidiary Guarantor.

#### **21.5 Limitations on Asset Dispositions**

Not make any Asset Disposition (including, without limitation, the sale of any receivables and leasehold interests and any sale-leaseback or similar transaction) except:

- (a) the sale of inventory in the ordinary course of trading;
- (b) the sale of obsolete, damaged, worn-out or surplus assets no longer needed in the business of the Borrower or any of its Subsidiaries;
- (c) any lease or sub-licence of Spectrum subject to a Communications Licence *provided that* such lease or sub-licence is on *bona fide* arms' length terms at the time such agreement is entered into and does not have, and could not reasonably be expected to have, a Material Adverse Effect;
- (d) the transfer of assets to the Borrower or any Subsidiary Guarantor pursuant to Clause 21.4 (*Limitations on Mergers and Liquidations*); and
- (e) the sale or discount without recourse of accounts receivable arising in the ordinary course of trading in connection with the compromise or collection thereof.

#### **21.6 Limitations on Dividends and Distributions**

- (a) Subject to paragraphs (b) and (c) below, not (and shall procure that each member of the Group shall not) pay or make any Shareholder Distribution without the prior written consent of all the Lenders (including any repayment of the US\$35,000,000 (or such higher amount to take into account accrued but unpaid interest) shareholder loan from Thermo to the Borrower and all other amounts owing to Thermo under the Thermo Loan Agreement).
- (b) The Borrower shall be permitted to prepay on the Closing Date, the full amount outstanding under the 2019 Bridge Facility Agreement, from the proceeds of this Facility.
- (c) The Borrower shall permit the conversion of all amounts outstanding under the Thermo Loan Agreement into Capital Stock of the Borrower by 30 June 2022.

#### **21.7 Limitations on Exchange and Issuance of Capital Stock**

Except as provided for in the Borrower's 2006 Equity Incentive Plan and the "*Designated Executive Incentive Award Agreement*", not issue, sell or otherwise dispose of any class or series of Capital Stock that, by its terms or by the terms of any security into which it is convertible or exchangeable, is, or upon the happening of an event or passage of time would be:

- (a) convertible or exchangeable into Financial Indebtedness; or

- (b) required to be redeemed or repurchased prior to the date that is six (6) Months after the Final Maturity Date, including at the option of the holder, in whole or in part, or has, or upon the happening of an event or passage of time would have, a redemption or similar payment due.

## **21.8 Transactions with Affiliates**

Not directly or indirectly:

- (a) make any loan or advance to, or purchase or assume any note or other obligation to or from, any of its officers, directors, shareholders or other Affiliates, or to or from any member of the immediate family of any of its officers, directors, shareholders or other Affiliates, or subcontract any operations to any of its Affiliates, unless otherwise expressly permitted under this Agreement; or
- (b) enter into, or be a party to, any other transaction not described in Clause (a) above with any of its Affiliates other than:
  - (i) transactions permitted by Clause 21.1 (*Limitations on Financial Indebtedness*), 21.3 (*Limitations on Loans, Investments and Acquisitions*), 21.4 (*Limitations on Mergers and Liquidations*) and 21.7 (*Limitations on Exchange and Issuance of Capital Stock*);
  - (ii) transactions existing on the date of this Agreement and described in Schedule 18 (*Transactions With Affiliates*);
  - (iii) normal compensation and reimbursement of reasonable expenses of officers and directors including adoption of a restricted stock bonus or purchase plan;
  - (iv) other transactions in the ordinary course of trading on terms as favourable as would be obtained by it on a comparable arms-length transaction with an independent, unrelated third party as determined in good faith by the board of directors of the Borrower;
  - (v) subject to the provisions of Clause 21.14 (*Employee Incentive Plans*), the Borrower's incentive compensation plan described in Schedule 20 (*Incentive Plan*); and
  - (vi) transactions pursuant to the Finance Documents.

## **21.9 Certain Accounting Changes; Organisational Documents**

- (a) Not change its Fiscal Year end, or make any change in its accounting treatment and reporting practices except as required by GAAP.
- (b) Not amend, modify or change:
  - (i) its articles of incorporation (or corporate charter or other similar organizational documents); or
  - (ii) its bylaws (or other similar documents),

in any such case, in any manner adverse in any respect to the rights or interests of the Finance Parties.

#### **21.10 Amendments; Payments and Prepayments of Subordinated Indebtedness**

- (a) Not amend or modify (or permit the modification or amendment of) any of the terms or provisions of any Subordinated Indebtedness without the consent of the Agent and the Lenders.
- (b) Not cancel, forgive, make any payment or prepayment on, or redeem or acquire for value including, without limitation:
  - (i) by way of depositing with any trustee with respect thereto money or securities before due for the purpose of paying when due; and
  - (ii) at the maturity thereof any Subordinated Indebtedness, except refinancings, refundings, renewals, extensions or exchange of any Subordinated Indebtedness permitted by Clause 21.1 (*Limitations on Financial Indebtedness*).

#### **21.11 Restrictive Agreements**

- (a) Not enter into or permit to exist any agreement which impairs or limits the ability of any Subsidiary of the Borrower to pay dividends to the Borrower.
- (b) Not enter into any amendment, restatement, amendment and restatement, supplement, replacement or other modification (any of the foregoing, an “**Amendment**”) to any Commercial Contract unless the Borrower concurrently executes, in each case in form and substance acceptable to the Majority Lenders, (1) a French law delegation agreement between the Borrower, the Supplier and the Security Agent in relation to any such Amendment to the Satellite Construction Contract and a French law delegation agreement between the Borrower, the Launch Services Provider and the Security Agent in relation to any such Amendment to the Launch Services Contract, as applicable (each a “**Delegation Agreement**”), (2) a direct agreement between the Borrower, the Supplier and the Security Agent and a direct agreement between the Borrower, the Launch Services Provider and the Security Agent, as applicable (each a “**Direct Agreement**”), (3) legal opinion letters from (a) external counsel to the Obligors confirming, among other things, each applicable Obligor has been duly authorised to enter into each such Finance Document to which it is a party, (b) in-house counsel or external counsel of the Supplier confirming, among other things, that the Supplier has been duly authorised to enter into each such Finance Document to which it is a party, as applicable, (c) in-house counsel or external counsel of the Launch Services Provider confirming, among other things, that the Launch Services Provider has been duly authorised to enter into each such Finance Document to which it is a party and (d) external counsel satisfactory to the Agent as to matters of the laws of France and confirming, among other things, the validity and enforceability of such Finance Documents under the laws of France and (4) such other opinion letters and security documents (including, for the avoidance of doubt, certificates and insurance deliverables) reasonably requested by the Security Agent (acting at the direction of the Majority Lenders).

#### **21.12 Nature of Business**



Not alter in any material respect the character or conduct of the business conducted by the Borrower and its Subsidiaries as of the date of this Agreement. Without limiting the foregoing, the Borrower will not permit or cause any Licence Subsidiary to engage in any line of business or engage in any other activity (including without limitation incurring liabilities) other than the ownership of one or more Communications Licences; *provided that*, subject to any restrictions under Applicable Law with respect to Communications Licences, the Borrower shall cause each of the Licence Subsidiaries to execute and deliver a Guarantee Agreement and each other Finance Document to which such Licence Subsidiary is a party. In no event shall:

- (a) any Licence Subsidiary own any assets other than one (1) or more Communications Licences (and assets reasonably related thereto to the extent necessary to comply with all Applicable Law); and
- (b) neither the Borrower nor any Subsidiary other than a Licence Subsidiary shall hold any Communications Licence issued by the FCC or the ANFR.

#### **21.13 Impairment of Liens**

Not take or omit to take any action, which might or would have the result of materially impairing the security interests created in favour of the Agent with respect to the Collateral or grant to any person (other than the Agent for the benefit of itself and the Lenders pursuant to the Security Documents) any interest whatsoever in the Collateral, except for Financial Indebtedness permitted under Clause 21.1 (*Limitations on Financial Indebtedness*), Permitted Liens and Asset Dispositions permitted under Clause 21.5 (*Limitations on Asset Dispositions*).

#### **21.14 Employee Incentive Plans**

- (a) Subject to Paragraph (b) below, not (and shall procure that each member of the Group shall not) make any payment in cash under any employee incentive plan.
- (b) The Borrower may make cash payments to employees pursuant to the Relevant EIPs *provided that* it obtains the prior written consent of the Majority Lenders before making any such payment.

#### **21.15 No Hedging**

Other than in accordance with clause 20.11 (*Hedging Agreements*) of the First Lien Facility Agreement as of the date hereof or by way of the Interest Rate Cap Agreements, the Borrower shall not, without the consent of the Agent (acting on the instructions of the Majority Lenders), enter into any Hedging Agreement.

#### **21.16 Commercial Contracts**

- (a) Not amend or grant any waiver:
  - (i) in respect of any provision of any Commercial Contract relating to the first twenty four (24) Satellites, if such amendment or waiver would or could reasonably be expected to adversely affect the Lenders; and

- (ii) in respect of any other provision of any Commercial Contract not referred to in paragraph (i) above, if such amendment or waiver would or could reasonably be expected to have a Material Adverse Effect.
- (b) Not exercise the option to order from the Supplier up to eighteen (18) additional recurring Spacecraft (as such term is defined in the Satellite Construction Contract) pursuant to Article 29(B) (Options) of the Satellite Construction Contract without the prior written consent of the Agent.

**21.17 No Amendments to Convertible Notes, First Terrapin Purchase Agreement or Second Terrapin Purchase Agreement**

- (a) Not amend, vary, modify, waive any provision of or agree to the amendment, variation, waiver or modification of any documents relating to any of the Convertible Notes, the First Terrapin Purchase Agreement or the Second Terrapin Purchase Agreement, in each case, without the prior written consent of all the Lenders, save for any amendment in respect of the extension of the redemption date in respect of any of the Convertible Notes.
- (b) Not terminate (pursuant to a breach or default), or permit any termination of, such documents referred to in paragraph (a) above, in each case without the prior written consent of all the Lenders.

**21.18 No Amendments to Key Agreements**

Not amend, vary, modify, waive any provision of or agree to the amendment, variation, waiver or modification of any Key Agreement unless such action:

- (a) is required by Applicable Law;
- (b) has not, or could not reasonably be expected to have, a material adverse effect on the ability of the Borrower or relevant counterparty to such Key Agreement to perform its obligations under such Key Agreement or to comply with its obligations under the Finance Documents; or
- (c) is permitted by the Finance Documents.

**21.19 Expenditure on Group Spectrum Rights**

Not, at any time, incur any expenditure relating to (either directly or indirectly) the Group's Spectrum rights:

- (a) (either individually or in aggregate) in an amount that exceeds the lesser of:
  - (i) US\$20,000,000; and
  - (ii) twenty *per cent.* (20%) of the aggregate of any Net Cash Proceeds raised pursuant to an Equity Issuance or any arrangements evidencing any Subordinated Indebtedness from 1 January 2017 through to 31 December 2019 (inclusive); and
- (b) other than in accordance with the then-applicable Spectrum Plan.

## **21.20 Anti-bribery, Anti-corruption and Anti-money Laundering**

Not engage in any activity or conduct which would violate any applicable anti-bribery, anti-corruption or anti-money laundering laws, regulations or rules in any applicable jurisdiction.

## **21.21 Sanctions**

Not, directly or indirectly, use the proceeds of any Utilisation or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or any other Person (as such term is defined in Clause 17.27 (*Sanctions*)):

- (a) to fund any activities or business of or with any Person, or in any country or territory, that, at the time of such funding, is, a Sanctioned Person (as such term is defined in Clause 17.27 (*Sanctions*)) or is in a Sanctioned Country (as such term is defined in Clause 17.27 (*Sanctions*)); or
- (b) in any other manner that would result in a violation of Sanctions by any Person (including any Person participating in any Utilisation hereunder, whether as underwriter, advisor, investor, lender, hedge provider, facility or security trustee or otherwise).

## **21.22 Anti-layering**

No Obligor will create or incur any Financial Indebtedness which is (a) contractually subordinated or junior in right of payment to the First Lien Obligations of such Obligor, unless such Financial Indebtedness is also contractually subordinated or junior in right of payment, in the same manner and to the same extent, to the Obligations or (b) secured by a Lien on any portion of the Collateral that is senior in priority to the Liens securing the Obligations and junior in priority to the Liens securing the First Lien Obligations.

## **22. Events of Default**

Each of the events or circumstances set out in Clause 22 (*Events of Default*) is an Event of Default.

### **22.1 Non-Payment**

An Obligor does not pay on the due date any amount payable pursuant to a Finance Document at the place and in the currency in which it is expressed to be payable unless:

- (a) its failure to pay is caused by:
  - (i) administrative or technical error; or
  - (ii) a Disruption Event; and
- (b) payment is made within:
  - (i) in the case of paragraph (a)(i) above:
    - (A) in the case of payments of principal and interest, within two (2) Business Days of its due date; or

- (B) in the case of any other payment, within four (4) Business Days of its due date; and
- (ii) in the case of paragraph (a)(ii) above:
  - (A) in the case of payments of principal and interest, within three (3) Business Days of the cessation (or reasonable avoidance) of such Disruption Event; or
  - (B) in the case of any other payment, within five (5) Business Days of the cessation (or reasonable avoidance) of such Disruption Event.

## 22.2 Financial Covenants

- (a) Any requirement of Clause 19 (*Financial Covenants*) is not satisfied.
- (b) No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within thirty (30) days of the earlier of the Agent giving notice to the Borrower or the Borrower becoming aware of the failure to comply.
- (c) No Event of Default under paragraph (a) above will occur if no later than the date that is thirty (30) days after the earlier of the Agent giving notice to the Borrower or the Borrower becoming aware of, in each case, the breach of the relevant covenant in respect of a Relevant Period, the Borrower has received an Equity Cure Contribution in respect of that breach (a “**Relevant Contribution**”) and the Borrower satisfies the relevant covenant recalculated to take into account such Relevant Contribution, *provided that* any such Equity Cure Contribution shall be in a minimum amount of US\$10,000,000 (the “**Minimum Contribution Amount**”) and the Borrower may not cure a breach of a relevant covenant as contemplated under this paragraph (c) where such breach is determined on any date falling after 30 June 2022 (unless such breach is for a Relevant Period ending on 30 June 2022).
- (d) Notwithstanding anything in this Agreement to the contrary, if there is a breach of Clause 19.5 (*Net Debt to Adjusted Consolidated EBITDA*) for any Relevant Period commencing with the Relevant Period that begins on 1 January 2018 and expires on 31 December 2018 and ending with the Relevant Period that begins on 1 July 2021 and expires on 30 June 2022, then such breach may be cured pursuant to paragraph (c) above with the making of an Equity Cure Contribution in an amount equal to the lesser of:
  - (i) the amount required to ensure that the ratio of Net Debt to Adjusted Consolidated EBITDA is equal to or less than the ratio set out in column 2 (*Column 2 – Ratio*) opposite that Relevant Period; and
  - (ii) the amount required to cure any breach of Clause 19.3(*Adjusted Consolidated EBITDA*) for such Relevant Period (before application of the Minimum Contribution Amount pursuant to paragraph (c) above) multiplied by a factor of 1.5,

*provided that* such amount, if less than the Minimum Contribution Amount, shall be increased to the Minimum Contribution Amount in order to comply with paragraph (c) above.

- (e) Notwithstanding anything in this Agreement to the contrary, no portion of any Equity Cure Contribution made pursuant to paragraph (c) above on account of a breach of a covenant during a particular Relevant Period shall be applied to any breach of any covenant in any earlier or subsequent Relevant Periods.

### **22.3 Other Obligations**

- (a) An Obligor does not comply with any provision of the Finance Documents (other than those referred to in Clause 22.1 (*Non-Payment*), Clause 22.2 (*Financial Covenants*), Clause 20.19 (*Equity Commitments*), Clause 20.23 (*The 2021 Equity Issuance*), Clause 21.21 (*Sanctions*), Clause 22.21 (*Convertible Notes*), Clause 22.22 (*Termination of Trading*) or Clause 22.23 (*Purchase Notice*)).
- (b) The Borrower does not comply with Clause 20.19 (*Equity Commitments*), Clause 20.23 (*The 2021 Equity Issuance*), Clause 21.21 (*Sanctions*), Clause 22.21 (*Convertible Notes*), Clause 22.22 (*Termination of Trading*) or Clause 22.23 (*Purchase Notice*)).
- (c) No Event of Default under paragraph (a) above will occur if the failure to comply is capable of remedy and is remedied within ten (10) Business Days of the earlier of:
  - (i) the Agent giving notice to the Borrower; or
  - (ii) the Borrower becoming aware of the failure to comply.

### **22.4 Misrepresentation**

Any representation or statement made by an Obligor in the Finance Documents or any other document delivered by or on behalf of an Obligor under or in connection with any Finance Document is or proves to have been incorrect or misleading when made or deemed to be made and, if capable of remedy, is not remedied within twenty (20) Business Days of the Agent giving notice to the Borrower or an Obligor becoming aware of such misrepresentation.

### **22.5 Cross Default**

- (a) Any Financial Indebtedness of any Material Subsidiary is not paid when due nor within any originally applicable grace period.
- (b) Any Financial Indebtedness of any Material Subsidiary is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).
- (c) Any commitment for any Financial Indebtedness of any Material Subsidiary is cancelled or suspended by a creditor of any Material Subsidiary as a result of an event of default (however described).
- (d) Any creditor of any Material Subsidiary becomes entitled to declare any Financial Indebtedness of any Material Subsidiary due and payable prior to its specified maturity as a result of an event of default (however described).

- (e) No Event of Default will occur under this Clause 22.5:
- (i) if the aggregate amount of Financial Indebtedness (other than the First Lien Facility) or commitment for Financial Indebtedness (other than the First Lien Facility) falling within paragraphs (a) to (d) above is less than US\$5,000,000 (or its equivalent in any other currency or currencies); and
  - (ii) in respect solely of a breach under clause 20 (*Financial Covenants*) of the First Lien Facility Agreement.

## 22.6 Insolvency

Any Material Subsidiary shall:

- (a) commence a voluntary case (or analogous motion) under the federal bankruptcy laws or under other laws, domestic or foreign, relating to bankruptcy, insolvency, reorganisation, winding-up or adjustment of debts or analogous proceedings;
- (b) file a petition (or analogous motion) seeking to take advantage of any other laws, domestic or foreign, relating to bankruptcy, insolvency, reorganisation, winding-up, composition for adjustment of debts or analogous proceedings;
- (c) consent to or fail to contest in a timely and appropriate manner any petition filed against it in an involuntary case under such bankruptcy laws or other laws;
- (d) apply for or consent to, or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of a substantial part of its property, domestic or foreign;
- (e) admit in writing its inability to pay its debts as they become due;
- (f) make a general assignment for the benefit of creditors;
- (g) take any corporate action for the purpose of authorising any of the foregoing; or
- (h) suspend or threaten to suspend making payment on any of its debts or by reason of actual or anticipated financial difficulties commences negotiations with one (1) or more of its creditors with a view to rescheduling any of its indebtedness (other than the Finance Parties in connection with this Agreement).

## 22.7 Insolvency Proceedings

A case or other proceeding shall be commenced against a Material Subsidiary in any court of competent jurisdiction and such case or proceeding shall continue without dismissal or stay for a period of sixty (60) consecutive days, seeking:

- (a) relief under the federal bankruptcy laws or under other laws, domestic or foreign, relating to bankruptcy, insolvency, reorganisation, winding-up or adjustment of debts or analogous proceedings; or
- (b) the appointment of a trustee, receiver, custodian, liquidator or the like for a Material Subsidiary or for all or any substantial part of their respective assets, domestic or foreign,

or an order granting the relief requested in such case or proceeding (including, but not limited to, an order for relief under such federal bankruptcy laws or under other laws, domestic or foreign, relating to bankruptcy, insolvency, reorganisation, winding-up or adjustment of debts or analogous proceedings) shall be entered.

## **22.8 Creditors' Process**

Any attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of a Material Subsidiary having an aggregate value of US\$1,000,000 and is not discharged within twenty (20) Business Days or such longer period of time if such Material Subsidiary is contesting such process in good faith *provided that*, such process:

- (a) is in any event discharged within one hundred and eighty (180) days; and
- (b) does not have or could not reasonably be likely to have a Material Adverse Effect.

## **22.9 Unlawfulness and Invalidity**

- (a) It is or becomes unlawful for an Obligor, or any other member of the Group or the Thermo Group party to an Acceptable Intercreditor Agreement or the Intercreditor Agreement, to perform any of its obligations under the Transaction Documents or any Acceptable Intercreditor Agreement to which it is a party or any Lien created or expressed to be created or evidenced by a Security Document ceases to be effective or any subordination under the Intercreditor Agreement or any Acceptable Intercreditor Agreement is or becomes unlawful.
- (b) Any obligation or obligations of any Obligor under any Finance Document, or any other member of the Group or the Thermo Group under an Acceptable Intercreditor Agreement or the Intercreditor Agreement, are not or cease to be legal, valid, binding or enforceable and the cessation individually or cumulatively materially and adversely affects the interests of the Lenders under the Finance Documents or Acceptable Intercreditor Agreement.
- (c) Any Transaction Document is terminated or ceases to be in full force and effect or any Lien or subordination created under a Security Document, the Intercreditor Agreement or an Acceptable Intercreditor Agreement ceases to be legal, valid, binding, enforceable or effective or is alleged by a party to it (other than a Finance Party) to be ineffective.
- (d) No Event of Default under paragraphs (b) and (c) above will occur in respect of a Finance Document (other than this Agreement, the Intercreditor Agreement and an Acceptable Intercreditor Agreement) if the failure to comply is capable of remedy and is remedied within three (3) Business Days of the Agent giving notice to the Borrower or the Borrower becoming aware of the failure to comply.

## **22.10 Material Adverse Change**

Any event or circumstance occurs which the Majority Lenders reasonably believe has or is reasonably likely to have a Material Adverse Effect *provided that*, no Event of Default shall occur under this Clause 22.10 if such event or circumstance is capable of being remedied and is remedied to the satisfaction of the Agent within thirty (30) days of the Agent giving notice to

the Borrower or the Borrower the becoming aware of the occurrence of such event or circumstance.

#### **22.11 Repudiation and Rescission of Agreements**

An Obligor (or any other relevant party) rescinds or purports to rescind or repudiates or purports to repudiate a Transaction Document or evidences an intention to rescind or repudiate a Transaction Document, which has or is likely to have a Material Adverse Effect.

#### **22.12 Expropriation**

The authority or ability of a Material Subsidiary to conduct its business is limited or wholly or substantially curtailed by any seizure, expropriation, nationalisation, intervention, restriction or other action by or on behalf of any governmental, regulatory or other authority or other person in relation to any Material Subsidiary or any of its assets.

#### **22.13 Litigation**

- (a) Any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes are commenced, threatened or continued against any Material Subsidiary or its assets which has or is reasonably likely to have a Material Adverse Effect unless such action is frivolous or vexatious.
- (b) Any material contingent liability known to the Borrower and related to any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes exists (a “**Relevant Liability**”) and:
  - (i) the Relevant Liability is reduced to final judgment or settlement and declared to be payable by the Borrower; and
  - (ii) the payment of such Relevant Liability:
    - (A) is not contemplated in the then current Agreed Business Plan (other than any Permitted Supplier Indebtedness that is Permitted Vendor Indebtedness or amounts that might become due and that are approved by the Agent (acting on the instructions of the Majority Lenders)); and
    - (B) would result in a material adverse change to the cash flows of the Borrower, save where appropriate reserves have been allocated to the Relevant Liability.

#### **22.14 Audit Qualification**

The auditors of the Group qualify the audited annual consolidated financial statements of the Group in respect of the calendar year ending 31 December 2013 and all subsequent audited annual consolidated financial statements, to an extent that has or could reasonably be expected to have a Material Adverse Effect.

#### **22.15 ERISA Termination Event**



The occurrence of any of the following events:

- (a) any Obligor or any ERISA Affiliate fails to make full payment when due of all amounts which, under the provisions of any Pension Plan or Multiemployer Plan or Section 412 of the Code, or Section 302 of ERISA, such Obligor or ERISA Affiliate is required to pay as contributions thereto;
- (b) the Borrower or any ERISA Affiliate as an employer under one (1) or more Multiemployer Plans makes a complete or partial withdrawal from any such Multiemployer Plan and the plan sponsor of such Multiemployer Plan notifies such withdrawing employer that such employer has incurred a withdrawal liability requiring payments in an amount exceeding US\$2,500,000; or
- (c) any
  - (i) ERISA Termination Event;
  - (ii) Unfunded Pension Liability (taking into account only Pension Plans with positive Unfunded Pension Liabilities); or
  - (iii) potential withdrawal liability under Section 4201 of ERISA, if any Obligor or ERISA Affiliate were to withdraw completely from any and all Multiemployer Plans,

and the events described in paragraphs (c)(i), (ii) and (iii), either individually or in the aggregate, have resulted, or would be reasonably expected to result, in a material liability of any Obligor or any ERISA Affiliate.

#### **22.16 Environmental**

Any one (1) or more Environmental Claims shall have been asserted against the Borrower or any of its Subsidiaries; the Borrower or any of its Subsidiaries would be reasonably likely to incur liability as a result thereof; and such liability would be reasonably likely, individually or in the aggregate, to have a Material Adverse Effect.

#### **22.17 Debt Service Reserve Account**

At any time during the First Lien Facility Period the Debt Service Reserve Account is not fully funded with the DSRA Required Balance within five (5) Business Days of any drawdown of such Project Account.

#### **22.18 Post-Closing Covenants**

Any Obligor fails to deliver any document or other evidence listed in Part 2 (*Conditions Subsequent*) of Schedule 2 (*Conditions Precedent*) in form and substance satisfactory to the Agent within the time periods set out therein.

#### **22.19 Breach of Subordination Arrangements**

- (a) The Borrower breaches or repudiates any document relating to any notes issued by the Borrower (including the Convertible Notes), including, but not limited to, any subordination arrangements relating to such notes.

- (b) Any enforcement action is taken by any noteholder in violation of any subordination arrangement relating to any of the Convertible Notes (*but excluding* any action in which the Borrower diligently defends itself, each Finance Party and the subordination arrangement (as applicable) and which is dismissed within sixty (60) days or such longer period as the Agent may agree) or any noteholder obtains an adverse judgment by a court of relevant jurisdiction (whether or not subject to appeal) that has not been stayed as to the invalidity, unenforceability or other ineffectiveness of any subordination arrangement in respect of any of the Convertible Notes.
- (c) Any:
- (i) third party providing funds to the Group pursuant to an Equity Commitment;
  - (ii) party to an Acceptable Intercreditor Agreement (other than a Finance Party); or
  - (iii) other person providing Subordinated Indebtedness,
- in each case, breaches or repudiates any subordination agreement entered into by such third party.

#### 22.20 Equity Commitments

- (a) Any member of the Thermo Group (or any relevant third party) fails to make available to the Borrower the Equity Commitments when required at the times and in the manner contemplated by the First Global Deed of Amendment and Restatement, the First Thermo Group Undertaking Letter, the Second Global Amendment and Restatement Agreement, or the Second Thermo Group Undertaking Letter (as the case may be).
- (b) Any member of the Thermo Group (or any relevant third party) terminates, breaches (other than a breach referred to in paragraph (a) above) or repudiates any document evidencing any Equity Commitment, *provided that* no Event of Default shall occur under this paragraph (b):
- (i) in relation to any breach by a third party in circumstances where a member of the Thermo Group assumes such third party's obligations under such document within twenty (20) days and on no more onerous terms for the Borrower; or
  - (ii) once the Equity Commitment has been fulfilled.

#### 22.21 Convertible Notes

- (a) Other than as provided in paragraph (f) below, the Borrower or any Subsidiary makes a payment to or for the benefit of any holder of any of the Convertible Notes in cash (rather than equity) or the Borrower exercises the call right in respect of the 8% New Notes exercisable in December 2013 or in 2017, in each case, without the prior written consent of the Majority Lenders.
- (b) Any Subsidiary enters into or delivers to the holders of the 8% New Notes a guarantee in a manner or in circumstances inconsistent with the provisions of Clause 21.1 (*Limitations on Financial Indebtedness*).

- (c) [Reserved].
- (d) James Monroe III, Thermo, the Borrower, any Subsidiary Guarantor or any of their respective Affiliates (directly, indirectly or beneficially) exercises any put option with respect to the 8% New Notes.
- (e) Other than as provided in paragraph (f) below, any put option is exercised by the relevant noteholders under the 8% New Notes as a result of the occurrence of a “*Fundamental Change*” (as such term is defined in the Fourth Supplemental Indenture).
- (f) For the avoidance of doubt, paragraphs (a) and (e) do not relate to the put options in respect of the 8% New Notes which may be exercised in April 2018 or April 2023.

#### **22.22 Termination of Trading**

The occurrence of any “*Termination of Trading*” (as such term is defined in the Fourth Supplemental Indenture).

#### **22.23 Purchase Notice**

Any Purchase Notice is delivered by James Monroe III, Thermo, any Subsidiary Guarantor or any of their respective Affiliates pursuant to the terms of the Fourth Supplemental Indenture without any waiver of this provision from the Majority Lenders.

#### **22.24 Certification**

Any certification by an Obligor under, or as required by, any of the Finance Documents is incorrect in any material respect when delivered.

#### **22.25 [Reserved]**

#### **22.26 2021 Equity Issuance**

If:

- (a) by no later than 30 March 2021, the Borrower has not received new cash contributions pursuant to an Equity Issuance:
  - (i) in an amount at least equal to the 2021 Equity Raise Amount; and
  - (ii) the terms of which do not require a member of the Group to make a Shareholder Distribution prior to the Final Discharge Date, (the “**2021 Equity Issuance**”); and
- (b) on 30 March 2021, the Borrower has failed to demonstrate to the Agent satisfaction of Clause 19.2(a)(*Minimum Liquidity*).

#### **22.27 Thermo Loan Agreement**

Any failure to convert all amounts outstanding under the Thermo Loan Agreement into Capital Stock consisting of common shares of the Borrower by 30 June 2022.

## **23. Remedies Upon an Event of Default**

### **23.1 Acceleration**

On and at any time after the occurrence of an Event of Default (other than an Event of Default as set out in 22.6(a), (b), (c), (d), (f) and (g) (*Insolvency*) and 22.7(a) (*Insolvency Proceedings*)) which is continuing, the Agent may, and it shall if so directed by the Majority Lenders:

- (a) by notice to the Borrower:
  - (i) cancel the Total Commitments whereupon they shall immediately be cancelled and no further Utilisations shall be requested or made under the Facility; and/or
  - (ii) declare that all or part of the Loans, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon the same shall become immediately due and payable; and/or
  - (iii) declare that all or part of the Loans are payable on demand, whereupon they shall become immediately due and payable; and/or
- (b) without notice to the Borrower:
  - (i) exercise or direct the Security Agent to exercise any or all of its rights, remedies, powers or discretions under the Finance Documents; and/or
  - (ii) exercise all other contractual and legal rights of the Finance Parties in respect of any Liens; and/or
  - (iii) take any other action and pursue any other remedies available under Applicable Law or under the Finance Documents.

### **23.2 Automatic Acceleration**

Following the occurrence of an Event of Default as set out in Clauses 22.6(a), (b), (c), (d), (f) and (g) (*Insolvency*), 22.7(a) (*Insolvency Proceedings*) or upon the occurrence of a Change of Control, the obligations of the Borrower shall be automatically accelerated without any requirement for notice from the Finance Parties whereupon:

- (a) the Total Commitments shall be immediately cancelled and no further Utilisations shall be requested or made under the Facility;
- (b) the Loans, together with accrued interest and all other amounts accrued and outstanding under the Finance Documents shall become immediately due and payable;
- (c) the Security Agent shall be entitled to exercise any or all of its right, remedies, powers or discretions under the Finance Documents;
- (d) the Finance Parties shall be entitled to exercise all other contractual and legal rights of the Finance Parties in respect of any Liens; and

- (e) the Finance Parties shall be entitled to take any other actions and pursue any other remedies available under Applicable Law or under the Finance Documents.

## 24. Security

Unless expressly provided to the contrary, the Security Agent holds any security created by a Security Document for the Finance Parties on the terms set out in Schedule 6 (*The Security Agent*).

## 25. Changes to the Lenders

### 25.1 Assignments and Transfers by the Lenders

Subject to this Clause 25 (*Changes to the Lenders*), a Lender (the “**Existing Lender**”) shall be entitled to assign any of its rights or transfer any of its rights and obligations under the Finance Documents to any person (the “**New Lender**”) with the prior written consent of the Borrower (such consent not to be unreasonably withheld or delayed in excess of five (5) Business Days commencing on the day upon which the Existing Lender requests such consent, after which such consent shall be deemed to have been given); *provided that*, no such consent is required for an assignment or transfer:

- (a) required by any Applicable Law;
- (b) to a Qualifying Lender or to an existing Lender (or any of its Affiliates);
- (c) to an Affiliate or other group member of that Lender;
- (d) to a trust, a special purpose securitisation vehicle or any other entity as part of a securitisation or covered bond transaction;
- (e) to a fund, financial institution or insurance company which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets; or
- (f) while a Default is continuing.

### 25.2 Conditions of Assignment or Transfer

- (a) The consent of the Borrower to an assignment must not be withheld solely because the assignment or transfer may result in an increase to the Mandatory Cost.
- (b) An assignment will only be effective on:
  - (i) receipt by the Agent of an Assignment Agreement confirming that the New Lender will assume the same obligations to the other Finance Parties as it would have been under if it was an Original Lender;
  - (ii) performance by the Agent of all necessary “*know your customer*” or other similar checks under all applicable laws and regulations in relation to such assignment

to a New Lender, the completion of which the Agent shall promptly notify to the Existing Lender and the New Lender;

- (iii) when the Agent updates the Register (as defined in Clause 25.8 (*Register*) below) in accordance with the provisions of Clause 25.8 (*Register*) below; and
  - (iv) the New Lender entering into documentation required for it to accede as a party to the Intercreditor Agreement; and
- (c) A transfer will only be effective if the New Lender enters into the documentation required for it to accede as a party to the Intercreditor Agreement and if the procedure set out in Clause 25.5 (*Procedure for Transfer or Assignment*) is complied with.
- (d) If:
- (i) a Lender assigns or transfers any of its rights or obligations under the Finance Documents or changes its Facility Office; and
  - (ii) as a result of circumstances existing at the date the assignment, transfer or change occurs, an Obligor would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause 12 (*Tax gross-up and Indemnities*) or Clause 13 (*Increased Costs*),

then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under those Clauses to the same extent as the Existing Lender or Lender acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred.

- (e) Each New Lender, by executing the relevant Transfer Certificate or Assignment Agreement, confirms, for the avoidance of doubt, that the Agent has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the transfer or assignment becomes effective in accordance with this Agreement and that it is bound by that decision to the same extent as the Existing Lender would have been had it remained a Lender.

### **25.3 Assignment or Transfer Fee**

The New Lender shall, on the date upon which an assignment or transfer takes effect, pay to the Agent (for its own account) a fee of US\$2,000.

### **25.4 Limitation of Responsibility of Existing Lenders**

- (a) Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:
- (i) the legality, validity, effectiveness, adequacy or enforceability of the Finance Documents or any other documents;
  - (ii) the financial condition of the Borrower or the status of the Project;

- (iii) the performance and observance by the Borrower of its obligations under the Finance Documents or any other documents; or
- (iv) the accuracy of any statements (whether written or oral) made in or in connection with any Finance Document or any other document,

and any representations or warranties implied by law are excluded.

(b) Each New Lender confirms to the Existing Lender and the other Finance Parties that it:

- (i) has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Obligor and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender in connection with any Finance Document; and
- (ii) will continue to make its own independent appraisal of the creditworthiness of each Obligor and its related entities whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.

(c) Nothing in any Finance Document obliges an Existing Lender to:

- (i) accept a re-transfer or reassignment from a New Lender of any of the rights and obligations assigned or transferred under this Clause 25 (*Changes to the Lenders*); or
- (ii) support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by any Obligor of its obligations under the Finance Documents or otherwise.

## 25.5 Procedure for Transfer or Assignment

(a) In respect of any transfer:

- (i) subject to the conditions set out in Clause 25.2 (*Conditions of Assignment or Transfer*) a transfer is effected in accordance with paragraph (iii) below when the Agent executes an otherwise duly completed Transfer Certificate delivered to it by the Existing Lender and the New Lender and updates the Register (as defined in Clause 25.8 (*Register*) below) in accordance with the provisions of Clause 25.8 (*Register*) below. The Agent shall, subject to paragraph (ii) below, as soon as reasonably practicable after receipt by it of a duly completed Transfer Certificate appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Transfer Certificate
- (ii) The Agent shall only be obliged to execute a Transfer Certificate delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary “*know your customer*” or other similar checks under all applicable laws and regulations in relation to the transfer to such New Lender.
- (iii) On the Transfer Date:

- (A) to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by novation its rights and obligations under the Finance Documents each of the Obligors and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and their respective rights against one another under the Finance Documents shall be cancelled (being the “**Discharged Rights and Obligations**”);
  - (B) the Borrower and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as that Obligor and the New Lender have assumed and/or acquired the same in place of that Obligor and the Existing Lender;
  - (C) the Agent, the Security Agent, the New Lender and other Lenders shall acquire the same rights and assume the same obligations between themselves as they would have acquired and assumed had the New Lender been an Original Lender with the rights and/or obligations acquired or assumed by it as a result of the transfer and to that extent the Agent, the Security Agent and the Existing Lender shall each be released from further obligations to each other under the Finance Documents; and
  - (D) the New Lender shall become a Party as a “Lender”.
- (iv) For the avoidance of doubt, for the purposes of *article 1278* of the French Civil Code and only in relation to the Borrower Pledge of Bank Accounts, the Borrower Additional Pledge of Bank Accounts and the Holding Account Pledge Agreement it is expressly agreed that the Pledge of Bank Accounts shall be preserved for the benefit of the New Lender and all other Finance Parties.
- (b) In respect of any assignment:
- (i) subject to the conditions set out in Clause 25.2 (*Conditions of Assignment or Transfer*) an assignment may be effected in accordance with paragraph (iii) below when the Agent executes an otherwise duly completed Assignment Agreement delivered to it by the Existing Lender and the New Lender. The Agent shall, subject to paragraph (ii) below, as soon as reasonably practicable after receipt by it of a duly completed Assignment Agreement appearing on its face to comply with the terms of this Agreement and delivered in accordance with the terms of this Agreement, execute that Assignment Agreement.
  - (ii) The Agent shall only be obliged to execute an Assignment Agreement delivered to it by the Existing Lender and the New Lender once it is satisfied it has complied with all necessary “*know your customer*” or other similar checks under all applicable laws and regulations in relation to the assignment to such New Lender.
  - (iii) On the Transfer Date:



- (A) the Existing Lender will assign absolutely to the New Lender the rights under the Finance Documents expressed to be the subject of the assignment in the Assignment Agreement;
  - (B) the Existing Lender will be released by each Obligor and the other Finance Parties from the obligations owed by it (the “**Relevant Obligations**”) and expressed to be the subject of the release in the Assignment Agreement; and
  - (C) the New Lender shall become a Party as a “*Lender*” and will be bound by obligations equivalent to the Relevant Obligations.
- (iv) Lenders may utilise procedures other than those set out in this Clause 25.5 to assign their rights under the Finance Documents (but not, without the consent of the relevant Obligor or unless in accordance with this Clause 25.5, to obtain a release by that Obligor from the obligations owed to that Obligor by the Lenders nor the assumption of equivalent obligations by a New Lender) *provided that* they comply with the conditions set out in Clause 25.2 (*Conditions of Assignment or Transfer*).

#### **25.6 Copy of Transfer Certificate or Assignment Agreement to Borrower**

The Agent shall, as soon as reasonably practicable after it has executed a Transfer Certificate or an Assignment Agreement, send to the Borrower a copy of that Transfer Certificate or Assignment Agreement.

#### **25.7 Disclosure of Information**

Any Lender may disclose to any of its Affiliates and any other person:

- (a) to (or through) whom that Lender assigns or transfers (or may potentially assign or transfer) all or any of its rights and obligations under this Agreement;
- (b) with (or through) whom that Lender enters into (or may potentially enter into) any sub-participation in relation to, or any other transaction under which payments are to be made by reference to, this Agreement or any Obligor; or
- (c) to whom, and to the extent that, information is required to be disclosed by any Applicable Law or regulation,

any information about the Borrower, the Thermo Group, the Group and the Finance Documents as that Lender shall consider appropriate if, in relation to paragraphs (a) and (b) above, the person to whom the information is to be given has entered into a Confidentiality Undertaking.

#### **25.8 Register**

- (a) The Borrower hereby designates the Agent, and the Agent agrees, to serve as the Borrower’s agent, solely for purposes of this Clause 25.8, to maintain a register (the “**Register**”) on which it will record the Commitments from time to time of each of the Lenders and each repayment in respect of the principal amount of the Loans of each Lender.

- (b) Failure to make any such recordation, or any error in such recordation shall not affect the Borrower's obligations in respect of such Loans.
- (c) With respect to any Lender, the transfer or assignment of the Commitments of such Lender and the rights to the principal of, and interest on, any Loan made pursuant to such Commitments shall not be effective until:
  - (i) the Transfer Certificate has been executed by the Agent; and
  - (ii) such transfer is recorded on the Register maintained by the Agent with respect to ownership of such Commitments and Loans. Prior to such recordation all amounts owing to the transferor with respect to such Commitments and Loans shall remain owing to the transferor.
- (d) The registration of an assignment or transfer of all or part of any Commitments and Loans shall be recorded by the Agent on the Register only upon the acceptance by the Agent of a properly executed and delivered Transfer Certificate pursuant to this Clause 25.8.
- (e) The Borrower agrees to indemnify the Agent from and against any and all losses, claims, damages and liabilities of whatsoever nature which may be imposed upon, asserted against or incurred by the Agent in performing its duties under this Clause 25.8 except to the extent resulting from the gross negligence or wilful misconduct of the Agent (as determined by a court of competent jurisdiction in a final and non-appealable decision).

#### **25.9 Liens over Lenders' rights**

- (a) In addition to the other rights provided to Lenders under this Clause 25 (*Changes to the Lenders*), each Lender may without consulting with or obtaining consent from the Borrower or the other Lenders, at any time charge, assign or otherwise create a Lien in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of that Lender including, without limitation:
  - (i) any charge, assignment or other Lien (including pursuant to Article L 211-38 et seq. of the French monetary and financial code and pursuant to the European Financial Collateral Directive) to secure obligations to a federal reserve or central bank, or to an Affiliate of a Lender or a special purpose vehicle or any entity set up in connection with a dedicated refinancing scheme for buyer credits in the country of any Lender or in connection with covered bonds programs or to a fund, financial institution or insurance company providing funds dedicated to export credits; and
  - (ii) in the case of any Lender which is a fund, any charge, assignment or other Lien granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by that Lender as security for those obligations or securities,

except that no such charge, assignment or Lien shall:

- (A) release a Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant charge, assignment or Lien for the Lender as a party to any of the Finance Documents; or
  - (B) require any payments to be made by the Borrower or grant to any person any more extensive rights than those required to be made or granted to the relevant Lender under the Finance Documents; *provided that*, this sub-Clause (ii) would not be applicable to any Borrower's grossing-up obligation arising whenever an Affiliate of a Lender which would be a "*société de crédit foncier*" would become a Lender further to the implementation of a security interest granted in or over all or any rights of such Lender under any Finance Document in favour of such Affiliate.
- (b) The Borrower undertakes to comply with all necessary formalities, if any, and take all necessary steps in order for the assignment, charge or Lien over the relevant Lender's rights to be created

#### 25.10 Right of First Refusal

- (a) If a Prospective Transferor seeks to assign all or a portion of its Loans (such Loans to be assigned by the Prospective Transferor, the "**Prospective Transferred Loans**"), to a Prospective Transferee in connection with any Proposed Loan Transfer, each other Lender shall have a Right of First Refusal to purchase all of the Prospective Transferred Loans that such Prospective Transferor may propose to transfer to a Prospective Transferee in a Proposed Loan Transfer, at the same price and on the same terms and conditions as those offered to the Prospective Transferee, subject to the terms set forth below, *provided that*, if more than one Lender exercises its Right of First Refusal, each such exercising Lender shall have the right to acquire an amount of the Prospective Transferred Loans in accordance with such Lender's then-existing pro rata share of the Loans held by all such exercising Lenders (or in such other amount as otherwise may be agreed by the Lenders eligible to purchase such Loans at such time of proposed assignment).
- (b) Each Prospective Transferor seeking to consummate a Proposed Loan Transfer shall deliver to each Lender written notice of the Proposed Loan Transfer not less than twenty (20) days prior to the scheduled consummation of the Proposed Loan Transfer. Such notice shall include the terms and conditions (including, but not limited to, price and form of consideration and amount and type of the Prospective Transferred Loans) of the Proposed Loan Transfer, the identity of the Prospective Transferee and the intended date of the Proposed Loan Transfer.
- (c) To exercise its Right of First Refusal, a Lender must deliver written notice to the selling Prospective Transferor within ten (10) days after such Lender's receipt of the Proposed Assignment Notice confirming its exercise of its Right of First Refusal, on the same terms and conditions as those set forth in the Proposed Loan Transfer. The closing of the purchase of the Prospective Transferred Loans by the applicable Lender or Lenders

shall take place, and all payments related thereto shall have been delivered to the selling Prospective Transferor, by the later of (i) the date specified in the Proposed Assignment Notice as the intended date of the Proposed Loan Transfer and (ii) thirty (30) days after delivery of the Proposed Assignment Notice in accordance with clause (b) above.

## **26. Changes to the Borrower**

The Borrower may not assign any of its rights or transfer any of its rights or obligations under the Finance Documents.

## **27. Role of the Agent and the Security Agent**

### **27.1 Appointment of the Agent and the Security Agent**

- (a) Each other Finance Party (other than the Security Agent) appoints the Agent to act as its agent under and in connection with the Finance Documents.
- (b) Each other Finance Party (other than the Agent) appoints the Security Agent:
  - (i) to act as its security agent and security trustee under and in connection with the Finance Documents and
  - (ii) to enforce any Security expressed to be created under the Security Documents as agent (or as otherwise provided) on its behalf, subject always to the terms of the Finance Documents.
- (c) Each other Finance Party authorises the Agent and the Security Agent to exercise the rights, powers, authorities and discretions specifically given to the Agent and the Security Agent under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.
- (d) The Security Agent declares that it holds the Security Property on trust for the Secured Parties on the terms contained in this Agreement.

### **27.2 Appointment of the Security Agent (France)**

- (a) Each Finance Party (other than the Security Agent) as “*mandants*” under French law irrevocably:
  - (i) appoints the Security Agent to act as agent (*mandataire*) pursuant to article 1984 of the French *Code Civil* for the purpose of executing any French Security Documents in its name, including, if required, the appointment of a custodian which shall hold assets on its behalf in custody under any French Security Documents, and the Security Agent accepts such appointment;
  - (ii) confirms its approval of the French Security Documents creating or expressed to create a Lien benefiting it and any Lien created or to be created pursuant thereto; and

- (iii) irrevocably authorises, empowers and directs the Security Agent (by itself or by such person as it may nominate) on its behalf, to perform the duties and to exercise the rights, powers and discretions that are specifically delegated to it under or in connection with the French Security Documents, to take any action and exercise any right, power, authorities and discretion upon the terms and conditions set out in this Agreement under or in connection with the French Security Documents, in each case, together with any other rights, powers and discretions which are incidental thereto, it being understood that each Finance Party (other than the Security Agent) shall issue special powers of attorneys in all cases where the exercise of powers granted under this Agreement requires the issuance of any such special powers of attorney, and the Security Agent accepts such appointment.
- (b) The Security Agent will act solely for itself and as agent for the other Finance Parties in carrying out its functions as agent under the French Security Documents.
- (c) The Security Agent shall not have, nor be deemed to have, assumed any obligations to, or trust or fiduciary relationship with, any party to this Agreement other than those for which specific provision is made by the French Security Documents and, to the extent permissible under French law, the other provisions of this Agreement, which shall be deemed to be incorporated in this Clause 27.2, where reference is made to the French Security Documents.
- (d) Notwithstanding Clause 38 (*Governing Law*), this Clause 27.2 shall be governed by, and construed in accordance with, French law. Notwithstanding Clause 39.1 (*Jurisdiction*), any dispute arising out of this Clause 27.2 shall be submitted to the *Tribunal de Commerce de Paris*.
- (e) Each Finance Party, the Security Agent and the Borrower irrevocably acknowledge that the existence and extent of the Security Agent's authority resulting from this Clause 27.2 and the effects of the Security Agent's exercise of this authority shall be governed by French law.

### **27.3 Duties of the Agent and the Security Agent**

- (a) Each of the Agent and the Security Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Agent or the Security Agent for that Party by any other Party.
- (b) Without prejudice to Clause 25.6(*Copy of Transfer Certificate or Assignment Agreement to Borrower*), paragraph (a) shall not apply to any Transfer Certificate or to any Assignment Agreement.
- (c) Except where a Finance Document specifically provides otherwise, neither the Agent nor the Security Agent is obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (d) If the Agent or the Security Agent receives notice from a Party referring to this Agreement, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the Finance Parties.

- (e) If the Agent is aware of the non-payment of any principal, interest, commitment fee or other fee payable to a Finance Party (other than the Agent or the Security Agent) under this Agreement it shall promptly notify the other Finance Parties.
- (f) The Agent's and the Security Agent's duties under the Finance Documents are solely mechanical and administrative in nature.
- (g) The Agent and the Security Agent shall only have those duties, obligations and responsibilities specified in the Finance Documents to which it is expressed to be a party (and no other shall be implied).

#### **27.4 No Fiduciary Duties**

- (a) Nothing in this Agreement constitutes the Agent or the Security Agent (except as expressly provided in the Finance Documents) as a trustee or fiduciary of any other person.
- (b) Neither the Agent nor the Security Agent (except as expressly provided in the Finance Documents) shall be bound to account to any Lender for any sum or the profit element of any sum received by it for its own account.

#### **27.5 Business with the Group**

The Agent and the Security Agent may accept deposits from, lend money to and generally engage in any kind of banking or other business with any member of the Group.

#### **27.6 Rights and Discretions of the Agent and the Security Agent**

- (a) Each of the Agent and the Security Agent may rely on:
  - (i) any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
  - (ii) any statement made by a director, authorised signatory or employee of any person regarding any matters which may reasonably be assumed to be within his knowledge or within his power to verify;
  - (iii) assume that:
    - (A) any instructions received by it from the Majority Lenders, any Lenders or any group of Lenders are duly given in accordance with the terms of the Finance Documents; and
    - (B) unless it has received notice of revocation, that those instructions have not been revoked; and
  - (iv) rely on a certificate from any person:
    - (A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
    - (B) to the effect that such person approves of any particular dealing, transaction, step, action or thing,

as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.

- (b) Each of the Agent and the Security Agent may assume (unless it has received notice to the contrary in its capacity as agent for the Lenders) that:
  - (i) no Default has occurred (unless it has actual knowledge of a Default arising under Clause 22.1 (*Non-Payment*));
  - (ii) any right, power, authority or discretion vested in any Party or the Majority Lenders has not been exercised; and
  - (iii) any notice or request made by the Borrower (other than a Utilisation Request) is made on behalf of and with the consent and knowledge of the Borrower.
- (c) Each of the Agent and the Security Agent may engage, pay for and rely on the advice or services of any lawyers, accountants, tax advisors, surveyors or other professional advisors or experts.
- (d) Without prejudice to the generality of paragraph (c) above or paragraph (e) below, the Agent or Security Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Agent or Security Agent (and so separate from any lawyers instructed by the Lenders) if the Agent or Security Agent in its reasonable opinion deems this to be necessary.
- (e) The Agent or Security Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Agent or Security Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
- (f) Each of the Agent and the Security Agent may act in relation to the Finance Documents through its personnel and agents and shall not:
  - (i) be liable for any error of judgment made by any such person; or
  - (ii) be bound to supervise, or be in any way responsible for, any loss incurred by reason of misconduct, omission or default on the part of any such person,unless such error or such loss was directly caused by the Agent or the Security Agent's (as applicable) gross negligence or wilful misconduct.
- (g) Each of the Agent and the Security Agent may disclose to any other Party any information it reasonably believes it has received as agent under this Agreement.
- (h) Notwithstanding any other provision of any Finance Document to the contrary, none of the Agent nor the Security Agent is obliged to do or omit to do anything if it would or might in its reasonable opinion constitute a breach of any law, regulation or a breach of a fiduciary duty or duty of confidentiality.
- (i) Notwithstanding any provision of any Finance Document to the contrary, neither the Agent or the Security Agent is obliged to expend or risk its own funds or otherwise incur

any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

- (j) Save as expressly otherwise provided in any Finance Document, the Security Agent may exercise its trusts, powers and authorities under the Finance Documents in its absolute and unconditional discretion.

## **27.7 Majority Lenders' Instructions**

- (a) Unless a contrary indication appears in a Finance Document, each of the Agent and the Security Agent shall:
  - (i) exercise any right, power, authority or discretion vested in it in accordance with any instructions given to it by the Majority Lenders (or, if so instructed by the Majority Lenders, refrain from exercising any right, power, authority or discretion vested in it); and
  - (ii) not be liable for any act (or omission) if it acts (or refrains from taking any action) in accordance with an instruction of the Majority Lenders.
- (b) Save in the case of decisions stipulated to be a matter for any other Lender or group of Lenders under the relevant Finance Document and unless a contrary indication appears in a Finance Document, any instructions given to the Agent by the Majority Lenders shall override any conflicting instructions given by any other Parties and will be binding on all the Finance Parties, save for the Security Agent.
- (c) Each of the Agent and the Security Agent may refrain from acting in accordance with the instructions of the Majority Lenders (or, if appropriate, the Lenders) until it has received such indemnification and/or security as it may in its sole discretion require for any cost, loss or liability (together with any associated VAT) (and which may include payment in advance), which it may incur in complying with those instructions.
- (d) In the absence of instructions from the Majority Lenders, (or, if appropriate, the Lenders) each of the Agent and the Security Agent may act (or refrain from taking action) as it considers to be in the best interest of the Lenders.
- (e) Each of the Agent and the Security Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority Lenders (or, if the relevant Finance Document stipulates the matter is a decision for any other Lender or group of Lenders, from that Lender or group of Lenders) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Agent and the Security Agent may refrain from acting unless and until it receives any such instructions or clarification that it has requested.
- (f) Neither the Agent nor the Security Agent is authorised to act on behalf of a Lender (without first obtaining that Lender's consent) in any legal or arbitration proceedings relating to any Finance Document. This paragraph (f) shall not apply to any legal or arbitration proceeding relating to the perfection, preservation or protection of rights



under the Security Documents or enforcement of the security interests or the Security Documents.

- (g) The Security Agent may assume (unless it has received notice to the contrary in its capacity as Security Agent) that all instructions given to it by the Agent, if required to be approved by the Majority Lenders, have been so approved.

## **27.8 Responsibility for Documentation**

Neither the Agent nor the Security Agent:

- (a) is responsible or liable for the adequacy, accuracy and/or completeness of any information (whether oral or written) supplied by the Agent, the Security Agent, the Borrower or any other person given in or in connection with any Finance Document or the transactions contemplated in the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; or
- (b) is responsible for the legality, validity, effectiveness, adequacy or enforceability of any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of or in connection with any Finance Document.

## **27.9 No Duty to Monitor**

Neither the Agent nor the Security Agent shall be bound to enquire:

- (a) whether or not any Default has occurred;
- (b) as to the performance, default or any breach by any Party of its obligations under any Finance Document; or
- (c) whether any other event specified in any Finance Document has occurred.

## **27.10 Exclusion of Liability**

- (a) Without limiting paragraph (b) below, neither the Agent nor the Security Agent will be liable (including, without limitation, for negligence or any other category of liability whatsoever) for:
  - (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Finance Document, unless directly caused by its gross negligence or wilful misconduct;
  - (ii) exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Finance Document; or
  - (iii) without prejudice to the generality of paragraphs (i) and (ii) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of:

- (A) any act, event or circumstance not reasonably within its control; or
- (B) the general risks of investment in, or the holding of assets in, any jurisdiction,

including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets (including any Disruption Event); breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.

- (b) No Party (other than the Agent or the Security Agent) may take any proceedings against any officer, employee or agent of the Agent or the Security Agent in respect of any claim it might have against the Agent or the Security Agent or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document and any officer, employee or agent of the Agent or the Security Agent may rely on this Clause 27.10 subject to Clause 1.5 (*Third Party Rights*) and the provisions of the Third Parties Act.
- (c) Neither the Agent nor the Security Agent will be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by it if it has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by it for that purpose.
- (d) Nothing in this Agreement shall oblige the Agent or the Security Agent to carry out:
  - (i) any “*know your customer*” or other checks in relation to any person on behalf of any Lender; or
  - (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Lender, andeach Lender confirms to the Agent and the Security Agent that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Agent and the Security Agent.
- (e) Without prejudice to any provision of any Finance Document excluding or limiting the Agent’s or the Security Agent’s liability, any liability of the Agent or the Security Agent arising under or in connection with any Finance Document shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered (as determined by reference to the date of default of the Agent or the Security Agent (as applicable) or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Agent or the Security Agent (as applicable) at any time which increase the amount of that loss. In no event shall the Agent or the Security Agent be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect

or consequential damages, whether or not the Agent or the Security Agent (as applicable) has been advised of the possibility of such loss or damages.

#### **27.11 Lenders' Indemnity to the Agent and the Security Agent**

Each Lender shall (in proportion to its share of the Total Commitments or, if the Total Commitments are then zero, to its share of the Total Commitments immediately prior to their reduction to zero) indemnify each of the Agent and the Security Agent, within three (3) Business Days of demand, against any cost, loss or liability (including, without limitation, for negligence or any other category of liability whatsoever) incurred by the Agent and the Security Agent (otherwise than by reason of its gross negligence or wilful misconduct) notwithstanding its negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent or the Security Agent in acting as Agent or the Security Agent under the Finance Documents (unless the Agent or the Security Agent has been reimbursed by the Borrower pursuant to a Finance Document).

#### **27.12 Resignation of the Agent and the Security Agent**

- (a) Each of the Agent and the Security Agent may resign and appoint one of its Affiliates as successor by giving notice to the other Finance Parties and the Borrower.
- (b) Alternatively each of the Agent and the Security Agent may resign by giving notice to the other Finance Parties and the Borrower, in which case the Majority Lenders (after consultation with the Borrower) may appoint a successor Agent or Security Agent (as the case may be).
- (c) If the Majority Lenders have not appointed a successor Agent or Security Agent in accordance with Clause 27.12(b) within thirty (30) days after notice of resignation was given, the Agent or the Security Agent (after consultation with the Borrower) may appoint a successor Agent or Security Agent.
- (d) If the Agent or Security Agent wishes to resign because (acting reasonably) it has concluded that it is no longer appropriate for it to remain as agent and the Agent or Security Agent (as applicable) is entitled to appoint a successor under paragraph (c) above, the Agent or Security Agent (applicable) may (if it concludes (acting reasonably) that it is necessary to do so in order to persuade the proposed successor Agent or Security Agent to become a party to this Agreement) agree with the proposed successor Agent or Security Agent (as applicable) amendments to this Clause 27 consistent with then current market practice for the appointment and protection of corporate trustees together with any reasonable amendments to the agency fees payable under this Agreement which are consistent with the successor Agent's or Security Agent's (as applicable) normal fee rates and those amendments will bind the Parties.
- (e) The retiring Agent or Security Agent shall, at its own cost, make available to its successor such documents and records and provide such assistance as its successor may reasonably request for the purposes of performing its functions as Agent or Security Agent under the Finance Documents.
- (f) The Agent's resignation notice shall only take effect upon the appointment of a successor.

- (g) The Security Agent's resignation notice shall only take effect upon:
- (i) the appointment of a successor; and
  - (ii) the transfer of all of any Lien expressed to be created under the Security Documents to that successor.
- (h) Upon the appointment of a successor, the retiring Agent or Security Agent shall be discharged from any further obligation in respect of the Finance Documents but shall remain entitled to the benefit of Clause 14.3 (*Indemnity to the Agent*), Clause 14.4 (*Indemnity to the Security Agent*) and this Clause 27.12 (and any agency fees for the account of the retiring Agent or Security Agent (as applicable) shall cease to accrue from (and shall be payable on) that date). Its successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.
- (i) After consultation with the Borrower, the Majority Lenders may, by notice to the Agent or the Security Agent (as the case may be), require it to resign in accordance with Clause 27.12(a). In this event, the Agent or the Security Agent (as the case may be) shall resign in accordance with Clause 27.12(a).
- (j) The Agent shall resign in accordance with paragraph (b) above (and, to the extent applicable, shall use reasonable endeavours to appoint a successor Agent pursuant to paragraph (c) above) if on or after the date which is three (3) months before the earliest FATCA Application Date relating to any payment to the Agent under the Finance Documents:
- (i) the Agent fails to respond to a request under Clause 12.7 (*FATCA Information*) and a Lender reasonably believes that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date;
  - (ii) the information supplied by the Agent pursuant to Clause 12.7 (*FATCA Information*) indicates that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date; or
  - (iii) the Agent notifies the Borrower and the Lenders that the Agent will not be (or will have ceased to be) a FATCA Exempt Party on or after that FATCA Application Date,

and, in each case, a Lender reasonably believes that a Party will be required to make a FATCA Deduction that would not be required if the Agent were a FATCA Exempt Party, and that Lender, by written notice to the Agent, requires it to resign.

### **27.13 Confidentiality**

- (a) In acting as agent for the Finance Parties, each of the Agent and the Security Agent shall be regarded as acting through its agency division which shall be treated as a separate entity from any other of its divisions or departments.

- (b) If information is received by another division or department of the Agent or the Security Agent, it may be treated as confidential to that division or department and neither the Agent nor the Security Agent shall be deemed to have notice of it.

#### **27.14 Relationship with the Lenders**

The Agent may treat each Lender as a Lender, entitled to payments under this Agreement and acting through its Facility Office unless it has received not less than five (5) Business Days prior notice from that Lender to the contrary in accordance with the terms of this Agreement.

#### **27.15 Credit Appraisal by the Lenders**

Without affecting the responsibility of the Borrower for information supplied by it or on its behalf in connection with any Finance Document, each Lender confirms to the Agent and the Security Agent that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Finance Document including but not limited to:

- (a) the financial condition, status and nature of the Group;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document;
- (c) whether that Lender has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document; and
- (d) the adequacy, accuracy and/or completeness of any information provided by the Agent, the Security Agent, any Party or by any other person under or in connection with any Finance Document, the transactions contemplated by the Finance Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Finance Document.

#### **27.16 Agent's and Security Agent's Management Time**

Any amounts payable to the Agent or the Security Agent (as the case may be) under Clause 14.3 (*Indemnity to the Agent*), Clause 14.4 (*Indemnity to the Security Agent*) and Clause 16 (*Costs and Expenses*) shall include the cost of utilising the Agent's or the Security Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Agent or the Security Agent may notify to the Borrower and the Lenders and is in addition to any fee paid or payable to the Agent and the Security Agent under Clause 11 (*Agency Fees*).

#### **27.17 Deduction from Amounts Payable by the Agent and the Security Agent**

If any Party owes an amount to the Agent or the Security Agent under the Finance Documents, the Agent or the Security Agent (as the case may be) may, after giving notice to that Party and *provided that* this will not result in breach of any applicable currency control regulations by the

Borrower, deduct an amount not exceeding that amount from any payment to that Party which the Agent or the Security Agent would otherwise be obliged to make under the Finance Documents and apply the amount deducted in or towards satisfaction of the amount owed. For the purposes of the Finance Documents, that Party shall be regarded as having received any amount so deducted.

#### **27.18 Security Agent**

- (a) The provisions of Schedule 6 (*The Security Agent*) shall bind each Party.
- (b) The Security Agent shall promptly transfer to the Agent any amounts received by it under the Finance Documents for application by the Agent in accordance with the order set out in Clause 30.6 (*Partial Payments*). The Security Agent shall be obliged to make such transfer only to the extent it has actually received such amount.
- (c) At the request of the Security Agent, the Agent shall notify the Security Agent, and shall provide a copy of such notification to the Borrower, of amounts due to any Party under this Agreement, and the due date for such amounts. The Security Agent may accept such notifications as conclusive evidence of the matters to which they relate.

#### **27.19 No Independent Power**

- (a) The Lenders shall not have any independent power to enforce, or have recourse to, any of the Liens expressed to be created under the Security Documents, or to exercise any rights or powers arising under the Security Documents except through the Security Agent.
- (b) This Clause 27.19 is for the benefit of the Finance Parties only.

### **28. Conduct of Business by the Finance Parties**

No provision of this Agreement will:

- (a) interfere with the right of any Finance Party to arrange its affairs (Tax or otherwise) in whatever manner it thinks fit;
- (b) oblige any Finance Party to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or
- (c) oblige any Finance Party to disclose any information relating to its affairs (Tax or otherwise) or any computations in respect of Tax.

### **29. Sharing among the Finance Parties**

#### **29.1 Payments to Finance Parties**

If a Finance Party (a “**Recovering Finance Party**”) receives or recovers any amount from an Obligor other than in accordance with Clause 30 (*Payment Mechanics*) and applies that amount to a payment due under the Finance Documents then:

- (a) the Recovering Finance Party shall, within three (3) Business Days, notify details of the receipt or recovery, to the Agent;
- (b) the Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Agent and distributed in accordance with Clause 30 (*Payment Mechanics*), without taking account of any Tax which would be imposed on the Agent in relation to the receipt, recovery or distribution; and
- (c) the Recovering Finance Party shall, within three (3) Business Days of demand by the Agent, pay to the Agent an amount (the “**Sharing Payment**”) equal to such receipt or recovery less any amount which the Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with Clause 30.6 (*Partial Payments*).

## 29.2 Redistribution of Payments

The Agent shall treat the Sharing Payment as if it had been paid by the relevant Obligor and distribute it between the Finance Parties (other than the Recovering Finance Party) (the “**Sharing Finance Parties**”) in accordance with Clause 30.6 (*Partial Payments*) towards the obligations of that Obligor to the Sharing Finance Parties.

## 29.3 Recovering Finance Party’s Rights

On a distribution by the Agent under Clause 29.2 (*Redistribution of Payments*), of a payment received by a Recovering Finance Party from an Obligor, as between the relevant Obligor and the Recovering Finance Party, an amount of the Recovered Amount equal to the Sharing Payment will be treated as not having been paid by that Obligor.

## 29.4 Reversal of Redistribution

If any part of the Sharing Payment received or recovered by a Recovering Finance Party becomes repayable and is repaid by that Recovering Finance Party, then:

- (a) each Sharing Finance Party shall, upon request of the Agent, pay to the Agent for the account of that Recovering Finance Party an amount equal to the appropriate part of its share of the Sharing Payment (together with an amount as is necessary to reimburse that Recovering Finance Party for its proportion of any interest on the Sharing Payment which that Recovering Finance Party is required to pay) (the “**Redistributed Amount**”); and
- (b) as between the relevant Obligor and each relevant Sharing Finance Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by that Obligor.

## 29.5 Exceptions

- (a) This Clause 29 shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this Clause, have a valid and enforceable claim against the relevant Obligor.
- (b) A Recovering Finance Party is not obliged to share with any other Finance Party any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if:
  - (i) it notified that other Finance Party of the legal or arbitration proceedings; and
  - (ii) that other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

## **30. Payment Mechanics**

### **30.1 Payments to the Agent**

- (a) On each date on which the Borrower or a Lender is required to make a payment under a Finance Document (subject to Clause 30.12 (*Payments to the Security Agent*)), the Borrower or Lender shall make the same available to the Agent (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Agent as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
- (b) All payments to be made by the Borrower under this Agreement shall be made in Dollars in immediately available funds to the account of the Agent with Account No. 393785008, ABA: 021000021, Bank: JPMorgan Chase Bank NA, Acct Name: GLAS USD Globalstar FA, Reference: Globalstar USA or to such other account as the Agent may from time to time designate to the Borrower in writing.

### **30.2 Evidence of Financial Indebtedness**

- (a) Each Loan made by a Lender shall be evidenced by one (1) or more accounts or records maintained by such Lender and by the Agent in the ordinary course of business. The accounts or records maintained by the Agent and each Lender shall be conclusive absent manifest error of the amount of any Loan made by the Lenders to the Borrower and the interest and payments thereon.
- (b) Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower under this Agreement to pay any amount owing with respect to the Obligations. If there is any conflict between the accounts and records maintained by any Lender and the accounts and records of the Agent in respect of such matters, the accounts and records of the Agent shall prevail in the absence of manifest error.
- (c) Upon the request of any Lender made through the Agent, the Borrower shall immediately execute and deliver to the Agent Promissory Notes which shall evidence all outstanding Loans (including principal and interest). Each Promissory Note shall be denominated



in Dollars and be payable in accordance with this Clause 30 (*Payment Mechanics*). The Borrower shall ensure that each Promissory Note shall be governed by English or French law as selected by the Agent and the Borrower waives any right of protest under any Promissory Note to the extent possible under applicable law.

- (d) Any payment which is due to be made under a Promissory Note that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (e) If paragraph (d) above applies, interest shall be payable on the principal up to the date of actual payment by the Borrower.
- (f) Neither the payment date nor the amount of principal and interest specified in the relevant Promissory Note (if any) shall be modified. Notwithstanding that the Promissory Note shall not be modified, the Borrower shall be obliged to make payment in full (including principal and accrued interest) to the Agent in accordance with the provisions of this Clause 30 (*Payment Mechanics*). Notwithstanding the foregoing, the Agent and the Lenders hereby agree not to demand payment under any Promissory Note prior to exercising its rights pursuant to Clause 23 (*Remedies upon an Event of Default*).
- (g) If paragraph (d) applies, at least thirty (30) days prior to any payment under a note the payment date of which has been extended in accordance with paragraph (d) above, the Agent shall send to the Borrower a written statement documenting the additional amount of interest owed by the Borrower at such payment date.
- (h) Following the issue of Promissory Notes under this Clause 30.2, on or before each date on which the Borrower makes a repayment or prepayment of any outstanding Loan, it shall execute and deliver to the Agent replacement Promissory Notes. Each such replacement Promissory Note shall be issued on the terms as set out in paragraph (c) and shall, in aggregate, have a face value equal to the principal amount outstanding in respect of the outstanding Loans following such repayment or prepayment. Upon receipt of such replacement Promissory Notes, the Agent shall cancel and return to the Borrower all the Promissory Notes held by it before such repayment or prepayment.

### **30.3 Distributions by the Agent**

Each payment received by the Agent under the Finance Documents for another Party shall, subject to Clause 30.4 (*Distributions to the Borrower*) and Clause 30.5 (*Clawback*) and Clause 30.12 (*Payments to the Security Agent*), be made available by the Agent as soon as practicable after receipt to the Party entitled to receive payment in accordance with this Agreement (in the case of a Lender, for the account of its Facility Office), to such account as that Party may notify to the Agent by not less than five (5) Business Days' notice with a bank in the principal financial centre of the country of that currency.

### **30.4 Distributions to the Borrower**

The Agent and the Security Agent may (with the consent of the Obligor or in accordance with Clause 31 (*Set-off*)) apply any amount received by it for that Obligor in or towards payment (on the date and in the currency and funds of receipt) of any amount due from that Obligor under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

### 30.5 Clawback

- (a) Where a sum is to be paid to the Agent or the Security Agent under the Finance Documents for another Party, the Agent is not obliged to pay that sum to that other Party (or to enter into or perform any related exchange contract) until it has been able to establish to its satisfaction that it has actually received that sum.
- (b) If the Agent or the Security Agent pays an amount to another Party and it proves to be the case that the Agent had not actually received that amount, then the Party to whom that amount (or the proceeds of any related exchange contract) was paid by the Agent or the Security Agent shall on demand refund the same to the Agent together with interest on that amount from the date of payment to the date of receipt by the Agent or the Security Agent, calculated by it to reflect its cost of funds.

### 30.6 Partial Payments

- (a) If the Agent receives a payment that is insufficient to discharge all the amounts then due and payable by an Obligor under the Finance Documents, the Agent shall apply that payment towards the obligations of that Obligor under the Finance Documents in the following order:
  - (i) **first**, in or towards payment *pro rata* of any unpaid fees, costs and expenses of the Agent or the Security Agent under the Finance Documents;
  - (ii) **secondly**, in or towards payment *pro rata* of any accrued interest, fee or commission due to the Finance Parties but unpaid under this Agreement;
  - (iii) **thirdly**, in or towards payment *pro rata* of any principal due but unpaid under this Agreement; and
  - (iv) **fourthly**, in or towards payment *pro rata* of any other sum due but unpaid under the Finance Documents.
- (b) The Agent shall, if so directed by the Majority Lenders, vary the order set out in paragraphs (a)(ii) to (iv) above.
- (c) Paragraphs (a) and (b) above will override any appropriation made by an Obligor.

### 30.7 No set-off by the Borrower

All payments to be made by the Borrower under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

### 30.8 Business Days

- (a) Any payment which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar Month (if there is one) or the preceding Business Day (if there is not).
- (b) During any extension of the due date for payment of any principal or Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

### **30.9 Currency of Account**

- (a) Subject to paragraphs (b) and (c) below, Dollars is the currency of account and payment for any sum due from the Borrower under any Finance Document.
- (b) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which the costs, expenses or Taxes are incurred.
- (c) Any amount expressed to be payable in a currency other than Dollars shall be paid in that other currency.

### **30.10 Change of Currency**

- (a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
  - (i) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Agent (after consultation with the Borrower); and
  - (ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Agent (acting reasonably).
- (b) If a change in any currency of a country occurs, this Agreement will, to the extent the Agent (acting reasonably and after consultation with the Borrower) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the London interbank market and otherwise to reflect the change in currency.

### **30.11 Disruption to Payment Systems etc.**

If either the Agent determines (in its discretion) that a Disruption Event has occurred or the Agent is notified by the Borrower that a Disruption Event has occurred:

- (a) the Agent may, and shall if requested to do so by the Borrower, consult with the Borrower with a view to agreeing with the Borrower such changes to the operation or administration of the Facility as the Agent may deem necessary in the circumstances;
- (b) the Agent shall not be obliged to consult with the Borrower in relation to any changes mentioned in paragraph (a) if, in its opinion, it is not practicable to do so in the circumstances and, in any event, shall have no obligation to agree to such changes;
- (c) the Agent may consult with the Finance Parties in relation to any changes mentioned in paragraph (a) but shall not be obliged to do so if, in its opinion, it is not practicable to do so in the circumstances;
- (d) any such changes agreed upon by the Agent and the Borrower shall (whether or not it is finally determined that a Disruption Event has occurred) be binding upon the Parties

as an amendment to (or, as the case may be, waiver of) the terms of the Finance Documents notwithstanding the provisions of Clause 36 (*Amendments and Waivers*);

- (e) the Agent shall not be liable for any damages, costs or losses whatsoever (including, without limitation for negligence, gross negligence or any other category of liability whatsoever but not including any claim based on the fraud of the Agent) arising as a result of its taking, or failing to take, any actions pursuant to or in connection with this Clause 30.11 (*Disruption to Payment Systems etc.*); and
- (f) the Agent shall notify the Finance Parties of all changes agreed pursuant to paragraph (d) above.

### **30.12 Payments to the Security Agent**

Notwithstanding any other provision of any Finance Document, after a notice has been given to the Borrower under Clause 23 (*Remedies Upon an Event of Default*), and at any time after any Liens created by or pursuant to any Security Document becomes enforceable, the Security Agent may require the Borrower to pay all sums due under any Finance Document as the Security Agent may direct for application in accordance with the terms of the Security Documents.

## **31. Set-off**

If an Event of Default has occurred and is continuing, a Finance Party may set-off any matured obligation due from the Borrower under the Finance Documents (to the extent beneficially owned by that Finance Party) against any matured obligation owed by that Finance Party to the Borrower, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off. Following the exercise of a right of set-off under this Agreement, the relevant Finance Party shall notify the Borrower.

## **32. Notices**

### **32.1 Communications in Writing**

Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by fax or letter.

### **32.2 Addresses**

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with the Finance Documents is:

- (a) in the case of the Borrower:

Address:           Globalstar, Inc.  
                          1351 Holiday Square Boulevard

Covington  
LA 70433  
United States of America

Attention: James Monroe III / Tim Taylor

Facsimile: +001 985 335-1900

- (b) in the case of each Lender, that notified in writing to the Agent on or prior to the date on which it becomes a Party; and
- (c) in the case of the Agent:

Address: 45 Ludgate Hill  
London EC4M 7JU  
United Kingdom

Attention: Transaction Management Group / GSAT

Facsimile: +44 (0)20 3070 0113

Email: [tmg@glas.agency](mailto:tmg@glas.agency)

- (d) in the case of the Security Agent:

Address: GLAS Trust Corporation Limited  
45 Ludgate Hill  
London  
EC4M 7JU  
United Kingdom

Attention: Transaction Management Group / GSAT

Facsimile: +44 (0)20 3070 0113

Email: [tmg@glas.agency](mailto:tmg@glas.agency)

or any substitute address or fax number or department or officer as the Party may notify to the Agent (or the Agent may notify to the other Parties, if a change is made by the Agent) by not less than five (5) Business Days' notice.

### 32.3 Delivery

- (a) Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:
  - (i) if by way of fax, when received in legible form; or
  - (ii) if by way of letter, when it has been left at the relevant address or five (5) Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address;

and, if a particular department or officer is specified as part of its address details provided under Clause 32.2 (*Addresses*), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to the Agent or the Security Agent will be effective only when actually received by the Agent or the Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Agent's or the Security Agent's signature below (or any substitute department or officer as the Agent or the Security Agent shall specify for this purpose).
- (c) All notices from or to an Obligor shall be sent through the Agent.
- (d) Any communication or document made or delivered to the Borrower in accordance with this Clause 32 will be deemed to have been made or delivered to each of the Obligors.
- (e) Any communications or document which becomes effective in accordance with paragraphs (a) to (d) above, after 5:00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

#### **32.4 Notification of Address and Fax Number**

Promptly upon receipt of notification of an address or fax number or change of address or fax number pursuant to Clause 32.2 (*Addresses*) or changing its own address or fax number, the Agent shall notify the other Parties.

#### **32.5 Electronic Communication**

- (a) Any communication to be made between any two Parties under or in connection with the Finance Documents may be made by electronic mail or other electronic means to the extent that these two Parties agree that, unless and until notified to the contrary, this is to be accepted form of communication and if those two parties:
  - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
  - (ii) notify each other of any change to their address or any other such information supplied by them by no less than five (5) Business Days' notice.
- (b) Any electronic communication made between those two Parties will be effective only when actually received in readable form and in the case of any electronic communication made by a Party to the Agent only if it is addressed in such a manner as the Agent shall specify for this purpose.
- (c) Any electronic communication which becomes effective, in accordance with paragraph (b) above, after 5.00pm in the place of receipt shall be deemed only to become effective on the following day.

#### **32.6 English Language**

- (a) Any notice given under or in connection with any Finance Document must be in English.

- (b) All other documents provided under or in connection with any Finance Document must be:
- (i) in English; or
  - (ii) if not in English, and if so required by the Agent, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

### **33. Calculations and Certificates**

#### **33.1 Accounts**

In any litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by a Finance Party are *prima facie* evidence of the matters to which they relate.

#### **33.2 Certificates and Determinations**

Any certification or determination by a Finance Party of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

#### **33.3 Day Count Convention**

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of three hundred and sixty (360) days or, in any case where the practice in the London interbank market differs, in accordance with that market practice.

### **34. Partial Invalidity**

If, at any time, any provision of the Finance Documents is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

### **35. Remedies and Waivers**

No:

- (a) failure to exercise, nor any delay in exercising, on the part of any Finance Party, any right or remedy under the Finance Documents shall operate as a waiver of any such right or remedy or constitute an election to affirm any of the Finance Documents; and
- (b) election to affirm any of the Finance Documents on the part of any Finance Party shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy.

## **36. Amendments and Waivers**

### **36.1 Required Consents**

- (a) Subject to Clause 36.2 (*Exceptions*) any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and the Borrower. Any such amendment or waiver will be binding on all Parties.
- (b) The Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause 36.
- (c) Unless otherwise agreed, no amendment or waiver may be made before the date falling ten (10) Business Days after the terms of that amendment or waiver have been notified by the Agent to the Lenders. The Agent shall notify the Lenders reasonably promptly of any amendments or waivers proposed by the Borrower.

### **36.2 Exceptions**

- (a) An amendment or waiver that has the effect of changing or which relates to:
  - (i) the definition of “*Majority Lenders*” in Clause 1.1 (*Definitions*);
  - (ii) an extension to the date of payment of any amount under the Finance Documents;
  - (iii) a reduction in the Margin or a reduction in the amount of any payment of principal, interest, fees or commission payable;
  - (iv) an increase in or an extension of any Commitment or any requirement that a cancellation of Commitments reduces the Commitments of the Lenders rateably under the relevant Facility;
  - (v) a change to an Obligor;
  - (vi) any provision which expressly requires the consent of all the Lenders;
  - (vii) Clause 2.2 (*Finance Parties’ Rights and Obligations*), Clause 17.26 (*Anti-bribery, Anti-corruption and Anti-money Laundering*), Clause 17.27 (*Sanctions*), Clause 20.24 (*Anti-bribery, Anti-corruption and Anti-money Laundering*), Clause 21.20 (*Anti-bribery, Anti-corruption and Anti-money Laundering*), Clause 21.21 (*Sanctions*), Clause 25 (*Changes to the Lenders*) or this Clause 36;
  - (viii) the nature or scope of the assets of the Borrower which from time to time are, or are expressed to be, the subject of a Lien under the Security Documents; or
  - (ix) the release of any Lien granted in accordance with the Security Documents or the granting of any Lien required under the terms of this Agreement,



shall not be made without the prior consent of all the Lenders.

- (b) An amendment or waiver which relates to the rights or obligations of the Agent and/or the Security Agent may not be effected without the consent of the Agent and/or the Security Agent (as the case may be).
- (c) If the Agent or a Lender reasonably believes that an amendment or waiver may constitute a “*material modification*” for the purposes of FATCA that may result (directly or indirectly) in a Party being required to make a FATCA Deduction and the Agent or that Lender (as the case may be) notifies the Borrower and the Agent accordingly, that amendment or waiver may not be effected without the consent of the Agent or that Lender (as the case may be).

### 36.3 Payment of Waiver or Amendment Fees

- (a) Subject to paragraph (d) below, the Borrower shall pay to the Agent (for the account of each Lender) a waiver fee in an amount equal to US\$20,000 to be divided among the Lenders on a pro rata basis in accordance with their respective Commitment (the “**Waiver Fee**”) if, following the date of this Agreement any amendments or waivers (howsoever described) are required in respect of the Finance Documents.
- (b) The Waiver Fee shall be due from the date on which the Borrower delivers the waiver and/or amendment request to the Agent and is payable within thirty (30) days of such request.
- (c) The payment by the Borrower of a Waiver Fee shall be made in accordance with Clause 29 (*Payment Mechanics*) and the other provisions of the Finance Documents.
- (d) No Waiver Fee shall be payable in respect of any amendment requested by the Borrower in connection with:
  - (i) the Third Global Amendment and Restatement Agreement (but without prejudice to the payment of the “*Amendment Fee*” as such term is defined therein);
  - (ii) the ability of the Borrower to incur additional Financial Indebtedness in connection with Permitted Vendor Financings in an aggregate amount above the threshold set out in Clause 21.1(k) (*Limitations on Financial Indebtedness*);
  - (iii) the ability of the Borrower to incur additional Financial Indebtedness in connection with cash paying Subordinated Indebtedness above the amounts as set out in the then current Agreed Business Plan; or
  - (iv) any adjustment to the numerator of the financial covenant set out in Clause 19.5 (*Net Debt to Adjusted Consolidated EBITDA*) in order to take into account the revised levels of Financial Indebtedness permitted following any amendment requests of the types set out in paragraphs (a) and (b) above (for which separate amendment requests shall be required).
- (e) In connection with any requested amendment under paragraph (d)(iv) above in accordance with the provisions of this Clause 36 (*Amendments and Waivers*), the

Borrower shall provide to the Agent a substitute table for the purposes of Clause 19.5 (*Net Debt to Adjusted Consolidated EBITDA*) on the same basis as the existing table but reflecting the appropriate numerator for the financial covenant. Upon agreement by the Lenders and the Borrower with the substitute table, the substitute table will be deemed to replace the then existing table applicable for the purposes of Clause 19.5 (*Net Debt to Adjusted Consolidated EBITDA*) and all determinations in respect of compliance with such financial covenant shall be made in accordance with the substitute table.

#### **36.4 Intercreditor Agreement**

This Clause 36 (*Amendments and Waivers*) is subject to the terms of the Intercreditor Agreement.

#### **37. Counterparts**

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

#### **38. Governing Law**

Other than Clause 27.2(*Appointment of Security Agent (France)*), this Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

#### **39. Enforcement**

##### **39.1 Jurisdiction**

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a “**Dispute**”).
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) This Clause 39.1 (*Jurisdiction*) is for the benefit of the Finance Parties only. As a result, no Finance Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Finance Parties may take concurrent proceedings in any number of jurisdictions.
- (d) This Clause 39 does not apply to Clause 27.2 (*Appointment of the Security Agent (France)*).

##### **39.2 Service of Process**

Without prejudice to any other mode of service allowed under any relevant law, the Borrower:

- (a) irrevocably appoints WFW Legal Services Limited of 15 Appold Street, London EC2A 2HB as its agent for service of process in relation to any proceedings before the English courts in connection with any Finance Document; and
- (b) agrees that failure by a process agent to notify the Borrower of the process will not invalidate the proceedings concerned.

### **39.3 Waiver of Immunity**

To the extent that the Borrower may in any jurisdiction claim for itself or its assets or revenues immunity from suit, execution, attachment (whether in aid of execution, before judgment or otherwise) or other legal process and to the extent that in any such jurisdiction there may be attributed to itself, its assets or revenues such immunity (whether or not claimed), the Borrower irrevocably agrees not to claim, and irrevocably waives, such immunity to the full extent permitted by the laws of such jurisdiction.

## **40. Confidentiality**

### **40.1 Confidential Information**

Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 40.2 (*Disclosure of Confidential Information*), and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

### **40.2 Disclosure of Confidential Information**

Any Finance Party may disclose:

- (a) to any of its Affiliates and any of its or their officers, directors, employees, professional advisers, auditors and partners such Confidential Information as that Finance Party shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this paragraph (a) is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
- (b) to any person:
  - (i) to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents and to any of that person's Affiliates and professional advisers;
  - (ii) with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or

more Finance Documents and/or one or more Obligators and to any of that person's Affiliates and professional advisers;

- (iii)appointed by any Finance Party or by a person to whom paragraph (b)(i) or (ii) above applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf;
- (iv)who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in paragraph (b)(i) or (b)(ii) above;
- (v)to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any Applicable Law or regulation;
- (vi)to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;
- (vii)who is a Party; or
- (viii)with the consent of the Borrower;

in each case, such Confidential Information as that Finance Party shall consider appropriate if:

- (A)in relation to paragraphs (b)(i), (b)(ii) and b(iii) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;
- (B)in relation to paragraph (b)(iv) above, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;
- (C)in relation to paragraphs (b)(v) and (b)(vi) above, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of that Finance Party, it is not practicable so to do in the circumstances; and
- (D)to any person appointed by that Finance Party or by a person to whom paragraph (b)(i) or (b)(ii) above applies to provide administration or

settlement services in respect of one or more of the Finance Documents including without limitation, in relation to the trading of participations in respect of the Finance Documents, such Confidential Information as may be required to be disclosed to enable such service provider to provide any of the services referred to in this paragraph (c) if the service provider to whom the Confidential Information is to be given has entered into a confidentiality agreement substantially in the form of the LMA Master Confidentiality Undertaking for Use With Administration/Settlement Service Providers or such other form of confidentiality undertaking agreed between the Company and the relevant Finance Party.

#### **40.3 Entire agreement**

This Clause 40 (*Confidentiality*) constitutes the entire agreement between the Parties in relation to the obligations of the Finance Parties under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

#### **40.4 Inside information**

Each of the Finance Parties acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and each of the Finance Parties undertakes not to use any Confidential Information for any unlawful purpose.

#### **40.5 Notification of disclosure**

Each of the Finance Parties agrees (to the extent permitted by law and regulation) to inform the Company:

(a) of the circumstances of any disclosure of Confidential Information made pursuant to paragraph (b)(v) of Clause 40.2 (*Disclosure of Confidential Information*) except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and

(b) upon becoming aware that Confidential Information has been disclosed in breach of this Clause 40 (*Confidentiality*).

#### **40.6 Continuing obligations**

The obligations in this Clause 40 (*Confidentiality*) are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of twelve months from the earlier of:

(a) the date on which all amounts payable by the Obligors under or in connection with this Agreement have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and

(b) the date on which such Finance Party otherwise ceases to be a Finance Party.

#### **41. Contractual recognition of bail-in**

Notwithstanding any other term of any Finance Document or any other agreement, arrangement or understanding between the Parties, each Party acknowledges and accepts that any liability of any Party to any other Party under or in connection with the Finance Documents may be subject to Bail-In Action by the relevant Resolution Authority and acknowledges and accepts to be bound by the effect of:

- (a) any Bail-In Action in relation to any such liability, including (without limitation):
- (b) a reduction, in full or in part, in the principal amount, or outstanding amount due (including any accrued but unpaid interest) in respect of any such liability;
- (c) a conversion of all, or part of, any such liability into shares or other instruments of ownership that may be issued to, or conferred on, it; and
- (d) a cancellation of any such liability; and
- (e) a variation of any term of any Finance Document to the extent necessary to give effect to any Bail-In Action in relation to any such liability.

#### **42. GDPR**

Each Party shall comply with all applicable data protection legislation to the extent it receives any personal data.

#### **43. Intercreditor Agreement**

Notwithstanding any provision to the contrary in this Agreement, in the event of any conflict or inconsistency between the provisions of the Intercreditor Agreement and this Agreement, the provisions of such Intercreditor Agreement shall prevail. So long as the First Lien Security Agent is acting as bailee and as agent for perfection on behalf of the Security Agent pursuant to the terms of the Intercreditor Agreement, any obligation of any Obligor in this Agreement that requires (or any representation or warranty hereunder to the extent that it would have the effect of requiring) delivery of Collateral to, or the possession or control of Collateral with, the Security Agent shall be deemed complied with and satisfied (or, in the case of any representation or warranty hereunder, shall be deemed to be true) if such delivery of Collateral is made to, or such possession or control of Collateral is with, the First Lien Security Agent.

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

**GLOBALSTAR, INC.,**  
as Borrower

By: /s/Lindsey Keeble  
Name: Lindsey Keeble  
Title: Attorney-in-fact

**Schedule 1**

**Lenders and Commitments**

<b>Original Lenders</b>		<b>Commitments US\$</b>
Inverness Financing L.L.C.		\$95,117,699.63
Thermo Funding II LLC	\$	95,117,699.63
[*]		\$3,297,950.51
[*]		\$3,297,950.51
[*]		\$2,127,710.01
<b>Total:</b>		<hr/> <b>\$198,959,010.29</b> <hr/> <hr/>



## Schedule 2

### Conditions Precedent

#### Part 1

#### Conditions Precedent

##### 1. Obligors

- (a) A copy of the constitutional documents of each Obligor.
- (b) A copy of a resolution of the board of directors of each Obligor:
  - (i) approving the terms of, and the transactions contemplated by, the Transaction Documents to which it is a party and resolving that it execute the Transaction Documents to which it is a party;
  - (ii) authorising a specified person or persons to execute the Transaction Documents to which it is a party on its behalf;
  - (iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Utilisation Request) to be signed and/or despatched by it under or in connection with the Transaction Documents to which it is a party; and
  - (iv) confirming that the borrowing or guaranteeing, as appropriate, contemplated by the Finance Documents would not cause any borrowing, guaranteeing or similar limit binding on any Obligor to be exceeded.
- (c) A specimen of the signature of each person authorised by the resolution referred to in paragraph (b) above.
- (d) A certificate of each Obligor (signed by an authorised signatory) confirming that the borrowing or guaranteeing, as appropriate, contemplated by the Finance Documents would not cause any borrowing, guaranteeing or similar limit binding on any Obligor to be exceeded.
- (e) A certificate from a Responsible Officer of the Borrower dated no earlier than the Closing Date:
  - (i) certifying that, as of Closing Date:
    - (A) the statement set out in Paragraph 4 (*No litigation*) below is true and correct;
    - (B) each copy document relating to an Obligor specified in this Schedule 2, Part 1 (*Conditions Precedent*) is correct, complete and in full force and effect as at a date no earlier than the Closing Date;

- (C) all representations and warranties of the Obligor contained in the Finance Documents are true, correct and complete in all respects;
  - (D) none of the Obligor is in violation of any of the covenants contained in the Finance Documents to which it is a party;
  - (E) after giving effect to the transactions contemplated by the Finance Documents, no Default or Event of Default has occurred and is continuing;
  - (F) each of the Obligor has satisfied each of the conditions set out in this Schedule 2, Part 1(*Conditions Precedent*);
- (ii) Confirming that:
- (A) no action, proceeding, investigation, regulation or legislation shall have been instituted, threatened or proposed by any Governmental Authority to enjoin, restrain, or prohibit, or to obtain substantial damages in respect of, or which is related to or arises out of the Finance Documents or the consummation of the transactions contemplated thereby, or which, in its reasonable opinion, would make it inadvisable to consummate the transactions contemplated by the Finance Documents or the consummation of the transactions contemplated thereby;
  - (B) that no proceeding shall be pending or threatened which may result in the loss, revocation, material modification, non-renewal, suspension or termination of any Material Communications Licence, the issuance of any cease or desist order or the imposition of any fines, forfeitures or other administrative actions by the FCC with respect to any operations of the Borrower and its Subsidiaries; and
  - (C) no proceeding is pending or threatened which may result in the denial by the FCC of any pending material applications of the Borrower or any Subsidiary thereof, which could reasonably be expected to have a Material Adverse Effect; and
- (iii) certifying that, since the date of this Agreement nothing has occurred which has or could reasonably be expected to have a Material Adverse Effect;
- (f) Certificates, (a) as of a recent date, and (b) as of the Closing Date, of the good standing of each Obligor under the laws of its jurisdiction of organisation and, to the extent requested by the Agent, each other jurisdiction where such Obligor is qualified to do business.

## 2. **Legal opinions**

- (a) A legal opinion of Winston & Strawn London LLP (advisers to the Lenders) as to matters of the laws of England and confirming, among other things, the validity and enforceability of the Finance Documents governed by English law).

- (b) A legal opinion of Taft Stettinius & Hollister LLP (advisers to the Obligors) confirming, among other things, the due authorisation of each Obligor to enter into each Finance Document to which it is a party, no conflict with the convertible notes or the First Lien Finance Documents, and confirming the validity and enforceability of those Security Documents governed by New York law.
- (c) A legal opinion of Seen Visciano Canges P.C. (advisers to the Obligors) confirming, among other things, the due authorisation of each Obligor organised under Colorado law and confirming the validity and enforceability of those Security Documents governed by Colorado law.
- (d) A legal opinion of Lawler, Metzger, Keeny & Logan, LLC in respect of each Obligor's FCC Communications Licences.
- (e) Such other favourable legal opinions of counsel to the Obligors addressed to the Agent and Security Agent (in each case, for and on behalf of itself and the other Finance Parties) with respect to the Obligors, the Finance Documents and such other matters as the Agent or the Security Agent shall reasonably request, including, without limitation, FCC matters.

3. **Finance documents**

An original (duly executed by each of the parties thereto) of:

- (a) this Agreement;
- (b) the Intercreditor Agreement;
- (c) the First Lien Facility Agreement; and
- (d) each other Finance Document (other than the Post-Closing Documents).

4. **No litigation**

No litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes are commenced or threatened against the Group or its assets which has not been disclosed to the Agent in writing.

5. **Personal Property Collateral**

The First Lien Security Agent shall have received on behalf of itself and as bailee for the Security Agent under the Intercreditor Agreement:

- (a) original stock certificates and other certificates evidencing the Capital Stock pledged pursuant to the First Lien Security Documents and Security Documents, together with an undated stock power for each such certificate duly executed in blank by the registered owner thereof; and
- (b) each original promissory note pledged pursuant to the First Lien Security Documents and Security Documents.

6. **Security matters**

- (a) Certified copies of all notices of assignment and/or charge required to be delivered pursuant to the Security Documents to be delivered under this Part 1.
- (b) Each Obligor shall have duly authorised, executed and delivered:
  - (i) proper financing statements (Form UCC-1 or such other financing statements or similar notices as shall be required by local law) fully executed for filing under the UCC or other appropriate filing offices of each jurisdiction as may be necessary to perfect a Lien purported to be created by the Security Documents to be delivered under this Part 1;
  - (ii) certified copies of requests for information or copies (Form UCC-11), or equivalent reports, listing all judgement liens, tax liens or effective financing statements that name the Obligors or any of their Subsidiaries, or a division or other operating unit of any such person, as debtor and that are filed in the jurisdictions referred to in paragraph (i) above, together with copies of such other financing statements evidencing any Lien permitted by Clause 21.2 (*Limitations on Liens*);
  - (iii) evidence of the completion of all other recordings and filings of, or with respect to, the Security Documents to be delivered under this Part 1 as may be necessary to perfect any Lien intended to be created by such Security Documents;
  - (iv) each irrevocable payment instruction (if any); and
  - (v) evidence that all other actions necessary to perfect and protect any Lien purported to be created by the Security Document to be delivered under this Part 1 have been taken.

7. **Governmental and other authorisations**

The Borrower has obtained, and provided to the Agent, certified copies of all Authorisations listed in Schedule 14 (*Communication Licences*) together with:

- (a) in the case of paragraphs (i), (iii) and (iv) below, all other Authorisations; and
- (b) in the case of paragraph (ii) below, all other material Authorisations,

in each case, not listed in those Clauses that may become necessary for:

- (i) each Loan;
- (ii) the business of the Borrower as it is presently carried on and is contemplated to be carried out;
- (iii) the due execution, delivery, validity and enforceability of, and performance by an Obligor of its obligations under this Agreement and each other Transaction Document to which it is a party, and any other documents necessary or desirable to the implementation of any of those agreements or documents; and

- (iv) the remittance to any Finance Party (or its assigns) of all monies payable or owing to such Finance Party (or its assigns) under any Finance Document in the currencies specified in such Finance Document,

and all those Authorisations are in full force and effect.

**8. Commercial contracts**

The following documents shall have been delivered to the Agent:

- (a) a copy, certified as true and complete by the Borrower of each Commercial Contract (including, for the avoidance of doubt, any amendments, restatements, amendments and restatements, supplements, extensions, replacements or other modifications thereto); and
- (b) a certificate, signed by an Authorised Signatory of the Borrower certifying that each Commercial Contract has been performed in full (with there being no outstanding obligations thereunder), formally terminated or expired in accordance with its terms, as applicable.

**9. Debt service reserve account**

Evidence that the Debt Service Reserve Account is open and funded with the DSRA Required Balance.

**10. Insurances**

- (a) The Agent shall have received:
  - (i) evidence of payment of all insurance premiums (as required within the applicable credit terms agreed with insurers) for the current policy year of each Insurance (naming the Agent and the Lenders as additional insured on all certificates for “*all risks property insurance*”); and
  - (ii) in relation to the “*all risks property insurance*”, a certified copy of the Insurance Documentation (including evidence of transit insurance), copies in the form required under the Security Documents and otherwise in form and substance reasonably satisfactory to the Agent.

**11. Know your customer requirements**

The Agent shall have received each of the documents referred to in Schedule 7 (*Know Your Customer Requirements*).

**12. Equity / subordinated debt**

A payoff letter (in form and substance satisfactory to the Majority Lenders) evidencing the termination of all obligations under the 2019 Bridge Facility Agreement.

**13. Group structure chart**

A certified copy of the Group Structure Chart.

14. **Accounts**

Evidence that:

- (a) the Project Accounts (other than the Collection Account) have each been opened and continue to be maintained with the Offshore Account Bank; and
- (b) the Collection Account has been opened and continues to be maintained with the Onshore Account Bank.

15. **Fourth Global Amendment and Restatement Agreement and First Lien Facility Agreement**

- (a) The Fourth Global Amendment and Restatement Agreement has been duly executed by each of the parties thereto.
- (b) The Borrower having entered into the First Lien Facility Agreement on terms satisfactory to each Lender.

16. **Other documents and evidence**

- (a) Evidence that any process agent referred to in Clause 39.2 (*Service of Process*) (and any other equivalent provision in the other Finance Documents) has accepted its appointment.
- (b) A copy of any other Authorisation or other document, opinion or assurance which the Lenders consider to be necessary in connection with the entry into and performance of the transactions contemplated by any Finance Document or for the validity and enforceability of any Finance Document.
- (c) Copies of the following financial statements:
  - (i) the annual audited financial statements issued by the Borrower for the financial year ended December 31, 2018; and
  - (ii) the unaudited financial statements issued by the Borrower for the period ended September 30, 2019.
- (d) A copy of the latest "*Agreed Business Plan*" (as such term is defined in the First Lien Facility Agreement).
- (e) Evidence of payment of all Transaction Costs accruing up until and including the Utilisation Date.
- (f) A copy of the Funds Flow Statement.
- (g) A copy of the Spectrum Plan.

**Part 2**  
**Conditions Subsequent**

The Borrower shall deliver to the Agent:

**1. Obligors**

No later than 31 January 2020:

- (a) A copy of any changes to the constitutional documents of each Obligor since the Closing Date.
- (b) A copy of a resolution of the board of directors of each Obligor that is a party to any Post-Closing Document:
  - (i) approving the terms of, and the transactions contemplated by, the Post Closing Documents to which it is a party and resolving that it execute the Post Closing Documents to which it is a party;
  - (ii) authorising a specified person or persons to execute the Post Closing Documents to which it is a party on its behalf; and
  - (iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with the Post Closing Documents to which it is a party.
- (c) A specimen of the signature of each person authorised by the resolution referred to in paragraph (b) above.
- (d) A certificate from a Responsible Officer of the Borrower certifying that certifying that:
  - (i) each copy document relating to it specified in this Paragraph 1 is correct, complete and in full force and effect and has not been amended, varied, novated, supplemented, superseded or terminated as at a date no earlier than the Post Closing Documents; and
  - (ii) since the Closing Date nothing has occurred which has or could reasonably be expected to have a Material Adverse Effect.
- (e) Certificates as of a recent date of the good standing of each Obligor under the laws of its jurisdiction of organisation and, to the extent requested by the Agent, each other jurisdiction where such Obligor is qualified to do business.

**2. Process Agent**

No later than 30 November 2019, evidence that any process agent referred to in the Intercreditor Agreement has accepted its appointment.

### 3. **Legal opinions**

No later than 31 December 2019:

- (a) A legal opinion of external Texas counsel (as Texas adviser to the Obligors) or such adviser satisfactory to the Majority Lenders, as to matters of the laws of Texas and confirming, among other things, the validity and enforceability of those Post-Closing Documents governed by Texas law.
- (b) A legal opinion of external Alaska counsel (as Alaska adviser to the Obligors) or such adviser satisfactory to the Majority Lenders, as to matters of the laws of Alaska and confirming, among other things, the validity and enforceability of those Post-Closing Documents governed by Alaska law.

No later than 31 January 2020:

- (c) A legal opinion of such adviser satisfactory to the Majority Lenders, as to matters of the laws of England and confirming, amongst other things, the validity and enforceability of the A&R Agreement in a form and substance satisfactory to the Required Lenders.
- (d) A legal opinion of such adviser satisfactory to the Majority Lenders, as to matters of the laws of France and confirming, among other things, the validity and enforceability of the French Security Documents.
- (e) A legal opinion of Taft Stettinius & Hollister LLP (as adviser to the Obligors) or such other adviser to the Obligors satisfactory to the Majority Lenders, confirming among other things, the due capacity and authority of the Obligors to enter into the Post-Closing Documents (other than the Mortgages).
- (f) such other favourable legal opinions of counsel to the Obligors addressed to the Agent and the Security Agent (in each case, for and on behalf of itself and the other Finance Parties) with respect to the Obligors, the Finance Documents and such other matters as the Agent or the Security Agent shall reasonably request.

### 4. **Post-closing finance and security documents**

- (a) an original (duly executed by each of the parties thereto) of:
  - (i) No later than 31 January 2020, an original (duly executed by each of the parties thereto) of the amendment and restatement agreement in respect of the Accounts Agreement (the “**A&R Agreement**”), in a form reasonably acceptable to the Majority Lenders, to among other things (x) amend the waterfall provisions, and (y) include the Agent as a party;
  - (ii) No later than 31 January 2020, each Account Control Agreement;
  - (iii) No later than 31 December 2019, the Mortgages and deliverables associated therewith, including, without limitation (1) title commitments, (2) title policies, (3) title insurance endorsements, (4) ALTA surveys, (5) zoning reports, (6) Completed “Life-of-Loan” Federal Emergency Management Agency Standard Flood Hazard Determination with respect to each Mortgaged Property and, if



any such Mortgaged Property is located in a special flood hazard area, evidence of flood insurance and a borrower flood notice, (7) lien search results and (8) legal opinion letters in each applicable jurisdiction;

- (iv) No later than 31 January 2020, Stock Pledge Agreements governed by the laws of Brazil executed by and among (a) GSSI, LLC (as pledgor), Globalstar do Brasil Holdings, Ltda. (as pledged company), Globalstar, Inc. and the Security Agent and (b) Globalstar Brazil Holdings L.P. (as pledgor), Globalstar de Brasil Holdings, Ltda. (as pledged company), Globalstar, Inc. and the Security Agent; and
- (v) No later than 31 January 2020 (or such other period as required under Clause 21.11(b) (*Restrictive Agreements*), the French Security Documents; and
- (b) No later than 31 December 2019, evidence that the Security Agent is a Loss Payee or Additional Insured, as applicable, on the general liability and property insurance of the Obligors, including, 30 days' prior notice of cancellation to the Security Agent and notice to the Security Agent of non-payment of premiums continuing for 10 days or more,  
  
each a "**Post-Closing Document**" and together, the "**Post-Closing Documents**".

5. **Security matters**

No later than 31 January 2020:

- (a) Certified copies of all notices of assignment and/or charge required to be delivered pursuant to the Post Closing Documents.
- (b) Each Obligor shall have duly authorised, executed and delivered:
  - (i) evidence of the completion of all recordings and filings of, or with respect to, the Post Closing Documents as may be necessary to perfect any Lien intended to be created by the Security Documents;
  - (ii) each irrevocable payment instruction (if any); and
  - (iii) evidence that all other actions necessary to perfect and protect any Lien purported to be created by the Post Closing Documents have been taken.

6. **First Lien Security Documents**

No later than 31 January 2020, a certified copy (duly executed by each of the parties thereto) of each First Lien Security Document.

7. **Other documents and evidence**

No later than 20 December 2019:

- (a) Evidence that the Pledged Account (as defined in that certain Pledge Agreement for the Pledge of Bank Accounts, dated June 5, 2009 (as amended, restated, amended and restated, supplemented, replaced or otherwise modified from time to time) among Thermo, the First Lien Security Agent, BNP Paribas, as the Offshore Account Bank and

BNP Paribas, as the BPIFAE Agent) (x) has been closed and (y) has not been replaced with any other account serving a substantially similar purpose;

No later than 31 January 2020:

- (b) A copy of any other Authorisation or other document, opinion or assurance which the Lenders consider to be necessary in connection with the entry into and performance of the transactions contemplated by any Finance Document or for the validity and enforceability of any Finance Document.
- (c) A template form of the cash movement summary report, in form and substance satisfactory to the Agent (acting on the instructions of each Lender).
- (d) Evidence of termination of the following agreements the amended and restated agreement regarding uncertificated securities dated 6 October 2009 and made between Mobile Satellite Services, B.V. (as issuer), the Security Agent and Globalstar C, LLC (as pledgor).



## Schedule 4

### Maximum Covenant Capital Expenditure

Part A

#### Maximum Covenant Capital Expenditures

1	2	3	4	5	6	7	8
Relevant Period A	Business Plan Capex B	10% Buffer A + B = C	Maximum Capex Covenant D	Minimum Capex – Not Available for Rollover C – D = E	Capex Available for Rollover F	Cumulative Rollover C + F	Maximum Cumulative Capex
2019	\$15,000,000	N/A	\$15,000,000	N/A	N/A	N/A	\$15,000,000
2020	\$15,000,000	N/A	\$15,000,000	N/A	N/A	N/A	\$15,000,000
2021	\$15,000,000	N/A	\$15,000,000	N/A	N/A	N/A	\$15,000,000
2022	\$15,000,000	N/A	\$15,000,000	N/A	N/A	N/A	\$15,000,000

Part B

#### Maximum Covenant Capital Expenditures for Excess Cash Flow Calculation

Relevant Period	Maximum Covenant Capex for Excess Cash Flow Calculation
2H 2019	US\$2,500,000
1H 2020	US\$2,500,000
2H 2020	US\$2,500,000
1H 2021	US\$2,500,000
2H 2021	US\$2,500,000
1H 2022	US\$2,500,000
2H 2022	US\$2,500,000

## Schedule 5

### Form of Transfer Certificate and Assignment Agreement

#### Part A

#### Form of Transfer Certificate

To: [●] as Agent, [●] as Security Agent

From: [*The Existing Lender*] (the “Existing Lender”) and [*The New Lender*] (the “New Lender”)

Dated: [●]

#### Facility Agreement dated [ ] (as amended and restated from time to time) (the “Agreement”)

1. We refer to the Agreement and the Intercreditor Agreement (as defined in the Agreement). This is a Transfer Certificate for the purposes of the Agreement and a [Creditor Accession Undertaking] for the purposes of the Intercreditor Agreement. Terms defined in the Agreement have the same meaning in this Transfer Certificate unless given a different meaning in this Transfer Certificate.
2. We refer to clause 25.5 (*Procedure for Transfer or Assignment*) of the Agreement:
  - (a) The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by novation, and in accordance with clause 25.5 (*Procedure for Transfer or Assignment*), all of the Existing Lender’s rights and obligations under the Agreement and the other Finance Documents which relate to that portion of the Existing Lender’s Commitment(s) and participation in Loans under the Agreement as specified in the Schedule.
  - (b) The proposed Transfer Date is [●].
  - (c) The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of clause 32.2 (*Addresses*) of the Agreement are set out in the Schedule.
3. The New Lender expressly acknowledges the limitations on the Existing Lender’s obligations set out in paragraph (c) of clause 25.4 (*Limitation of Responsibility of Existing Lenders*) of the Agreement.
4. The New Lender confirms that the person beneficially entitled to interest payable to that Lender in respect of an advance under a Finance Document is a Qualifying Lender.
5. This Transfer Certificate may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Transfer Certificate.
6. This Transfer Certificate and any non-contractual obligations arising out of or in connection with it are governed by English law.

7. For the purposes of *Article 1278* and *seq.* of the French Civil Code, it is agreed that the security interest created pursuant to the Borrower Pledge of Bank Accounts, the Borrower Additional Pledge of Bank Accounts and the Holding Account Pledge Agreement shall be preserved for the benefit of the New Lender and all other Finance Parties.
8. We refer to clause 20 (*Changes to the Parties*) of the Intercreditor Agreement. In consideration of the New Lender being accepted as a Senior Lender (as defined in the Intercreditor Agreement) for the purposes of the Intercreditor Agreement. The New Lender confirms that, as from the Transfer Date, it intends to be party to the Intercreditor Agreement as a Senior Lender, and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a Senior Lender and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement.

**The Schedule**

**Commitment/rights and obligations to be transferred**

*[insert relevant details]*

*[Facility Office address, fax number and attention details for notices and account details for payments,]*

**[Existing Lender]**

**[New Lender]**

By: [●]

By: [●]

This certificate is accepted as a Transfer Certificate for the purposes of the Agreement by the Agent, and as a *[Creditor Accession Undertaking]* for the purposes of the Intercreditor Agreement by the Security Agent, and the Transfer Date is confirmed as [●].

[Agent]

By: [●]

[Security Agent]

By: [●]

**Part B**  
**Form of Assignment Agreement**

To: [●] as Agent, [●] as Security Agent and [●] as Borrower, for and on behalf of itself and each Obligor

From: [the Existing Lender] (the “Existing Lender”) and [the New Lender] (the “New Lender”)

Dated: [●]

**[Borrower] - [●] Facility Agreement**  
**dated [●] (the "Agreement")**

1. We refer to the Agreement and the Intercreditor Agreement (as defined in the Agreement). This is an Assignment Agreement for the purposes of the Agreement and a [Creditor Accession Undertaking] for the purposes of the Intercreditor Agreement. Terms defined in the Agreement have the same meaning in this Assignment Agreement unless given a different meaning in this Assignment Agreement.
2. We refer to clause 25.5 (*Procedure for Transfer or Assignment*):
  - (a) The Existing Lender assigns absolutely to the New Lender all the rights of the Existing Lender under the Agreement and the other Finance Documents which relate to that portion of the Existing Lender's Commitment(s) and participations in Loans under the Agreement as specified in the Schedule.
  - (b) The Existing Lender is released from all the obligations of the Existing Lender which correspond to that portion of the Existing Lender's Commitment(s) and participations in Loans under the Agreement specified in the Schedule.
  - (c) The New Lender becomes a Party as a Lender and is bound by obligations equivalent to those from which the Existing Lender is released under paragraph (b) above.
3. The proposed Transfer Date is [●].
4. On the Transfer Date the New Lender becomes:
  - (a) Party to the Finance Documents (other than the Intercreditor Agreement) as a Lender; and
  - (b) Party to the Intercreditor Agreement as a Senior Lender (as defined in the Intercreditor Agreement).
5. The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of clause 32.2 (*Addresses*) are set out in the Schedule.
6. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in paragraph (c) of clause 25.4 (*Limitation of Responsibility of Existing Lenders*).
7. The New Lender confirms, for the benefit of the Agent and without liability to any Obligor, that it is:
  - (a) [a Qualifying Lender;]
  - (b) [not a Qualifying Lender].



8. This Assignment Agreement acts as notice to the COACE Agent (on behalf of each Finance Party) and, upon delivery in accordance with clause 25.6(*Copy of Transfer Certificate or Assignment Agreement to Borrower*), to the Borrower (on behalf of each Obligor) of the assignment referred to in this Assignment Agreement.
9. We refer to clause [●] (*Change of Senior Lender*) of the Intercreditor Agreement. In consideration of the New Lender being accepted as a Senior Lender Agreement (and as defined in the Intercreditor Agreement) for the purposes of the Intercreditor Agreement, the New Lender confirms that, as from the Transfer Date, it intends to be party to the Intercreditor Agreement as a Senior Lender, and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a Senior Lender and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement.
10. The Existing Lender hereby represents that it has complied with the procedures of clause 25.10(*Right of First Refusal*) of the Agreement.
11. This Assignment Agreement may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Assignment Agreement.
12. This Assignment Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.
13. This Assignment Agreement has been entered into on the date stated at the beginning of this Assignment Agreement.

**THE SCHEDULE**  
**Rights to be assigned and obligations to be released and undertaken**

[insert relevant details]

[Facility office address, fax number and attention details for notices and account details for payments]

[Existing Lender]

[New Lender]

By:

By:

This Assignment Agreement is accepted by the Agent and the Transfer Date is confirmed as [●].

Signature of this Assignment Agreement by the Agent constitutes confirmation by the Agent of receipt of notice of the assignment referred to herein, which notice the Agent receives on behalf of each Finance Party.

[Agent]

By:

## Schedule 6

### The Security Agent

#### 1. Security agent as holder of liens

(a) In this Clause:

“**Finance Party Claim**” means any amount which an Obligor owes to a Finance Party under or in connection with the Finance Documents; and

“**Security Agent Claim**” means any amount which an Obligor owes to the Security Agent under this Clause.

(b) Unless expressly provided to the contrary in any Finance Document, the Security Agent holds:

(i) any security created by a Security Document governed by any relevant law;

(ii) the benefit of any Security Agent Claims; and

(iii) any proceeds of security,

for the benefit, and as the property, of the Finance Parties.

(c) The Security Agent will separately identify in its records the property rights referred to in paragraph (b) above.

(d) The Borrower must pay the Security Agent, as an independent and separate creditor, an amount equal to each Finance Party Claim on its due date.

(e) The Security Agent may enforce performance of any Security Agent Claim in its own name as an independent and separate right. This includes any suit, execution, enforcement of security, recovery of guarantees and applications for and voting in respect of any kind of insolvency proceeding.

(f) Each Finance Party must, at the request of the Security Agent, perform any act required in connection with the enforcement of any Security Agent Claim. This includes joining in any proceedings as co-claimant with the Security Agent.

(g) Unless the Security Agent fails to enforce a Security Agent Claim within a reasonable time after its due date, a Finance Party may not take any action to enforce the corresponding Finance Party Claim unless it is requested to do so by the Security Agent.

(h) The Borrower irrevocably and unconditionally waives any right it may have to require a Finance Party to join in any proceedings as co-claimant with the Security Agent in respect of any Security Agent Claim.

(i) (A) Discharge by the Borrower of a Finance Party Claim will discharge the corresponding Security Agent Claim in the same amount; and  
(B) Discharge by the

Borrower of a Security Agent Claim will discharge the corresponding Finance Party Claim in the same amount.

- (j) The aggregate amount of the Security Agent Claims will never exceed the aggregate amount of Finance Party Claims.
- (k) (A) A defect affecting a Security Agent Claim against the Borrower will not affect any Finance Party Claim; and (B) A defect affecting a Finance Party Claim against the Borrower will not affect any Security Agent Claim.
- (l) If the Security Agent returns to the Borrower, whether in any kind of insolvency proceedings or otherwise, any recovery in respect of which it has made a payment to a Finance Party, that Finance Party must repay an amount equal to that recovery to the Security Agent.

2. **Responsibility**

- (a) The Security Agent is not liable or responsible to any other Finance Party for:
  - (i) any failure in perfecting or protecting the security created by any Security Document; or
  - (ii) any other action taken or not taken by it in connection with any Security Document,unless caused by its gross negligence or wilful misconduct.
- (b) The Security Agent is not responsible for:
  - (i) the right or title of any person in or to, or the value of, or sufficiency of any part of the security created by the Security Documents;
  - (ii) the priority of any security created by the Security Documents; or
  - (iii) the existence of any other Lien affecting any asset secured under a Security Document.

3. **Title**

The Security Agent may accept, without enquiry, the title (if any) the Borrower may have to any asset over which security is intended to be created by any Security Document.

4. **Possession of documents**

The Security Agent is not obliged to hold in its own possession any Security Document, title deed or other document in connection with any asset over which security is intended to be created by a Security Document. Without prejudice to the above, the Security Agent may allow any bank providing safe custody services or any professional adviser to the Security Agent to retain any of those documents in its possession.

5. **Investments**

Except as otherwise provided in any Security Document, all moneys received by the Security Agent under a Security Document may be:

- (a) invested in the name of, or under the control of, the Security Agent in any investment for the time being authorised by any relevant law for the investment by trustees of trust money or in any other investments which may be selected by the Security Agent with the consent of the Majority Lenders; or
- (b) placed on deposit in the name of, or under the control of, the Security Agent at any bank or institution (including any Finance Party) and on such terms as the Security Agent may agree.

6. **Approval**

Each Finance Party:

- (a) confirms its approval of each Security Document; and
- (b) authorises and directs the Security Agent (by itself or by such person(s) as it may nominate) to enter into and enforce the Security Documents as trustee (or agent) or as otherwise provided (and whether or not expressly in the names of the Finance Parties) on its behalf.

7. **Conflict with security documents**

If there is any conflict between this Agreement and any Security Document with regard to instructions to, or other matters affecting, the Security Agent, this Agreement will prevail.

8. **Release of security**

- (a) If a disposal of any asset subject to security created by a Security Document is made to a person (which is and will remain) outside the Group in the following circumstances:
  - (i) all the Lenders agree to the disposal;
  - (ii) the disposal is being made at the request of the Security Agent in circumstances where any security created by the Security Documents has become enforceable;
  - (iii) the disposal is allowed by the terms of the Finance Documents and will not result or could not reasonably be expected to result in any Default; and
  - (iv) the disposal is being effected by enforcement of a Security Document, the asset(s) being disposed of will be released from any security over it created by a Security Document.
- (b) Any release under this Subclause will not become effective until the date of the relevant disposal or otherwise in accordance with the consent of all the Lenders.
- (c) If a disposal is not made, then any release relating to that disposal will have no effect, and the obligations of the Borrower under the Finance Documents will continue in full force and effect.

- (d) If the Security Agent so requests pursuant to a release under this Subclause, (at the request and expense of the Borrower) each Finance Party must enter into any document and do all such other things which are reasonably required to achieve that release. Each other Finance Party irrevocably authorises the Security Agent to enter into any such document.

9. **Co-security agent**

- (a) The Security Agent may appoint a separate security agent or a co-security agent in any jurisdiction:
  - (i) if the Security Agent considers that without the appointment the interests of the Lenders under the Finance Documents might be materially and adversely affected;
  - (ii) for the purpose of complying with any law, regulation or other condition in any jurisdiction; or
  - (iii) for the purpose of obtaining or enforcing a judgment or enforcing any Finance Document in any jurisdiction.
- (b) Any appointment under this Subclause will only be effective if the security agent or co-security agent confirms to the Security Agent and the Borrower in form and substance satisfactory to the Security Agent that it is bound by the terms of this Agreement as if it were the Security Agent.
- (c) The Security Agent may remove any security agent or co-security agent appointed by it and may appoint a new security agent or co-security agent in its place.

10. **Information**

Each Finance Party and the Borrower must supply the Security Agent with any information that the Security Agent may reasonably specify as being necessary or desirable to enable it to perform its functions under this Clause.

11. **Perfection of security**

Borrower must (at its own cost) take any action and enter into and deliver any document which is required by the Security Agent so that a Security Document provides for effective and perfected security in favour of any successor Security Agent.

## Schedule 7

### Know Your Customer Requirements

The Borrower shall provide the following documents to the Agent, upon the request of a Finance Party, in original or certified copy form:

1. **Formation Documents:** original or certified copies of the certificate of commercial registration, memorandum of association or any other equivalent formation documents in English that have been filed with the relevant business registry in the jurisdiction of formation of the Borrower and any other trading names;
2. **List of Directors:** a certified list of all directors of the Borrower including:
  - (a) names;
  - (b) nationalities;
  - (c) dates of birth; and
  - (d) business addresses;
3. **Passports:** a certified copy of the passports of the persons signing each of the Finance Documents for and on behalf of the Borrower;
4. **Financials:** most recent annual audited financial reports (if any) and the latest unaudited statement of accounts; and
5. **Listing:** evidence that the Borrower is a listed entity.

## Schedule 8

### Form of Compliance Certificate

To: [Agent] as Agent

From: [Borrower]

Dated: [●]

Dear Sirs

**Globalstar Facility Agreement dated [ ] (as amended and restated from time to time) (the “Agreement”)**

1. We refer to the Agreement. This is a Compliance Certificate. Terms defined in the Agreement have the same meaning in this Compliance Certificate unless given a different meaning in this Compliance Certificate.
2. We confirm that: *[Insert details of financial covenants in Clause 19 (Financial Covenants) to be certified]*.
3. We confirm that the amounts as of the date of this Compliance Certificate in each of the Project Accounts are as follows:
  - (a) the Collection Account – US\$[●];
  - (b) the Debt Service Account – US\$[●];
  - (c) the Debt Service Reserve Account – US\$[●];
  - (d) the Equity Proceeds Account – US\$[●]; and
  - (e) the Insurance Proceeds Account – US\$[●].
4. We confirm that: *[insert details of any Spectrum Cash Flow and/or Spectrum Sale proceeds]*.
5. We confirm that: *[insert detailed calculations for the purposes of calculating the amounts of the cash sweeps in Clause 7 (Prepayment and Cancellation)]*.
6. We confirm that: *[insert detailed calculation of the Adjusted Consolidated EBITDA Reconciliation and the reconciliation of the Excess Cash Flow]*.
7. We confirm that since the date of the last Compliance Certificate no new Subsidiaries have been created or equity interests issued other than as disclosed in writing to the Agent.
8. We confirm that the shareholders of record of the Borrower are as follows: *[insert list of current shareholders of record of the Borrower]*.
9. We confirm that the Borrower has complied with the terms of the Accounts Agreement.
10. [We confirm that no Default is continuing.]\*



Signed:

Director

Of

[*Borrower*]

Director

Of

[*Borrower*]

## **Schedule 9**

### **ERISA Plans**

1. Globalstar, Inc. Savings Plan (401(k));
2. Globalstar, Inc. Pension Plan (Retirement); and
3. Globalstar, Inc. Comprehensive Welfare Benefits Plan document.

**Schedule 10**

**Form of Confidentiality Undertaking**

To:

--

*[insert name of Potential Lender]*

Re: The Facility

Borrower: Amount: Agent:
--------------------------------

Dear Sirs,

We understand that you are considering participating in the Facility. In consideration of us agreeing to make available to you certain information, by your signature of a copy of this letter you agree as follows:

**1. Confidentiality Undertaking**

You undertake:

- (a) to keep the Confidential Information confidential and not to disclose it to anyone except as provided for by paragraph 2 below and to ensure that the Confidential Information is protected with security measures and a degree of care that would apply to your own confidential information;
- (b) to use the Confidential Information only for the Permitted Purpose; and
- (c) to use all reasonable endeavours to ensure that any person to whom you pass any Confidential Information (unless disclosed under paragraph 2(b) below) acknowledges and complies with the provisions of this letter as if that Person were also a party to it.

**2. Permitted Disclosure**

We agree that you may disclose Confidential Information:

- (a) to members of the Participant Group and their officers, directors, employees and professional advisers to the extent necessary for the Permitted Purpose and to any auditors of members of the Participant Group;
- (b) (i) where requested or required by any court of competent jurisdiction or any competent judicial, governmental, supervisory or regulatory body, (ii) where required by the rules of any stock exchange on which the shares or other securities of any member of the Participant Group are listed or (iii) where required by the laws or regulations of any country with jurisdiction over the affairs of any member of the Participant Group; or

(c) with the prior written consent of us and the Borrower.

3. **Notification of Required or Unauthorised Disclosure**

You agree (to the extent permitted by law and except where disclosure is to be made to any competent supervisory or regulatory body during the ordinary course of its supervisory or regulatory function over you) to inform us of the full circumstances of any disclosure under paragraph 2(b) or upon becoming aware that Confidential Information has been disclosed in breach of this letter.

4. **Return of Copies**

If we so request in writing, you shall return all Confidential Information supplied to you by us and destroy or permanently erase (to the extent technically practicable) all copies of Confidential Information made by you and use all reasonable endeavours to ensure that anyone to whom you have supplied any Confidential Information destroys or permanently erases (to the extent technically practicable) such Confidential Information and any copies made by them, in each case save to the extent that you or the recipients are required to retain any such Confidential Information by any applicable law, rule or regulation or by any competent judicial, governmental, supervisory or regulatory body or in accordance with internal policy, or where the Confidential Information has been disclosed under paragraph 2(b) above.

5. **Continuing Obligations**

The obligations in this letter are continuing and, in particular, shall survive the termination of any discussions or negotiations between you and us. Notwithstanding the previous sentence, the obligations in this letter shall cease on the earlier of (a) the date you become a party to or otherwise acquire (by assignment, sub participation or otherwise) an interest, direct or indirect in the Facility and (b) twelve (12) Months after you have returned all Confidential Information supplied to you by us and destroyed or permanently erased (to the extent technically practicable) all copies of Confidential Information made by you (other than any such Confidential Information or copies which have been disclosed under paragraph 2 above (other than sub-paragraph 2(a)) or which, pursuant to paragraph 4 above, are not required to be returned or destroyed).

6. **No Representation; Consequences of Breach, etc**

You acknowledge and agree that:

- (a) neither we, nor any member of the Group nor any of our or their respective officers, employees or advisers (each a “**Relevant Person**”)
  - (i) make any representation or warranty, express or implied, as to, or assume any responsibility for, the accuracy, reliability or completeness of any of the Confidential Information or any other information supplied by us or the assumptions on which it is based or
  - (ii) shall be under any obligation to update or correct any inaccuracy in the Confidential Information or any other information supplied by us or be otherwise liable to you or any other Person in respect to the Confidential Information or any such information; and
- (b) we or members of the Group may be irreparably harmed by the breach of the terms of this letter and damages may not be an adequate remedy; each Relevant Person may be

granted an injunction or specific performance for any threatened or actual breach of the provisions of this letter by you.

7. **No Waiver; Amendments, etc**

This letter sets out the full extent of your obligations of confidentiality owed to us in relation to the information the subject of this letter. No failure or delay in exercising any right, power or privilege under this letter will operate as a waiver thereof nor will any single or partial exercise of any right, power or privilege preclude any further exercise thereof or the exercise of any other right, power or privileges under this letter. The terms of this letter and your obligations under this letter may only be amended or modified by written agreement between us.

8. **Inside Information**

You acknowledge that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and you undertake not to use any Confidential Information for any unlawful purpose.

9. **Nature of Undertakings**

The undertakings given by you under this letter are given to us and (without implying any fiduciary obligations on our part) are also given for the benefit of the Borrower and each other member of the Group.

10. **Third Party Rights**

(a) Subject to this paragraph 10 and to paragraph 6 and paragraph 9, a person who is not a party to this letter has no right under the Contracts (Rights of Third Parties) Act 1999 (the “**Third Parties Act**”) to enforce or enjoy the benefit of any term of this letter.

(b) The Relevant Persons may enjoy the benefit of paragraphs 6 and 9 subject to and in accordance with this paragraph 10 and the provisions of the Third Parties Act.

(c) The parties to this letter do not require the consent of any Relevant Person to rescind or vary this letter at any time.

11. **Governing Law and Jurisdiction**

This letter (including the agreement constituted by your acknowledgement of its terms) shall be governed by and construed in accordance with the laws of England and the parties submit to the non-exclusive jurisdiction of the English courts.

12. **Definitions**

In this letter (including the acknowledgement set out below) terms defined in the Facility shall, unless the context otherwise requires, have the same meaning and:

“**Confidential Information**” means any information relating to the Borrower, the Group, and the Finance Documents, provided to you by us or any of our affiliates or advisers, in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such

information but excludes information that (a) is or becomes public knowledge other than as a direct or indirect result of any breach of this letter or (b) is known by you before the date the information is disclosed to you by us or any of our affiliates or advisers or is lawfully obtained by you after that date, other than from a source which is connected with the Group and which, in either case, as far as you are aware, has not been obtained in violation of, and is not otherwise subject to, any obligation of confidentiality;

“**Group**” means the Borrower and each of its holding companies and subsidiaries and each subsidiary of each of its holding companies (as each such term is defined in the Companies Act 1985);

“**Participant Group**” means you, each of your holding companies and subsidiaries and each subsidiary of each of your holding companies (as each such term is defined in the Companies Act 1985); and

“**Permitted Purpose**” means considering and evaluating whether to enter into the Facility.

Please acknowledge your agreement to the above by signing and returning the enclosed copy.

Yours faithfully

.....

To: The Borrower and each other member of the Group

We acknowledge and agree to the above:

.....

For and on behalf of

[Potential Lender]

## Schedule 11

### Material Contracts

1. Radio Access Network and User Terminal Subsystem Contract between the Borrower and Hughes, effective as of 1 May 2008.
  - (a) Amendment No. 1 to Radio Access Network and User Terminal Subsystem Contract, effective as of 16 June 2009.
  - (b) Amendment No. 2 to Radio Access Network and User Terminal Subsystem Contract, effective as of 28 August 2009.
  - (c) Amendment No. 3 to Radio Access Network and User Terminal Subsystem Contract, effective as of 21 September 2009.
  - (d) Amendment No. 4 to Radio Access Network and User Terminal Subsystem Contract, effective as of 24 March 2010.
  - (e) Amendment No. 5 to Radio Access Network and User Terminal Subsystem Contract, effective as of 5 April 2011.
  - (f) Amendment No. 6 to Radio Access Network and User Terminal Subsystem Contract, effective as of 4 November 2011.
  - (g) Amendment No. 7 to Radio Access Network and User Terminal Subsystem Contract, effective as of 1 February 2012.
  - (h) Amendment No. 8 to Radio Access Network and User Terminal Subsystem Contract, effective as of 6 September 2012.
  - (i) Letter Agreements for deferral of payment under the Radio Access Network and User Terminal Subsystem Contract, dated 30 March 2011 as further amended on 14 October 2011, 30 December 2011, 30 March 2012, 26 June 2012, 27 September 2012, 20 December 2012, 26 March 2013, 28 June 2013, 7 August 2013 and 30 May 2014.
  - (j) Radio Access Network and User Terminal Subsystem Contract Exhibit A, dated 6 September 2012.
  - (k) Radio Access Network and User Terminal Subsystem Contract Exhibit C, dated 6 September 2012.
  - (l) Amendment No. 9 to Contract between Globalstar and Hughes Network Systems LLC, effective as of January 13, 2013.
  - (m) Amendment No. 10 to Contract between Globalstar and Hughes Network Systems LLC, effective as of 7 August 2013.
  - (n) Amendment No. 11 to Contract between Globalstar and Hughes Network Systems LLC, effective as of 17 December 2013.

- (o) Letter Agreement regarding equity payment between Globalstar, Inc. and Hughes Network Systems, LLC, dated as of 30 May 2014, as further amended on 3 December 2015, 7 March 2016, 14 June 2016, 21 September 2016 and 6 December 2016
  - (p) Amendment No.12 to Contract between Globalstar, Inc. and Hughes Network Systems LLC, effective as of 16 October 2014.
  - (q) Amendment No.13 to Contract between Globalstar, Inc. and Hughes Network Systems LLC, effective as of 16 July 2015.
  - (r) Amendment No.14 to Contract between Globalstar, Inc. and Hughes Network Systems LLC, effective as of 16 December 2016.
  - (s) Amendment No.15 to Contract between Globalstar, Inc. and Hughes Network Systems LLC, effective as of 1 June 2017.
2. Core Network Purchase Agreement between the Borrower and Ericsson, dated as of 22 July 2014.
- (a) Amendment No.1 to Contract between Globalstar, Inc. and Ericsson Inc., effective as of 2 April 2015.
  - (b) Amendment No. 2 to Contract between Globalstar, Inc. and Ericsson Inc., effective as of 11 August 2015.
3. Senior Indenture between the Borrower and U.S. Bank, National Association, dated as of 15 April 2008.
- (a) First Supplemental Indenture to Senior Indenture, dated as of 15 April 2008;
  - (b) Amendment to First Supplemental Indenture dated, as of 1 December 2008;
  - (c) Second Supplemental Indenture to Senior Indenture, dated as of 19 June 2009;
  - (d) Third Supplemental Indenture to Senior Indenture, dated as of 14 June 2011; and
  - (e) Fourth Supplemental Indenture to Senior Indenture, dated as of 20 May 2013.
4. The Finance Documents.
5. Master Manufacturing and Supply Agreement between the Borrower and BYD (Huizhou) Co., Ltd, effective as of 10 June 2011.
6. Manufacturing Agreement between the Borrower and Creation Technologies Texas LLC, effective as of 8 July 2019.
7. Gateway Operation and Maintenance Agreement between the Borrower and Singapore Telecommunications Limited, dated 7 May 2008.
- (a) Supplemental Agreement to the Operation and Maintenance Agreement, dated 9 September 2009.
  - (b) Supplemental Agreement No.2 to the Operation and Maintenance Agreement, dated 1 September 2011.



- (c) Supplemental Agreement No. 3 to the Operation and Maintenance Agreement, dated 6 May 2013.
  - (d) Supplemental Agreement No. 4 to the Operation and Maintenance Agreement, dated 23 September 2013.
  - (e) Supplemental Agreement No. 5 to the Operation and Maintenance Agreement, dated 24 January 2014.
  - (f) Supplemental Agreement No. 6 to the Operation and Maintenance Agreement, dated 1 April 2014.
  - (g) Supplemental Agreement No. 7 to the Operation and Maintenance Agreement, dated 1 July 2014.
  - (h) Supplemental Agreement No. 8 to the Operation and Maintenance Agreement, dated 16 December 2014.
  - (i) Supplemental Agreement No. 9 to the Operation and Maintenance Agreement, dated 10 May 2015.
  - (j) Supplemental Agreement No. 10 to the Operation and Maintenance Agreement, dated 1 August 2016.
  - (k) Supplemental Agreement No. 11 to the Operation and Maintenance Agreement, dated 1 February 2019.
- 8. Settlement Agreement between the Borrower, Thales Alenia Space France, Thermo Funding Company, dated 24 June 2012.
  - 9. Lease Agreement between the Borrower and Thermo Covington, LLC, dated 1 February 2019.
  - 10. Guaranty Agreement to the Senior Indenture and Fourth Supplemental Indenture between the Borrower, certain subsidiaries of the Borrower, and U.S. Bank National Association dated 27 December 2013.
  - 11. First Lien Facility Agreement.
  - 12. Thermo Loan Agreement.

## **Schedule 12**

### **Labour and Collective Bargaining Agreements**

A labour and collective bargaining agreement dated 1 May 2019 and entered in between Sinttel/RJ (Sindicato dos Trabalhadores em Empresas de Telecomunicações, Transmissão de Dados e Correio Eletrônico, Telefonia Móvel Celular, Serviços Troncalizados de Comunicação, Rádiochamadas, Telemarketing, Projeto, Construção, Instalação e Operação de Mesas Telefônicas no Estado do Rio de Janeiro) and Globalstar do Brasil Ltda.

## Schedule 13

### Financial Indebtedness and Guarantee Obligations

1. Open end promissory note in the maximum principal amount of US\$10,000,000, dated 23 March 2006 from Globalstar Canada Satellite Co. to Globalstar de Venezuela, C.A., having a balance outstanding of US\$4,700,868.93 as of 30 September 2019 (provided, that, notwithstanding anything to the contrary contained in Section 21.1(d) of the Agreement, in no event shall the aggregate outstanding balance under this item 1 exceed the Foreign Investment Limitation (calculated without regard to paragraph (b) of the definition of Foreign Investment Limitation) as of any date of determination).
2. Open end line of credit promissory note in the maximum principal amount of US\$50,000,000, dated 30 June 2007 and amended 31 December 2008 from Globalstar Canada Satellite Co. to the Borrower, having a balance outstanding of US\$0 as of 30 September 2019 (provided, that, notwithstanding anything to the contrary contained in Section 21.1(d) of the Agreement, in no event shall the aggregate outstanding balance under this item 2 exceed the Foreign Investment Limitation (calculated without regard to paragraph (b) of the definition of Foreign Investment Limitation) as of any date of determination).
3. Fourth Supplemental Indenture and the 8% New Notes (in each case, subject to the terms set forth in Clause 21.1(l) (*Negative Undertakings*)).
4. First Lien Facility Agreement (subject to the terms set forth in Clause 21.1(n) (*Negative Undertakings*)).
5. Thermo Loan Agreement.

## **Schedule 14**

### **Communication Licences**

**Licenses and Authorizations Regulated by the Federal Communications Commission  
Held by Globalstar, Inc. and its Subsidiaries  
Active as of October, 2019**

Licensee (Holder)	Call Sign	Expiration Date	Description and Authorizing Order(s) and/or File Number(s)
Globalstar Licensee LLC	S2115	10/04/2024	<p><i>NGSO Satellite Authorization:</i></p> <p>Authority to Construct, Launch, and Operate Globalstar, a Low Earth Orbit Satellite System to Provide Mobile Satellite Services in the Big LEO Band at 1610-1618.725 MHz (“Lower Big LEO band,” for uplink operations) and 2483.5-2500 MHz (“Upper Big LEO band,” for downlink operations), per Order and Authorization, 10 FCC Rcd 2333 (IB 1995) (DA 95-128), and Second Order on Reconsideration, 22 FCC Rcd 19733 (2007) (FCC 07-194) (<i>see also</i> File Nos. SAT-A/O-19910603-00010, formerly 19-DSS-0-91(48); SAT- SAT-ASG-20060724-00078).</p> <p>Authority to operate space stations using transmitting frequencies for feeder downlinks at 6875-7055 MHz and for reception of feeder uplinks at 5091-5250 MHz, per Order and Authorization, 11 FCC Rcd 16410 (IB 1996) (DA 98-1924).</p> <p>License term for first-generation U.S.-licensed space stations extended to Oct. 4, 2024 by File No. SAT-MOD-20130314-00030 (granted Sept. 18, 2014); <i>see</i> Public Notice, Report No. SAT-01042 (DA 14-1355) (IB 2014).</p> <p>Authority to operate Globalstar’s second-generation NGSO MSS satellites licensed through the Republic of France (Globalstar 2.0, ITU Name HIBLEO-X) within the United States granted under File Nos. SAT-MOD-20080904-000165 and SAT-AMD-20091221-00147, per Order, 26 FCC Rcd 3948 (IB 2011) (DA 11-520).</p> <p>Modification of Globalstar’s Ancillary Terrestrial Component (ATC) of its Mobile-Satellite Service (MSS) system operating in the Big LEO S-band, using Globalstar’s licensed spectrum at 2483.5-2495 MHz to deploy a terrestrial low-power broadband network, enabled by Report and Order, 31 FCC Rcd 13801 (2016) (FCC 16-181); <i>see also</i> modification applications, File Nos. SAT-MOD-20170411-00061 and SES-MOD-20170412-00422, (granted August 2017); <i>see</i> Public Notice, DA 17-756, at 1 (Aug. 11, 2017); Public Notice, Report No. SES-01982, at 5-7 (Aug. 16, 2017); Notice of Minor Modification, File No. SAT-MOD-20171020-00141 (accepted Oct. 31, 2017); Public Notice, Report No. SAT-02190, at 2 (Dec. 15, 2017).</p>

GUSA Licensee LLC	E970381	10/04/2024	<i>Mobile Earth Terminals – Blanket License</i> Authority for mobile satellite service handsets / mobile earth terminals within 1610 – 1618.7250 MHz and 2483.5 – 2500 MHz – File No. SES-MOD-20160412-00344 granted July 5, 2016; <i>see</i> Public Notice, Report No. SES-01865. <i>See also</i> MSS Ancillary Terrestrial Component (ATC) Leasing Licence, granted Oct. 31, 2008.
GUSA Licensee LLC	E000342	03/22/2026	<i>Fixed Earth Station – Site ID: CLFN-2 (Clifton, TX)</i> Authority within 5091-5250 MHz and 6875-7055 MHz – File No. SES-MFS-20091221-01608 granted March 18, 2011; <i>see</i> Order, 26 FCC Rcd 3948 (2011) (DA 11-520).
GUSA Licensee LLC	E000343	03/22/2026	<i>Fixed Earth Station – Site ID: CLFN-3 (Clifton, TX)</i> Authority within 5091-5250 MHz and 6875-7055 MHz – File No. SES-MFS-20091221-01609 granted March 18, 2011; <i>see</i> Order, 26 FCC Rcd 3948 (2011) (DA 11-520).
GUSA Licensee LLC	E000344	03/22/2026	<i>Fixed Earth Station – Site ID: CLFN-4 (Clifton, TX)</i> Authority within 5091-5250 MHz and 6875-7055 MHz – File No. SES-MFS-20091221-01610 granted March 18, 2011; <i>see</i> Order, 26 FCC Rcd 3948 (2011) (DA 11-520).
GUSA Licensee LLC	E000345	03/22/2026	<i>Fixed Earth Station – Site ID: CLFN-5 (Clifton, TX)</i> Authority within 5091-5250 MHz and 6875-7055 MHz – File No. SES-MFS-20091221-01611 granted March 18, 2011; <i>see</i> Order, 26 FCC Rcd 3948 (2011) (DA 11-520).
GUSA Licensee LLC	E030266	10/14/2025	<i>Fixed Earth Station – Site ID: CLFN-IOT (Clifton, TX)</i> Authority within 1610-1618.725 MHz and 2483.5-2500 MHz – File No. SES-MOD-20120308-00251 granted May 7, 2012; <i>see</i> Public Notice, Report No. SES-01448.
GUSA Licensee LLC	E050097	01/04/2022	<i>Fixed Earth Station – Site ID: SBRG-1 (Sebring, FL)</i> Authority within 5091-5250 MHz and 6875-7055 MHz – File No. SES-MFS-20101108-01412 granted June 6, 2011; <i>see</i> Public Notices, Report Nos. SES-01354 and SES-01405.
GUSA Licensee LLC	E050098	01/04/2022	<i>Fixed Earth Station – Site ID: SBRG-2 (Sebring, FL)</i> Authority within 5091-5250 MHz and 6875-7055 MHz – File No. SES-MFS-20101108-01411 granted June 7, 2011; <i>see</i> Public Notices, Report Nos. SES-01354 and SES-01405.
GUSA Licensee LLC	E050099	01/04/2022	<i>Fixed Earth Station – Site ID: SBRG-3 (Sebring, FL)</i> Authority within 5091-5250 MHz and 6875-7055 MHz – File No. SES-MFS-20101108-01410 granted June 7, 2011; <i>see</i> Public Notices, Report Nos. SES-01354 and SES-01405.

GUSA Licensee LLC	E050100	01/04/2022	<i>Fixed Earth Station – Site ID: SBRG-4 (Sebring, FL)</i> Authority within 5091-5250 MHz and 6875-7055 MHz – File No. SES-MFS-20101108-01409 granted June 7, 2011; see Public Notices, Report Nos. SES-01354 and SES-01405.
GUSA Licensee LLC	E050345	01/04/2022	<i>Fixed Earth Station – Site ID: WSLA-3 (Wasilla, AK)</i> Authority within 5091-5250 MHz and 6875-7055 MHz – File No. SES-MFS-20101108-01413 granted June 7, 2011; see Public Notices, Report Nos. SES-01354 and SES-01405.
GUSA Licensee LLC	E050346	01/04/2022	<i>Fixed Earth Station – Site ID: 1 (Wasilla, AK)</i> Authority within 5091-5250 MHz and 6875-7055 MHz – File No. SES-MFS-20101108-01414 granted June 7, 2011; see Public Notices, Report Nos. SES-01354 and SES-01405.
GUSA Licensee LLC	E050347	01/04/2022	<i>Fixed Earth Station – Site ID: WSLA-1 (Wasilla, AK)</i> Authority within 5091-5250 MHz and 6875-7055 MHz – File No. SES-MFS-20101108-01415 granted June 7, 2011; see Public Notices, Report Nos. SES-01354 and SES-01405.
GUSA Licensee LLC	E970199	02/27/2023	<i>Fixed Earth Station – Site ID: CLFN-1 (Clifton, TX)</i> Authority within 5091-5250 MHz and 6875-7055 MHz – File No. SES-MOD-20170112-00029 granted Feb. 7, 2017; see Public Notice, Report No. SES-01927.
GCL Licensee LLC	E050237	10/17/2020	<i>Fixed Earth Station – Site ID: LPMA-4 (Cabo Rojo, PR)</i> Authority within 5091-5250 MHz and 6875-7055 MHz – File No. SES-MFS-20091221-01606 granted March 18, 2011; see Order, 26 FCC Rcd 3948 (2011) (DA 11-520).
GCL Licensee LLC	E990335	06/23/2025	<i>Fixed Earth Station – Site ID: LPMA-3 (Cabo Rojo, PR)</i> Authority within 5091-5250 MHz and 5875-7055 MHz – File No. SES-MFS-20091221-01605 granted March 18, 2011; see Order, 26 FCC Rcd 3948 (2011) (DA 11-520).
GCL Licensee LLC	E990336	06/23/2025	<i>Fixed Earth Station – Site ID: LPMA-2 (Cabo Rojo, PR)</i> Authority within 5091-5250 MHz and 6900-7055 MHz – File No. SES-MFS-20091221-01604 granted March 18, 2011; see Order, 26 FCC Rcd 3948 (2011) (DA 11-520).
GCL Licensee LLC	E990337	06/23/2025	<i>Fixed Earth Station – Site ID: LPMA-1 (Cabo Rojo, PR)</i> Authority within 5091-5250 MHz and 6900-7055 MHz – File No. SES-MOD-20170112-00030 granted Feb. 7, 2017; see Public Notice, Report No. SES-01927.

Globalstar, Inc.	WH2XNQ	01/01/2020	<i>Experimental License – Mobile and Fixed Base Stations – Locations:</i> San Mateo, CA; Washington, DC (two sites); Herndon, VA; New York, NY; Chicago, IL. Authority in 2484 MHz – File No. 0501-EX-RR-2015 granted Nov. 10, 2015 (effective Jan. 1, 2016).
Globalstar, Inc.	WJ2XYD	10/01/2019	<i>Experimental License – Mobile – Location:</i> Non-geostationary. Authority in 2483.5-2500 MHz – File No. 0523-EX-CN-2017 granted Oct. 24, 2017.
Globalstar, Inc.	WJ2XLN	05/01/2020	<i>Experimental License – Mobile – Location:</i> Non-geostationary space station. Authority in 2483.5-2495 MHz – File No. 0595-EX-CN-2017 granted Apr. 26, 2018.
Globalstar, Inc.	WJ2XLL	05/01/2020	<i>Experimental License – Mobile – Location:</i> Globalstar LEO. Authority in 2483.5-2495 MHz – File No. 0941-EX-CN-2017 granted Apr. 26, 2018.
Globalstar, Inc.	WJ2XLM	05/01/2020	<i>Experimental License – Mobile – Location:</i> Globalstar LEO, non-GEO. Authority in 2483.5-2495 MHz – File No. 0014-EX-CN-2018 granted Apr. 26, 2018.
Globalstar, Inc.	WJ2XJC	03/01/2020	<i>Experimental License – Mobile – Location:</i> Globalstar, FCC Reg HIBLEO-4. Authority in 2483.5-2495 MHz – File No. 0017-EX-CN-2018 granted Mar. 12, 2018.
Globalstar, Inc.	WJ2XJD	03/01/2020	<i>Experimental License – Mobile – Location:</i> Globalstar, FCC Reg HIBLEO-4. Authority in 2483.5-2500 MHz – File No. 0095-EX-CN-2018 granted Mar. 12, 2018.
Globalstar, Inc.	WJ2XOR	07/01/2020	<i>Experimental License – Mobile – Location:</i> Globalstar, FCC Reg HIBLEO-4. Authority in 2483.5-2495 MHz – File No. 0305-EX-CN-2018 granted June 28, 2018.
Globalstar, Inc.	WJ2XZE	02/01/2021	<i>Experimental License – Mobile – Location:</i> Globalstar, FCC Reg HIBLEO-4. Authority in 2483.5-2495 MHz – File No. 0400-EX-CN-2018 granted Feb. 12, 2019.
Globalstar, Inc.	WJ2XTR	10/01/2020	<i>Experimental License – Mobile – Location:</i> Globalstar, FCC Reg HIBLEO-4. Authority in 2483.5-2500 MHz – File No. 0578-EX-CN-2018 granted Oct. 2, 2018.
Globalstar, Inc.	WJ2XSB	09/01/2020	<i>Experimental License – Mobile – Location:</i> Globalstar, FCC Reg HIBLEO-4. Authority in 2483.5-2500 MHz – File No. 0579-EX-CN-2018 granted Sept. 13, 2018.
Globalstar, Inc.	WJ2XVX	11/01/2019	<i>Experimental License – Mobile – Location:</i> Globalstar, FCC Reg HIBLEO-4. Authority in 2483.5-2500 MHz – File No. 0783-EX-CN-2018 granted Nov. 7, 2018.
Globalstar, Inc.	WK2XFU	05/01/2020	<i>Experimental License – Mobile – Location:</i> Globalstar, FCC Reg HIBLEO-4. Authority in 2483.5-2500 MHz – File No. 0192-EX-CN-2019 granted May 13, 2019.



Globalstar USA, LLC	ITC-214-19990728-00484	None	<i>International Section 214 Authorization</i> – Global Facilities Based and Resale Service – <i>see</i> Public Notice, Report No. TEL-00131 (DA 99-1782); Public Notice, DA 04-628.
Globalstar USA, LLC	ITC-214-19991229-00795	None	<i>International Section 214 Authorization</i> – Global Facilities Based and Resale Service – <i>see</i> Public Notice, Report No. TEL-00191 (DA 00-361); Public Notice, DA 04-628.
Globalstar USA, LLC	ITC-214-20000615-00356	None	<i>International Section 214 Authorization</i> – Global Facilities Based and Resale Service – <i>see</i> Public Notice, Report No. TEL-00261 (DA 00-1614); Public Notice, DA 04-628.

**Other Licenses and Authorizations  
Held by Globalstar, Inc. and its Subsidiaries  
Active as of October, 2019**

Licensee Holder	Call Sign/Lic #	Expiration Date	Description
Globalstar Canada Satellite Co.	File # 8190-G37-201504978	June 30, 2025 Renewed every 10-year	<p>Licence for the provision of basic international telecommunications service traffic between Canada and another country</p> <p>Conditions:</p> <ol style="list-style-type: none"> <li>1. The licensee shall not engage in anti-competitive conduct in relation to the provision of an international telecommunications service or services. For the purposes of this condition, anti-competitive conduct includes entering into or continuing to participate in an agreement or an arrangement that has or is likely to have the effect of preventing or lessening competition unduly in Canada, or otherwise providing telecommunications services in a manner that has or is likely to have the effect of preventing or lessening competition unduly in Canada. The licensee shall file with the Commission, should it become necessary to investigate whether or not the licensee is engaging in practices having an anti-competitive effect in Canada, any information that the Commission may deem necessary.</li> <li>2. The licensee shall comply with the requirements set out in Changes to the contribution regime, Decision CRTC 2000-745, 30 November 2000, as amended by Changes to the annual contribution reporting requirements, Decision CRTC 2002-35, May 31, 2002, and as amended from time to time by the Commission.</li> <li>3. The licensee shall keep current the information required by the Commission in the application (affidavit) form for the issuance or renewal of basic international telecommunications licences, as amended from time to time by the Commission. The licensee shall file with the Commission particulars of any change to such information within 30 days of the licensee becoming aware of the change in question.</li> <li>4. The licensee shall file with the Commission any information required to be filed, in such form as may be prescribed by the Commission. For example, the licensee shall comply with the telecommunications industry data collection process requirements set out in Telecom Circular CRTC 2003-1 and Telecom Circular CRTC 2005-4, as amended from time to time by the Commission.</li> </ol> <p>(Licence and Conditions attached)</p>

Globalstar Canada Satellite Co.	Spectrum Licence # 010797205-001	March 31, 2020 Annual Renewal	Spectrum licence granting Globalstar Canada Satellite Co. (Globalstar) authority to use the following bands of radio frequencies to provide mobile satellite services to Globalstar's subscriber earth stations in Canada via the Globalstar constellation of satellites.  Frequency Bands (Uplink 1610 – 1618.725 MHz); (Downlink 2483.5 – 2500 MHz)  Spectrum 8.7250 MHz/16.5000 MHz  Operational Frequency Requirements: Service link operations will be restricted to the 1610-1618.25 MHz and 2483.5 – 2500 MHz frequency bands. Globalstar is required to share the use of this spectrum in Canada with any other party licensed by ISED to use the same spectrum in the provision of mobile satellite services.  (Licence and conditions attached)
Globalstar Canada Satellite Co.	CG715 Lic # 010001163-001	March 31, 2020 Annual renewal	Radio Licence for the Smiths Falls Gateway  (Licence and conditions attached)
Globalstar Canada Satellite Co.	CG606 Lic#010000201-001	March 31, 2020	Radio licence for the High River Gateway  (Licence and conditions attached)
Globalstar Licensee LLC and Globalstar do Brasil Holdings Ltda (as its representative)		09/30/2024	Authority to operate Globalstar satellite system at Brazilian territory – Anatel Act 10303 – July 12 <sup>th</sup> , 2017
Globalstar do Brasil		None	Authority to explore the Mobile Service Global Satellite Non-Geostationary at Brazilian territory – Anatel Act 4849 – September 24 <sup>th</sup> , 1999
Globalstar do Brasil		09/05/2033	Presidente Prudente Gateway, number 1006015202.  SATELLITE OPERATION AND ACCESS STATIONS
Globalstar do Brasil		09/05/2033	Manaus gateway, number 1006029130.  SATELLITE OPERATION AND ACCESS STATIONS
Globalstar do Brasil		09/05/2033	Petrolina gateway, number 1006102210.  SATELLITE OPERATION AND ACCESS STATIONS

Schedule 15

Satellites

Orbital Plane	In-Plane Slot Location	Satellite Flight Model Number	Transponder Frequency	Satellite Status as of November 5, 2019
A	1	M092	See Transponder Frequency Table	Operational in-orbit
A	2	M073		Operational in-orbit
A	3	M077		Operational in-orbit
B	1	M079		Operational in-orbit
B	2	M076		Operational in-orbit
B	3	M074		Operational in-orbit
C	1	M075		Operational in-orbit
C	2	M089		Operational in-orbit
C	3	M094		Operational in-orbit
D	1	M085		Operational in-orbit
D	2	M096		Operational in-orbit
D	3	M081		Operational in-orbit
E	1	M097		Operational in-orbit
E	2	M093		Operational in-orbit
E	3	M091		Operational in-orbit
F	1	M095		Operational in-orbit
F	2	M078		Operational in-orbit
F	3	M088		Operational in-orbit
G	1	M086		Operational in-orbit
G	2	M090		Operational in-orbit
G	3	M082		Operational in-orbit
H	1	M083		Operational in-orbit
H	2	M084		Operational in-orbit
H	3	M080		Operational in-orbit
B	Spare	M070		Operational in-orbit
C	Spare	M069		Operational in-orbit
C	Spare	M071		Operational in-orbit
D	Spare	M065		Operational in-orbit
E	Spare	M072		Operational in-orbit
G	Spare	M066		Operational in-orbit

<b>Orbital Plane</b>	<b>In-Plane Slot Location</b>	<b>Satellite Flight Model Number</b>	<b>Satellite Status as of 5-Nov-19</b>
A	1	92	In-service
	2	73	In-service
	3	77	In-service
B	1	79	In-service
	2	76	In-service
	3	74	In-service
C	1	75	In-service
	2	89	In-service
	3	94	In-service
D	1	85	In-service
	2	96	In-service
	3	81	In-service
E	1	97	In-service
	2	93	In-service
	3	91	In-service
F	1	95	In-service
	2	78	In-service
	3	88	In-service
G	1	86	In-service
	2	90	In-service
	3	82	In-service
H	1	83	In-service
	2	84	In-service
	3	80	In-service
S			
	1	70	In-service
	2	69	In-service
	3	71	In-service
	4	65	In-service
	5	72	In-service
	6	66	In-service

### Transponder Frequency Table

(all frequencies in MHz)

	Forward Link					
	C-Band Uplink			S-Band Downlink		
	low limit	center	high limit	low limit	center	high limit
1	5096.9600	5105.2100	5113.4600	2483.5000	2491.7500	2500.0000
2	5116.3400	5124.5900	5132.8400			
3	5135.7200	5143.9700	5152.2200			
4	5155.1000	5163.3500	5171.6000			
5	5174.4800	5182.7300	5190.9800			
6	5193.8600	5202.1100	5210.3600			
7	5213.2400	5221.4900	5229.7400			
8	5232.6200	5240.8700	5249.1200			

Command Frequency		
5091.0000	5091.5000	5092.0000

	Return Link					
	L-Band Uplink			C-Band Downlink		
	low limit	center	high limit	low limit	center	high limit
1	1610.0000	1618.2500	1626.5000	6900.7400	6908.9900	6917.2400
2				6920.1200	6928.3700	6936.6200
3				6939.5000	6947.7500	6956.0000
4				6958.8800	6967.1300	6975.3800
5				6978.2600	6986.5100	6994.7600
6				6997.6400	7005.8900	7014.1400
7				7017.0200	7025.2700	7033.5200
8				7036.4000	7044.6500	7052.9000

Telemetry Frequency		
6875.9000	6877.5000	6879.1000

## Schedule 16

### Existing Liens

1. Liens on a first ranking basis pursuant to the First Lien Security Documents.
2. Delaware - UCC-1 Financing Statements to name BNP Paribas, as agent, as secured party filed 18 June 2009:
  - (a) Globalstar, Inc., 91950739;
  - (b) Globalstar USA, LLC, 91951547;
  - (c) Globalstar C, LLC, 91950895;
  - (d) Globalstar Leasing LLC, 91953501;
  - (e) Globalstar Security Services, LLC, 91951836;
  - (f) ATSS Canada, Inc., 91951976;
  - (g) GSSI, LLC, 91951281;
  - (h) Globalstar Licensee LLC, 91953584;
  - (i) GUSA Licensee LLC, 91951059;
  - (j) GCL Licensee LLC, 91951158; and
  - (k) Globalstar Brazil Holdings, L.P., 91951695.
3. Colorado Secretary of State UCC-1 Financing Statement 2009F052197 filed against Spot LLC, with BNP Paribas as agent, 18 June 2009.
4. Form 3C Personal Property Security Registrations filed against the Borrower and Subsidiary Guarantors in favour of the administrative agent with the Ontario, Canada Ministry of Consumer and Business Services on 17 January 2008:
  - (a) Globalstar, Inc. <625298679;
  - (b) Globalstar USA, LLC <625298661;
  - (c) Globalstar C, LLC <625298607;
  - (d) Globalstar Leasing LLC <625298598;
  - (e) Globalstar Security Services, LLC <625298625;
  - (f) ATSS Canada, Inc. <625298643; and
  - (g) GSSI, LLC <625298634.
5. Delaware Secretary of State UCC-1 Financing Statement filed against Globalstar Broadband Services Inc., with BNP Paribas as agent filed June 25, 2012, 22445536.



6. Louisiana Secretary of State UCC-1 Financing Statement filed against Globalstar Media, L.L.C., with BNP Paribas as agent filed 25 June 2012, 52-64212.
7. Delaware Secretary of State UCC-1 Financing Statement filed against Globalstar International, LLC, with BNP Paribas as agent filed June 4, 2019, 20193840423.
8. Delaware Secretary of State UCC-1 Financing Statement filed against Globalstar Holding US, LLC, with BNP Paribas as agent filed June 4, 2019, 20193840647.
9. United States Patent and Trademark Office filings against the Borrower's Patents.
10. United States Patent and Trademark Office filings against the Borrower's Trademarks.
11. Regarding the Clifton, Texas real property:
  - (a) Deed of Trust, Security Agreement, Assignment of Leases, Rents and Profits, Financing Statement and Fixture Filing granted by Globalstar USA, LLC to BNP Paribas regarding Clifton, Texas real property dated as of 9 July 2009 and recorded on 28 July 2009 as Instrument No. 2009-00002393 with the County Clerk of Bosque County, Texas, as amended on or about the date hereof by that certain Modification of Deed of Trust, Security Agreement, Assignment of Leases, Rents and Profits, Financing Statement and Fixture Filing;
  - (b) mineral reservation as set forth in the deed dated 10 June 1954 and recorded in volume 172, page 298 of the Deed Records of Bosque County, Texas;
  - (c) the following oil and gas leases as recorded in the Deed Records of Bosque County, Texas: volume 16, page 439; volume 134, page 301; volume 14, page 370; volume 134, page 369; and
  - (d) items shown on the survey prepared by David Lane, RPLS #5233 dated 14 August 2006.
12. Regarding Wasilla, Alaska real property:
  - (a) Deed of Trust, Security Agreement, Assignment of Leases, Rents and Profits, Financing Statement and Fixture Filing granted by Globalstar USA, LLC to BNP Paribas regarding Wasilla, Alaska real property dated as of 9 July 2009 and recorded on 29 July 2009 as Instrument No. 2009-016786-0 in Palmer Recording District, Alaska, as amended on or about the date hereof by that certain Modification of Deed of Trust, Security Agreement, Assignment of Leases, Rents and Profits, Financing Statement and Fixture Filing;
  - (b) reservations or exceptions in patents or in acts authorizing the issuance thereof, recorded 1 April 1963 at Book 45, page 284, Palmer Recording District, Alaska;
  - (c) items shown on the plats of Discovery Hill Subdivision filed under Plat Number 2003-46 and Plat Number 98-134, Palmer Recording District, Alaska;
  - (d) items shown on the As-Built Survey prepared by John Shadrach, PLS dated 18 August 2005;

- (e) Right of Way Easements granted to Matanuska Electric Association, Inc. recorded in Book 29, Page 86; Book 325, Page 353; Book 913, Page 542; as Serial Number 2005-029959-0, each in Palmer Recording District, Alaska; and
  - (f) Easement in favor of Enstar Natural Gas Company, recorded in Book 944, Page 145, Palmer Recording District, Alaska.
13. Lien in favor of NFS Leasing Inc. and Peoples United Bank with Globalstar, Inc. listed as debtor, for all equipment and peripherals leased by Globalstar, Inc. under that certain Master Lease # 2015-413, as described in the UCC-1 filed on 19 February 2016 with the Delaware Department of State (Initial Filing No. 2016 1015922).
  14. Lien in favor of Electro Rent Corporation with Globalstar, Inc. listed as debtor, for a signal and spectrum analyzer, Asset #1734309D, Serial #103743, as described in the UCC-1 filed on 2 July 2018 with the Delaware Department of State (Initial Filing No. 2018 4523722).
  15. Lien in favor of Dell Financial Services L.L.C. with Globalstar, Inc. listed as debtor, for all computer equipment and peripherals and other equipment financed under the Payment Plan Agreement entered into between Globalstar, Inc. and Dell Financial Services L.L.C., as described in the UCC-1 filed on 13 April 2017 with the Caddo Clerk of Court (09-1327337).
  16. Lien in favor of Dell Financial Services L.L.C. with Globalstar, Inc. listed as debtor, for all computer equipment and peripherals and other equipment financed under the Payment Plan Agreement entered into between Globalstar, Inc. and Dell Financial Services L.L.C., as described in the UCC-1 filed on 15 February 2017 with the Caddo Clerk of Court (09-1321841).
  17. Lien in favor of Toyota Industries Commercial Finance, Inc. with Globalstar, Inc. listed as debtor, for one Toyota Forklift, Model #8BWS10, Serial #11586, as described in the UCC-1 filed on 25 February 2019 with the Caddo Clerk of Court (09-1387856).
  18. Lien in favor of Cisco Systems Capital Corporation with Globalstar USA, LLC listed as debtor, for all right, title, and interest in and to, among other things, the equipment subject to that Agreement to Lease Equipment No. 12020-MM001-0 entered into between Cisco Systems Capital Corporation and Globalstar USA, LLC, as described in the UCC-1 filed on 2 September 2015 with the Delaware Department of State (Initial Filing No. 2015 3856514).

**Schedule 17****Key Performance Indicators****North America**

<b>Key Performance Indicators</b>	<b>Quarter Ended</b>
<b>Subscribers (by product line)</b>	
<b>Gross Additions (by product line)</b>	
<b>Net Additions (by product line)</b>	
<b>Churn (by product line)</b>	
<b>ARPU (by product line)</b>	
<b>Minutes of Use</b>	

**Rest of the World**

<b>Key Performance Indicators</b>	<b>Quarter Ended</b>
<b>Subscribers (by product line)</b>	
<b>Gross Additions (by product line)</b>	
<b>Net Additions (by product line)</b>	
<b>Churn (by product line)</b>	
<b>ARPU (by product line)</b>	
<b>Minutes of Use</b>	

## Schedule 18

### Transactions with Affiliates

1. Transactions with Thermo
  - (a) Settlement Agreement with Thermo and Other Shareholders
    - (i) On 14 December 2018, the Borrower, Thermo and other unaffiliated shareholders entered a stipulation and agreement of settlement, compromise and release of stockholder derivative action to settle all claims asserted against all defendants in the shareholder action filed on 25 September 2018. On September 5, 2019, the Court approved the Settlement Agreement and awarded to the Plaintiffs' attorneys a fee of \$4,500,000, inclusive of expenses
  - (b) General & Administrative & Non-cash expenses
    - (i) Certain general and administrative expenses are incurred by Thermo on behalf of the Borrower. These expenses, which include non-cash expenses, relate to services provided by certain executive officers of Thermo and expenses incurred by Thermo on behalf of the Borrower which are charged to the Borrower. The expenses charged are based on actual amounts (with no markup) incurred by Thermo or upon allocated employee time.
  - (c) The "*Finance Documents*" under the First Lien Facility Agreement as in effect on the Closing Date.
  - (d) The Thermo Loan Agreement.
2. Thermo Covington, LLC
  - (a) On 1 February 2019, the Borrower entered into a Lease Agreement for provision of its headquarters with Thermo Covington, LLC with an annual rent payment of \$1,400,000 subject to annual increases not exceeding 2.5%.

## Schedule 19

### Existing Loans, Investments and Advances

1. Open end line of credit promissory note in the maximum principal amount of US\$50,000,000, dated 30 June 2007 and amended December 31, 2008 from Globalstar Canada Satellite Co. to the Borrower, having a balance outstanding of \$0 as of 30 September 2019 (provided, that, notwithstanding anything to the contrary contained in Section 21.3(a)(iii) of the Agreement, in no event shall the aggregate outstanding balance under this item 1 exceed the Foreign Investment Limitation (calculated without regard to paragraph (b) of the definition of Foreign Investment Limitation) as of any date of determination).
2. Open end promissory note in the maximum principal amount of US\$10,000,000 dated 23 March 2006 from Globalstar Canada Satellite Co. to Globalstar de Venezuela, C.A., having a balance outstanding of US\$4,700,868.93 as of 30 September 2019 (provided, that, notwithstanding anything to the contrary contained in Section 21.3(a)(iii) of the Agreement, in no event shall the aggregate outstanding balance under this item 2 exceed the Foreign Investment Limitation (calculated without regard to paragraph (b) of the definition of Foreign Investment Limitation) as of any date of determination).
3. As of the Fourth Effective Date, the Borrower owned 225,000,000 ordinary shares of Globaltouch (West Africa) Limited pursuant to a Share Purchase Agreement between the Borrower and Globaltouch (West Africa) Limited dated 16 October 2007.
4. Joint Venture Agreement, dated as of 21 January 2010, by and between the Borrower and Arion Communications Co., pursuant to which the Borrower has advanced a total of US\$1,457,381 to Globalstar Asia Pacific.
5. On 7 April 2011, the Borrower purchased 1,000,000 Series B Convertible Preferred Stock and 250,000 warrants of TRAFFICCAST INTERNATIONAL, INC. at an Aggregate Purchase Price of US\$500,000.
6. On 23 March 2015, the Borrower entered into an agreement with CROC 684 (Proprietary) Limited T/A BBI Wireless @ Home. The Borrower retains a 74% economic interest and CROC 684 (Proprietary) Limited T/A BBI Wireless @ Home holds the remaining 26%. Operations are conducted through the entity The World's End Proprietary Limited, which is a subsidiary of the Borrower's parent company, Globalstar Inc. As of 30 September 2019, the initial shareholder loan from CROC 684 (Proprietary) Limited T/A BBI Wireless @ Home to The World's End has a balance of \$104,000 and the loan from Globalstar, Inc. to the World's End has a balance of \$296,000.
7. On 16 April 2014 and 25 June 2014, the Borrower (as lender) entered into separate Loan Agreements in the maximum aggregate principal amount of US\$575,000 with VehSmart (as borrower), a simplex VAR providing a tracking solution for the Ministry of Agriculture and Fishing in Ecuador. These loans are secured by all inventory held at VehSmart.
8. Acquisition of capital stock of Yippy, Inc. ("**Yippy**"), pursuant to a Stock Issuance Agreement, dated 15 December 2015, between the Borrower and Yippy, which, among other things, provides

Yippy access to the Borrower's network to sell certain Yippy services. In lieu of cash consideration, as consideration for such access, the Borrower received 19.99% of Yippy's total outstanding shares of capital stock with certain anti-dilutive protections.

## Schedule 20

### Incentive Plan

1. *Third Amended and Restated Globalstar 2006 Equity Incentive Plan.* The Borrower's 2006 Equity Incentive Plan (the "**Equity Plan**") is a broad based, long-term retention programme intended to attract and retain talented employees and align stockholder and employee interests. The Equity Plan was originally approved by the Board of Directors and the holders of a majority of our outstanding common stock on 12 July 2006 and became effective upon the registration of our common stock under the Securities Act of 1933 on 1 November 2006. The Plan was amended and restated at the 2008 Annual Meeting of Stockholders and further amended and restated at each of the 2016 and 2018 Annual Meetings of Stockholders. The number of shares of the Borrower's common stock authorized for issuance under the Equity Plan is subject to yearly increases each 1 January equal to the lesser of a) two percent of the number of shares of the Borrower's common stock issued and outstanding on the immediately preceding 31 December or b) such other amount determined by the Borrower's Board of Directors. As of 30 September 2019, 83,200,000 shares of the Borrower's common stock were authorized under the Equity Plan.
2. *Globalstar Key Employee Bonus Plans.* The Borrower has an annual bonus plan designed to reward designated key employees' efforts to exceed the Borrower's financial performance goals for the designated calendar year ("**Plan Year**"). The bonus pool available for distribution is determined based on the Borrower's adjusted EBITDA performance during the Plan Year. The bonus may be paid in cash or the Borrower's common stock, as determined by the Compensation Committee.
3. *Letter Agreement with Barbee Ponder and David Milla, dated 27 November 2018.* Mr. Ponder and Mr. Milla have a letter agreement in connection with obtaining certain international spectrum authorities. They will each receive restricted stock awards or cash for each license obtained.
4. *Letter Agreement with David Kagan dated 4 September 2018.* In 2018, Mr. Kagan was granted 3,000,000 restricted stock awards of which 1,250,000 have a graded vesting schedule whereby ten percent of the awards vest on the first anniversary of the grant date, fifteen percent vest on the second anniversary of the grant date, twenty-five percent vest on the third anniversary of the grant date and the remaining fifty percent vest on the fourth anniversary of the grant date; these equity awards are designed to recognize performance and encourage retention. The remaining 1,750,000 have vesting conditions that are contingent upon his achievement of certain performance milestones.
5. *Letter Agreement with Jim Kilfeather dated 26 September 2018.* Mr. Kilfeather has a letter agreement, which states that he will receive restricted stock awards in connection with reaching certain performance milestones.





## Schedule 22

### Disclosures

#### 1. Clause 17.35 Tax Returns and Payments

**Tax Returns and Payments.** The Borrower operates in various U.S. and foreign tax jurisdictions. The process of determining its anticipated tax liabilities involves many calculations and estimates which are inherently complex. The Borrower believes that it has complied in all material respects with its obligations to pay taxes in these jurisdictions. However, its position is subject to review and possible challenge by the taxing authorities of these jurisdictions. If the applicable taxing authorities were to challenge successfully its current tax positions, or if there were changes in the manner in which the Borrower conducts its activities, the Borrower could become subject to material unanticipated tax liabilities. It may also become subject to additional tax liabilities as a result of changes in tax laws, which could in certain circumstances have a retroactive effect.

- (i) The Canada Revenue Agency (CRA) is currently auditing the income tax returns of the Borrower's Canadian subsidiary for the years ended October 31, 2015 and 2016. The Borrower is in the process of collecting information and responding to questions from the Canada Revenue Agency.
- (ii) Except for the Canadian tax audits, neither the Borrower nor any of its Subsidiaries are currently under audit; however, numerous tax years remain subject to examination by tax authorities.
- (iii) The Borrower's Worlds' End Subsidiary has not timely filed with its taxing authority its income tax returns as the statutory audits of the underlying financial statements have not been completed.

**Schedule 23**

**Form of Promissory Note**

Note P n° ..... US\$ .....

(amount in figures)

..... , .....  
(place and date of issue)

For .....  
(date of payment)

We hereby agree to pay against this note to the order of [ ] ..... the amount of.....  
US Dollars (amount in letters).

This note is expressly exempted from protest.

This note is governed by [English / French law].

Issued under the Facility Agreement dated [ ] (as amended and restated from time to time)

Any right and/or obligation hereunder of any party shall be subject in all respects to the terms of the Intercreditor Agreement dated [ ] November 2019.

Issuer
GLOBALSTAR, INC 1351 Holiday Square Boulevard, Covington LA 70433 United States of America
Domiciliation
[ ]

For : **GLOBALSTAR, INC.**

Name : .....

Title : .....”

**Subsidiary Guarantors**

1. GSSI, LLC, a limited liability company organised in Delaware, United States of America, with organisational identification number 3732317 and whose chief executive office is at 1351 Holiday Square Boulevard, Covington, LA 70433, United States of America;
2. Globalstar Security Services, LLC, a limited liability company organised in Delaware, United States of America, with organisational identification number 3747502 and whose chief executive office is at 1351 Holiday Square Boulevard, Covington, LA 70433, United States of America;
3. GlobalStar C, LLC, a limited liability company organised in Delaware, United States of America, with organisational identification number 3732313 and whose chief executive office is at 1351 Holiday Square Boulevard, Covington, LA 70433, United States of America;
4. Globalstar USA, LLC, a limited liability company organised in Delaware, United States of America, with organisational identification number 2663064 and whose chief executive office is at 1351 Holiday Square Boulevard, Covington, LA 70433, United States of America;
5. Globalstar Leasing LLC, a limited liability company organised in Delaware, United States of America, with organisational identification number 3731109 and whose chief executive office is at 1351 Holiday Square Boulevard, Covington, LA 70433, United States of America;
6. Spot LLC, a limited liability company organised in Colorado, United States of America, with organisational identification number 20071321209 and whose chief executive office is at 1351 Holiday Square Boulevard, Covington, LA 70433, United States of America;
7. ATSS Canada, Inc., a corporation incorporated in Delaware, United States of America, with organisational identification number 2706412 and whose chief executive office is at 1351 Holiday Square Boulevard, Covington, LA 70433, United States of America;
8. Globalstar Brazil Holdings, L.P., a limited partnership formed in Delaware, United States of America, with organisational identification number 2453576 and whose chief executive office is at 1351 Holiday Square Boulevard, Covington, LA 70433, United States of America;
9. GCL Licensee LLC, a limited liability company organised in Delaware, United States of America, with organisational identification number 4187922 and whose chief executive office is at 1351 Holiday Square Boulevard, Covington, LA 70433, United States of America;
10. GUSA Licensee LLC, a limited liability company organised in Delaware, United States of America, with organisational identification number 4187919 and whose chief executive office is at 1351 Holiday Square Boulevard, Covington, LA 70433, United States of America;
11. Globalstar Licensee LLC, a limited liability company organised in Delaware, United States of America, with organisational identification number 4187920 and whose chief executive office is at 1351 Holiday Square Boulevard, Covington, LA 70433, United States of America;

12. Globalstar Media, L.L.C., a limited liability company organised in Louisiana, United States of America, with organisational identification number 40224959k and whose chief executive office is at 1351 Holiday Square Boulevard, Covington, LA 70433, United States of America;
13. Globalstar Broadband Services Inc. a corporation incorporated in Delaware, United States of America, with organisational identification number 4833062 and whose chief executive office is at 1351 Holiday Square Boulevard, Covington, LA 70433, United States of America;
14. Globalstar International, LLC, a limited liability company organized in Delaware, United States of America, with organisational identification number 6438610 and whose chief executive office is at 1351 Holiday Square Boulevard, Covington, LA 70433; and
15. Globalstar Holding US, LLC, a limited liability company organised in Delaware, United States of America, with organisational identification number 6508346 and whose chief executive office is at Globalstar, Inc., 1351 Holiday Square Boulevard, Covington, LA 70433.

## Schedule 25

### Investment Policy

#### 1. Purpose

This document outlines the Borrower's Corporate Investment policy. The main objectives of the investment policy are:

- (a) To ensure the safety and preservation of principal. The Borrower shall only invest in instruments and accounts with the lowest level of default and volatility risk. The Borrower shall use other methods to minimize risk such as diversifying the investment portfolio to minimize the adverse effects of the failure of any one issuer or broker.
- (b) To coincide with its short-term liquidity needs. The Borrower's investment policy contemplates buying only the securities that have active secondary markets to provide immediate liquidity, when needed.
- (c) To offer maximum return without compromising the Borrower's stated investment objectives.
- (d) To provide fiduciary control.

#### 2. Approved Investment Vehicles

In order to meet the Borrower's stated investment objectives, it must choose between several different investment options available to it. The following options have been identified for the Borrower for meeting its investment objectives as stated above.

- (a) Corporate Savings Accounts. The account must be fully collateralized by instruments issued by the US Treasury.
- (b) Corporate Money Market Funds, Repurchase Agreements, and Commercial Paper. The funds must meet the following criteria:
  - (i) the investment objectives and policies must be substantially similar to those set forth in this guideline, i.e., principal preservation and risk mitigation;
  - (ii) the funds must offer immediate redemption of shares upon request; and
  - (iii) the funds load or sales charges are not excessive, relative to those of other potential investments meeting the objectives.

#### 3. US Government obligations

T-Bills or bonds of short-term or medium-term maturity. At any given time, the Borrower may have invested in one or all of the above mentioned investment vehicles. However, under no circumstances will the Borrower make investment decisions contrary to its investment objectives.

4. **Credit Quality**

Except for US Treasury, all securities must be rated by S & P's or Moody's, and shall be of high credit quality (A-1 and P-1 or better).

5. **Marketability**

All holdings should be sufficient in size and held in issues which are traded actively to facilitate timely transactions at a minimum cost and accurate market evaluation.

6. **Trading**

All purchases and sales shall be executed at the best net price with principal dealers and banks in the particular securities. All securities purchased shall be in the name of the Globalstar, Inc. or its designate.

7. **Responsibility and Authorization**

The Chief Financial Officer has reviewed this investment policy. Revisions to this policy will be initiated by the Chief Financial Officer and implemented upon approval of the Borrower's Chief Executive Officer and the President.

The Chief Financial Officer of the Borrower shall have the authority to:

- (a) open accounts with brokers, investment banks, commercial bank, and mutual funds companies;
- (b) establish safekeeping accounts or other arrangements concerning the custody of the securities; and
- (c) execute documents to effect the above, as necessary.

In addition, the Chief Financial Officer or his or her designate is expected to monitor the portfolio and cash management policy for suitability in light of then-current corporate and market conditions. The Borrower may use the services of investment firms, brokers, or mutual funds companies for its investment program. All investment firms, brokers, and mutual fund companies must be personally approved by the Chief Financial Officer of the Borrower.

[Reserved]

[Reserved]



**Schedule 28**

**Form of Quarterly Health Report**

**Part 1**

**Satellite Status**

<b>Orbital Plane</b>	<b>In-Plane Slot Location</b>	<b>Satellite Flight Model Number</b>	<b>Satellite Status as of</b> [•]
[•]	[•]	[•]	[•]

**Part 2**

**Band Status**

<b>Satellite Flight Model Number</b>	<b>L-Band Status</b>	<b>S-Band Status</b>	<b>Status of Command Telemetry Receiver</b>
[•]	[•]	[•]	[•]

**Part 3**

**Material Events**

Attached is a letter providing details of material or unusual events that have occurred with respect to the Satellites since the delivery to the Agent of the last quarterly report.

Schedule 29

Satellite Performance Criteria

IOT Criteria to Declare Satellite Stabilization Bus			
Parameter	Status		
SHM acquisition- check satellite configuration	NOMINAL/FAIL		
Solar Array Wings Deployed	NOMINAL/FAIL		
Telemetry Transmitters "ON"	NOMINAL/FAIL		
Telemetry Tx EIRP (Nominal Unit) within 3dB of prediction	YES/NO	Value	
Telemetry Tx EIRP (Redundant Unit) within 3dB of prediction	YES/NO	Value	
Telemetry Signal Successfully Received by Ground Station	NOMINAL/FAIL		
Command Rx Sensitivity (Nominal Unit) with in 3dB of prediction	YES/NO	Value	
Command Rx Sensitivity (Redundant Unit) within 3dB of prediction	YES/NO	Value	
EAM acquisition after SHM	NOMINAL/FAIL		
NOM acquisition after EAM	NOMINAL/FAIL		
Heaters "ON"	NOMINAL/FAIL		
Successful orbit raising to 1414 km orbit (thruster check)	NOMINAL/FAIL		
Expended 100K or fewer thruster pulses; 90kg of propellant	YES/NO	Value	
Battery DOD less than 15%	YES/NO	Value	
PAYLOAD			
Good health check of transponders	Turn On	Nominal operations	
<b>Test all 16 beams of C-S Transponder</b>	<b>1.1V</b>	<b>2.65V</b>	<b>4.0V</b>
X1	NOMINAL/FAIL	NOMINAL/FAIL	NOMINAL/FAIL
X2			
X3			
X4			
X5			
X6			
X7			
X8			
Y1			
Y2			
Y3			
Y4			
Y5			
Y6			
Y7			
Y8			
<b>Test all 16 beams of L-C Transponder</b>			
X5	NOMINAL/FAIL		
X7			
Y1			
X3			
Y5			
X4			
Y7			
X1			
Y6			
X2			
Y4			
X8			
Y3			
X6			
Y2			
Y8			

## Schedule 30

### Form of Auditors Report

To the Audit Committee and Management of Globalstar, Inc.:

We have performed the procedures enumerated below, which were agreed to by the audit committee, management of Globalstar Inc. (“**Globalstar**”) and the Finance Parties (as such term is defined in the Facility Agreement) solely to assist you with respect to the [insert date] Compliance Certificate required to be issued pursuant to clause 18.4(*Compliance Certificate*) of the facility agreement dated [1] (as amended and restated) (the “**Facility Agreement**”). Globalstar’s management is responsible for the Compliance Certificate. This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of those parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

Procedures performed:

1. Agreed the financial information contained in the Compliance Certificate to the general ledger or underlying accounting records prepared by management.
2. Mathematically recomputed the calculations in the Compliance Certificate to make sure they are arithmetically accurate.
3. Compared each individual financial component of the Compliance Certificate to the definition included within the Facility Agreement.

We were not engaged to, and did not conduct an examination, the objective of which would be the expression of an opinion on the Compliance Certificate. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of the audit committee, management of Globalstar and the Finance Parties (as such term is defined in the Facility Agreement) and is not intended to be and should not be used by anyone other than these specified parties.

[insert name of auditor]

[insert address of auditor and date]

## Schedule 31

### Security Documents

#### Part 1 Definition of Security Documents

“Security Documents” means:

- (a) the Collateral Agreement;
- (b) each French Security Document
- (c) each Account Control Agreement;
- (d) each Stock Pledge Agreement;
- (e) each Delegation Agreement;
- (f) each United States Trademarks Security Agreement;
- (g) each United States Patents Security Agreement;
- (h) each Mortgage;
- (i) each Landlord Waiver and Consent Agreement;
- (j) all other agreements conferring, or purporting to confer, security in favour of the Finance Parties with respect to the obligations of the Borrower under the Finance Documents entered into after the date of this Agreement as required by the terms of this Agreement;
- (k) all agreements and other documents executed from time to time pursuant to any of the foregoing; and
- (l) any other agreement or document which the Security Agent and the Borrower (acting reasonably) from time to time designate as a “Security Document” for the purposes of this Agreement.

## Part 2 Defined Terms

“**Account Control Agreements**” means each account control agreement entered into between a deposit account bank, a member of the Group and the Security Agent (in form and substance satisfactory to the Agent).

“**Borrower Pledge of Bank Accounts**” means the French law “*Convention de Nantissement de Comptes Bancaires*” to be entered into between the Borrower, the Offshore Account Bank and the Security Agent.

“**Collateral Agreement**” means the security agreement dated as of the date hereof between the Borrower, each Domestic Subsidiary and the Security Agent, as may be amended, restated, amended and restated, replaced, supplemented or otherwise modified from time to time.

“**Holding Account Pledge Agreement**” means the French law “*Convention de Nantissement de Compte Bancaire*” to be entered into between the Borrower and the Security Agent in accordance with Clause 20.11 (*Conditions Subsequent*).

“**Landlord Waiver and Consent Agreements**” means:

- (a) any landlord waiver and consent agreement to be entered into between Four Sierra, LLC as landlord and the Security Agent;
- (b) any landlord waiver and consent agreement to be entered into between Orinda Equity Partners, LLC as landlord and the Security Agent;
- (c) any landlord waiver and consent agreement to be entered into between Sebring Airport Authority as landlord and the Security Agent; and
- (d) any other agreement or document which the Security Agent and the Borrower (acting reasonably) from time to time designate as a “*Landlord Waiver and Consent Agreement*” for the purposes of this Agreement.

“**Mortgages**” means the collective reference to each mortgage, deed of trust or other real property security document, encumbering all real property now or hereafter owned by the Borrower or any Subsidiary, in each case, in form and substance reasonably satisfactory to the Security Agent and executed by the Borrower or any Subsidiary in favour of the Security Agent (for and on behalf of itself and the other Finance Parties), as any such document may be amended, restated, supplemented or otherwise modified from time to time.

“**Stock Pledge Agreements**” means:

- (a) the stock pledge agreement dated as of the date hereof between the Borrower, each Domestic Subsidiary of the Borrower and the Security Agent;
- (b) certain agreements regarding uncertificated securities dated as of the date hereof and entered into from time to time, among the Borrower, certain Subsidiaries of the Borrower and the Security Agent;
- (c) certain agreements regarding uncertificated limited liability company interests dated as of the date hereof and entered into from time to time, among the Borrower, certain Subsidiaries of the Borrower and the Security Agent;

- (d) certain agreements regarding uncertificated partnership interests dated as of the date hereof and entered into from time to time, among the Borrower, certain Subsidiaries of the Borrower and the Security Agent; and
- (e) any other stock pledge agreement (howsoever described) entered into among or between any other deposit account bank, a member of the Group and/or the Security Agent (in form and substance satisfactory to the Security Agent),

in each case of the foregoing, as any such document may be amended, restated, amended and restated, replaced, supplemented or otherwise modified from time to time.

**“United States Patents Security Agreements”** means:

- (a) the agreement relating to the grant of a security interest in United States patents dated as of the date hereof and made between the Borrower and the Security Agent; and
- (b) any other patents security agreement entered into between any Obligor and the Security Agent (in form and substance satisfactory to the Agent).

**“United States Trademarks Security Agreements”** means:

- (a) the agreement relating to the grant of a security interest in United States trademarks dated as of the date hereof and made between the Borrower and the Security Agent; and
- (b) any other trademarks security agreement entered into between any Obligor and the Security Agent (in form and substance satisfactory to the Agent).

**[Reserved]**

NEITHER THIS SECURITY NOR THE SECURITIES FOR WHICH THIS SECURITY IS EXERCISABLE HAVE BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS. THIS SECURITY AND THE SECURITIES ISSUABLE UPON EXERCISE OF THIS SECURITY MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN SECURED BY SUCH SECURITIES.

COMMON STOCK PURCHASE WARRANT

GLOBALSTAR, INC.

Warrant Shares: \_\_\_\_\_ Original Issue Date: November 27, 2019

Initial Exercise Date: November 27, 2019

**THIS COMMON STOCK PURCHASE WARRANT** (this "**Warrant**") certifies that, for value received, \_\_\_\_\_, or its successors and assigns (the "**Holder**") is entitled, upon the terms and subject to the limitations on exercise and the conditions hereinafter set forth, at any time on or after the Initial Exercise Date (as defined below) and on or prior to the close of business on March 31, 2021 (the "**Termination Date**") but not thereafter, to subscribe for and purchase from **GLOBALSTAR, INC.**, a Delaware corporation (the "**Company**"), up to \_\_\_\_\_ shares of Common Stock (subject to adjustment hereunder, the "**Warrant Shares**"). The purchase price of one Warrant Share under this Warrant shall be equal to the Exercise Price (as defined below).

Section 1. Definitions. (a) Capitalized terms used and not otherwise defined herein shall have the meanings set forth in that certain Second Lien Financing Agreement (as it may be amended, restated, supplemented or otherwise modified from time to time in accordance with its terms, the "**Second Lien Financing Agreement**"), dated November 26, 2019, among the Company and the Lenders party thereto.

(b) As used in this Warrant, the following terms have the respective meanings set forth below:

"**Aggregate Exercise Price**" means an amount equal to the product of (a) the number of Warrant Shares in respect of which this Warrant is then being exercised pursuant to Section 2 hereof, multiplied by (b) the Exercise Price in effect as of the Exercise Date in accordance with the terms of this Warrant.

"**Board**" means the board of directors of the Company.

"**Convertible Securities**" means any securities (directly or indirectly) convertible into or exchangeable for Common Stock, but excluding Options.



“**Initial Exercise Date**” means November 27, 2019.

“**Options**” means any warrants or other rights or options to subscribe for or purchase Common Stock or Convertible Securities.

“**Original Issue Date**” means November 27, 2019.

“**Nasdaq**” means The NASDAQ Stock Market LLC.

“**OTC Bulletin Board**” means the Financial Industry Regulatory Authority OTC Bulletin Board electronic inter-dealer quotation system.

“**Pink OTC Markets**” means the OTC Markets Group Inc. electronic inter-dealer quotation system, including OTCQX, OTCQB and OTC Pink.

“**Registrable Securities**” means this Warrant and the Warrant Shares.

“**Registration Rights Agreement**” means the Registration Rights Agreement related to this Warrant and the Warrant Shares between the Holder and the Company dated as of the Original Issue Date.

“**VWAP**” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, the New York Stock Exchange, the daily volume-weighted average closing price of the Common Stock for the five (5) trading days immediately preceding such date on the trading market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (“**Bloomberg**”); (b) if the Common Stock is quoted on the OTCQB or OTCQX, the volume-weighted average closing price of the Common Stock for the five (5) trading days immediately preceding such date on OTCQB or OTCQX as applicable; (c) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported in the “Pink Sheets” published by OTC Markets, Inc. (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported; or (d) in all other cases, the fair market value of a share of Common Stock, as the case may be, as determined by an independent appraiser selected in good faith by the Holder and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

## Section 2. Exercise.

(a) Exercise of the purchase rights represented by this Warrant may be made, in whole or in part, at any time or times on or after the Initial Exercise Date and on or before the Termination Date by delivery to the Company (or such other office or agency of the Company as it may designate by notice in writing to the registered Holder at the address of the Holder appearing on the books of the Company) of a duly executed facsimile (or other electronic method) copy of the Notice of Exercise Form attached hereto as **Exhibit A**. Within two (2) Business Days following the date of exercise as aforesaid, the Holder shall deliver the Aggregate Exercise Price for the shares specified in the applicable Notice of Exercise by wire transfer or cashier’s check drawn on a United States bank. Notwithstanding anything herein to the contrary (although the Holder may surrender this Warrant to, and receive a replacement Warrant from, the Company), the Holder shall not be required to physically surrender this Warrant to the Company. After the Holder has purchased all of the Warrant Shares available hereunder and this Warrant has been exercised in full, this

Warrant will be deemed cancelled. Partial exercises of this Warrant resulting in purchases of a portion of the total number of Warrant Shares available hereunder shall have the effect of lowering the outstanding number of Warrant Shares purchasable hereunder in an amount equal to the applicable number of Warrant Shares purchased. The Company shall maintain records showing the number of Warrant Shares purchased and the date of such purchases. The Company shall deliver any objection to any Notice of Exercise Form within one (1) Business Day of delivery of such notice. The Holder by acceptance of this Warrant, acknowledges and agrees that, by reason of the provisions of this paragraph, following the purchase of a portion of the Warrant Shares hereunder, the number of Warrant Shares available for purchase hereunder at any given time may be less than the amount stated on the face hereof.

(b) Exercise Price. The initial exercise price per share of the Common Stock under this Warrant (the “**Exercise Price**”) shall be the daily volume-weighted average closing price of the Common Stock for the twenty (20) trading days immediately preceding the Original Issue Date (the “**Pricing Period**”), subject to adjustment as provided herein.

(c) Mechanics of Exercise.

(i) Delivery of Warrant Shares Upon Exercise. Warrant Shares purchased hereunder shall be transmitted to the Holder by the Holder’s transfer agent by crediting the account of the Holder’s broker with The Depository Trust Company through its Deposit or Withdrawal at Custodian system (“**DWAC**”) if the Company is then a participant in such system, there is an effective registration statement registering the resale of the Warrant Shares by the Holder, and otherwise by notation of electronic book entry (including any notation of restrictive legend) in the records of the Company’s transfer agent as specified by the Holder in the Notice of Exercise by the date that is two (2) Business Days after the latest of: (y) the delivery to the Company of the Notice of Exercise; and (z) payment of the Aggregate Exercise Price as set forth above (such date, the “**Warrant Share Delivery Date**”). The Warrant Shares shall be deemed to have been issued, and Holder or any other Person so designated to be named therein shall be deemed to have become a holder of record of such shares for all purposes, as of the date this Warrant has been exercised, with payment to the Company of the Exercise Price and all taxes required to be paid by the Holder, if any, pursuant to Section 2(c)(vi) prior to the issuance of such shares, having been paid. If the Company fails for any reason to deliver to the Holder the Warrant Shares subject to a Notice of Exercise by the Warrant Share Delivery Date, the Company shall pay to the Holder, in cash, as liquidated damages and not as a penalty, for each \$1,000 of Warrant Shares subject to such exercise (based on the VWAP of the Common Stock on the date of the applicable Notice of Exercise), \$10 per Business Day (increasing to \$20 per Business Day on the fifth (5<sup>th</sup>) Business Day after such liquidated damages begin to accrue) for each Business Day after such Warrant Share Delivery Date until such Warrant Shares are delivered or Holder rescinds such exercise.

(ii) Delivery of New Warrants Upon Exercise. If this Warrant shall have been exercised in part, the Company shall, at the request of a Holder and upon surrender of this Warrant, at the time of delivery of the Warrant Shares, deliver to the Holder a new Warrant evidencing the rights of the Holder to purchase the unpurchased Warrant Shares called for by this Warrant, which new Warrant shall in all other respects be identical to this Warrant.

(iii) Rescission Rights. If the Company fails to issue and deliver the Warrant Shares to the Holder by the Warrant Share Delivery Date, then the Holder will have the right to rescind such exercise.

Any such rescission by the Holder shall have no impact on the Company's obligation to pay liquidated damages pursuant to Section 2(c)(i) prior to such rescission.

(iv) Compensation for Buy-In on Failure to Timely Deliver Warrant Shares Upon Exercise. In addition to any other rights available to the Holder, if the Company fails for any reason to issue and deliver to the Holder such Warrant Shares pursuant to Section 2(c)(i) hereof by the Warrant Share Delivery Date, and if on or after such Warrant Share Delivery Date the Holder purchases (in an open market transaction or otherwise) shares of the Company's Common Stock to deliver in satisfaction of a sale by the Holder of all or any portion of the number of shares of Common Stock issuable upon such conversion that the Holder anticipated receiving from the Company (a "**Buy-In**"), then, the Company shall: (a) pay in cash to the Holder the amount, if any, by which the Holder's total purchase price (including brokerage commissions, if any) for the shares of Common Stock so purchased exceeds the amount obtained by multiplying: (i) the number of Warrant Shares that the Company was required to deliver to the Holder in connection with the exercise at issue; times (ii) the price at which the sell order giving rise to such purchase obligation was executed; and (b) at the option of the Holder, either reinstate the portion of this Warrant and equivalent number of Warrant Shares for which such exercise was not honored (in which case such exercise shall be deemed rescinded) or deliver to the Holder the number of shares of Common Stock that would have been issued had the Company timely complied with its exercise and delivery obligations hereunder. The Holder shall provide the Company written notice indicating the amounts payable to the Holder in respect of the Buy-In and, upon request of the Company, evidence of the amount of such loss. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver shares of Common Stock upon exercise of this Warrant as required pursuant to the terms hereof.

(v) No Fractional Shares or Scrip. No fractional shares or scrip representing fractional shares shall be issued upon the exercise of this Warrant. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such exercise, the Company shall, at its election, either pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Exercise Price or round up to the next whole share.

(vi) Charges, Taxes and Expenses. Issuance of Warrant Shares shall be made without charge to the Holder for any issue or transfer tax or other incidental expense in respect of the issuance of such Warrant Shares including any charges of any clearing firm, all of which taxes and expenses shall be paid by the Company, and such Warrant Shares shall be issued in the name of the Holder or in such name or names as may be directed by the Holder; provided, however, that in the event Warrant Shares are to be issued in a name other than the name of the Holder, this Warrant when surrendered for exercise shall be accompanied by the Assignment Form attached hereto as **Exhibit B** duly executed by the Holder and the Company may require, as a condition thereto, the payment of a sum sufficient to reimburse it for any transfer tax incidental thereto.

(vii) Closing of Books. The Company will not close its stockholder books or records in any manner which prevents the timely exercise of this Warrant, pursuant to the terms hereof.

(d) Holder's Exercise Limitations. The Company shall not effect any exercise of this Warrant, and a Holder shall not have the right to exercise any portion of this Warrant, pursuant to this Section 2 or otherwise, to the extent that after giving effect to such issuance after exercise as set forth on the applicable Notice of Exercise, the Holder (together with the Holder's affiliates, and any other Persons acting as a group together with the Holder or any of the Holder's affiliates), would beneficially own in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by the Holder and its affiliates and any other Persons acting as a group together with the Holder or any of the Holder's affiliates shall include the number of shares of Common Stock issuable upon exercise of this Warrant with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which would be issuable upon: (i) exercise of the remaining, nonexercised portion of this Warrant beneficially owned by the Holder or any of its affiliates; and (ii) exercise or conversion of the unexercised or nonconverted portion of any other securities of the Company (including, without limitation, any other common stock equivalents) subject to a limitation on conversion or exercise analogous to the limitation contained herein beneficially owned by the Holder or any of its affiliates. Except as set forth in the preceding sentence, for purposes of this Section 2(d), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder, it being acknowledged by the Holder that the Company is not representing to the Holder that such calculation is in compliance with Section 13(d) of the Exchange Act and the Holder is solely responsible for any schedules required to be filed in accordance therewith. To the extent that the limitation contained in this Section 2(d) applies, the determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder together with any affiliates) and of which portion of this Warrant is exercisable shall be in the sole discretion of the Holder, and the submission of a Notice of Exercise shall be deemed to be the Holder's determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder together with any affiliates) and of which portion of this Warrant is exercisable, in each case subject to the Beneficial Ownership Limitation, and the Company shall have no obligation to verify or confirm the accuracy of such determination. In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes of this Section 2(d), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as reflected in: (A) the Company's most recent periodic or annual report filed with the United States Securities and Exchange Commission, as the case may be; (B) a more recent public announcement by the Company; or (C) a more recent written notice by the Company or the Company's transfer agent setting forth the number of shares of Common Stock outstanding. Upon the written request of a Holder, the Company shall within one (1) Business Day confirm orally and in writing to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Warrant, by the Holder or its affiliates since the date as of which such number of outstanding shares of Common Stock was reported. The "**Beneficial Ownership Limitation**" shall be 4.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon exercise of this Warrant. The Holder, upon not less than sixty-one (61) days' prior notice to the Company, may increase the Beneficial Ownership Limitation provisions of this Section 2(d) solely with respect to the Holder's Warrant. Any such increase will not be effective until the sixty-first (61<sup>st</sup>) day after such notice is delivered to the Company. The Holder may also

decrease the Beneficial Ownership Limitation provisions of this Section 2(d) solely with respect to the Holder's Warrant at any time, which decrease shall be effectively immediately upon delivery of notice to the Company. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 2(d) to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Beneficial Ownership Limitation herein contained or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitations contained in this paragraph shall apply to a successor holder of this Warrant. The provisions of this Section 2(d) may not be waived by the Company.

(e) Disputes. In the case of a dispute as to the determination of the Exercise Price or the arithmetic calculation of the Warrant Shares, the Company shall promptly issue to the Holder the number of Warrant Shares that are not disputed.

Section 3. Certain Adjustments. The number of Warrant Shares issuable upon exercise of this Warrant shall be subject to adjustment from time to time as provided in this Section 3 (in each case, after taking into consideration any prior adjustments pursuant to this Section 3).

(a) Adjustment to Exercise Price and Warrant Shares Upon Dividend, Subdivision or Combination of Common Stock. If the Company shall, at any time or from time to time after the Original Issue Date, (i) pay a dividend or make any other distribution upon the Common Stock or any other capital stock of the Company payable in shares of Common Stock or in Options or Convertible Securities, or (ii) subdivide (by any stock split, recapitalization or otherwise) its outstanding shares of Common Stock into a greater number of shares, the Exercise Price in effect immediately prior to any such dividend, distribution or subdivision shall be proportionately reduced and the number of Warrant Shares issuable upon exercise of this Warrant shall be proportionately increased. If the Company at any time combines (by combination, reverse stock split or otherwise) its outstanding shares of Common Stock into a smaller number of shares, the Exercise Price in effect immediately prior to such combination shall be proportionately increased and the number of Warrant Shares issuable upon exercise of this Warrant shall be proportionately decreased. Any adjustment under this Section 3(a) shall become effective at the close of business on the date the dividend, subdivision or combination becomes effective.

(b) Adjustment to Exercise Price and Warrant Shares Upon Reorganization, Reclassification, Consolidation or Merger. In the event of any (i) capital reorganization of the Company, (ii) reclassification of the stock of the Company (other than a change in par value or from par value to no par value or from no par value to par value or as a result of a stock dividend or subdivision, split-up or combination of shares), (iii) consolidation or merger of the Company with or into another Person, (iv) sale of all or substantially all of the Company's assets to another Person or (v) other similar transaction (other than any such transaction covered by Section 3(a)), in each case which entitles the holders of Common Stock to receive (either directly or upon subsequent liquidation) stock, securities or assets with respect to or in exchange for Common Stock, each Warrant shall, immediately after such reorganization, reclassification, consolidation, merger, sale or similar transaction, remain outstanding and shall thereafter, in lieu of or in addition to (as the case may be) the number of Warrant Shares then exercisable under this Warrant, be exercisable for the kind and number of shares of stock or other securities or assets of the Company or of the successor Person resulting from such transaction to which the Holder would have been entitled upon such reorganization, reclassification,

consolidation, merger, sale or similar transaction if the Holder had exercised this Warrant in full immediately prior to the time of such reorganization, reclassification, consolidation, merger, sale or similar transaction and acquired the applicable number of Warrant Shares then issuable hereunder as a result of such exercise (without taking into account any limitations or restrictions on the exercisability of this Warrant); and, in such case, appropriate adjustment (in form and substance satisfactory to the Holder) shall be made with respect to the Holder's rights under this Warrant to insure that the provisions of this Section 3 hereof shall thereafter be applicable, as nearly as possible, to this Warrant in relation to any shares of stock, securities or assets thereafter acquirable upon exercise of this Warrant (including, in the case of any consolidation, merger, sale or similar transaction in which the successor or purchasing Person is other than the Company, an immediate adjustment in the Exercise Price to the value per share for the Common Stock reflected by the terms of such consolidation, merger, sale or similar transaction, and a corresponding immediate adjustment to the number of Warrant Shares acquirable upon exercise of this Warrant without regard to any limitations or restrictions on exercise, if the value so reflected is less than the Exercise Price in effect immediately prior to such consolidation, merger, sale or similar transaction). The provisions of this Section 3(b) shall similarly apply to successive reorganizations, reclassifications, consolidations, mergers, sales or similar transactions. The Company shall not effect any such reorganization, reclassification, consolidation, merger, sale or similar transaction unless, prior to the consummation thereof, the successor Person (if other than the Company) resulting from such reorganization, reclassification, consolidation, merger, sale or similar transaction, shall assume, by written instrument substantially similar in form and substance to this Warrant and satisfactory to the Holder, the obligation to deliver to the Holder such shares of stock, securities or assets which, in accordance with the foregoing provisions, such Holder shall be entitled to receive upon exercise of this Warrant.

(c) Calculations. All calculations under this Section 3 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 3, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding treasury shares, if any) issued and outstanding.

(d) Notice to Holder.

(i) Adjustment to Exercise Price. Whenever the Exercise Price is adjusted pursuant to any provision of this Section 3, the Company shall promptly email to the Holder a notice setting forth the Exercise Price after such adjustment and any resulting adjustment to the number of Warrant Shares and setting forth a brief statement of the facts requiring such adjustment. The Holder may supply an email address to the Company and change such address.

(ii) Notice to Allow Exercise by Holder. If: (A) the Company shall declare a dividend (or any other distribution in whatever form) on the Common Stock; (B) the Company shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock; (C) the Company shall authorize the granting to all holders of the Common Stock rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights; (D) the approval of any stockholders of the Company shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Company is a party, any sale or transfer of all or substantially all of the assets of the Company, or any compulsory share exchange whereby the Common Stock is converted into other securities; or (E) the

Company shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Company, then, in each case, the Company shall deliver to the Holder at its last address as it shall appear upon the Warrant Register of the Company, at least twenty (20) calendar days prior to the applicable record or effective date hereinafter specified, a notice stating: (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined; or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange; provided that the failure to email such notice or any defect therein or in the emailing thereof shall not affect the validity of the corporate action required to be specified in such notice. To the extent that any notice provided in this Warrant constitutes, or contains, material, non-public information regarding the Company or any of the Subsidiaries, the Company shall simultaneously file such notice with the Commission pursuant to a Current Report on Form 8-K. The Holder shall remain entitled to exercise this Warrant during the period commencing on the date of such notice to the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

Section 4. Transfer of Warrant.

(a) Transferability. Subject to compliance with any applicable securities laws and the provisions of the Second Lien Financing Agreement and the Registration Rights Agreement, this Warrant and all rights hereunder and under the Registration Rights Agreement are transferable, in whole or in part, upon surrender of this Warrant at the principal office of the Company or its designated agent, together with a written assignment of this Warrant substantially in the form of the Assignment Form attached hereto as Exhibit B duly executed by the Holder or its agent or attorney and funds sufficient to pay any transfer taxes payable upon the making of such transfer. Upon such surrender and, if required, such payment, the Company shall execute and deliver a new Warrant or Warrants in the name of the assignee or assignees, as applicable, and in the denomination or denominations specified in such instrument of assignment, and shall issue to the assignor a new Warrant evidencing the portion of this Warrant not so assigned, and this Warrant shall promptly be cancelled. This Warrant, if properly assigned in accordance herewith, may be exercised by a new holder for the purchase of Warrant Shares without having a new Warrant issued.

(b) New Warrants. This Warrant may be divided or combined with other Warrants upon presentation hereof at the aforesaid office of the Company, together with a written notice specifying the names and denominations in which new Warrants are to be issued, signed by the Holder or its agent or attorney. Subject to compliance with Section 4(a), as to any transfer which may be involved in such division or combination, the Company shall execute and deliver a new Warrant or Warrants in exchange for this Warrant or Warrants to be divided or combined in accordance with such notice. All Warrants issued on transfers or exchanges shall be dated the initial issuance date of this Warrant and shall be identical with this Warrant except as to the number of Warrant Shares issuable pursuant thereto.

(c) Warrant Register. The Company shall register this Warrant, upon records to be maintained by the Company for that purpose (the “**Warrant Register**”), in the name of the record Holder hereof from

time to time. The Company may deem and treat the registered Holder of this Warrant as the absolute owner hereof for the purpose of any exercise hereof or any distribution to the Holder, and for all other purposes, absent actual notice to the contrary.

(d) Representation by the Holder. The Holder, by the acceptance hereof, represents and warrants that it is acquiring this Warrant and, upon any exercise hereof, will acquire the Warrant Shares issuable upon such exercise, for its own account and not with a view to or for distributing or reselling such Warrant Shares or any part thereof in violation of the Securities Act or any applicable state securities law, except pursuant to sales registered or exempted under the Securities Act.

Section 5. Non-circumvention. The Company hereby covenants and agrees that the Company will not by any action, including, without limitation, by amendment of its Certificate of Incorporation, Bylaws or through any reorganization, transfer of assets, consolidation, merger, scheme of arrangement, dissolution, issue or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, and will at all times in good faith carry out all the provisions of this Warrant and take all action as may be required to protect the rights of the Holder as set forth in this Warrant against impairment. Without limiting the generality of the foregoing, the Company: (i) shall not increase the par value of any Warrant Shares above the amount payable therefor upon such exercise immediately prior to such increase in par value; (ii) shall take all such actions as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable shares of Common Stock upon the exercise of this Warrant; and (iii) shall use commercially reasonable efforts to obtain all such authorizations, exemptions or consents from any public regulatory body having jurisdiction thereof, as may be, necessary to enable the Company to perform its obligations under this Warrant.

Section 6. Registration Rights Agreement. This Warrant and the Warrant Shares shall be subject to and have the benefit of the Registration Rights Agreement.

Section 7. Miscellaneous.

(a) No Rights as Stockholder Until Exercise. This Warrant does not entitle the Holder to any voting rights, dividends or other rights as a stockholder of the Company prior to the exercise hereof other than as explicitly set forth in Section 3.

(b) Loss, Theft, Destruction or Mutilation of Warrant. The Company covenants that upon receipt by the Company of evidence reasonably satisfactory to it of the loss, theft, destruction or mutilation of this Warrant or any stock certificate relating to the Warrant Shares, and in case of loss, theft or destruction, of indemnity or security reasonably satisfactory to it, and upon surrender and cancellation of such Warrant or stock certificate, if mutilated, the Company will make and deliver a new Warrant or stock certificate of like tenor and dated as of such cancellation, in lieu of such Warrant or stock certificate.

(c) Saturdays, Sundays, Holidays, etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a Business Day, then, such action may be taken or such right may be exercised on the next succeeding Business Day.

(d) Authorized Shares and Listing.



The Company covenants that, during the period this Warrant is outstanding, it will reserve from its authorized and unissued Common Stock, free of preemptive rights, a sufficient number of shares equal to two times the number of Warrant Shares issuable under the Second Lien Financing Agreement to all Purchasers thereunder (without regard to any limitations on exercise hereof or thereof, including without limitation, the Beneficial Ownership Limitation). The Company further covenants that its issuance of this Warrant shall constitute full authority to its officers who are charged with the duty of executing stock certificates to execute and issue the necessary certificates or make other necessary instructions for the issuance of the Warrant Shares upon the exercise of the purchase rights under this Warrant. The Company will take all such commercially reasonable action as may be necessary to assure that such Warrant Shares may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of any trading market upon which the Common Stock may be listed. The Company covenants that all Warrant Shares which may be issued upon the exercise of the purchase rights represented by this Warrant will, upon exercise of the purchase rights represented by this Warrant and payment for such Warrant Shares in accordance herewith, be duly authorized, validly issued, fully paid and non-assessable and free from all taxes, liens and charges created by the Company in respect of the issue thereof (other than taxes in respect of any transfer occurring contemporaneously with such issue).

Before taking any action which would result in an adjustment in the number of Warrant Shares for which this Warrant is exercisable or in the Exercise Price, the Company shall use commercially reasonable efforts to obtain all such authorizations or exemptions thereof, or consents thereto, as may be necessary from any public regulatory body or bodies having jurisdiction thereof.

The Company shall promptly secure the listing of the Warrant Shares issuable upon exercise of this Warrant on the market or exchange on which the Common Shares are traded or listed, if any, and shall maintain, so long as any other Common Shares shall be so traded or listed, such listing of all Warrant Shares from time to time issuable upon the exercise of this Warrant.

(e) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Warrant shall be determined in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of New York.

(f) Jurisdiction. Any legal suit, action or proceeding arising out of or based upon this Warrant or the transactions contemplated hereby shall be instituted in the federal courts of the United States of America or the courts of the State of New York, in each case located in the city of New York City, borough of Manhattan, and County of New York, exclusively, as set forth in the Registration Rights Agreement.

(g) Restrictions. The Holder acknowledges that the Warrant Shares acquired upon the exercise of this Warrant, if not registered, may have restrictions upon resale imposed by state and federal securities laws.

(h) Non-waiver and Expenses. No course of dealing or any delay or failure to exercise any right hereunder on the part of Holder shall operate as a waiver of such right or otherwise prejudice the Holder's rights, powers or remedies. Without limiting any other provision of this Warrant or the Second Lien Financing

Agreement, if the Company willfully and knowingly fails to comply with any provision of this Warrant, which results in any material damages to the Holder, the Company shall pay to the Holder such amounts as shall be sufficient to cover any costs and expenses including, but not limited to, reasonable attorneys' fees, including those of appellate proceedings, incurred by the Holder in collecting any amounts due pursuant hereto or in otherwise enforcing any of its rights, powers or remedies hereunder.

(i) Notices. Any notice, request or other document required or permitted to be given or delivered to the Holder by the Company shall be delivered in accordance with the notice provisions of the Second Lien Financing Agreement.

(j) Limitation of Liability. No provision hereof, in the absence of any affirmative action by the Holder to exercise this Warrant to purchase Warrant Shares, and no enumeration herein of the rights or privileges of the Holder, shall give rise to any liability of the Holder for the purchase price of any Common Stock or as a stockholder of the Company, whether such liability is asserted by the Company or by creditors of the Company.

(k) Remedies. The Holder, in addition to being entitled to exercise all rights granted by law, including recovery of damages, will be entitled to specific performance of its rights under this Warrant. The Company agrees that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by it of the provisions of this Warrant and hereby agrees to waive and not to assert the defense in any action for specific performance that a remedy at law would be adequate or that there is no irreparable harm and not to require the posting of a bond or other security.

(l) Successors and Assigns. Subject to applicable securities laws, this Warrant and the rights and obligations evidenced hereby shall inure to the benefit of and be binding upon the successors and permitted assigns of the Company and the successors and permitted assigns of Holder. The provisions of this Warrant are intended to be for the benefit of any Holder from time to time of this Warrant and shall be enforceable by the Holder or holder of Warrant Shares.

(m) Amendment. This Warrant may be modified or amended or the provisions hereof waived with the written consent of the Company and the Holder.

(n) Severability. Wherever possible, each provision of this Warrant shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Warrant shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Warrant.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

**IN WITNESS WHEREOF**, the Company has caused this Warrant to be executed by its officer thereunto duly authorized as of the date first above indicated.

**GLOBALSTAR, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**NOTICE OF EXERCISE**

TO: GLOBALSTAR, INC.

(1) The undersigned hereby elects to purchase \_\_\_\_\_ Warrant Shares of the Company pursuant to the terms of the Warrant, and tenders herewith payment of the exercise price in full, together with all applicable transfer taxes, if any.

(2) Payment shall take the form of lawful money of the United States.

(3) Please issue said Warrant Shares in the name of the undersigned or in such other name as is specified below:

\_\_\_\_\_

(4) After giving effect to this Notice of Exercise, the undersigned will not have exceeded the Beneficial Ownership Limitation.

The Warrant Shares shall be delivered to the following DWAC Account Number or by notation of electronic book entry in the records of the Company's transfer agent to:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

[SIGNATURE OF HOLDER]

Name of Investing Individual: [LENDER NAME]

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT B**

**ASSIGNMENT FORM**

(To assign the foregoing warrant, execute this form and supply required information. Do not use this form to exercise the warrant.)

\_\_\_\_\_

**FOR VALUE RECEIVED**, [all][\_\_\_\_\_] of the rights to purchase Warrant Shares under the foregoing Warrant and all other rights evidenced thereby are hereby assigned to

\_\_\_\_\_ whose address is

\_\_\_\_\_

\_\_\_\_\_

Dated: \_\_\_\_\_, \_\_\_\_\_

In connection with any transfer or exchange of any of the Warrant, the undersigned confirms that such Warrant (or portion thereof) is being transferred:

CHECK ONE BOX BELOW:

- (1) to the Company;
- (2) pursuant to an effective registration statement under the Securities Act of 1933;
- (3) to a person who the undersigned reasonably believes is a "qualified institutional buyer" (as defined in Rule 144A under the Securities Act of 1933) that is purchasing for its own account or for the account of a qualified institutional buyer to whom notice is given that such transfer is being made in compliance with Rule 144A, in each case pursuant to and in compliance with Rule 144A under the Securities Act of 1933;
- (4) outside the United States in an offshore transaction within the meaning of Regulation S under the Securities Act in compliance with Rule 904 under the Securities Act of 1933;
- (5) to an affiliate of the Holder for no consideration; or

- (6) pursuant to another available exemption from the registration requirements of the Securities Act of 1933.

Unless one of the boxes is checked, the Company will refuse to register any of the foregoing Warrant in the name of any person other than the Holder; provided, however, that if box (6) is checked, the Company may require, prior to registering any such transfer of the Warrant, in its sole discretion, such legal opinions, certifications and other information as the Company may reasonably request to confirm that such transfer is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act of 1933, such as the exemption provided by Rule 144.

Holder's Signature: \_\_\_\_\_

Holder's Address: \_\_\_\_\_  
\_\_\_\_\_

NOTE: The signature to this Assignment Form must correspond with the name as it appears on the face of the Warrant, without alteration or enlargement or any change whatsoever. Officers of corporations and those acting in a fiduciary or other representative capacity should file proper evidence of authority to assign the foregoing Warrant.

## REGISTRATION RIGHTS AGREEMENT

This REGISTRATION RIGHTS AGREEMENT (this “Agreement”), dated as of November 26, 2019, is entered into by and between Globalstar, Inc., a Delaware corporation (the “Company”), and Inverness Financing L.L.C., a Colorado limited liability company, Thermo Funding II LLC, a Colorado limited liability company, [\*], [\*], and [\*] (each an “Initial Holder” and collectively the “Initial Holders”).

### R E C I T A L S

**WHEREAS**, on or about the date hereof, the Company and the Initial Holders entered into that certain Second Lien Financing Agreement (as it may be amended, restated, supplemented or otherwise modified from time to time in accordance with its terms, the “**Second Lien Financing Agreement**”);

**WHEREAS**, in connection with the Second Lien Financing Agreement, the Company issued to each Initial Holder a certain Common Stock Purchase Warrant (such warrants collectively, the “Warrants”), pursuant to which, among other things, such Initial Holder is entitled, subject to the terms and conditions set forth therein, to purchase from the Company shares of common stock of the Company (the “Company Common Stock”); and

**WHEREAS**, the Company has agreed to provide the Initial Holders with the registration rights specified in this Agreement with respect to Registrable Securities (as defined herein), on the terms and subject to the conditions set forth herein.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### ARTICLE 1 DEFINITIONS

**1.1 Definitions.** The following terms shall have the meanings set forth in this Section 1.1:

“Adverse Effect” has the meaning given such term in Section 2.2.4 herein.

“Advice” has the meaning given such term in Section 2.5 herein.

“Affiliate” means with respect to a party hereto, any Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such party. For purposes of this definition, “control” and, with correlative meanings, the terms “controlled by” and “under common control with” as used with respect to a Person means (a) the possession, directly or indirectly, of the power to direct, or cause the direction of, the management or policies of such Person, whether through the ownership of voting securities, by contract relating to voting rights or corporate governance, or otherwise, or (b) the ownership, directly or indirectly, of more than 50% of the voting securities or other ownership interest of a Person.

“Agreement” has the meaning given such term in the introductory paragraph of this Agreement.

“Block Sale” means the sale of shares of Company Common Stock to one of several purchasers in a registered transaction by means of a bought deal, a block trade or a direct sale.

“Business Days” means any day that is not a Saturday, a Sunday or other day on which banks are required or authorized by law to be closed in New York City.

“Company” has the meaning given such term in the introductory paragraph of this Agreement and includes the Company’s successors by merger, acquisition, reorganization or otherwise.

“Company Common Stock” has the meaning given such term in the recitals of this Agreement.

“Company Indemnified Person” has the meaning given such term in Section 2.7.2 herein.

“Demand Registration” has the meaning given such term in Section 2.2.1(a) herein.

“Demand Request” has the meaning given such term in Section 2.2.1(a) herein.

“Demanding Holders” has the meaning given such term in Section 2.2.1(a) herein.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, or any similar federal statute, and the rules and regulations promulgated by the SEC thereunder.

“Excluded Registration” means a registration under the Securities Act (i) of Registrable Securities pursuant to one or more Demand Registrations pursuant to Section 2 hereof, (ii) of equity securities issuable in connection with the Company’s stock option or other employee benefit plans registered on Form S-8 or any similar successor form, (iii) of equity securities registered to effect the acquisition of, or combination with, another Person on Form S-4 or any similar successor form, (iv) relating solely to the sale of non-convertible debt instruments, (v) of securities registered in connection with any dividend reinvestment plan or (vi) of equity securities pursuant to an equity cure under the [First Lien Financing Agreement].

“FINRA” has the meaning given such term in Section 2.4(xvi) herein.

“Holder” means (i) any Initial Holder and (ii) any direct or indirect transferee of any Initial Holder who shall become a party to this Agreement in accordance with Section 2.8 and has agreed in writing to be bound by the terms of this Agreement.

“Initial Holders” has the meaning given such term in the introductory paragraph of this Agreement.

“Inspectors” has the meaning given such term in Section 2.4(xii) herein.

“Losses” has the meaning given such term in Section 2.7.1 herein.

“Marketed Underwritten Offering” has the meaning given such term in Section 2.1.3 herein.

“Permitted Transferee” has the meaning given such term in Section 2.8 herein.

“Person” or “person” means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or government or other agency or political subdivision thereof.

“Records” has the meaning given such term in Section 2.4(xii) herein.

“register,” “registered” and “registration” refer to a registration effected by preparing and filing a registration statement in compliance with the Securities Act, and the declaration or ordering of the effectiveness of such registration statement under the Securities Act (to the extent such declaration or order is required in order for such registration statement to become effective).

“Registrable Securities” means any (i) the Warrants and (ii) shares of Company Common Stock issuable or issued upon the exercise of any Warrant; provided, however, that Registrable Securities shall not include any Warrants or shares of Company Common Stock (a) when a registration statement with respect to the sale of such Warrants or shares of Company Common Stock has become effective under the Securities Act and such Warrants or shares of Company Common Stock have been disposed of in accordance with such registration statement; (b) that have been sold to the public pursuant to Rule 144; (c) that have been otherwise transferred, new certificates for them not bearing a legend restricting further transfer shall have been delivered by the Company and subsequent public distribution of them shall not require registration or qualification of them under the Securities Act or any similar state law then in force; (d) as to which the Company has delivered an opinion of counsel reasonably satisfactory to the transfer agent for the Warrants or Company Common Stock to the effect that such Registrable Securities are able to be sold by the Holders without restriction as to volume or manner of sale pursuant to Rule 144; (e) that are otherwise sold or transferred by a Holder in a transaction where its rights under this Agreement are not assigned; or (f) that have ceased to be outstanding.

“Requesting Holders” shall mean any Holder(s) requesting to have its (their) Registrable Securities included in any Demand Registration or Shelf Registration.

“Required Filing Date” has the meaning given such term in Section 2.2.1(b) herein.

“Rule 144” means Rule 144 under the Securities Act or any successor rule thereto.

“SEC” means the United States Securities and Exchange Commission or any other federal agency at the time administering the Securities Act.

“Securities Act” means the Securities Act of 1933, as amended, or any similar federal statute, and the rules and regulations promulgated by the SEC thereunder.

“Seller Affiliates” has the meaning given such term in Section 2.7.1 herein.

“Shelf Registration Statement” has the meaning given such term in Section 2.1.1 herein.

“Shelf Takedown” has the meaning given such term in Section 2.2.2(b) herein.

“Suspension Notice” has the meaning given such term in Section 2.5 herein.

“Underwritten Offering” shall mean an offering registered under the Securities Act in which securities of the Company are sold to one or more underwriters on a firm-commitment basis for reoffering to the public.

“Warrants” has the meaning given such term in the recitals of this Agreement.

## ARTICLE 2 REGISTRATION RIGHTS

### 2.1 Shelf Registration.

2.1.1 Registration Requirement. The Company shall use commercially reasonable efforts to prepare and file a resale registration statement under the Securities Act (it being agreed that such registration statement shall be a registration statement filed for an offering to be made on a delayed or continuous basis pursuant to Rule 415 (or any successor rule), including any post-effective amendment thereto, (the registration statement filed pursuant to this Section 2.1.1 being referred to as a “Shelf Registration Statement”)) for the resale of all or part of its or their Registrable Securities within 30 days after the date hereof. A Shelf Registration Statement filed pursuant to this Section 2.1.1 shall be on such appropriate registration form of the SEC as shall be selected by the Company; provided that, if the Company is then eligible, it shall file such registration statement on Form S-3. A Shelf Registration Statement when declared effective (including the documents incorporated therein by reference) will comply as to form in all material respects with all applicable requirements of the Securities Act and the Exchange Act and will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading (and, in the case of any prospectus contained in such registration statement, in the light of the circumstances under which a statement is made).

2.1.2 Effectiveness of the Registration Statement. The Company shall use commercially reasonable efforts to cause the Shelf Registration Statement to be declared effective by the SEC staff as soon as practicable after it has been filed with the Commission. Thereafter, the Company shall use commercially reasonable efforts to keep such Shelf Registration Statement continuously effective, including by filing any necessary post-effective amendments to such Shelf Registration Statement or a new Shelf Registration Statement, until the earlier of (x) the date on which all Registrable Securities have been sold pursuant to such Shelf Registration Statement or another Shelf Registration Statement filed under the Securities Act (but in no event prior to the applicable period referred to in Section 4(a)(3) of the Securities Act and Rule 174 thereunder) and (y) such time as the Registrable Securities are no longer outstanding or otherwise no longer constitute Registrable Securities. A Holder shall provide the information required by, and comply with the obligations under, Section 2.5 following the receipt of a Suspension Notice. Further, each Holder agrees to accurately complete and execute all questionnaires and other documents reasonably required by the Company in order to prepare and file any Shelf Registration Statement.

### 2.1.3 Shelf Takedowns.

(a) Any Holder or Holders of Registrable Securities shall be entitled, at any time and from time to time when a Shelf Registration Statement is effective, to sell such Registrable Securities held by such Holder or Holders as are then registered pursuant to a Shelf Registration Statement (each, a “Shelf Takedown”). The number of Shelf Takedowns that such Holder or Holders may effect pursuant to this Section 2.1.3 shall not be limited, provided, that the number of offerings where the plan of distribution



contemplates a customary “road show” (including an “electronic road show”) or other substantial marketing effort of by the Company and the underwriters ( any such Underwritten Offering, a “Marketed Underwritten Offering”) that may be effected hereunder shall be limited to a total of two (less any Demand Requests pursuant to Section 2.2.1), and such other restriction as may be set forth in Section 2.1.3(b) are complied with. Any such Shelf Takedown may be made in the United States by and pursuant to any method or combination of methods legally available to any Holder or Holders of Registrable Securities (including, but not limited to, an Underwritten Offering, a direct sale to purchasers, a sale to or through brokers, dealers or agents, a sale over the internet, Block Sales, derivative transactions with third parties, sales in connection with short sales and other hedging transactions). The Company shall comply with the applicable provisions of the Securities Act with respect to the disposition of all Registrable Securities covered by the Shelf Registration Statement in accordance with the intended methods of disposition by the Holder or Holders of Registrable Securities.

(b) Upon receipt of prior written notice of the majority of Holders of the then outstanding Registrable Securities that they intend to effect a Shelf Takedown, the Company shall use commercially reasonable efforts to cooperate in such Shelf Takedown, whether or not such Shelf Takedown constitutes an Underwritten Offering, by amending or supplementing the prospectus related to such Shelf Registration Statement as may be reasonably requested by such Holder or Holders for so long as such Holder or Holders holds Registrable Securities; provided, that the Company shall not be obligated to cooperate in an Underwritten Offering to be effected by means of a Block Sale if notice of such Underwritten Offering has not been delivered to the Company at least five Business Days prior to the intended launch of such Block Sale.

2.1.4 Selection of Underwriters. At the request of the Holders of 25% of the outstanding Registrable Securities, the offering of Registrable Securities pursuant to a Shelf Takedown, shall be in the form of a “firm commitment” Underwritten Offering. In the case of an Underwritten Offering, a majority of such Holders shall select the investment banking firm or firms to manage the Underwritten Offering; provided, that such selection shall be subject to the prior consent of the Company, which consent shall not be unreasonably withheld; provided further, that no such “firm commitment” Underwritten Offering shall be required unless the Holders requesting it expect in good faith that it will generate gross proceeds of at least \$50 million. No Holder may participate in any such Underwritten Offering unless such Holder (x) agrees to sell such Holder’s Registrable Securities on the basis provided in any underwriting arrangements described above and (y) completes and executes all questionnaires, powers of attorney, indemnities, underwriting agreements and other documents reasonably required under the terms of such underwriting arrangements; provided, however, that any such Holder’s representations and warranties in connection with any such registration shall be substantially consistent in substance and scope with those that are customarily made by selling securityholders to underwriters and issuers in underwritten offerings; provided, further, however, that the obligation of such Holder to indemnify pursuant to any such underwriting arrangements shall be several, not joint and several, among such Holders selling Registrable Securities, and the liability of each such Holder will be in proportion thereto; provided, further, that such liability will be limited to the net amount received by such Holder from the sale of such Holder’s Registrable Securities pursuant to such Underwritten Offering.

2.1.5 Deferral of Filing. If the filing, initial effectiveness or continued use of a registration statement, including a Shelf Registration Statement, filed hereunder would require the Company to make a public disclosure of material non-public information, which disclosure in the good-faith judgment of the Company based on the advice of counsel (i) would be required to be made in any registration statement so

that such registration statement would not be materially misleading, (ii) would not be required to be made at such time but for the filing, effectiveness or continued use of such registration statement or (iii) would reasonably be expected to adversely affect in any material respect the Company or its business or the Company's ability to effect a *bona fide* material proposed acquisition, disposition, financing, reorganization, recapitalization or similar transaction, then the Company may, upon giving prompt written notice of such action to the Holders, delay the filing or initial effectiveness of, or suspend use of, such registration statement; provided that the Company shall not be permitted to do so (x) more than once in any six-month period or (y) for any single period of time in excess of 45 days, or for periods exceeding, in the aggregate, 90 days during any 12-month period. In the event that the Company exercises its rights under the preceding sentence, the Holders agree to suspend, promptly upon receipt of the notice referred to above, the use of any prospectus relating to such registration in connection with any sale or offer to sell Registrable Securities. In order to defer the filing of a registration statement pursuant to this Section 2.1.6, the Company shall promptly (but in any event within 10 days), upon determining to seek such deferral, deliver to each Requesting Holder a certificate signed by an executive officer of the Company stating that the Company is deferring such filing pursuant to this Section 2.1.6 and a statement of the reason for such deferral and an approximation of the anticipated delay.

## **2.2 Demand Registration.**

### **2.2.1 Request for Registration.**

(a) If the Company is unable to file, cause to become effective or maintain the effectiveness of a Shelf Registration Statement as required under Section 2.1, the Holder shall have the right to require the Company to, pursuant to the terms of this Agreement, register under and in accordance with the provisions of the Securities Act all or part of its or their Registrable Securities (a "Demand Registration"), by delivering to the Company written notice stating that such right is being exercised, naming, if applicable, the Holders whose Registrable Securities are to be included in such registration (collectively, the "Demanding Holders"), specifying the number of each such Demanding Holder's Registrable Securities to be included in such registration and, subject to Section 2.2.3 hereof, describing the intended method of distribution thereof (a "Demand Request").

(b) Subject to this Section 2.2.1 and Section 2.2.5, the Company shall file a registration statement in respect of a Demand Registration as soon as reasonably practicable and, in any event, within 30 days after receiving a Demand Request (the "Required Filing Date") and shall use commercially reasonable efforts to cause the same to be declared effective by the SEC as promptly as reasonably practicable after such filing; provided, however, that the Company shall not be obligated to effect:

(i) a Demand Registration pursuant to Section 2.2.1(a) within 90 days after the effective date of a previous Demand Registration in which the sale of Registrable Securities was consummated;

(ii) any Demand Registration if a Shelf Registration Statement is then effective, and such Shelf Registration Statement may be utilized by the Holder or Holders of Registrable Securities for the resale of Registrable Securities, including through an Underwritten Offering, without a requirement under the SEC's rules and regulations for a post-effective amendment thereto;

(iii) any Demand Registration that would require the Company to make a public disclosure of material non-public information, which disclosure in the good-faith judgment of the Company based on the advice of counsel (x) would be required to be made in any registration statement so that such registration statement would not be materially misleading, (y) would not be required to be made at such time but for the filing, effectiveness or continued use of such registration statement or (z) would reasonably be expected to adversely affect in any material respect the Company or its business or the Company's ability to effect a *bona fide* material proposed acquisition, disposition, financing, reorganization, recapitalization or similar transaction; and

(iv) any Demand Registration in which the Demand Request provides for less than ten percent (10%) of the aggregate number of originally issued Registrable Securities.

Notwithstanding the foregoing, the Company shall not be obligated to effect, in total, more than four Demand Registrations (less the number of any Shelf Takedowns constituting an Underwritten Offering), which may consist of (a) no more than two Demand Registrations where the plan of distribution contemplates a Marketed Underwritten Offering, less the number of any Shelf Takedowns constituting a Marketed Underwritten Offering and (b) no more than one Demand Registration (less the number of any Shelf Takedowns constituting an Underwritten Offering) during any 12-month period.

(c) Each Holder requesting a Demand Registration agrees to complete accurately and execute all questionnaires and other documents reasonably required by the Company in order to prepare and file any Shelf Registration Statement.

2.2.2 Selection of Underwriters. At the request of a majority of the Requesting Holders, the offering of Registrable Securities pursuant to a Demand Registration, shall be in the form of a "firm commitment" Underwritten Offering. In the case of an Underwritten Offering, a majority of the Requesting Holders shall select the investment banking firm or firms to manage the Underwritten Offering; provided, that such selection shall be subject to the prior consent of the Company, which consent shall not be unreasonably withheld. No Holder may participate in any such Underwritten Offering unless such Holder (x) agrees to sell such Holder's Registrable Securities on the basis provided in any underwriting arrangements described above and (y) completes and executes all questionnaires, powers of attorney, indemnities, underwriting agreements and other documents reasonably required under the terms of such underwriting arrangements; provided, however, that any such Holder's representations and warranties in connection with any such registration shall be substantially consistent in substance and scope with those that are customarily made by selling securityholders to underwriters and issuers in underwritten offerings; provided, further, however, that the obligation of such Holder to indemnify pursuant to any such underwriting arrangements shall be several, not joint and several, among such Holders selling Registrable Securities, and the liability of each such Holder will be in proportion thereto; provided, further, that such liability will be limited to the net amount received by such Holder from the sale of such Holder's Registrable Securities pursuant to such Underwritten Offering.

2.2.3 Rights of Nonrequesting Holders. Upon receipt of any Demand Request, the Company shall promptly (but in any event within 10 days) give written notice of such proposed Demand Registration to all other Holders (if any), who shall have the right, exercisable by written notice to the Company within

15 days of their receipt of the Company's notice, to elect to include in such Demand Registration such portion of their Registrable Securities as they may request. All Holders requesting to have their Registrable Securities included in a Demand Registration in accordance with the preceding sentence shall be deemed to be "Requesting Holders" for purposes of this Section 2.2.

**2.2.4 Priority on Demand Registrations.** No securities to be sold for the account of any Person (including the Company) other than any Requesting Holder shall be included in a Demand Registration unless the managing underwriter or underwriters shall advise such Requesting Holder (or, in the case of a Demand Registration that is not an Underwritten Offering, such Requesting Holder determines in good faith after considering the relevant facts and circumstances at the relevant time) that the inclusion of such securities, in the reasonable opinion of the managing underwriter or underwriters, will not adversely affect the price or success of the offering (an "Adverse Effect"). Furthermore, if the managing underwriter or underwriters shall advise the Requesting Holder (or such Requesting Holder determines, as applicable, in good faith after considering the relevant facts and circumstances at the relevant time) that, even after exclusion of all securities of other Persons pursuant to the immediately preceding sentence, the amount of securities proposed to be included in such Demand Registration by the Requesting Holders and the Demanding Holders is sufficiently large to cause an Adverse Effect, the number of securities to be included in such Demand Registration shall equal the number of shares which the Requesting Holder is so advised can be sold in such offering without an Adverse Effect, allocated as follows: (i) first, the securities requested to be included in such offering by the Demanding Holders and (ii) second, the Registrable Securities requested to be included in such offering by the Requesting Holders (and such shares shall be allocated *pro rata* among the Requesting Holders on the basis of the number of Registrable Securities requested to be included in such registration by each such Requesting Holder).

**2.2.5 Deferral of Filing.** With respect to any Demand Registration, the obligation of the Company to file, accelerate the initial effectiveness or continue the effectiveness of a registration statement shall be limited to the extent set forth in Section 2.1.5. If the Company so postpones the filing of a prospectus or the effectiveness of a registration statement with respect to a Demand Registration for the reasons set forth in Section 2.1.5, the Holders shall be entitled to withdraw such request and, if such request is withdrawn, such registration request shall not count for the purposes of the limitations set forth in Section 2.2. The Company shall promptly give the Holders requesting registration thereof pursuant to this Section 2 written notice of any postponement made in accordance with the preceding sentence. A deferral of the filing of a registration statement pursuant to this Section 2.2.5 shall be lifted, and the requested registration statement shall be filed forthwith. In order to defer the filing of a registration statement pursuant to this Section 2.2.5, the Company shall promptly (but in any event within 10 days), upon determining to seek such deferral, deliver to each Requesting Holder a certificate signed by an executive officer of the Company stating that the Company is deferring such filing pursuant to this Section 2.2.5 and a statement of the reason for such deferral and an approximation of the anticipated delay. Within 20 days after receiving such certificate, the holders of a majority of the Registrable Securities held by the Requesting Holders and for which registration was previously requested may withdraw such Demand Request by giving notice to the Company; if withdrawn, the Demand Request shall be deemed not to have been made for all purposes of this Agreement.

### **2.3 Holdback Agreements.**

(a) In the case of any Underwritten Offering by any Holder hereunder, the Company shall not effect any public sale or distribution of its equity securities, or any securities convertible into or exchangeable or exercisable for such securities, during the seven days prior to and during the 90-day period

beginning on the effective date of any registration statement filed in connection with such Underwritten Offering or, in the case of an Underwritten Offering pursuant to a Shelf Takedown, the filing of any prospectus relating to the offer and sale of Registrable Securities (or, in either case, such shorter period that any lock-up period with respect to such Underwritten Offering is in effect), except (i) pursuant to any Excluded Registration, (ii) pursuant to any registrations filed in connection with an exchange offer or any employee benefit or dividend reinvestment plan or (iii) unless the underwriters managing any such Underwritten Offering otherwise agree. The underwriters in connection with such Underwritten Offering are intended third-party beneficiaries of this Section 2.3(a) and shall have the right and power to enforce the provisions hereof as though they were a party thereto.

(b) Each Holder agrees, in the event of an Underwritten Offering by the Company (whether for the account of the Company or otherwise), not to offer, sell, contract to sell or otherwise dispose of any Registrable Securities, or any securities convertible into or exchangeable or exercisable for such securities, including any sale pursuant to Rule 144 (except as part of such Underwritten Offering), during the seven days prior to, and during the 90-day period beginning on, the effective date of the registration statement for such Underwritten Offering (or, in the case of an offering pursuant to an effective shelf registration statement pursuant to Rule 415, the pricing date for such Underwritten Offering) (or, in either case, such shorter period that any lock-up period with respect to such Underwritten Offering is in effect). The underwriters in connection with such Underwritten Offering are intended third-party beneficiaries of this Section 2.3(b) and shall have the right and power to enforce the provisions hereof as though they were a party thereto.

(c) Notwithstanding the foregoing, nothing in this Section 2.3 shall prohibit: (i) any exercise of Warrants and acquisition of underlying Company Common Stock in connection therewith by a Holder or (ii) transfers of Warrants or Company Common Stock to an Affiliate.

(d) Notwithstanding the foregoing, no Holder shall be required to execute a lock-up agreement or otherwise be restricted in making sales pursuant to this Section 2.3 unless each director, officer and other beneficial owner of at least the same amount of common equity of the Company as such Holder (each, an “**Additional Locked-Up Party**”) is also similarly restricted. No Holder shall be required to be subject to less favorable restrictions than those applicable to each other Additional Locked-Up Party.

**2.4 Registration Procedures.** If and whenever any Holder has requested that any Registrable Securities be registered pursuant to this Agreement, the Company will use its reasonable best efforts to effect the registration and the sale of such Registrable Securities in accordance with the intended method of disposition thereof as promptly as is reasonably practicable, and pursuant thereto the Company will as expeditiously as possible:

(i) prepare and file with the SEC, pursuant to Section 2.2.1(b) with respect to any Demand Registration, a registration statement on any appropriate form under the Securities Act with respect to such Registrable Securities and use its reasonable best efforts to cause such registration statement to become effective; provided, that as far in advance as practicable before filing such registration statement or any amendment thereto, the Company will furnish to the selling Holders copies of reasonably complete drafts of all such documents prepared to be filed (including exhibits), and any such Holder shall have the opportunity to review and reasonably object, as promptly as is reasonably practicable, to any information contained therein and the Company will make corrections reasonably requested by such

Holder with respect to such information prior to filing any such registration statement or amendment; provided, that the Company shall not have any obligation to modify any information if the Company reasonably believes in good faith that so doing would cause (x) the registration statement to contain an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading or (y) the prospectus to contain an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;

(ii) except in the case of a Shelf Registration Statement, prepare and file with the SEC such amendments, post-effective amendments, and supplements to such registration statement and the prospectus used in connection therewith as may be necessary to keep such registration statement effective for a period of not less than 180 days (or such lesser period as is necessary for the underwriters in an underwritten offering to sell unsold allotments) and comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such registration statement during such period in accordance with the intended methods of disposition by the sellers thereof set forth in such registration statement;

(iii) in the case of a Shelf Registration Statement, prepare and file with the SEC such amendments and supplements to such registration statement and the prospectus used in connection therewith as may be necessary to keep such registration statement effective and to comply with the provisions of the Securities Act with respect to the disposition of all Registrable Securities subject thereto for a period ending on the earlier of (x) 36 months after the effective date of such registration statement, (y) the date when all restrictive legends on the Registrable Securities have been removed and such Registrable Securities are able to be sold by the Holders without restriction as to volume or manner of sale pursuant to Rule 144 or (z) the date on which all the Registrable Securities held by any Holder cease to be Registrable Securities;

(iv) furnish to each seller of Registrable Securities and the underwriters of any Underwritten Offering, such number of copies of such registration statement, each amendment and supplement thereto, the prospectus included in such registration statement (including each preliminary prospectus), any prospectus supplement, any documents incorporated by reference therein and such other documents as such seller or underwriters may reasonably request for purposes of permitting such seller's or underwriters' review in order to facilitate the disposition of the Registrable Securities owned by such seller or the sale of such securities by such underwriters (it being understood that, subject to Section 2.6 and the requirements of the Securities Act and applicable state securities laws, the Company consents to the use of the prospectus and any amendment or supplement thereto by each seller and the underwriters in connection with any Underwritten Offering covered by the registration statement of which such prospectus, amendment or supplement is a part);

(v) use its reasonable best efforts to register or qualify such Registrable Securities under such other securities or blue sky laws of such jurisdictions in the United States as the managing underwriter reasonably requests (or, in the event the registration statement does not relate to an Underwritten Offering, as the Holders of a majority of such Registrable Securities may reasonably request); use its reasonable best efforts to keep each

such registration or qualification (or exemption therefrom) effective during the period in which such registration statement is required to be kept effective and to take any other action that may be reasonably necessary or advisable to enable each seller to consummate the disposition of the Registrable Securities owned by such seller in such jurisdictions (provided, however, that the Company will not be required to (A) qualify generally to do business in any jurisdiction where it would not otherwise be required to qualify but for this subparagraph, (B) subject itself to taxation in any jurisdiction wherein it is not so subject or (C) take any action that would subject it to general service of process in any jurisdiction where it is not then so subject);

(vi) promptly notify each seller and each underwriter of any Underwritten Offering and (if requested by any such Person) confirm such notice in writing (A) when a prospectus or any prospectus supplement or post-effective amendment has been filed and, with respect to a registration statement or any post-effective amendment, when the same has become effective, (B) of the issuance by any state securities or other regulatory authority of any order suspending the qualification or exemption from qualification of any of the Registrable Securities under state securities or “blue sky” laws or the initiation of any proceedings for that purpose, and (C) of the happening of any event which makes any material statement made in a registration statement or related prospectus untrue or which requires the making of any material changes in such registration statement, prospectus or documents so that they will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, and, as promptly as practicable thereafter, prepare and file with the SEC and furnish a supplement or amendment to such prospectus so that, as thereafter deliverable to the purchasers of such Registrable Securities, such prospectus will not contain any untrue statement of a material fact or omit a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading;

(vii) permit any selling Holder, which in such Holder’s judgment, based on the advice of counsel, might reasonably be deemed to be an underwriter or a controlling person of the Company, to participate in the preparation of such registration or comparable statement, to the extent necessary, and to require the insertion therein of material, furnished to the Company in writing, which in the reasonable judgment of such Holder and its counsel should be included; provided, that the Company shall not have any obligation to include such information if the Company reasonably believes in good faith that so doing would cause (i) the registration statement to contain an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading or (ii) the prospectus to contain an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading;

(viii) in the case of any Underwritten Offering, make reasonably available members of management of the Company, as selected by the Holders of a majority of the Registrable Securities included in such registration, for assistance in the selling effort relating to the Registrable Securities covered by such registration, including, but not limited to, the participation of such members of the Company’s management in road show presentations as the underwriters reasonably request; provided, that the underwriter shall take into account

the reasonable business requirements of the Company in determining the scheduling and duration of any road show;

(ix) otherwise use its reasonable best efforts to comply with the Securities Act, the Exchange Act and all other applicable rules and regulations of the SEC, and make generally available to the Company's securityholders an earnings statement satisfying the provisions of Section 11(a) of the Securities Act no later than 45 days after the end of the 12-month period beginning with the first day of the Company's first fiscal quarter commencing after the effective date of a registration statement, which earnings statement shall cover said 12-month period, and which requirement will be deemed to be satisfied if the Company timely files complete and accurate information on Forms 10-Q, 10-K and 8-K under the Exchange Act and otherwise complies with Rule 158 under the Securities Act;

(x) if requested by the managing underwriter of any Underwritten Offering or any seller, promptly incorporate in a prospectus supplement or post-effective amendment such information as the managing underwriter or such seller reasonably requests to be included therein, including, without limitation, with respect to the Registrable Securities being sold by such seller, the purchase price being paid therefor by the underwriters and with respect to any other terms of the underwritten offering of the Registrable Securities to be sold in such offering, and promptly make all required filings of such prospectus supplement or post-effective amendment;

(xi) cooperate with the seller and the managing underwriter of any Underwritten Offering to facilitate the timely preparation and delivery of certificates (which shall not bear any restrictive legends unless required under applicable law) representing securities sold under any registration statement, and enable such securities to be in such denominations and registered in such names as the managing underwriter or such sellers may request as promptly as reasonably practicable prior to any sale of Registrable Securities and keep available and make available to the Company's transfer agent prior to the effectiveness of such registration statement a supply of such certificates;

(xii) in the case of an Underwritten Offering, upon reasonable notice and during normal business hours, make reasonably available for inspection by any seller, any underwriter participating in any disposition pursuant to any registration statement, and any attorney, accountant or other agent or representative retained by any such seller or underwriter (collectively, the "Inspectors"), relevant financial and other records, pertinent corporate documents and properties of the Company (collectively, the "Records"), as shall be reasonably necessary to enable them to exercise their due diligence responsibility, and cause the Company's officers, directors and employees to supply information reasonably requested by any such Inspector in connection with such registration statement; provided, however, that, unless the disclosure of such Records is necessary to avoid or correct a misstatement or omission in the registration statement or the release of such Records is ordered pursuant to a subpoena or other order from a court of competent jurisdiction, the Company shall not be required to provide any information under this subparagraph (xii) if (A) the Company believes, after consultation with counsel for the Company, that either (1) the requested Records constitute confidential commercial and/or supervisory information within the meaning of 5 U.S.C. § 552(b)(4) and (8), respectively, or (2) to do so would cause



the Company to forfeit an attorney-client privilege that was applicable to such information, or (B) if the Company has requested and been granted from the SEC confidential treatment of such information contained in any filing with the SEC or documents provided supplementally or otherwise; provided, further, however, that any Records and other information provided under this Section 2.5(xii) that is not generally publicly available shall be subject to such confidential treatment as is customary for underwriters' due diligence reviews;

(xiii) in the case of any Underwritten Offering, use commercially reasonable efforts to furnish to each seller and the underwriter a signed counterpart of (A) an opinion or opinions of counsel to the Company (and/or internal counsel if acceptable to the managing underwriters and the sellers), and (B) a comfort letter or comfort letters from the Company's independent public accountants, each in customary form and covering such matters of the type customarily covered by opinions or comfort letters, as the case may be, as the seller or managing underwriter reasonably requests;

(xiv) use its reasonable best efforts to cause the Registrable Securities covered by any registration statement to be listed on the primary national securities exchange, if any, on which similar securities issued by the Company are then listed;

(xv) provide a transfer agent and registrar for all Registrable Securities registered hereunder;

(xvi) reasonably cooperate with each seller and each underwriter of any Underwritten Offering participating in the disposition of such Registrable Securities and their respective counsel in connection with any filings required to be made with the Financial Industry Regulatory Authority, Inc. ("FINRA");

(xvii) during the period when the prospectus is required to be delivered under the Securities Act, promptly file all documents required to be filed with the SEC pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act;

(xviii) notify each seller of Registrable Securities promptly of any request by the SEC for the amending or supplementing of any registration statement or prospectus relating to such seller's Registrable Securities;

(xix) enter into such agreements (including underwriting agreements) as are customary in connection with an Underwritten Offering; and

(xx) advise each seller of such Registrable Securities, promptly after it shall receive notice or obtain knowledge thereof, of the issuance of any stop order by the SEC suspending the effectiveness of a registration statement relating to the such seller's Registrable Securities or the initiation or threatening of any proceeding for such purpose and promptly use its reasonable best efforts to prevent the issuance of any stop order or to obtain its withdrawal as soon as practicable if such stop order should be issued.

The Company may, from time to time, require any Holder of Registrable Securities as to which any registration is being effected to furnish to the Company in writing such information as the Company reasonably determines, based on the advice of counsel, is required or advised to be included in connection with such registration regarding such Holder and the distribution of such Registrable Securities, and the Company may exclude from such registration the Registrable Securities of such Holder if such Holder fails to furnish such information within 15 days of receiving such request.

**2.5 Suspension of Dispositions.** Each Holder agrees by acquisition of any Registrable Securities that, upon receipt of any notice (a “Suspension Notice”) from the Company of the happening of any event of the kind described in Section 2.4(vi)(C), such Holder will forthwith discontinue disposition of Registrable Securities until such Holder’s receipt of the copies of the supplemented or amended prospectus, or until it is advised in writing (the “Advice”) by the Company that the use of the prospectus may be resumed, and has received copies of any additional or supplemental filings which are incorporated by reference in the prospectus, and, if so directed by the Company, such Holder will deliver to the Company all copies, other than permanent file copies then in such Holder’s possession, of the prospectus covering such Registrable Securities current at the time of receipt of such notice. In the event the Company shall give any such notice, the time period regarding the effectiveness of registration statements set forth in Section 2.4(ii) and Section 2.4(iii) hereof shall be extended by the number of days during the period from and including the date of the giving of the Suspension Notice to and including the date when each seller of Registrable Securities covered by such registration statement shall have received the copies of the supplemented or amended prospectus or the Advice. The Company shall use its reasonable best efforts and take such actions as are reasonably necessary to render the Advice as promptly as reasonably practicable. In any event, the Company shall not be entitled to deliver more than two Suspension Notices in any one year.

**2.6 Registration Expenses.** The Company shall be responsible for all reasonable and documented, out-of-pocket fees and expenses incident to any Demand Registration including, without limitation, the Company’s performance of or compliance with this Article 2, all registration and filing fees, all fees and expenses associated with filings required to be made with FINRA (including, if applicable, the reasonable fees and expenses of any “qualified independent underwriter” as such term is defined in FINRA Rule 5121, and of its counsel), as may be required by the rules and regulations of FINRA, fees and expenses of compliance with securities or “blue sky” laws (including reasonable fees and disbursements of counsel in connection with “blue sky” qualifications of the Registrable Securities), rating agency fees, printing expenses (including expenses of printing certificates for the Registrable Securities and of printing prospectuses if the printing of prospectuses is requested by any Holder of Registrable Securities), messenger and delivery expenses, the fees and expenses incurred in connection with any listing or quotation of the Registrable Securities, and the fees and expenses of counsel for the Company and its independent certified public accountants (including the expenses of any special audit or “comfort letters” required by or incident to such performance). The Holders shall be responsible for (i) any underwriting discounts, commissions, or fees attributable to the sale of the Registrable Securities, on a *pro rata* basis on the basis of the number of shares so sold whether or not any registration statement becomes effective, and (ii) any applicable transfer taxes. The Company shall be responsible for the fees and expenses of one firm of attorneys retained by all of the Holders in the aggregate in connection with the sale of Registrable Securities in a Demand Registration or an Underwritten Offering. Notwithstanding the foregoing, the Company shall not be responsible for the fees and expenses of any additional counsel, or any of the accountants, agents or experts retained by the Holders in connection with the sale of Registrable Securities in a Demand Registration. The Company will also be responsible for its internal expenses in any Demand Registration (including, without limitation, all

salaries and expenses of its officers and employees performing legal or accounting duties, the expense of any annual audit and the expense of any liability insurance).

## **2.7 Indemnification.**

2.7.1 The Company agrees to indemnify and reimburse, to the fullest extent permitted by law, each seller of Registrable Securities, and each of its employees, advisors, agents, representatives, partners, officers, and directors and each Person who controls such seller (within the meaning of the Securities Act) and any agent or investment advisor thereof (collectively, the “Seller Affiliates”) (A) against any and all losses, claims, damages, liabilities, and expenses, joint or several (including, without limitation, reasonable attorneys’ fees and disbursements except as limited by Section 2.7.3) (collectively, “Losses”) based upon, arising out of, related to or resulting from any untrue or alleged untrue statement of a material fact contained in any registration statement, prospectus or preliminary prospectus or any amendment thereof or supplement thereto, or any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, (B) against any and all Losses, as incurred, to the extent of the aggregate amount reasonably paid in settlement of any litigation or investigation or proceeding by any governmental agency or body, commenced or threatened, or of any claim whatsoever based upon, arising out of, related to or resulting from any such untrue statement or omission or alleged untrue statement or omission made by the Company in any registration statement, prospectus or preliminary prospectus or any amendment thereof or supplement thereto; provided, that such settlement is effected with the consent of the Company (such consent not to be unreasonably withheld); and (C) against any Losses as may be reasonably incurred in investigating, preparing, or defending against any litigation, or investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon, arising out of, related to or resulting from any such untrue statement or omission or alleged untrue statement or omission, or such violation of the Securities Act, the Exchange Act or any other similar federal or state securities laws or any rule or regulation promulgated thereunder, to the extent that any such expense or cost is not paid under subparagraph (A) or (B) above; provided, that the Company will have no obligation to provide any indemnification or reimbursement hereunder to the extent that any such Losses (or actions or proceedings in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement or omission or alleged omission made in such registration statement, prospectus, or any preliminary prospectus or any amendment thereof or supplement thereto, in reliance upon and in substantial conformity with information furnished in writing to the Company by such seller or any of its Seller Affiliates (or on such seller’s or Seller Affiliate’s behalf) for use therein.

2.7.2 In connection with any registration statement in which a seller of Registrable Securities is participating, each such seller will furnish to the Company in writing such information and certificates as the Company reasonably requests for use in connection with any such registration statement or prospectus and, to the fullest extent permitted by law, each such seller will indemnify and reimburse, to the fullest extent permitted by law, the Company and each of its employees, advisors, agents, representatives, partners, officers and directors and each Person who controls the Company (within the meaning of the Securities Act or the Exchange Act) and any agent or investment advisor (“Company Indemnified Persons”) thereof against any and all Losses resulting from any untrue statement or alleged untrue statement of a material fact contained in the registration statement, prospectus, or any preliminary prospectus or any amendment thereof or supplement thereto or any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, but only to the extent that such untrue statement or alleged untrue statement or omission or alleged omission is contained in any information or certificate so furnished in writing to the Company by such seller or any Seller Affiliates (or on such seller’s

or Seller Affiliate's behalf) specifically for inclusion in the registration statement, prospectus, or any preliminary prospectus or any amendment thereof or supplement thereto and the Holders agree to reimburse the Company Indemnified Persons for any legal or other expenses reasonably incurred by it in connection with investigating or defending any such action or claim as such expenses are incurred; provided, that the obligation to indemnify will be several, not joint and several, among such sellers of Registrable Securities, and the liability of each such seller of Registrable Securities will be in proportion and limited to the net amount received by such seller from the sale of Registrable Securities pursuant to such registration statement; provided, however, that such seller of Registrable Securities shall not be liable in any such case to the extent that prior to the filing of any such registration statement or prospectus or amendment thereof or supplement thereto, such seller has furnished in writing to the Company information expressly for use in such registration statement or prospectus or any amendment thereof or supplement thereto which corrected or made not misleading information previously furnished to the Company.

2.8.3 Any Person entitled to indemnification hereunder will (A) give prompt written notice to the indemnifying party of any claim with respect to which it seeks indemnification (provided, that the failure to give such notice shall not limit the rights of such Person) and (B) unless in such indemnified party's reasonable judgment a conflict of interest between such indemnified and indemnifying parties may exist with respect to such claim, permit such indemnifying party to assume the defense of such claim with counsel reasonably satisfactory to the indemnified party; provided, however, that any person entitled to indemnification hereunder shall have the right to employ separate counsel and to participate in the defense of such claim, but the reasonable and documented fees and expenses of such counsel shall be at the expense of such person unless (X) the indemnifying party has agreed to pay such fees or expenses or (Y) the indemnifying party shall have failed to assume the defense of such claim and employ counsel reasonably satisfactory to such person. If such defense is not assumed by the indemnifying party as permitted hereunder, the indemnifying party will not be subject to any liability for any settlement made by the indemnified party without its consent (but such consent will not be unreasonably withheld, conditioned or delayed). If such defense is assumed by the indemnifying party pursuant to the provisions hereof, such indemnifying party shall not settle or otherwise compromise the applicable claim unless (1) such settlement or compromise contains a full and unconditional release of the indemnified party or (2) the indemnified party otherwise consents in writing. An indemnifying party who is not entitled to, or elects not to, assume the defense of a claim will not be obligated to pay the fees and expenses of more than one counsel for all parties indemnified by such indemnifying party with respect to such claim, unless in the reasonable judgment of any indemnified party, a conflict of interest may exist between such indemnified party and any other of such indemnified parties with respect to such claim, in which event the indemnifying party shall be obligated to pay the reasonable fees and disbursements of such additional counsel or counsels.

2.7.4 Each party hereto agrees that, if for any reason the indemnification provisions contemplated by Section 2.7.1 or Section 2.7.2 are unavailable to or insufficient to hold harmless an indemnified party in respect of any Losses (or actions in respect thereof) referred to therein, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of such Losses (or actions in respect thereof) in such proportion as is appropriate to reflect the relative fault of the indemnifying party and the indemnified party in connection with the actions which resulted in the losses, claims, damages, liabilities or expenses as well as any other relevant equitable considerations. The relative fault of such indemnifying party and indemnified party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by such indemnifying party or indemnified party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such

statement or omission. The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 2.7.4 were determined by *pro rata* allocation (even if the Holders or any underwriters or all of them were treated as one entity for such purpose) or by any other method of allocation which does not take account of the equitable considerations referred to in this Section 2.7.4. The amount paid or payable by an indemnified party as a result of Losses (or actions in respect thereof) referred to above shall be deemed to include any legal or other fees or expenses reasonably incurred by such indemnified party in connection with investigating or, except as provided in Section 2.7.3, defending any such action or claim. Notwithstanding the provisions of this Section 2.7.4, no Holder shall be required to contribute an amount greater than the dollar amount by which the net proceeds received by such Holder with respect to the sale of any Registrable Securities exceeds the amount of damages which such Holder has otherwise been required to pay by reason of any and all untrue or alleged untrue statements of material fact or omissions or alleged omissions of material fact made in any registration statement, prospectus or preliminary prospectus or any amendment thereof or supplement thereto related to such sale of Registrable Securities. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Holders' obligations in this Section 2.7.4 to contribute shall be several in proportion to the amount of Registrable Securities registered by it and not joint.

If indemnification is available under this Section 2.7, the indemnifying parties shall indemnify each indemnified party to the full extent provided in Section 2.7.1 and Section 2.7.2 without regard to the relative fault of said indemnifying party or indemnified party or any other equitable consideration provided for in this Section 2.7.4 subject, in the case of any Holder, to the limited dollar amounts set forth in Section 2.7.2.

2.7.5 The indemnification and contribution provided for under this Agreement will remain in full force and effect regardless of any investigation made by or on behalf of the indemnified party or any officer, director, or controlling Person of such indemnified party and will survive the transfer of securities.

**2.8 Transfer of Registration Rights.** The rights of each Holder under this Agreement may be assigned or transferred to (i) any Affiliate of the Holder or (ii) third-party transferees of the Registrable Securities or Warrants that are not Affiliates of one another and that each acquire, or agree to acquire, an amount of Registrable Securities (or Warrants exercisable therefor), and, in the case of both (i) and (ii), such Affiliate of the Holder or transferee enters into an Assignment Agreement, substantially in the form of Exhibit A hereto (collectively, a "Permitted Transferee").

### ARTICLE 3

**3.1 Rule 144.** The Company will file the reports required to be filed by it under the Exchange Act and the rules and regulations adopted by the SEC thereunder (or, if the Company is not required to file such reports, will, upon the request of the Holders, make publicly available other information so long as necessary to permit sales of Registrable Securities pursuant to Rule 144) and will take such further action as the Holders may reasonably request, all to the extent required from time to time to enable the Holders to sell Registrable Securities without registration under the Securities Act within the limitation of the exemption provided by Rule 144 or any similar rule or regulation hereafter adopted by the SEC. Upon the reasonable request of any Holder, the Company will deliver to such parties a written statement as to whether it has complied with such requirements. If any Initial Holder seeks to sell Company Common Stock under Rule

144, any legal opinion reasonably required by the transfer agent to effect such sale shall be provided by, or at the expense of, the Company.

**3.2 Preservation of Rights.** The Company will not (i) grant any registration rights to third parties which are more favorable than or inconsistent with the rights granted hereunder or (ii) enter into any agreement, take any action or permit any change to occur, with respect to its securities that violates or subordinates the rights expressly granted to the Holders.

#### ARTICLE 4 TERMINATION

**4.1 Termination.** This Agreement shall terminate and be of no further force and effect at the earliest to occur of (i) its termination by the written agreement of all parties or their respective successors in interest, (ii) with respect to any Holder, the date on which all Company Common Stock held by such Holder have ceased to be Registrable Securities, (iii) with respect to the Company, the date on which all Company Common Stock has ceased to be Registrable Securities and (iv) the dissolution, liquidation or winding up of the Company.

#### ARTICLE 5 MISCELLANEOUS

**5.1 Notices.** Any notice, request or other document required or permitted to be given or delivered to the Holder by the Company shall be delivered in accordance with the notice provisions of the Second Lien Financing Agreement.

**5.2 Authority.** Each of the parties hereto represents to the other that (i) it has the corporate power and authority to execute, deliver and perform this Agreement, (ii) the execution, delivery and performance of this Agreement by it has been duly authorized by all necessary corporate action and no such further action is required, (iii) it has duly and validly executed and delivered this Agreement and (iv) this Agreement is a legal, valid and binding obligation, enforceable against it in accordance with its terms subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and general equity principles.

**5.3 Jurisdiction and Governing Law.** All questions concerning the construction, validity, enforcement and interpretation of this Agreement and the Warrants shall be determined in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of New York. Any legal suit, action or proceeding arising out of or based upon this Agreement, the Warrants or the transactions contemplated hereby may be instituted in the federal courts of the United States of America or the courts of the State of New York in each case located in the city of New York City and County of New York, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. The parties hereto irrevocably and unconditionally waive any objection to the laying of venue of any suit, action or any proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

**5.4 Remedies.** The Holder, in addition to being entitled to exercise all rights granted by law, including recovery of damages, will be entitled to specific performance of its rights under this Warrant. The Company agrees that monetary damages would not be adequate compensation for any loss incurred by reason of a

breach by it of the provisions of this Warrant and hereby agrees to waive and not to assert the defense in any action for specific performance that a remedy at law would be adequate or that there is no irreparable harm and not to require the posting of a bond or other security.

**5.5 Successors and Assigns.** The rights of a Holder may only be assigned in accordance with Section 2.8 to a Permitted Transferee. A Permitted Transferee to whom rights are transferred pursuant to Section 2.8 may not again transfer those rights to any other Permitted Transferee, other than as provided in Section 2.8. Except as otherwise expressly provided herein, this Agreement shall be binding upon and inure to the benefit of the parties hereto and any and all successors to the Company and each Holder and their respective assigns.

**5.6 No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever, under or by reason of this Agreement; provided, however, the parties hereto hereby acknowledge that the Persons set forth in Section 2.3(b) are express third-party beneficiaries in accordance with Section 2.3(b).

**5.7 Headings.** The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

**5.8 Severability.** If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced under any law or as a matter of public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties to this Agreement shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated by this Agreement be consummated as originally contemplated to the greatest extent possible.

**5.9 Waivers.** The observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) by the party entitled to enforce such term, but such waiver shall be effective only if it is in a writing signed by the party against whom the existence of such waiver is asserted. Unless otherwise expressly provided in this Agreement, no delay or omission on the part of any party in exercising any right or privilege under this Agreement shall operate as a waiver thereof, nor shall any waiver on the part of any party of any right or privilege under this Agreement operate as a waiver of any other right or privilege under this Agreement nor shall any single or partial exercise of any right or privilege preclude any other or further exercise thereof or the exercise of any other right or privilege under this Agreement. No failure by either party to take any action or assert any right or privilege hereunder shall be deemed to be a waiver of such right or privilege in the event of the continuation or repetition of the circumstances giving rise to such right unless expressly waived in writing by the party against whom the existence of such waiver is asserted.

**5.10 Entire Agreement.** This Agreement, together with the Warrants, the Second Lien Agreement and any related exhibits and schedules thereto, constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter.

**5.11 Amendment.** This Agreement may not be amended or modified in any respect except by a written agreement signed by the Company and the Holders of a majority of the then-outstanding Registrable Securities.

**5.12 Counterparts.** This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become effective when each party hereto shall have received counterparts hereof signed by each of the other parties hereto. If any signature is delivered by facsimile transmission or by PDF, such signature shall create a valid and binding obligation of the party executing (or on whose behalf the signature is executed) with the same force and effect as if such facsimile or PDF signature were an original thereof.

**5.13 Further Assurances.** Each of the parties to this Agreement shall, and shall cause their Affiliates to, execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and to give effect to the transactions contemplated hereby.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first written above.

**GLOBALSTAR, INC.**

By: /s/Rebecca Clary \_\_\_\_\_

Name: Rebecca Clary \_\_\_\_\_

Title: VP and Chief Financial Officer \_\_\_\_\_

Dated 26 November 2019

# Intercreditor Agreement

between

**BNP Paribas**  
as the Senior Agent

**Global Loan Agency Services Limited**  
as the Second Lien Agent

**The Senior Lenders**

**The Second Lien Lenders**

**Globalstar, Inc.,**  
as the Borrower

**BNP Paribas**  
as the Senior Security Agent

**GLAS Trust Corporation Limited**  
as the Second Lien Security Agent

and **Others**

White & Case LLP  
5 Old Broad Street  
London EC2N 1DW

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This Agreement (the “**Agreement**”) is dated 26 November 2019 and made

**Between:**

- (1) **Globalstar, Inc.**, a corporation duly organised and validly existing under the laws of the State of Delaware, with its principal office located at 1351 Holiday Square Boulevard, Covington, LA 70433, United States of America (the “**Borrower**”);
- (2) **The Subsidiaries** of the Borrower listed in Part 1 of Schedule 1 (*The Original Parties*) as Debtors (together with the Borrower, the “**Original Debtors**”);
- (3) **BNP Paribas**, a société anonyme with a share capital of €2,499,597,122 organised and existing under the laws of the Republic of France, whose registered office is at 16 boulevard des Italiens, 75009 Paris, France registered under number 662 042 449 at the Commercial Registry of Paris, acting in its capacity as facility agent and *Chef de File* for and on behalf of the Senior Facility Creditors as the **Senior Agent**;
- (4) **BNP Paribas, Société Générale, Natixis, Crédit Agricole Corporate and Investment Bank and Crédit Industriel et Commercial** each acting in its capacity as a mandated lead arranger as the **Senior Arrangers**;
- (5) **BNP Paribas, Société Générale, Natixis, Crédit Agricole Corporate and Investment Bank and Crédit Industriel et Commercial** as the **Senior Lenders**;
- (6) **Global Loan Agency Services Limited**, a limited liability company registered in England and Wales with number 8318601, as the initial **Second Lien Agent**;
- (7) **Inverness Financing, L.L.C., Thermo Funding II LLC, [\*], [\*] and [\*]** as the **Second Lien Lenders**;
- (8) **The Persons** listed in Part 2 of Schedule 1 (*The Original Parties*) as original Subordinated Creditors (in their capacity as Subordinated Creditors only, and not in any other capacity) (the “**Original Subordinated Creditors**”);
- (9) **The Persons** listed in Part 3 of Schedule 1 (*The Original Parties*) as original Subordinated Debtors (the “**Original Subordinated Debtors**”);
- (10) **BNP Paribas**, a société anonyme with a share capital of €2,499,597,122 organised and existing under the laws of the Republic of France, whose registered office is at 16 boulevard des Italiens, 75009 Paris, France registered under number 662 042 449 at the Commercial Registry of Paris, acting in its capacity as security trustee and agent for the Senior Facility Creditors (the “**Senior Security Agent**”); and
- (11) **GLAS Trust Corporation Limited**, limited liability incorporated in England and Wales with registered number 7927175, as security trustee and agent for the Second Lien Creditors (the “**Second Lien Security Agent**”).

**It is agreed** as follows:

# 1. Definitions and interpretation

## 1.1 Definitions

In this Agreement:

“**Acceleration Event**” means a Senior Acceleration Event or a Second Lien Acceleration Event.

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

“**Appropriation**” means the appropriation (or similar process) of the shares in the capital of a member of the Group (other than the Borrower) by the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) (or any Receiver or Delegate) which is effected (to the extent permitted under the relevant Security Document and applicable law) by enforcement of the Transaction Security.

“**Bankruptcy Case**” means a case or proceeding under the Bankruptcy Code.

“**Bankruptcy Code**” means Title 11 of the United States Code, as now or hereafter in effect or any successor statute.

“**Blocking Notice**” means has the meaning given to that term in the Accounts Agreement.

“**Borrowing Liabilities**” means, in relation to a member of the Group, the liabilities and obligations (not being Guarantee Liabilities) it may have as a principal debtor to a Creditor (other than to a Senior Arranger or a Senior Agent) or a Debtor in respect of Financial Indebtedness arising under the Debt Documents (whether incurred solely or jointly and including, without limitation, liabilities and obligations as a borrower under the Senior Finance Documents and liabilities and obligations as a borrower under the Second Lien Finance Documents).

“**BPIFAE Insurance Policy**” means each credit insurance policy (as amended from time to time) in respect of the Initial Senior Facility Agreement originally issued by COFACE (and now managed by BPIFAE acting for and on behalf of the French state as successor in title to COFACE) for the benefit of the Senior Lenders in respect of each Senior Facility and as approved by the BPIFAE Agent (on behalf of the Senior Lenders) pursuant to article L.432-2 of the French *Code des Assurances* and signed by the BPIFAE Agent and the Senior Lenders.

“**Bridge Loan Subordination Deed**” means the subordination deed dated 2 July 2019 and made between the Borrower, Thermo Funding Company LLC, [ \* ], [ \* ], [ \* ], the Senior Security Agent and the Senior Agent.

“**Cash Proceeds**” means:

8(a) proceeds of the Security Property which are in the form of cash; and

8(b) any cash which is generated by holding, managing, exploiting, collecting, realising or disposing of any proceeds of the Security Property which are in the form of Non-Cash Consideration.

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

“**Commitment**” means a Senior Commitment or a Second Lien Commitment.

“**Common Assurance**” means any guarantee, indemnity or other assurance against loss in respect of any of the Liabilities, the benefit of which (however conferred) is, to the extent legally possible, given to all the Secured Parties in respect of their Liabilities *but excludes* a BPIFAE Insurance Policy.

“**Common Currency**” means Dollars.

“**Common Currency Amount**” means, in relation to an amount, that amount converted (to the extent not already denominated in the Common Currency) into the Common Currency at the Senior Security Agent’s (or, following the Senior Discharge Date, the Second Lien Security Agents) Spot Rate of Exchange on the Business Day prior to the relevant calculation.

“**Competitive Sales Process**” means

14(a) any auction or other competitive sales process conducted with the advice of a Financial Adviser appointed by, or approved by, the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) pursuant to Clause 13.6 (*Appointment of Financial Adviser*) (and the procedures for which do not expressly exclude the Second Lien Creditors from participating as prospective buyers); and

14(b) any enforcement of the Transaction Security carried out by way of auction or other competitive sales process pursuant to requirements of applicable law.

“**Consent**” means any consent, approval, release or waiver or agreement to any amendment.

“**Creditor Accession Undertaking**” means:

16(a) an undertaking substantially in the form set out in Schedule 3 (*Form of Creditor Accession Undertaking*); or

16(b) a Transfer Certificate or an Assignment Agreement (each as defined in the relevant Facility Agreement) (*provided that* it contains an accession to this Agreement which is substantially in the form set out in Schedule 3 (*Form of Creditor Accession Undertaking*)), as the context may require; or

16(c) in the case of an acceding Debtor or Subordinated Debtor which is expressed to accede as a Debtor or a Subordinated Debtor in the relevant Debtor Accession Deed, that Debtor Accession Deed.

“**Creditors**” means:

(a) the Primary Creditors; and

(b) the Subordinated Creditors.

“**Debt Disposal**” means any disposal of any Liabilities or Debtors’ Intra-Group Receivables pursuant to paragraphs (d) or (e) of Clause 13.1 (*Facilitation of Distressed Disposals and Appropriation*).

“**Debt Document**” means each of:

- (a) this Agreement;
- (b) the Senior Finance Documents;
- (c) the Second Lien Finance Documents;
- (d) the Security Documents;
- (e) any Subordinated Liabilities Document; and
- (f) any other document designated as such by the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) and the Borrower.

“**Debtor**” means:

- (a) each Original Debtor; and
- (b) any person which becomes a Party as a Debtor in accordance with the terms of Clause 20 (*Changes to the Parties*).

“**Debtor Accession Deed**” means a deed substantially in the form set out in Schedule 2 (*Form of Debtor Accession Deed*).

“**Debtors’ Intra-Group Receivables**” means, in relation to a member of the Group, any liabilities and obligations owed to any Debtor (whether actual or contingent and whether incurred solely or jointly) by that member of the Group.

“**Default**” means an Event of Default or any event or circumstance which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Debt Documents or any combination of any of the foregoing) be an Event of Default.

“**Delegate**” means any delegate, agent, attorney or co-trustee appointed by the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent).

“**DIP Financing**” has the meaning given to that term in Clause 7.1 (*Financing Issues*).

“**DIP Financing Conditions**” has the meaning given to that term in Clause 7.1 (*Financing Issues*).

“**Distress Event**” means any of:

- 26(a) an Acceleration Event; or
- 26(b) the enforcement of any Transaction Security.

“**Distressed Disposal**” means a disposal of an asset of a member of the Group which is:

- 27(a) being effected at the request of the Instructing Group in circumstances where the Transaction Security has become enforceable;
- 27(b) being effected by enforcement of the Transaction Security (including the disposal of any Property of a member of the Group, the shares in which have been subject to an Appropriation); or

27(c) being effected, after the occurrence of a Distress Event, by a Debtor to a person or persons which is, or are, not a member, or members, of the Group.

**“Enforcement Action”** means:

28(a) in relation to any Liabilities:

- (i) the acceleration of any Liabilities or the making of any declaration that any Liabilities are prematurely due and payable (other than as a result of it becoming unlawful for a Senior Facility Creditor to perform its obligations under, or of any voluntary or mandatory prepayment arising under, the Debt Documents);
- (ii) the making of any declaration that any Liabilities are payable on demand;
- (iii) the making of a demand in relation to a Liability that is payable on demand;
- (iv) the making of any demand against any member of the Group in relation to any Guarantee Liabilities of that member of the Group;
- (v) the exercise of any right to require any member of the Group to acquire any Liability (including exercising any put or call option against any member of the Group for the redemption or purchase of any Liability);
- (vi) the exercise of any right of set-off, account combination or payment netting against any member of the Group in respect of any Liabilities other than the exercise of any such right which is otherwise expressly permitted under the Senior Facility Agreement to the extent that the exercise of that right gives effect to a Permitted Payment; and
- (vii) the suing for, commencing or joining of any legal or arbitration proceedings against any member of the Group to recover any Liabilities (including, without limitation, an involuntary Bankruptcy Case);

28(b) the taking of any steps to enforce or require the enforcement of any Transaction Security (including the crystallisation of any floating charge forming part of the Transaction Security);

28(c) the entering into of any composition, compromise, assignment or arrangement with any member of the Group which owes any Liabilities, or has given any Security, guarantee or indemnity or other assurance against loss in respect of the Liabilities; or

28(d) the petitioning, applying or voting for, or the taking of any steps (including the appointment of any liquidator, receiver, administrator or similar officer) in relation to, the winding up, dissolution, administration or reorganisation of any member of the Group which owes any Liabilities, or has given any Security, guarantee, indemnity or other assurance against loss in respect of any of the Liabilities, or any of such member of the Group’s assets or any suspension of payments or moratorium of any indebtedness of any such member of the Group, or any analogous procedure or step in any jurisdiction.

**“Event of Default”** means:



29(a) any event or circumstance specified as such in the Initial Senior Facility Agreement (or any Refinancing Equivalent); and

29(b) any event or circumstance specified as such in the Second Lien Facility Agreement.

**“Existing Subordination Agreement”** means:

- (a) the Thermo Subordination Deed;
- (b) the Thermo Junior Subordination Deed;
- (c) the Bridge Loan Subordination Deed; or
- (d) the Subsidiary Guarantor Subordination Deed.

**“Exposure”** has the meaning given to that term in Clause 17.1 (*Equalisation Definitions*).

**“Facility Agent”** means each of the Senior Agent and the Second Lien Agent.

**“Facility Agreement”** means each of the Senior Facility Agreement and the Second Lien Facility Agreement.

**“Fairness Opinion”** means, in respect of a Distressed Disposal or a Liabilities Sale, an opinion that the proceeds received or recovered in connection with that Distressed Disposal or Liabilities Sale are fair from a financial point of view taking into account all relevant circumstances, including, without limitation, the method of enforcement or disposal.

**“Final Discharge Date”** means the later to occur of:

- (a) the Senior Discharge Date; and
- (b) the Second Lien Discharge Date.

**“Financial Adviser”** means any:

- 35(a) independent internationally recognised investment bank;
- 35(b) independent internationally recognised accountancy firm; or
- 35(c) other independent internationally recognised professional services firm which is regularly engaged in providing valuations of businesses or financial assets or, where applicable, advising on competitive sales processes.

**“Financial Indebtedness”** has the meaning given to that term in the Initial Senior Facility Agreement.

**“Fourth Global Amendment and Restatement Agreement”** means the amendment and restatement agreement entered into on or about the date of this Agreement and made between, amongst others, the Borrower and the Senior Facility Creditors.

**“Guarantee Liabilities”** means, in relation to a member of the Group, the liabilities and obligations under the Debt Documents (present or future, actual or contingent and whether incurred solely or jointly) it may have to a Creditor (other than to a Senior Arranger or a Senior Agent) or Debtor as or as a result of its being a guarantor or surety (including, without limitation,

liabilities and obligations arising by way of guarantee, indemnity, contribution or subrogation and in particular any guarantee or indemnity arising under or in respect of the Senior Finance Documents and the Second Lien Finance Documents).

“**Hardening Period**” means any period during which Security, or any other assurance against loss, is capable of being avoided by virtue of any bankruptcy, insolvency, liquidation or similar laws.

“**Initial Senior Facility Agreement**” means the facility agreement originally dated 5 June 2009, as amended from time to time including as amended and restated pursuant to the Fourth Global Amendment and Restatement Agreement between the Borrower, the Senior Security Agent, the Senior Agent, each Senior Arranger and the Senior Lenders.

“**Initial Senior Facility**” has the meaning given to the term “*Facilities*” in the Initial Senior Facility Agreement.

“**Initial Senior Liabilities**” means the Senior Liabilities owed by the Debtors to the Senior Facility Creditors under the Initial Senior Finance Documents.

“**Initial Senior Finance Documents**” has the meaning given to the term “*Finance Documents*” in the Initial Senior Facility Agreement.

“**Insolvency Event**” means, in relation to a person, a situation where any of the following occurs in respect of that person:

- 43(a) the commencement of a voluntary case (or analogous motion) under U.S. federal bankruptcy laws or under other laws, domestic or foreign, relating to bankruptcy, insolvency, reorganisation, winding-up or adjustment of debts or analogous proceedings (including the commencement of a Bankruptcy Case);
- 43(b) that person’s filing of a petition (or analogous motion) seeking to take advantage of any other laws, domestic or foreign, relating to bankruptcy, insolvency, reorganisation, winding-up, composition for adjustment of debts or analogous proceedings;
- 43(c) that person’s consent to, or failure to contest, in a timely and appropriate manner any petition filed against it in an involuntary case under such bankruptcy laws or other laws;
- 43(d) that person’s application for or consent to, or failure to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of a substantial part of its property, domestic or foreign;
- 43(e) any admission in writing by that person of its inability to pay its debts as they become due;
- 43(f) any general assignment by that person for the benefit of creditors;
- 43(g) the taking by that person of any corporate action for the purpose of authorising any of the foregoing;
- 43(h) any suspension or threat to suspend by that person of making payment on any of that person’s debts or, by reason of actual or anticipated financial difficulties, commencement by that person of negotiations with one or more of that person’s creditors with a view

to rescheduling any of that person's indebtedness (other than the Senior Facility Creditors in connection with the Senior Finance Documents);

- 43(i) the appointment of any liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of that member of the Group or any of its assets;
- 43(j) any law or resolution is passed or order made for the winding up, dissolution, administration or reorganisation of that member of the Group, a moratorium is declared in relation to any indebtedness of that member of the Group or an administrator is appointed to that member of the Group;
- 43(k) any composition, compromise, assignment or arrangement is made with any of its creditors; or
- 43(l) any analogous procedure or step is taken in any jurisdiction.

**"Instructing Group"** means at any time:

- (a) prior to the Senior Discharge Date, the Majority Senior Lenders; and
- (b) on or after the Senior Discharge Date, the Majority Second Lien Lenders.

**"Intra-Group Liabilities"** means the Liabilities owed by any member of the Group to any other member of the Group (other than the Borrower Liabilities).

**"Liabilities"** means all present and future liabilities and obligations at any time of any member of the Group to any Creditor under the Debt Documents, both actual and contingent and whether incurred solely or jointly or as principal or surety or in any other capacity together with any of the following matters relating to or arising in respect of those liabilities and obligations:

- 45(a) any refinancing, novation, deferral or extension;
- 45(b) any claim for breach of representation, warranty or undertaking or on an event of default or under any indemnity given under or in connection with any document or agreement evidencing or constituting any other liability or obligation falling within this definition;
- 45(c) any claim for damages or restitution; and
- 45(d) any claim as a result of any recovery by any Debtor of a Payment on the grounds of preference or otherwise,

and any amounts which would be included in any of the above but for any discharge, non-provability, unenforceability or non-allowance of those amounts in any insolvency or other proceedings.

**"Liabilities Sale"** means a Debt Disposal pursuant to paragraph (e) of Clause 13.1 (*Facilitation of Distressed Disposals and Appropriation*).

“**Majority Second Lien Lenders**” has the meaning given to the term “*Majority Lenders*” in the Second Lien Facility Agreement.

“**Majority Senior Lenders**” means the “*Majority Lenders*” under and as defined in the Initial Senior Facility Agreement or any Refinancing Equivalent.

“**Mandatory Prepayment**” means a Senior Mandatory Prepayment or a Second Lien Mandatory Prepayment.

“**Margin**” means the “*Applicable Margin*” under and as defined in the Initial Senior Facility Agreement or any Refinancing Equivalent.

“**Non-Cash Consideration**” means consideration in a form other than cash.

“**Non-Cash Recoveries**” means:

52(a) any proceeds of a Distressed Disposal or a Debt Disposal; or

52(b) any amount distributed to the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) pursuant to Clause 8.1 (*Turnover by the Creditors*),

which are, or is, in the form of Non-Cash Consideration.

“**Non-Distressed Disposal**” has the meaning given to that term in Clause 12 (*Non-Distressed Disposals*).

“**Other Liabilities**” means, in relation to a member of the Group, any trading and other liabilities and obligations (not being Borrowing Liabilities or Guarantee Liabilities) it may have to a Subordinated Creditor, Subordinated Debtor or Debtor.

“**Party**” means a party to this Agreement.

“**Payment**” means, in respect of any Liabilities (or any other liabilities or obligations), a payment, prepayment, repayment, redemption, defeasance or discharge of those Liabilities (or other liabilities or obligations).

“**Payover Amount**” has the meaning given to that term in Clause 7.3(d) (*Adequate Protection*).

“**Permitted Payment**” means:

(a) a Permitted Second Lien Payment;

(b) a Permitted Subordinated Liability Payment; or

(c) a Permitted Senior Liability Payment.

“**Permitted Second Lien Payments**” means any payment by the Borrower to a Second Lien Creditor under, or in connection with, a Second Lien Finance Document in respect of:

(a) PIK Interest relating to the Second Lien Facility Agreement paid by capitalising and adding the amount of the applicable interest payment to the principal amount of the loan thereunder; and

- (b) cash payments relating to:
  - (i) the legal fees of Winston & Strawn LLP and Paul Hastings LLP incurred on or prior to the date of this Agreement in the amount notified by the Borrower to the Senior Agent at or around the date of this Agreement;
  - (ii) any legal fees incurred following the date of this Agreement *provided that*:
    - (A) such legal fees are reasonable and proportionate and incurred in connection with:
      - (1) the negotiation, preparation, printing and execution of the Second Lien Finance Documents; or
      - (2) responding to, evaluating, negotiating or complying with any requests for an amendment, waiver or consent of a Second Lien Finance Document;
    - (B) if requested by the Senior Agent, the Borrower promptly delivers supporting documentary evidence in relation to such fees; and
    - (C) any such legal fees are summarised in the applicable Monthly Report; and
  - (iii) transaction fees, costs and expenses relating to the Second Lien Agent and/or the Second Lien Security Agent in an aggregate amount no greater than US\$100,000 per annum.

**“Permitted Senior Liability Payments”** means the Payments permitted by Clause 3.1 (*Payments of Senior Liabilities*).

**“Permitted Subordinated Liability Payments”** means the Payments permitted by Clause 5.2 (*Permitted Subordinated Liability Payments*).

**“Preference Recovery”** has the meaning given to that term in Clause 7.4(a) (*Preference Issues*).

**“Primary Creditors”** means:

- (a) the Senior Facility Creditors; and
- (b) the Second Lien Creditors.

**“Property”** means, in relation to a member of the Group or of a Debtor:

- 64(a) any asset of that member of the Group or of that Debtor;
- 64(b) any Subsidiary of that member of the Group or of that Debtor; and
- 64(c) any asset of any such Subsidiary.

**“Qualifying Senior Facility Refinancing”** means a refinancing of the Senior Liabilities where:

- 65(a) the proceeds of that refinancing discharge the Senior Liabilities in full;

- 65(b) the indebtedness created as a result of such refinancing ranks, or is expressed to rank, in relation to the Second Lien Liabilities in the same manner and to the same extent as the Senior Liabilities being refinanced;
- 65(c) any:
- (i) agent of the providers of the refinancing becomes a Party as a Senior Agent;
  - (ii) arranger of the refinancing becomes a Party as a Senior Arranger; and
  - (iii) provider of the refinancing becomes a Party as a Senior Lender,
- in respect of that refinancing pursuant to Clause 20.8 (*Creditor Accession Undertaking*);
- 65(d) the terms of the original form of the documents relating to the indebtedness created by, or the terms of, that refinancing either:
- (i) comply with the following conditions:
    - (A) any Senior Principal Increase resulting from the refinancing would not exceed the Senior Headroom at that time;
    - (B) any Refinancing Yield Increase resulting from the refinancing would not cause the Senior Yield Headroom at that time to be exceeded;
    - (C) the facilities made available under those documents do not benefit from any Security, guarantee, indemnity or other assurance against loss other than that which is permitted to be taken by the Senior Facility Creditors in respect of the Senior Liabilities pursuant to Clause 3.4 (*Security: Senior Facility Creditors*);
    - (D) the date by which all the facilities made available under those documents are scheduled to have been repaid is no earlier than 180 days before, and does not extend more than 364 days beyond, the Senior Termination Date applicable to the Initial Senior Facilities in the original form of the Initial Senior Facility Agreement;
    - (E) to the extent that any financial covenant (however described) in the original form of those documents (the “**Revised Covenant**”) is more onerous in any material respect than any financial covenant in the Initial Senior Finance Documents (the “**Original Covenant**”), the relevant Debtors and Primary Creditors, if requested to do so by the Second Lien Lenders, grant all necessary consents under the Second Lien Finance Documents to enable the equivalent financial covenant in the Second Lien Finance Documents (the “**Second Lien Covenant**”) to be amended so that any percentage differential between the Revised Covenant and the amended form of Second Lien Covenant is the same as any percentage differential between the Original Covenant and the form of Second Lien Covenant prior to that amendment; and
    - (F) the representations, warranties, undertakings (other than financial covenants) and events of default (however described) in the original

form of those documents are not more onerous in any material respect than those applying under the Initial Senior Finance Documents; or

- (ii) are agreed to by the Majority Second Lien Lenders and the Second Lien Agent.

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

“**Recoveries**” has the meaning given to that term in Clause 16.1 (*Order of Application*).

“**Refinancing Equivalent**” means, on and after the completion of a Qualifying Senior Facility Refinancing and in relation to a provision or term of the Initial Senior Facility Agreement, any equivalent provision or term in the Refinancing Senior Facility Agreement which is similar in meaning and effect.

“**Refinancing Senior Facility Agreement**” means, in relation to a Qualifying Senior Facility Refinancing, any facility agreement entered into pursuant to that Qualifying Senior Facility Refinancing.

“**Refinancing Senior Facility**” means, in relation to a Qualifying Senior Facility Refinancing, any facility made available under the relevant Refinancing Senior Finance Documents.

“**Refinancing Senior Liabilities**” means the Senior Liabilities owed by the Debtors to the Senior Facility Creditors under the Refinancing Senior Finance Documents.

“**Refinancing Senior Finance Documents**” means, in relation to a Qualifying Senior Facility Refinancing, any documents relating to the indebtedness created by, or the terms of, that Qualifying Senior Facility Refinancing.

“**Refinancing Yield Increase**” means, in respect of a Qualifying Senior Facility Refinancing (or a proposed Qualifying Senior Facility Refinancing) and as at the date of the completion of that Qualifying Senior Facility Refinancing, the extent to which:

73(a) the margin relating to the facilities made available, or to be made available, pursuant to that Qualifying Senior Facility Refinancing (when aggregated with each fee or commission relating to those facilities and payable to the arrangers or lenders of those facilities (when amortised on a straight line basis over the relevant amortisation period)) exceeds;

73(b) the Margin relating to the Senior Facility being refinanced (when aggregated with each fee or commission relating to those facilities and payable to the arrangers or lenders of those facilities (when amortised on a straight line basis over the relevant amortisation period)).

“**Relevant Liabilities**” means, in the case of:

74(a) a Creditor:

- (i) the Liabilities owed to Creditors ranking (in accordance with the terms of this Agreement) *pari passu* with or in priority to that Creditor (as the case may be); and

(ii) all present and future liabilities and obligations, actual and contingent, of the Debtors to the Security Agents; and

74(b) a Debtor, the Liabilities owed to the Creditors together with all present and future liabilities and obligations, actual and contingent, of the Debtors to the Security Agents.

**“Second Lien Acceleration Event”** means the Second Lien Agent exercising any of its rights under clauses 23.1 (*Acceleration*) or 23.2 (*Automatic Acceleration*) of the Second Lien Facility Agreement.

**“Second Lien Agent”** means the *“Agent”* under and as defined in the Second Lien Facility Agreement.

**“Second Lien Commitment”** has the meaning given to the term *“Commitment”* in the Second Lien Facility Agreement.

**“Second Lien Creditors”** means:

- (a) the Second Lien Agent;
- (b) the Second Lien Security Agent; and
- (c) each Second Lien Lender.

**“Second Lien Discharge Date”** means the first date on which all Second Lien Liabilities have been fully and finally discharged to the satisfaction of the Second Lien Agent, whether or not as a result of an enforcement, and the Second Lien Creditors are under no further obligation to provide financial accommodation to any of the Debtors under the Debt Documents.

**“Second Lien Facility”** has the meaning given to the term *“Facility”* in the Second Lien Facility Agreement.

**“Second Lien Facility Agreement”** means the second lien facility agreement made between the Borrower, the Second Lien Creditors and others dated on or about the date of this Agreement.

**“Second Lien Finance Documents”** has the meaning given to the term *“Finance Documents”* in the Second Lien Facility Agreement.

**“Second Lien Lenders”** means each *“Lender”* (as defined in the Second Lien Facility Agreement).

**“Second Lien Liabilities”** means the Liabilities owed by the Debtors to the Second Lien Creditors under or in connection with the Second Lien Finance Documents.

**“Second Lien Mandatory Prepayment”** means any mandatory prepayment of any of the Second Lien Liabilities set out in the original form of the Second Lien Facility Agreement.

**“Secured Obligations”** means all the Liabilities and all other present and future liabilities and obligations at any time due, owing or incurred by any member of the Group and by each Debtor to any Secured Party under the Debt Documents, both actual and contingent and whether incurred solely or jointly and as principal or surety or in any other capacity.

**“Secured Parties”** means:



- (a) each Security Agent;
- (b) any Receiver;
- (c) any Delegate; and
- (d) each of the Primary Creditors from time to time but, in the case of each Primary Creditor, only if it is a Party or has acceded to this Agreement, in the appropriate capacity, pursuant to Clause 20.8 (*Creditor Accession Undertaking*).

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

“**Security Agents**” means:

- (a) prior to the Senior Discharge Date, the Senior Security Agent and the Second Lien Security Agent; and
- (b) following the Senior Discharge Date, solely the Second Lien Security Agent.

“**Security Documents**” means:

- 90(a) each of the Transaction Security Documents;
- 90(b) any other document entered into at any time by any person creating any guarantee, indemnity, Security or other assurance against financial loss in favour of any of the Secured Parties as security for any of the Secured Obligations; and
- 90(c) any Security granted under any covenant for further assurance in any of the documents referred to in paragraphs (a) and (b) above.

“**Security Property**” means:

- 91(a) the Transaction Security expressed to be granted in favour of each Security Agent as trustee for the Secured Parties and all proceeds of that Transaction Security;
- 91(b) all obligations expressed to be undertaken by a Debtor to pay amounts in respect of the Liabilities to each Security Agent as trustee for the Secured Parties and secured by the Transaction Security together with all representations and warranties expressed to be given by a Debtor in favour of each Security Agent as trustee for the Secured Parties;
- 91(c) each Security Agent’s interest in any trust fund created pursuant to Clause 8 (*Turnover of Receipts*);
- 91(d) any other amounts or property, whether rights, entitlements, choses in action or otherwise, actual or contingent, which a Security Agent is required by the terms of the Debt Documents to hold as trustee on trust for the Secured Parties.

“**Senior Acceleration Event**” means the Senior Agent exercising any of its rights under clauses 24.1 (*Acceleration*) or 24.2 (*Automatic Acceleration*) of the Initial Senior Facility Agreement or under any Refinancing Equivalent.

“**Senior Agent**” means the “*BPIFAE Agent*” under and as defined in the Initial Senior Facility Agreement or, if it becomes a Party as a Senior Agent in respect of the relevant Qualifying Senior Facility Refinancing, any agent of the providers of that Qualifying Senior Facility Refinancing.

“**Senior Arranger**” means any “*Mandated Lead Arranger*” under and as defined in the Initial Senior Facility Agreement or, if it becomes a Party as a Senior Arranger in respect of the relevant Qualifying Senior Facility Refinancing, any arranger of that Qualifying Senior Facility Refinancing.

“**Senior Commitment**” means a “*Commitment*” under and as defined in the Initial Senior Facility Agreement or any Refinancing Equivalent.

“**Senior Discharge Date**” means the first date on which all Senior Liabilities have been fully and finally discharged to the satisfaction of the Senior Agent, whether or not as the result of an enforcement, and the Senior Lenders are under no further obligation to provide financial accommodation to any of the Debtors under the Debt Documents.

“**Senior Event of Default**” means an Event of Default under the Senior Facility Agreement.

“**Senior Facility**” means:

98(a) prior to the completion of the first Qualifying Senior Facility Refinancing, the Initial Senior Facility; and

98(b) on and after the completion of a Qualifying Senior Facility Refinancing, any relevant Refinancing Senior Facility.

“**Senior Facility Agreement**” means:

99(a) prior to the completion of the first Qualifying Senior Facility Refinancing, the Initial Senior Facility Agreement; and

99(b) on and after the completion of a Qualifying Senior Facility Refinancing, the relevant Refinancing Senior Facility Agreement.

“**Senior Facility Creditors**” means:

(a) each Senior Agent;

(b) each Senior Arranger;

(c) each Senior Lender; and

(d) each Senior Security Agent.

“**Senior Facility Security Documents**” has the meaning given to that term in the Senior Facility Agreement.

“**Senior Finance Documents**” means:

101(a) prior to the completion of the first Qualifying Senior Facility Refinancing, the Initial Senior Finance Documents; and

101(b) on or after the completion of a Qualifying Senior Facility Refinancing, the relevant Refinancing Senior Finance Documents.

“**Senior Headroom**” means, at any time and in relation to a Senior Principal Increase (the “**Relevant Senior Principal Increase**”), 10% of the Loans then outstanding as at the date of this Agreement less the Common Currency Amount of the aggregate amount of any Senior Principal Increases other than the Relevant Senior Principal Increase.

“**Senior Lender Liabilities**” means the Senior Liabilities owed by the Debtors to the Senior Lenders.

“**Senior Lenders**” means each “*Lender*” (as defined in the Initial Senior Facility Agreement) or any Refinancing Equivalent).

“**Senior Liabilities**” means the Liabilities owed by the Debtors to the Senior Facility Creditors under the Senior Finance Documents.

“**Senior Mandatory Prepayment**” means any mandatory prepayment of any of the Senior Liabilities set out in the Senior Facility Agreement or pursuant to any Refinancing Equivalent.

“**Senior Payment Default**” means a Default under clause 23.1 (*Non-Payment*) of the Initial Senior Facility Agreement or under any Refinancing Equivalent.

“**Senior Principal**” means, at any time, and in relation to the Senior Finance Documents, the then aggregate (without double counting) of the Common Currency Amount of:

107(a) any amounts borrowed and not repaid or prepaid (assuming prepayment by the Borrower with the proceeds of the utilisation under the Second Lien Facility Agreement); and

107(b) the committed financial accommodation available (or potentially available),

under those Senior Finance Documents and, in the case of paragraph (b) above, by reference to the application, at that time, of any relevant limitation on the potential amount of that financial accommodation *but excluding* any principal that has arisen as a result of PIK Interest.

“**Senior Principal Increase**” means, in relation to an amendment or waiver of the Senior Finance Documents, or to a Qualifying Senior Facility Refinancing (or a proposed Qualifying Senior Facility Refinancing), the extent to which the Senior Principal immediately after that amendment or waiver, or immediately after the completion of that Qualifying Senior Facility Refinancing, would (as a result of that amendment or waiver, or Qualifying Senior Facility Refinancing (and after taking account of any repayment or cancellation to be effected at the same time as, or immediately after, that amendment or waiver, or the completion of that Qualifying Senior Facility Refinancing)), incrementally exceed either:

(a) the Senior Principal as at the date of this Agreement; or

(b) if less, the Senior Principal immediately before that amendment, waiver or the completion of that Qualifying Senior Facility Refinancing.

“**Senior Security Agent**” means the “*Security Agent*” under and as defined in the Initial Senior Facility Agreement or, if it becomes a Party as a Senior Agent in respect of the relevant Qualifying

Senior Facility Refinancing, any agent of the providers of that Qualifying Senior Facility Refinancing.

“**Senior Termination Date**” means the date by which all the Senior Facilities are scheduled to have been repaid in full pursuant to the Senior Facility Agreement.

“**Senior Yield Headroom**” means, at any time and in relation to:

112(a) any increase in Margin, or inclusion of additional margin, under paragraph (a)(ii)(B) of Clause 3.3 (*Restriction on Amendments and Waivers: Senior Liabilities*) (a “**Margin Increase**”); and

112(b) any Refinancing Yield Increase,

an effect which, when aggregated with:

(i) any Margin Increase (other than that Margin Increase); and

(ii) any Refinancing Yield Increase (other than that Refinancing Yield Increase),

is equivalent to an increase in the Margin in each calendar year relating to the Initial Senior Facility by up to 2% per annum (by reference to the original form of the Initial Senior Finance Documents).

“**Shortfall**” has the meaning given to that term in Clause 7.3(d) (*Adequate Protection*).

“**Spot Rate of Exchange**” means, in respect of the conversion of one currency (the “**First Currency**”) into another currency (the “**Second Currency**”):

116(a) the relevant Security Agent’s spot rate of exchange; or

116(b) (if the relevant Security Agent does not have an available spot rate of exchange) any other publicly available spot rate of exchange selected by the relevant Security Agent (acting reasonably),

for the purchase of the Second Currency with the First Currency in the London foreign exchange market at or about 11:00 a.m. (London time) on a particular day, which shall, in either case, be notified by the relevant Security Agent.

“**Subordinated Creditor**” means:

117(a) any Original Subordinated Creditor; and

117(b) any person which has become a Subordinated Creditor in accordance with Clause 20.3 (*Change of Subordinated Creditor*) and Clause 20.4 (*Accession of Subordinated Creditors*),

which, in each case, has not ceased to be a Subordinated Creditor in accordance with this Agreement.

“**Subordinated Debtor**” means:

118(a) any Original Subordinated Debtor; and

118(b) any person which has become a Subordinated Debtor in accordance with Clause 20.9 (*New Debtor*),

which, in each case, has not ceased to be a Subordinated Debtor in accordance with this Agreement.

“**Subordinated Liabilities**” means the Liabilities owed to a Subordinated Creditor by a Subordinated Debtor or any other member of the Group, *provided that* Second Lien Liabilities shall not constitute “*Subordinated Liabilities*”.

“**Subordinated Liabilities Documents**” means all documents, agreements and instruments evidencing or recording any Subordinated Liabilities.

“**Thermo Junior Subordination Deed**” means the subordination deed dated 2 July 2019 and made between the Borrower, Thermo Funding Company LLC, [\*], [\*] and [\*].

“**Thermo Subordination Deed**” means the subordination deed dated 22 June 2009 (as amended and restated on 31 July 2013) and made between the Borrower, Thermo Funding Company LLC, the Senior Security Agent and the Senior Agent.

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

“**Transaction Security**” means the Security created or evidenced or expressed to be created or evidenced under or pursuant to the Security Documents.

“**Transaction Security Documents**” means the “*Security Documents*” under and as defined in the Initial Senior Facility Agreement or any Refinancing Equivalent.

“**VAT**” means:

126(a) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and

126(b) any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraph (a) above, or imposed elsewhere.

## 1.2 Construction

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

- (i) the verb “**amend**”, in relation to any provision of any agreement or document, means to amend, waive, modify, alter or vary that provision (and “**amendment**” shall be construed accordingly);
- (ii) an “**amount**” includes an amount of cash and an amount of Non-Cash Consideration;
- (iii) the “**Borrower**”, any “**Creditor**”, any “**Debtor**”, any “**Facility Agent**”, “**Party**”, “**Primary Creditor**”, a “**Security Agent**”, “**Senior Agent**”, “**Senior**

**Arranger**, **Senior Facility Creditor**, any **Second Lien Agent**, any **Second Lien Creditor** any **Second Lien Lender**, **Senior Facility Creditor**, any **Senior Lender**, **Subordinated Debtor** or **Subordinated Creditor** shall be construed to be a reference to it in its capacity as such and not in any other capacity;

- (iv) any **Creditor**, any **Debtor**, any **Facility Agent**, any **Party**, a **Security Agent** or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Debt Documents and, in the case of a Security Agent, any person for the time being appointed as a Security Agent or Security Agents in accordance with this Agreement;
- (v) **assets** includes present and future properties, wireless spectrum assets of every kind, revenues and rights of every description;
- (vi) a **Debt Document** or any other agreement or instrument is (other than a reference to a **Debt Document** or any other agreement or instrument in **original form**) a reference to that Debt Document, or other agreement or instrument, as amended, novated, supplemented, extended or restated as permitted by this Agreement;
- (vii) a **distribution** of, or out of, the assets of a member of the Group, includes a distribution of cash and a distribution of Non-Cash Consideration;
- (viii) **enforcing** (or any derivation) the Transaction Security includes the appointment of an administrator, liquidator, receiver or trustee (or any analogous officer in any jurisdiction) of a Debtor by the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent);
- (ix) a **group of Creditors** includes all the Creditors and a **group of Primary Creditors** includes all the Primary Creditors;
- (x) **indebtedness** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (xi) a reference to **notice** includes any notice, request, instruction, demand or other communication;
- (xii) the **original form** of a **Debt Document** or any other agreement or instrument is a reference to that Debt Document, agreement or instrument as originally entered into *provided that*, in the case of a Senior Finance Document, any reference to the **original form** of a Senior Finance Document is a reference to such Senior Finance Document that is in force as at the date of this Agreement;
- (xiii) a reference to **payment** includes a distribution, prepayment, repayment or redemption and references to **pay** include distribute, prepay, repay or redeem;

- (xiv) a “**person**” includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
  - (xv) “**proceeds**” of a Distressed Disposal or of a Debt Disposal includes proceeds in cash and in Non-Cash Consideration;
  - (xvi) a “**regulation**” includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
  - (xvii) “**set-off**” includes combining accounts and payment netting;
  - (xviii) “**shares**” or “**share capital**” include equivalent ownership interests (and “**shareholder**” and similar expressions shall be construed accordingly); and
  - (xix) a provision of law is a reference to that provision as amended or re-enacted.
- (b) Section, Clause and Schedule headings are for ease of reference only.
- (c) A Default (other than an Event of Default) is “**continuing**” if it has not been remedied or waived, and an Event of Default is “**continuing**” if it has not been waived in writing by the Senior Agent and/or the Second Lien Agent, as the case may be, in each case, in accordance with the terms of this Agreement.

### 1.3 **Third Party Rights**

- (a) Unless expressly provided to the contrary in this Agreement, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the “**Third Parties Act**”) to enforce or to enjoy the benefit of any term of this Agreement.
- (b) Notwithstanding any term of this Agreement, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.
- (c) Any Receiver or Delegate may, subject to this Clause 1.3 and the Third Parties Act, rely on any Clause of this Agreement which expressly confers rights on it.

### 1.4 **Defined Terms**

- (a) On or prior to the Senior Discharge Date, words defined in the Senior Facility Agreement have, unless expressly defined in this Agreement, the same meaning in this Agreement.
- (b) After the Senior Discharge Date, words defined in the Second Lien Facility Agreement have, unless expressly defined in this Agreement, the same meaning in this Agreement.
- (c) If after the Senior Discharge Date a term is defined in the Senior Facility Agreement but not in the Second Lien Facility Agreement, any reference to such term in this Agreement shall have the same meaning given to such term in the Senior Facility Agreement.

### 1.5 **Agreement to Override**

Unless expressly stated otherwise in this Agreement, this Agreement overrides anything in the Debt Documents to the contrary.

## 1.6 **No Registrable Security Interests**

No part of this Agreement is intended to or shall create a registrable Security.

## 1.7 **Deed**

Each Party intends this document to take effect as a deed (even if a Senior Facility Creditor only executes it under hand).

## 1.8 **Facility Agents**

- (a) The Senior Agent has been appointed by each other Senior Facility Creditor (other than the Senior Security Agent) to act as agent on its behalf pursuant to clause 28 (*Role of the BPIFAE Agent, the Security Agent and the Mandated Lead Arrangers*) of the Initial Senior Facility Agreement and shall act in accordance with the instructions of the Majority Senior Lenders or such other group of Senior Lenders pursuant to such clause and exercise any other right or discretion of the Senior Agent howsoever described in accordance with the relevant provisions of the Senior Finance Documents.
- (b) The Second Lien Agent has been appointed by each other Second Lien Creditor (other than the Second Lien Security Agent) to act as agent on its behalf pursuant to clause 27 (*Role of the Agent and the the Security Agent*) of the Second Lien Facility Agreement and shall act in accordance with the instructions of the Majority Second Lien Lenders or such other group of Second Lien Lenders pursuant to such clause and exercise any other right or discretion of the Second Lien Agent howsoever described in accordance with the relevant provisions of the Second Lien Finance Documents.

## 1.9 **Security Agents**

- (a) The Senior Security Agent has been appointed by each other Senior Facility Creditor (other than the Senior Agent) to act as agent on its behalf pursuant to clause 28 (*Role of the BPIFAE Agent, the Security Agent and the Mandated Lead Arrangers*) of the Initial Senior Facility Agreement and shall act in accordance with the instructions of the Majority Senior Lenders or such other group of Senior Lenders pursuant to such clause and exercise any other right or discretion of the Senior Security Agent howsoever described in accordance with the relevant provisions of the Senior Finance Documents.
- (b) The Second Lien Security Agent has been appointed by each other Second Lien Creditor (other than the Second Lien Security Agent) to act as agent on its behalf pursuant to clause 27 (*Role of the Agent and the the Security Agent*) of the Second Lien Facility Agreement and shall act in accordance with the instructions of the Majority Second Lien Lenders or such other group of Second Lien Lenders pursuant to such clause and exercise any other right or discretion of the Second Lien Agent howsoever described in accordance with the relevant provisions of the Second Lien Finance Documents.

## 2. **Ranking and Priority**



## 2.1 **Primary Creditor Liabilities**

Each of the Parties agrees that the Liabilities owed by the Debtors to the Primary Creditors shall rank in right and priority of payment in the following order and are postponed and subordinated to any prior ranking Liabilities as follows:

- (a) **first**, the Senior Liabilities; and
- (b) **second**, the Second Lien Liabilities.

## 2.2 **Transaction Security**

(a) Each of the Parties agrees that the Transaction Security shall rank and secure the following Liabilities (but only to the extent that such Transaction Security is expressed to secure those Liabilities) in the following order:

- (i) **first**, the Senior Liabilities; and
- (ii) **second**, the Second Lien Liabilities.

(b) Each of the Parties agrees that the Senior Facility Security Documents shall only secure the Senior Liabilities.

(c) Each Party will co-operate with each other to ensure that:

- (i) any registration of a Security Document; and
- (ii) any notice given under a Security Document,

is consistent with the ranking of the Liabilities and the Transaction Security under this Agreement.

## 2.3 **Ranking of Liabilities Unaffected**

The ranking set out in this Clause 2 (*Ranking and Priority*) and the order of priority of the Transaction Security referred to in this Agreement shall apply notwithstanding:

- (a) any reduction or increase in the principal amount secured by the Transaction Security in respect of the Liabilities owing to the Primary Creditors or by any intermediate reduction or increase in, amendment or variation to any of the Debt Documents (or by any variation or satisfaction of) any of the Liabilities or any other circumstances, in each case, to the extent permitted under the terms of this Agreement;
- (b) the order in which or dates upon which this Agreement and the other Debt Documents are executed or the order of registration, notice or execution of any Security Document or other document;
- (c) the date upon which any of the Liabilities arise or of any fluctuations in the amount of any of the Liabilities outstanding;
- (d) when any Liability is incurred;
- (e) whether or when a Secured Party is obliged to advance any Liabilities;

- (f) any intermediate discharge of any Liability;
- (g) the creation in favour of any Secured Party, in accordance with this Agreement, of any additional Security over the undertaking, properties or assets of a Debtor or any asset which is subject to a floating charge in any Security Document becoming subject to a Security which is a fixed charge or a crystallised floating charge; or
- (h) any contrary provisions in any Debt Document.

#### 2.4 Subordinated Liabilities

- (a) Each of the Parties agrees that the Subordinated Liabilities are postponed and subordinated to the Liabilities owed by the Debtors to the Primary Creditors.
- (b) This Agreement does not purport to rank any of the Subordinated Liabilities as between themselves.

### 3. Senior Liabilities

#### 3.1 Payment of Senior Liabilities

The Debtors may make Payments of the Senior Liabilities at any time in accordance with the Senior Finance Documents.

#### 3.2 Amendments and Waivers: Senior Facility Creditors

Subject to Clause 3.3 (*Restriction on Amendments and Waivers: Senior Liabilities*), the Senior Facility Creditors may amend or waive the terms of the Senior Finance Documents in accordance with their terms (and subject to any consent required under them) at any time.

#### 3.3 Restriction on Amendments and Waivers: Senior Liabilities

- (a) The Senior Facility Creditors may not amend or waive the terms of the Senior Finance Documents if the amendment or waiver is, in relation to the original form of the Senior Finance Documents, an amendment or waiver which:
  - (i) constitutes a Senior Principal Increase the amount of which exceeds the Senior Headroom at that time;
  - (ii) constitutes an increase in the applicable Margin, or the inclusion of an additional margin, relating to the Senior Facility other than such an increase or inclusion which is:
    - (A) contemplated in the original form of the Senior Finance Documents; or
    - (B) not otherwise permitted pursuant to paragraph (A) above and the effect of which does not cause the Senior Yield Headroom at that time to be exceeded;
  - (iii) is in respect of clause 7 (*Prepayment and Cancellation*) of the Senior Facility Agreement and which if made would increase the amounts payable by the

Borrower to the Senior Facility Creditors prior to the Senior Termination Date in an aggregate amount greater than the amount equivalent to 10% of the Loans outstanding as at the date of this Agreement;

- (iv) constitutes a change in the currency of payment of any amount under any of the Senior Finance Documents;
- (v) constitutes an increase in, or addition of, any fees or commission in an amount greater than 2% (in aggregate) in any calendar year, other than such an increase or addition which is:
  - (A) in consideration for the amendment or waiver of, or the giving of a consent under, any term of a Senior Finance Document;
  - (B) in consideration for the performance of functions in connection with the refinancing or restructuring of the Senior Liabilities;
  - (C) contemplated by the original form of the Senior Finance Documents;
  - (D) in respect of a fee or commission payable to the Senior Agent or the Senior Security Agent; or
  - (E) any additional premia payable to BPIFAE;
- (vi) results in any deferral of any scheduled repayment of the Senior Liabilities (other than Liabilities due to the Senior Agent or the Senior Arranger) to a date more than 364 days after the Senior Termination Date; or
- (vii) constitutes a change to:
  - (A) clause 26 (*Changes to the Lenders*) of the Senior Facility Agreement (or any Refinancing Equivalent);
  - (B) the form of Transfer Certificate (or any schedule related thereto) set out in schedule 5 (*Form of Transfer Certificate and Assignment Agreement*) of the original form of the Senior Facility Agreement (or any Refinancing Equivalent); or
  - (C) the form of Assignment Agreement (or any schedule related thereto) set out in schedule 5 (*Form of Transfer Certificate and Assignment Agreement*) of the original form of the Senior Facility Agreement (or any Refinancing Equivalent),

that, in each case, of this paragraph (vii), could reasonably be expected to adversely affect the rights of a Second Lien Lender under Clause 4.10 (*Option to Purchase: Second Lien Lenders*),

unless, in each case the prior consent of the Majority Second Lien Lenders is obtained.

- (b) For the purposes of paragraph (a) above, in determining whether the consent of the Majority Second Lien Lenders has been obtained, if a Second Lien Lender does not accept or reject such request for consent within 15 Business Days of the date the Senior

Agent notifies the Second Lien Agent that the consent of the Majority Second Lien Lenders is required, such Second Lien Lender shall be deemed to have consented to such request.

#### 3.4 **Security: Senior Facility Creditors**

- (a) The Senior Facility Creditors may take, accept or receive the benefit of:
- (i) any Security in respect of the Senior Liabilities from any member of the Group in addition to the Senior Facility Security Documents which to the extent legally possible is, at the same time, also offered either:
    - (A) to the Second Lien Security Agent as trustee for the other Secured Parties in respect of their Liabilities; or
    - (B) in the case of any jurisdiction in which effective Security cannot be granted in favour of the Second Lien Security Agent as trustee for the Secured Parties:
      - (1) to the other Secured Parties in respect of their Liabilities; or
      - (2) to the Second Lien Security Agent under a parallel debt structure for the benefit of the other Secured Parties,and ranks in the same order of priority as that contemplated in Clause 2.2 (*Transaction Security*);
  - (ii) a BPIFAE Insurance Policy; and
  - (iii) any guarantee, indemnity or other assurance against loss in respect of the Senior Liabilities from any member of the Group in addition to those in:
    - (A) the original form of Senior Facility Agreement;
    - (B) this Agreement; or
    - (C) any Common Assurance,if and to the extent legally possible, at the same time it is also offered to the other Secured Parties in respect of their Liabilities and ranks in the same order of priority as that contemplated in Clause 2 (*Ranking and Priority*).
- (b) Nothing in this Agreement shall require or oblige a Senior Facility Creditor to share the benefit or rights of a Senior Facility Creditor in respect of a BPIFAE Insurance Policy and solely the Senior Facility Creditors may take, accept or receive the benefit of a BPIFAE Insurance Policy.

#### 3.5 **Senior Facility Creditor Voting**

- (a) The Parties hereby agree and acknowledge that, pursuant to the terms of a BPIFAE Insurance Policy, BPIFAE shall be entitled to direct the manner in which voting rights or any other rights, powers, authorities and discretions held by the Senior Lenders with respect to the Senior Facilities are exercised.
- (b) Other than as contemplated by Clause 4.10(a) (*Option to Purchase: Second Lien Lenders*), the Senior Agent shall seek the instructions of BPIFAE with respect to any matter on which any Senior Lender is entitled to vote or exercise any right, power, authority or discretion (whether under this Agreement, any other Senior Finance Document or any related agreements). The Senior Agent shall notify the Senior Lenders of the instructions of BPIFAE in respect thereof.

### 3.6 Debt Service Reserve Account

Nothing in this Agreement will prevent or restrict any rights of a Senior Facility Creditor in relation to the Debt Service Reserve Account and the other Project Accounts pursuant to, and in accordance with, the Accounts Agreement.

### 3.7 Equity cure rights

- (a) Prior to the occurrence of a Senior Acceleration Event, nothing in any Debt Document shall prevent or restrict any Second Lien Lender from making an Equity Cure Contribution to the Borrower in accordance with clause 23.2 (*Financial Covenants*) of the Initial Senior Facility Agreement, or any Refinancing Equivalent, and each of the Parties agrees that the Borrower will accept and ensure that any such Equity Cure Contribution (or equivalent payment) is applied towards curing or otherwise remedying any actual or potential breach of any financial covenant contained in the Initial Senior Facility Agreement or any other Senior Facility Agreement.
- (b) The Borrower agrees that it shall take all steps necessary to facilitate a Second Lien Lender making an Equity Cure Contribution (as defined in the Initial Senior Facility Agreement) or any Refinancing Equivalent.

### 3.8 Accounts Agreement – A&R Agreement

- (a) The Second Lien Agent and the Second Lien Security Agent shall promptly execute the “*A&R Agreement*” (as such term is defined in the Fourth Global Amendment and Restatement Agreement) (for and on behalf of each other Second Lien Creditor) following a request from the Senior Agent or the Borrower so long as the terms of the A&R Agreement:
  - (i) provide that:
    - (A) prior to the Senior Discharge Date, neither the Second Lien Agent nor the Second Lien Security Agent shall have any rights or obligations under the A&R Agreement;
    - (B) on and from the Senior Discharge Date:
      - (1) the Second Lien Agent shall, where relevant, assume all rights and obligations of the Senior Agent who shall retire as the

Senior Agent at or around the Senior Discharge Date in accordance with the terms of the Senior Finance Documents; and

- (2) the Second Lien Security Agent shall, where relevant, assume all rights and obligations of the Senior Security Agent who shall retire as the Senior Security Agent at or around the Senior Discharge Date in accordance with the terms of the Senior Finance Documents; and
- (C) on and from the Senior Discharge Date, a new account bank, the identity of which is agreed as between the Borrower and the Majority Second Lien Lenders (the “**Replacement Account Bank**”), replaces BNP Paribas as the Offshore Account Bank and the Borrower opens new bank accounts with such Replacement Account Bank in replacement of the Offshore Project Accounts (with such Offshore Project Accounts to be closed in accordance with the A&R Agreement); and
- (ii) do not have a material adverse effect on the ability of the Borrower to perform its material obligations under the Second Lien Finance Documents.
- (b) The Borrower shall notify the Senior Agent and the Offshore Account Bank in writing no later than 45 days prior to the proposed Senior Discharge Date of:
  - (i) the identity of the proposed Replacement Account Bank; and
  - (ii) the bank account or accounts (including details of the bank with which such account is held and the jurisdiction in which such account is located) to enable, amongst other things, the Offshore Account Bank to:
    - (A) satisfy any “*know-your-customer*” and other internal requirements of the Senior Agent or the Offshore Account Bank; and
    - (B) disburse any amounts remaining on deposit in the Offshore Project Accounts to the Borrower following the Senior Discharge Date in accordance with the A&R Agreement.

#### **4. Second Lien Liabilities**

##### **4.1 Restriction on Payment: Second Lien Liabilities**

- (a) Prior to the Senior Discharge Date:
- (i) no Second Lien Creditor shall demand or receive, and no Debtor shall make, any Payment, repayment or prepayment (including any Second Lien Mandatory Prepayment) of any principal, interest or other amount on or in respect of, or any distribution in respect of, or any redemption, purchase or defeasance of, any Second Lien Liabilities in cash or in kind, except as permitted by Clause 4.2 (*Permitted Payments*) or Clause 6.4 (*Filing of claims*);
  - (ii) no Second Lien Creditor shall apply any money or property in or towards discharge of, and no Debtor shall redeem, purchase or defease, any Second Lien Liabilities, except as permitted by Clause 4.2 (*Permitted Payments*) or Clause 6.4 (*Filing of Claims*);
  - (iii) no Second Lien Creditor nor any Debtor shall exercise any set-off against any Second Lien Liabilities, except as permitted by Clause 4.2 (*Permitted Payments*), Clause 4.9 (*Limited Permitted Enforcement: Second Lien Creditors*) or Clause 6.4 (*Filing of Claims*);
  - (iv) no Second Lien Creditor shall permit to subsist or receive, and no Debtor shall create or permit to subsist any Security, or any guarantee, for, or in respect of, any Second Lien Liability (other than the Transaction Security and except as permitted pursuant to Clause 4.7 (*Security: Second Lien Creditors*);
  - (v) no Second Lien Creditor shall claim or rank as a creditor in the insolvency, winding-up, bankruptcy or liquidation of a Debtor other than in accordance with Clause 6.4 (*Filing of Claims*) or Clause 4.9 (*Limited Permitted Enforcement: Second Lien Creditors*);
  - (vi) no Second Lien Creditor or Debtor shall take or omit to take any action whereby the ranking and/or subordination contemplated by this Agreement may be impaired; and
  - (vii) no Second Lien Creditor or Debtor shall permit any Second Lien Liabilities to be evidenced by a negotiable instrument other than a promissory note issued to a Second Lien Lender pursuant to, and in accordance with, the terms of the Second Lien Facility Agreement *provided that* any such promissory note is stated to be subject to the terms of this Agreement.
- (b) Paragraph (a) above does not apply to any action taken with the prior written consent of the Senior Agent.
- (c) On or after the Senior Discharge Date, a Debtor may make Payments to the Second Lien Creditors in respect of the Second Lien Liabilities in accordance with the Second Lien Finance Documents.

#### 4.2 Permitted Payments

The Borrower may pay, and the Second Lien Creditors may receive and retain, in each case, payments in respect of any Second Lien Liabilities that is a Permitted Second Lien Payment

made in accordance with the original form of the Second Lien Finance Documents (subject to any amendments permitted by this Agreement).

#### 4.3 **Amendments to Second Lien Finance Documents**

- (a) Until the Senior Discharge Date, neither a Second Lien Creditor nor a Debtor shall amend, terminate or give any waiver or other Consent under any provision of any Second Lien Finance Document.
- (b) Paragraph (a) above does not apply to any amendment, termination, waiver or Consent:
  - (i) made with the prior written consent of the Senior Agent; or
  - (ii) which is minor, technical or administrative or corrects a manifest error.

#### 4.4 **Representations: Second Lien Creditors**

Each Second Lien Creditor (other than the Second Lien Agent) makes the representations and warranties set out in this Clause 4.4 to the Senior Facility Creditors on the date of this Agreement:

- (a) it is a corporation, limited partnership, public limited company, limited liability company or is a natural person, as applicable, duly organised and validly existing (and to the extent applicable, in good standing) under the law of its jurisdiction of organisation;
- (b) it has the power to own its assets and carry on its business as it is being conducted;
- (c) subject to the Reservations, the obligations expressed to be assumed by it in this Agreement are legal, valid, binding and enforceable obligations;
- (d) it has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, this Agreement and all the transactions contemplated by this Agreement; and
- (e) the Second Lien Finance Documents contain all the terms and conditions of the Second Lien Liabilities.

#### 4.5 **Payment Obligations and Capitalisation of Interest Continue**

- (a) No Debtor shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Second Lien Finance Document by the operation of Clause 4.1 (*Restriction on Payment: Second Lien Liabilities*) even if its obligation to make that Payment is restricted at any time by the terms of any of that Clause or this Agreement.
- (b) The accrual and capitalisation of interest in accordance with the Second Lien Facility Agreement shall continue.

#### 4.6 **Designation of Second Lien Finance Documents**

If the terms of a document effect a change which would, if that change was effected by way of amendment to, or waiver of, the terms of a Second Lien Finance Document, require the consent of the Majority Senior Lenders under Clause 4.3 (*Amendments to Second Lien Finance Documents*), that document shall not constitute a Second Lien Finance Document for the purposes



of this Agreement or a “*Finance Document*” for the purposes of the Second Lien Facility Agreement without the prior consent of the Majority Senior Lenders.

#### 4.7 **Security: Second Lien Creditors**

At any time prior to the Senior Discharge Date, the Second Lien Creditors may not take, accept or receive the benefit of any Security, guarantee, indemnity or other assurance against loss from (or over the assets of or over the shares in) any member of the Group in respect of the Second Lien Liabilities other than:

- (a) the Second Lien Security Documents;
- (b) any guarantee, indemnity or other assurance against loss contained in:
  - (i) the original form of those Second Lien Finance Documents entered into as at the date of this Agreement;
  - (ii) this Agreement; or
  - (iii) any Common Assurance; and
- (c) as otherwise contemplated by Clause 3.4 (*Security: Senior Facility Creditors*),

unless the prior consent of the Majority Senior Lenders is obtained.

#### 4.8 **Restriction on Enforcement: Second Lien Creditors**

- (a) Subject to Clause 4.9 (*Limited Permitted Enforcement: Second Lien Creditors*), no Second Lien Creditor shall be entitled to take any Enforcement Action in respect of any of the Second Lien Liabilities prior to the Senior Discharge Date.
- (b) If required by the Senior Agent or the Senior Security Agent to take Enforcement Action, the Second Lien Creditors will promptly take the relevant Enforcement Action and apply any proceeds from that Enforcement Action in accordance with this Agreement.
- (c) Following the Senior Discharge Date, a Second Lien Creditor shall be entitled to take any Enforcement Action in respect of any of the Second Lien Liabilities pursuant to, and in accordance with, the terms of the Second Lien Facility Agreement.

#### 4.9 **Limited Permitted Enforcement: Second Lien Creditors**

- (a) After the occurrence of an Insolvency Event (other than a Bankruptcy Case) in relation to any member of the Group, each Second Lien Creditor may (unless otherwise directed by the Senior Security Agent or unless the Senior Security Agent has taken, or has given notice that it intends to take, action on behalf of that Second Lien Creditor in accordance with Clause 6.4 (*Filing of Claims*)) exercise any right they may otherwise have against that member of the Group to:
  - (i) accelerate any of that member of the Group’s Second Lien Liabilities or declare them prematurely due and payable or payable on demand;

- (ii) make a demand under any guarantee, indemnity or other assurance against loss given by that member of the Group in respect of any Second Lien Liabilities; or
  - (iii) claim and prove in any insolvency process of that member of the Group for the Second Lien Liabilities owing to it.
- (b) Prior to the Senior Discharge Date, in any Bankruptcy Case of any member of the Group:
- (i) any Second Lien Creditor may file a claim or statement of interest with respect to the Second Lien Liabilities under the Second Lien Facility against the applicable member of the Group;
  - (ii) a Second Lien Creditor may vote on any plan of reorganisation in accordance with the terms of this Agreement; and
  - (iii) the Second Lien Creditors may file any responsive or defensive pleadings in opposition to any motion, claim, adversary proceeding or other pleading made by any person objecting to or otherwise seeking the disallowance of the claims of the Second Lien Creditors or the avoidance of any Security in respect thereof to the extent not inconsistent with the terms of this Agreement,
- provided that*, if the Second Lien Agent or any Second Lien Creditor becomes a judgment lien creditor or other secured creditor in respect of any Transaction Security as a result of its enforcement of its rights as an unsecured creditor or otherwise, such judgment lien or any other lien shall be:
- (A) subordinated to the Security securing the Senior Liabilities on the same basis as the other Security securing the Second Lien Liabilities are so subordinated to the Transaction Security securing Senior Liabilities under this Agreement, and
  - (B) otherwise subject to the terms of this Agreement for all purposes to the same extent as all other Transaction Security securing the Second Lien Liabilities are subject to this Agreement.
- (c) Nothing in this Agreement shall prohibit, or restrict, a Second Lien Creditor from:
- (i) the taking of any action falling within paragraphs (a)(vii) or (d) in the definition of “*Enforcement Action*” which is necessary (but only to the extent necessary) to preserve the validity, existence or priority of claims in respect of the Second Lien Liabilities, including the registration of such claims before any court or governmental authority and the bringing, supporting or joining of proceedings to prevent any loss of the right to bring, support or join proceedings by reason of applicable limitation periods; and
  - (ii) bringing legal proceedings against any person solely for the purpose of:
    - (A) obtaining injunctive relief (or any analogous remedy outside England and Wales) to restrain any actual or putative breach of any Second Lien Finance Document to which it is party;

- (B) obtaining specific performance (other than specific performance of an obligation to make a payment) with no claim for damages; or
- (C) requesting judicial interpretation of any provision of any Second Lien Finance Document to which it is party with no claim for damages.”

4.10 **Option to Purchase: Second Lien Lenders**

- (a) The Second Lien Lenders (acting either as a whole or as otherwise may be agreed by such Second Lien Lenders amongst themselves from time to time) may (but shall not be obliged to) at any time by giving not less than ten Business Days’ notice to the Senior Security Agent, require the transfer to the Second Lien Lenders (or any Second Lien Lender, any subset of the Second Lien Lenders or to any nominee or nominees of the foregoing), in accordance with Clause 20.6 (*Change of Senior Lender or Second Lien Lender*), of all, but not part, of the rights and obligations in respect of the Senior Lender Liabilities (including, if so elected by the Second Lien Lenders (acting either as a whole or as otherwise may be agreed by such Second Lien Lenders amongst themselves from time to time) any DIP Financing and any analogous financing provided in any insolvency proceeding outside the United States) if:
  - (i) that transfer is lawful;
  - (ii) any conditions relating to such a transfer contained in clause 26 (*Changes to the Lenders*) of the Senior Facility Agreement are complied with, other than:
    - (A) the conditions contained in clauses 26.2(a) or 26.2(b)(iii) (*Conditions of Assignment or Transfer*);
    - (B) any requirement to obtain the consent of, or consult with, any Debtor or other member of the Group relating to such transfer, which consent or consultation shall not be required; and
    - (C) any requirement to obtain the consent of, or consult with, BPIFAE, which consent or consultation shall not be required solely in the circumstances where such proposed transfer of the rights and obligations in respect of the Senior Lender Liabilities will not include any right or benefit to a BPIFAE Insurance Policy;
  - (iii) the Senior Agent, on behalf of the Senior Lenders, is paid an amount equal to the aggregate of:
    - (A) all of the Senior Lender Liabilities (including all liabilities owed in respect of the DIP Financing) (whether or not due), including all amounts that would have been payable under the Senior Facility Agreement if the Senior Facilities were being prepaid by the relevant Debtors on the date of that payment; and
    - (B) all costs and expenses (including legal fees to the extent reimbursable in accordance with the terms of the Senior Facility Agreement *but excluding* any contingent indemnification obligations for which no

claim or demand for payment has been made at, or prior to, such time) incurred by the Senior Agent and/or the Senior Lenders as a consequence of giving effect to that transfer;

- (iv) an indemnity is provided from each Second Lien Lender (or from another third party acceptable to all the Senior Lenders) in a form satisfactory to each Senior Lender (acting reasonably) in respect of all losses which may be sustained or incurred by any Senior Lender in consequence of any sum received or recovered by any Senior Lender from any person being required (or it being alleged that it is required) to be paid back by or clawed back from any Senior Lender for any reason; and
- (v) the transfer is made without recourse to, or representation or warranty from, the Senior Lenders, except:
  - (A) that each Senior Lender shall be deemed to have represented and warranted on the date of that transfer that such Senior Lender:
    - (1) has the corporate power to effect that transfer and it has taken all necessary action to authorise the making by such Senior Lender of that transfer; and
    - (2) owns such Senior Lender Liabilities as at the Transfer Date free and clear of any Security; and
  - (B) any representation and warranties made in the Transfer Certificate or Assignment Agreement.
- (b) Promptly following the receipt of the notice referred to in paragraph (a) above, the Senior Agent shall notify the Second Lien Lenders in writing of the amounts described in paragraphs (a)(iii) above.
- (c) Other than in the circumstances contemplated by paragraph (a)(ii)(C) above, any assignment or transfer of the rights and obligations of a Senior Lender under the Senior Finance Documents shall require the prior consent of BPIFAE.

## **5. Subordinated Liabilities**

### **5.1 Restriction on Payment: Subordinated Liabilities**

- (a) Until the Final Discharge Date:
  - (i) no Subordinated Creditor shall demand or receive, and no Subordinated Debtor shall make, any Payment, repayment or prepayment of any principal, interest or other amount on or in respect of, or any distribution in respect of, or any redemption, purchase or defeasance of, any Subordinated Liabilities in cash or in kind, except as permitted by Clause 4.2 (*Permitted Subordinated Liability Payments*) or Clause 6.4 (*Filing of claims*);

- (ii) no Subordinated Creditor shall apply any money or property in or towards discharge of, and no Subordinated Debtor shall redeem, purchase or defease, any Subordinated Liabilities, except as permitted by Clause 4.2 (*Permitted Payments*) or Clause 6.4 (*Filing of claims*);
  - (iii) neither a Subordinated Creditor nor a Subordinated Debtor shall exercise any set-off against any Subordinated Liabilities, except as permitted by Clause 4.2 (*Permitted Subordinated Liability Payments*) or Clause 6.4 (*Filing of Claims*);
  - (iv) no Subordinated Creditor shall permit to subsist or receive, and no Subordinated Debtor shall create or permit to subsist any Security, or any guarantee, for, or in respect of, any Subordinated Liabilities (other than the Transaction Security);
  - (v) no Subordinated Creditor shall claim or rank as a creditor in the insolvency, winding-up, bankruptcy or liquidation of a Subordinated Debtor other than in accordance with Clause 6.4 (*Filing of Claims*);
  - (vi) neither a Subordinated Creditor nor a Subordinated Debtor shall take or omit to take any action whereby the ranking and/or subordination contemplated by this Agreement may be impaired; and
  - (vii) neither a Subordinated Creditor nor a Subordinated Debtor shall permit any Subordinated Liabilities to be evidenced by a negotiable instrument.
- (b) Paragraph (a) above does not apply to any action arising as a result of any prior written consent of the Senior Agent.

## 5.2 **Permitted Subordinated Liability Payments**

- (a) Subject to Clause 5.3 (*Suspension of Permitted Subordinated Liability Payments*), Clause 6 (*Effect of Insolvency Event*) and Clause 8 (*Turnover of Receipts*):
- (i) a Subordinated Debtor may pay; and
  - (ii) the Subordinated Creditors may receive and retain,
- in each case, the following Payments in respect of any Subordinated Liabilities:
- (A) solely in the case of Thermo in its capacity as a Subordinated Creditor, any payment by the Borrower to the Subordinated Creditor permitted pursuant to a Facility Agreement in respect of:
    - (1) PIK Interest relating to any Convertible Note held by Thermo;
    - (2) PIK Interest relating to the Thermo Loan Agreement; or
    - (3) PIK Interest issued by the Borrower pursuant to paragraph (b) below;
  - (B) PIK Interest relating to any Convertible Note held by the Subordinated Creditor; and

(C) solely in the case of a Payment by a Subordinated Debtor to another Subordinated Debtor, in a manner consistent with the Accounts Agreement.

- (b) Promptly upon receipt by Thermo in its capacity as a Subordinated Creditor of any Permitted Subordinated Liability Payment in respect of cash interest relating to any Convertible Note held by Thermo (the “**Relevant Funds**”), Thermo shall transfer monies in an amount equal to such Relevant Funds to the Collection Account. Upon receipt of the Relevant Funds in the Collection Account, the Borrower may issue PIK Interest to Thermo in its capacity as Subordinated Creditor in an amount no greater than an amount equal to the Relevant Funds.
- (c) Nothing in this Agreement shall restrict the conversion by Thermo of amounts outstanding under the Thermo Loan Agreement into Capital Stock consisting of common shares of the Borrower.

### 5.3 **Suspension of Permitted Subordinated Liability Payments**

- (a) Notwithstanding anything to the contrary in this Agreement, no Permitted Subordinated Liability Payment referred in Clause 5.2(a)(A) (*Permitted Subordinated Liability Payments*) shall be made by the Borrower to Thermo in its capacity as a Subordinated Creditor if:
  - (i) an Event of Default has occurred and is continuing; and
  - (ii) a Blocking Notice has been issued in respect of the Collection Account pursuant to, and in accordance with, the terms of the relevant Account Control Agreement.
- (b) Notwithstanding anything to the contrary in this Agreement, no Permitted Subordinated Liability Payment referred in Clause 5.2(a)(C) (*Permitted Subordinated Liability Payments*) shall be made by a Subordinated Debtor to a Subordinated Creditor (other than Thermo in its capacity as a Subordinated Creditor) if:
  - (i) an Event of Default has occurred and is continuing; and
  - (ii) a Blocking Notice has been issued.

### 5.4 **Amendments to Subordinated Liabilities Documents**

- (a) Until the Final Discharge Date, neither a Subordinated Creditor nor a Subordinated Debtor shall amend, terminate or give any waiver or consent under any provision of any Subordinated Liabilities Document:
- (b) Paragraph (a) above does not apply to any amendment, termination, waiver or Consent:
  - (i) prior to the Senior Discharge Date, the prior written consent of the Majority Senior Lenders (acting reasonably) and the Majority Second Lien Lenders (acting reasonably) is obtained;
  - (ii) on or after the Senior Discharge Date, the prior written consent of the Majority Second Lien Lenders is obtained; or

- (iii) which is minor, technical or administrative or corrects a manifest error.

#### 5.5 **Payment Obligations Continue**

No Subordinated Debtor shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Debt Document by the operation of Clause 5.1 (*Restriction on Payment: Subordinated Liabilities*) even if its obligation to make that Payment is restricted at any time by the terms of any of that Clause or this Agreement.

#### 5.6 **Security: Subordinated Creditors**

No Subordinated Creditor may take, accept or receive the benefit of any Security, guarantee, indemnity or other assurance against loss from any member of the Group in respect of any of the Subordinated Liabilities prior to the Final Discharge Date.

#### 5.7 **Restriction on Enforcement: Subordinated Creditors**

No Subordinated Creditor shall be entitled to take any Enforcement Action in respect of any of the Subordinated Liabilities at any time prior to the Final Discharge Date, other than in accordance with Clause 6 (*Effect of Insolvency Event*).

#### 5.8 **Termination of Existing Subordination Agreements**

On the date of this Agreement, each Existing Subordination Agreement is terminated and the terms thereof are immediately replaced by the terms of this Agreement.

#### 5.9 **Representations: Subordinated Creditors / Subordinated Debtors**

Each Subordinated Creditor and Subordinated Debtor makes the representations and warranties set out in this Clause 5.9 to the Primary Creditors on the date of this Agreement:

- (a) it is a corporation, limited partnership, public limited company or limited liability company, as applicable, duly organised and validly existing (and to the extent applicable, in good standing) under the law of its jurisdiction of organisation;
- (b) it has the power to own its assets and carry on its business as it is being conducted;
- (c) the obligations expressed to be assumed by it in this Agreement are legal, valid, binding and enforceable obligations;
- (d) it has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, this Agreement and all the transactions contemplated by this Agreement;
- (e) all acts, conditions, and things required to be done, fulfilled and performed in order:
  - (i) to enable it lawfully to enter into, exercise its rights under and perform and comply with the obligations expressed to be assumed by it in this Agreement; and
  - (ii) to ensure that the obligations expressed to be assumed by it in this Agreement are legal, valid and binding.

have been done, fulfilled and performed;

- (f) it has not taken any corporate action nor have any other steps been taken or legal proceedings been started or (to the best of its knowledge and belief) threatened against it for its winding-up, dissolution, administration or reorganisation or for the appointment of a receiver, administrator, administrative receiver, trustee or similar officer of it or of any or all of its assets or revenues;
- (g) the entry into and performance by it of, and the transactions contemplated by, this Agreement will not conflict with:
  - (i) any Applicable Law;
  - (ii) the constitutional documents of such Subordinated Creditor or Subordinated Debtor; or
  - (iii) any agreement or instrument binding upon it or any of its assets or constitute a default or termination event (however described) under any such agreement or instrument,in each case, where such conflict would have or is reasonably likely to have a Material Adverse Effect;
- (h) neither it nor its assets is entitled to immunity from suit, execution, attachment or other legal process;
- (i) the Subordinated Liabilities have not (in whole or in part) been previously subordinated to any Liabilities of any other creditor of the Borrower;
- (j) it is not required to make any deduction for or on account of Tax from any payment it may make under this Agreement;
- (k) under the laws of its jurisdiction of incorporation or organisation it is not necessary that this Agreement be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration, notarial or similar Taxes or fees be paid on or in relation to this Agreement;
- (l) no Default is continuing or is reasonably likely to result from the entry into, the performance of, or any transaction contemplated by, this Agreement;
- (m) no other event or circumstance is outstanding which constitutes (or with the expiry of a grace period, the giving of notice, the making of any determination or any combination of any of the foregoing, would constitute) a default or termination event (however described) under the Finance Documents to which it is a party, which has not been waived by the relevant parties hereto;
- (n) no other event or circumstance is outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination or any combination of any of the foregoing, would constitute) a default or termination event (however described) under any other agreement or instrument which is binding on it or any of its



Subsidiaries or to which its (or any of its Subsidiaries') assets are subject which has or is reasonably likely to have a Material Adverse Effect;

- (o) no litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency which is not frivolous, vexatious or otherwise an abuse of court process, and which, if adversely determined, could reasonably have a Material Adverse Effect (to the best of its knowledge and belief) have been started against it or any of its Subsidiaries;
- (p) subject to the Reservations:
  - (i) the choice of governing law of this Agreement will be recognised and enforced in its jurisdiction of incorporation; and
  - (ii) any judgment obtained in relation to this Agreement in England will be recognised and enforced in its jurisdiction of incorporation; and
- (q) the Subordinated Liabilities Documents contain all the terms and conditions of the Subordinated Liabilities.

Each of the representations in this Clause 5.9 are deemed to be repeated on each date prior to the Senior Discharge Date. When a representation is repeated, it is applied to the facts and circumstances existing at the time of repetition.

## **6. Effect of Insolvency Event**

### **6.1 Distributions**

- (a) After the occurrence of an Insolvency Event in relation to any Material Subsidiary, any Party entitled to receive a distribution out of the assets of that member of the Group in respect of Liabilities owed to that Party shall, to the extent it is able to do so, direct the person responsible for the distribution of the assets of that member of the Group to make that distribution to the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) (or to such other person as the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) shall direct) until the Liabilities owing to the Secured Parties have been paid in full.
- (b) The Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) shall apply distributions made to it under paragraph (a) above in accordance with Clause 16 (*Application of Proceeds*).

### **6.2 Set-Off**

To the extent that any member of the Group's Liabilities are discharged by way of set-off (mandatory or otherwise) after the occurrence of an Insolvency Event in relation to that member of the Group, any Creditor which benefited from that set-off shall pay an amount equal to the amount of the Liabilities owed to it which are discharged by that set-off to the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) for application in accordance with Clause 16 (*Application of Proceeds*).

### 6.3 **Non-Cash Distributions**

If the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) or any other Secured Party receives a distribution in the form of Non-Cash Consideration in respect of any of the Liabilities (other than any distribution of Non-Cash Recoveries), the Liabilities will not be reduced by that distribution until and except to the extent that the realisation proceeds are actually applied towards the Liabilities.

### 6.4 **Filing of Claims**

After the occurrence of an Insolvency Event in relation to any Material Subsidiary, each Creditor irrevocably authorises the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) on its behalf, to:

- (a) take any Enforcement Action (in accordance with the terms of this Agreement) against a member of the Group;
- (b) demand, sue, prove and give receipt for any or all of a member of the Group's Liabilities;
- (c) collect and receive all distributions on, or on account of, any or all of a member of the Group's Liabilities; and
- (d) file claims, take proceedings and do all other things the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) considers reasonably necessary to recover a member of the Group's Liabilities.

### 6.5 **Further Assurance – Insolvency Event**

Each Creditor will:

- (a) do all things that the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) requests in order to give effect to this Clause 6; and
- (b) if the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) is not entitled to take any of the actions contemplated by this Clause 6 or if the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) requests that a Creditor take that action, undertake that action itself in accordance with the instructions of the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) or grant any power of attorney (in addition to that contained in Clause 15.1 (*Appointment – Power of Attorney*)) to the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) (on such terms as the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) may reasonably require) to enable the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) to take such action.

### 6.6 **Security Agent instructions**

For the purposes of Clause 6.1 (*Distributions*), Clause 6.4 (*Filing of Claims*) and Clause 6.5 (*Further assurance – Insolvency Event*) the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) shall act:

- (a) on the instructions of the group of Primary Creditors entitled, at that time, to give instructions under Clause 10.1 (*Enforcement Instructions*) or Clause 10.2 (*Manner of Enforcement*); or
- (b) in the absence of any such instructions, as the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) sees fit.

#### 6.7 **Limitation by Applicable Laws**

Each of the provisions of this Clause 6 shall apply only to the extent permitted by applicable laws and subject to Clause 7 (*Insolvency or Liquidation Proceedings under the Bankruptcy Code*).

## 7. **Insolvency or Liquidation Proceedings under the Bankruptcy Code**

### 7.1 **Financing Issues**

Until the Senior Discharge Date has occurred, if any member of the Group shall be subject to a Bankruptcy Case and the Senior Agent (acting on the instructions of the Majority Senior Lenders) consents (or does not object) to the sale, use or lease of cash collateral or other assets of any member of the Group that is subject to Transaction Security under Section 363 of the Bankruptcy Code, or consent (or not object) to any member of the Group obtaining debtor-in-possession financing under Section 364 of the Bankruptcy Code (a “**DIP Financing**”), then each Second Lien Creditor agrees that:

- (a) it will raise no objection to and will not otherwise contest directly or indirectly any such sale, use or lease of such cash collateral or other assets of any member of the Group subject to Transaction Security or DIP Financing if it complies with the DIP Financing Conditions below, including any proposed orders for such collateral use and/or DIP Financing which are acceptable to the Senior Agent, *provided that*:
  - (i) such DIP Financing does not compel any member of the Group to seek confirmation of a specific plan or reorganisation or require the liquidation of all or substantially all of the assets of the applicable members of the Group subject to Transaction Security prior to a default under the documentation relating to such DIP Financing;
  - (ii) the Security securing such DIP Financing shall be senior to or *pari passu* with the Security of each Senior Facility Creditor on the assets of the applicable members of the Group subject to Transaction Security securing the then outstanding Senior Liabilities;
  - (iii) such DIP Financing does not require any Second Lien Creditor to release any Security on the assets of the applicable members of the Group subject to

Transaction Security as the same may exist at the time of such DIP Financing; and

- (iv) such DIP Financing does not impair or otherwise modify the rights of the Second Lien Creditors under this Agreement without the consent of the Second Lien Agent,

(paragraphs (a)(i) to (iv) above collectively, the “**DIP Financing Conditions**”);

- (b) it will not request adequate protection (except to the extent permitted by Clause 7.3 (*Adequate Protection*)) or any other relief (except to the extent permitted by paragraph (b) of Clause 4.9 (*Limited Permitted Enforcement: Second Lien Creditors*)) in connection therewith in such Bankruptcy Case;
- (c) to the extent the Security securing any Senior Liabilities is subordinated or *pari passu* with such DIP Financing, it will subordinate (and will be deemed hereunder to have subordinated) its Security in the assets of any member of the Group subject to Transaction Security to:
  - (i) such DIP Financing (and all obligations relating thereto) on the same basis as the Security securing the Second Lien Liabilities (as applicable) are so subordinated to Security securing Senior Liabilities under this Agreement;
  - (ii) any adequate protection liens granted to the Senior Facility Creditors; and
  - (iii) any “*carve-out*” for professional fees and costs, United States Trustee fees and costs and other customary fees and costs agreed to by the Senior Agent;
- (d) it will raise no objection to and will not otherwise contest directly or indirectly any motion for relief from the automatic stay or from any injunction against foreclosure or enforcement in respect of Senior Liabilities made by any Senior Agent or any other Senior Facility Creditor;
- (e) it will raise no objection to, and will not otherwise contest, directly or indirectly any exercise by any Senior Facility Creditor of the right to credit bid Senior Liabilities at any sale or other disposition of assets of any member of the Group subject to Transaction Security under Section 363(k), Section 1129 or any other applicable provision of the Bankruptcy Code, *provided that* the Second Lien Creditors shall not be deemed to have waived:
  - (i) any right to bid in connection with such dispositions; and
  - (ii) their rights to credit bid on the assets of any member of the Group subject to Transaction Security in any such disposition in accordance with Section 363(k), Section 1129 or any other applicable provision of the Bankruptcy Code,

in each case, so long as the proceeds of such bid are sufficient for, and applied to, repay the Senior Liabilities in their entirety in accordance with the terms of the Senior Finance Documents such that the Senior Discharge Date shall have occurred after giving effect to such repayment;

- (f) it will raise no objection to, and will not otherwise contest, directly or indirectly, will not seek consent rights in connection with, and will be deemed to have consented to such relief under Section 363(f) of the Bankruptcy Code, any order relating to a sale or other disposition of assets of any member of the Group subject to Transaction Security to which any Senior Agent has consented or not objected (including, without limitation, orders to retain professionals or establish bid and other sale procedures in connection with such sale or other disposition) that provides, to the extent such sale or other disposition is to be free and clear of any Security, that the Security securing the Senior Liabilities and the Second Lien Liabilities will attach to the proceeds of the sale on the same basis of priority as the Security on the assets of any member of the Group subject to Transaction Security securing the Senior Liabilities rank to the Security on the assets of any member of the Group subject to Transaction Security securing the Second Lien Liabilities (as applicable) pursuant to this Agreement, *provided that*:
- (i) the net cash proceeds of any such sale or other disposition are applied to the permanent reduction of the Senior Liabilities in accordance with Clause 16 (*Application of Proceeds*); and
  - (ii) if any Second Lien Creditors becomes a judgment lien creditor or other secured creditor in respect of any Transaction Security as a result of its enforcement of its rights as an unsecured creditor in respect of Second Lien Liabilities (as applicable), such judgment lien or any other lien shall be:
    - (A) subordinated to the Security on the assets of any member of the Group to Transaction Security securing the Senior Liabilities on the same basis as the Security on assets of any member of the Group subject to the Transaction Security securing the Second Lien Liabilities (as applicable) are so subordinated to the Security on the assets of any member of the Group subject to Transaction Security securing Senior Liabilities under this Agreement; and
    - (B) otherwise subject to the terms of this Agreement for all purposes to the same extent as all other Security on the assets of any member of the Group subject to Transaction Security securing the Second Lien Liabilities (as applicable) are subject to this Agreement; and
  - (iii) it will not propose or provide any DIP Financing to any member of the Group unless:
    - (A) the application of the proceeds of such DIP Financing would result in the occurrence of the Senior Discharge Date;
    - (B) such DIP Financing is secured by Security on assets of any member of the Group subject to Transaction Security junior in priority to the Security securing any Senior Liabilities and no Senior Facility Creditors shall propose, or shall have proposed, to provide any DIP Financing, or
    - (C) the provision of such DIP Financing is consented to by the Senior Agent.

## 7.2 **Relief from the Automatic Stay**

Until the Senior Discharge Date has occurred, the Second Lien Agent, for itself and on behalf of each Second Lien Creditor it represents, agrees that none of them shall seek relief from the automatic stay or any other stay in any Bankruptcy Case of any member of the Group, in each case in respect of any Transaction Security, without the prior written consent of the Senior Agent.

## 7.3 **Adequate Protection**

- (a) The Second Lien Agent, for itself and on behalf of each Second Lien Creditor it represents, agrees that none of them shall object, contest or support any other person objecting to or contesting in any Bankruptcy Case of any member of the Group:
- (i) any request by the Senior Agent or any Senior Facility Creditors for adequate protection;
  - (ii) any objection by the Senior Agent or any Senior Facility Creditors to any motion, relief, action or proceeding based on the Senior Agent's or Senior Facility Creditor's claiming a lack of adequate protection; or
  - (iii) the payment of interest, fees, expenses or other amounts of the Senior Agent or any other Senior Facility Creditor under Section 506(b) of the Bankruptcy Code.
- (b) Notwithstanding anything contained in this Clause 7.3 or in Clause 7.1 (*Financing Issues*), in any Bankruptcy Case of any member of the Group:
- (i) if the Senior Facility Creditors (or any subset thereof) are granted adequate protection in the form of replacement Liens on additional collateral, super-priority claims, or cash payments in connection with any DIP Financing or use of cash collateral under Section 363 or 364 of the Bankruptcy Code, then the Second Lien Agent, for itself and on behalf of each Second Lien Creditor represented by it, may seek or request adequate protection in the form of replacement Liens on such additional collateral, superpriority claims, or similar cash payments, which Security, super-priority claim or right to cash payments is subordinated to the Security securing all Senior Liabilities (including any adequate protection liens and all obligations relating thereto) and such DIP Financing (and all obligations relating thereto) on the same basis as the other Security securing the Second Lien Liabilities are so subordinated to the Security securing Senior Liabilities under this Agreement;
  - (ii) if the Second Lien Agent, for themselves and on behalf of the Second Lien Creditors represented by it, seek or request adequate protection and such adequate protection is granted (in each instance, whether or not such grant is otherwise permissible under the terms and conditions of this Agreement) in the form of additional or replacement collateral, then such Second Lien Agent, for themselves and on behalf of each Second Lien Creditor represented by it, agree that the Senior Agent, for itself and on behalf of the applicable Senior Facility Creditors, shall also be granted a senior Security on such additional or replacement collateral as adequate protection for the Senior Liabilities and any such DIP Financing and that any Security on such additional or replacement

collateral securing the Second Lien Liabilities shall be subordinated to the Security on such collateral securing the Senior Liabilities and any such DIP Financing (and all obligations relating thereto) on the same basis as the other Security securing the Second Lien Liabilities are so subordinated to such Security securing Senior Liabilities under this Agreement (and, to the extent the Senior Facility Creditors are not granted such adequate protection in such form, any amounts recovered by or distributed to any Second Lien Creditor pursuant to or as a result of any Security on such additional or replacement collateral so granted to the Second Lien Creditors shall be subject to Clause 8.1 (*Turnover by the Creditors*) in the same manner and extent as if such adequate protection had been granted to the Senior Facility Creditors); and

- (iii) if the Second Lien Agent, for itself and on behalf of the Second Lien Creditors represented by it, seeks or requests adequate protection in any Bankruptcy Case of any member of the Group and such adequate protection is granted (in each instance, whether or not such grant is otherwise permissible under the terms and conditions of this Agreement) in the form of a super-priority claim, then such Second Lien Agent, for itself and on behalf of each Second Lien Creditor represented by it, agrees that each Senior Agent shall also be granted adequate protection in the form of a superpriority claim, and that the superpriority claim of the Second Lien Creditors shall be subordinated to the Security on such collateral securing the Senior Liabilities and any such DIP Financing (and all obligations relating thereto) on the same basis as the other Security securing the Second Lien Liabilities are so subordinated to such Security securing Senior Liabilities under this Agreement (and, to the extent the Senior Facility Creditors are not granted such adequate protection in such form, any amounts recovered by or distributed to any Second Lien Creditor pursuant to or as a result of any such superpriority claim so granted to the Second Lien Creditors shall be subject to Clause 8.1 (*Turnover by the Creditors*) in the same manner and extent as if such adequate protection had been granted to the Senior Facility Creditors).
- (c) If any Second Lien Creditors are granted a super-priority claim, such Second Lien Creditors shall irrevocably agree, pursuant to Section 1129(a)(9) of the Bankruptcy Code, in any stipulation and/or order granting such super-priority claim, that such super-priority claim may be paid under any plan of reorganisation in any combination of cash, debt, equity, or other property having a value on the effective date of such plan equal to the allowed amount of such claims.
- (d) If any Second Lien Creditors receive any adequate protection payments or postpetition interest or fees in any Bankruptcy Case of any member of the Group and the Senior Discharge Date does not occur upon the effectiveness of the plan of reorganization or arrangement for, or other similar conclusion of, that Bankruptcy Case, then the Second Lien Creditors shall pay over to the applicable Senior Facility Creditors on such effective or other conclusion date an amount (the “**Payover Amount**”) equal to the lesser of:
  - (i) the aggregate sum of such adequate protection payments and postpetition interest or fees; and

(ii) the amount of such shortfall preventing the occurrence of the Senior Discharge Date at such time (the “**Shortfall**”),

*provided, that* to the extent any portion of the Shortfall represents payments received by the Senior Facility Creditors in the form of promissory notes, equity, or other property equal in value to the cash paid in respect of the Payover Amount, the Senior Facility Creditors shall, upon receipt of the Payover Amount, transfer those promissory notes, equity, or other property, equal in value to the cash paid in respect of the Payover Amount, to the applicable Second Lien Creditors *pro rata* in exchange for the Payover Amount.

#### 7.4 **Preference Issues**

- (a) If any Senior Facility Creditor is required in any Bankruptcy Case of any member of the Group (or otherwise) to disgorge, turn over or otherwise pay any amount to any member of the Group or the estate of any member of the Group (or any trustee, receiver or similar person therefor), because the payment of such amount was declared to be fraudulent, preferential or otherwise subject to avoidance in any respect or for any other reason, any amount (a “**Preference Recovery**”), whether received as proceeds of security, enforcement of any right of set-off or otherwise, then the Senior Liabilities shall be reinstated to the extent of such Preference Recovery and deemed to be outstanding as if such payment had not occurred and the Senior Facility Creditors shall be entitled to the benefits of this Agreement until a discharge of Senior Liabilities with respect to all such recovered amounts.
- (b) If this Agreement shall have been terminated prior to such Preference Recovery, this Agreement shall be reinstated in full force and effect, and such prior termination shall not diminish, release, discharge, impair or otherwise affect the obligations of the parties hereto.
- (c) The Second Lien Agent, for itself and on behalf of each Second Lien Creditor represented by it, hereby agrees that none of them shall be entitled to benefit from any avoidance action affecting or otherwise relating to any distribution or allocation made in accordance with this Agreement, whether by preference or otherwise, it being understood and agreed that the benefit of such avoidance action otherwise allocable to them shall instead be allocated and turned over for application in accordance with the priorities set forth in this Agreement.

#### 7.5 **Post-Petition Interest**

- (a) Neither the Second Lien Agent nor any Second Lien Creditor shall oppose or seek to challenge any claim by the Senior Agent or any Senior Facility Creditor for allowance and payment in any Bankruptcy Case of any member of the Group of Senior Liabilities consisting of post-petition interest, fees or expenses.
- (b) Neither the Senior Agent nor any Senior Facility Creditor shall oppose or seek to challenge any claim by the Second Lien Agent or any Second Lien Creditor for allowance and payment in any Bankruptcy Case of any member of the Group of Second Lien Liabilities consisting of post-petition interest, fees or expenses to the extent of the value



of the lien on the Transaction Security secure the Second Lien Liabilities (after taking into account the Senior Liabilities).

#### 7.6 **Separate Grants of Security and Separate Classifications**

- (a) The Second Lien Agent, for itself and on behalf of each Second Lien Creditor represented by it, acknowledges and agrees that:
  - (i) the grants of security pursuant to the Senior Finance Documents and the Second Lien Finance Documents constitute separate and distinct grants of Security; and
  - (ii) because of, among other things, their differing rights in the Transaction Security, the Second Lien Liabilities are fundamentally different from the Senior Liabilities and must be separately classified in any plan of reorganisation proposed or adopted in any Bankruptcy Case of any member of the Group.
- (b) To further effectuate the intent of the Parties as provided in paragraph (a) above, if it is held that any claims of the Senior Facility Creditors and the Second Lien Creditors in respect of the Transaction Security constitute a single class of claims (rather than separate classes of senior and junior secured claims), then the Second Lien Agent, for itself and on behalf of each Second Lien Creditor represented by it, hereby acknowledges and agrees that all distributions shall be made in accordance with Clause 16.1 (*Order of Application*) as if there were separate classes of senior and junior secured claims against any member of the Group in respect of the Transaction Security, and the Second Lien Agent, for itself and on behalf of each Second Lien Creditor represented by it, hereby acknowledges and agrees to turn over to the Senior Agent amounts otherwise received or receivable by them as set out in Clause 8.1 (*Turnover by the Creditors*), even if such turnover has the effect of reducing the claim or recovery of the Second Lien Creditors.
- (c) For the avoidance of doubt, nothing in this Agreement shall prevent or prohibit:
  - (i) claims of the Second Lien Creditors from voting as a single class; or
  - (ii) claims of the Senior Facility Creditors voting as a single class.

#### 7.7 **No Waivers of Rights of Senior Facility Creditors**

Nothing contained in this Agreement (other than Clause 7.5(b) (*Post Petition Interest*)) shall, except as expressly provided herein, prohibit or in any way limit the Senior Agent or any other Senior Facility Creditor from objecting in any Bankruptcy Case of any member of the Group or otherwise to any action taken by any Second Lien Creditor, including the seeking by any Second Lien Creditor of adequate protection or the assertion by any Second Lien Creditor of any of its rights and remedies under the Second Lien Finance Documents or otherwise.

#### 7.8 **Application**

- (a) This Agreement and all terms and conditions hereof, which the Parties expressly acknowledge is a “*subordination agreement*” under Section 510(a) of the Bankruptcy Code, shall be effective before, during and after the commencement of any Bankruptcy Case.

- (b) The relative rights of the Parties as to the Transaction Security and proceeds thereof shall continue after the commencement of any Bankruptcy Case on the same basis as prior to the date of the petition therefor, subject to any court order.
- (c) All references herein to any member of the Group shall include such member of the Group as a debtor-in-possession and any receiver or trustee for such member of the Group.

#### 7.9 **Other Matters**

If any Second Lien Creditor has or acquires termination, acceleration or stay relief rights under an order approving the sale, use or lease of assets of any member of the Group subject to Transaction Security or a DIP Financing under Section 363 or Section 364 of the Bankruptcy Code in any Bankruptcy Case of any member of the Group, the Second Lien Agent, on behalf of itself and each Second Lien Creditor it represents, or such Second Lien Creditor agrees not to assert any such rights without the prior written consent of each Senior Agent.

#### 7.10 **Surcharge Claims**

Until the Senior Discharge Date has occurred, the Second Lien Agent, on behalf of itself and each Second Lien Creditor represented by it, agrees that it will not assert, support or enforce any claim under Section 506(c) or 552(b) of the Bankruptcy Code (or any applicable law or court order having comparable effect) senior to or on a parity with the Security securing the Senior Liabilities for costs or expenses of preserving or disposing of any assets of any member of the Group subject to Transaction Security.

#### 7.11 **Reorganisation Securities; Plan of Reorganisation**

- (a) If, in any Bankruptcy Case of any member of the Group, debt or other securities obligations of the reorganised debtor secured by Security upon any assets of any member of the Group subject to Transaction Security of the reorganised debtor are distributed, pursuant to a plan of reorganisation or other dispositive restructuring plan, on account of both the Senior Liabilities and the Second Lien Liabilities, then, to the extent the debt obligations distributed on account of the Senior Liabilities and on account of the Second Lien Liabilities are secured by Security upon the same assets of any member of the Group subject to Transaction Security, the provisions of this Agreement will survive the distribution of such debt obligations pursuant to such plan and will apply with like effect to the Security securing such debt obligations.
- (b) No Second Lien Creditors (whether in the capacity of a secured creditor or an unsecured creditor) shall propose, vote in favor of, or otherwise directly or indirectly support any plan of reorganisation in any Bankruptcy Case of any member of the Group that violates the express provisions of, or is otherwise inconsistent with, this Agreement, other than with the prior written consent of the Senior Agent or to the extent any such plan:
  - (i) is proposed or supported by the number of Senior Facility Creditors required under Section 1126(d) of the Bankruptcy Code; and
  - (ii) provides for the payment in full, in cash, of all Senior Liabilities.

## 7.12 Section 1111(b) of the Bankruptcy Code

Each Second Lien Agent, for itself and on behalf of each Second Lien Creditor represented by it:

- (a) shall not object to, oppose, support any objection, or take any other action to impede, the right of any Second Lien Creditor to make an election under Section 1111(b)(2) of the Bankruptcy Code in any Bankruptcy Case of any member of the Group; and
- (b) waives any claim it may hereafter have against any Senior Facility Creditor arising out of the election by any such Senior Facility Creditor of the application of Section 1111(b)(2) of the Bankruptcy Code in any Bankruptcy Case of any member of the Group.

## 8. Turnover of Receipts

### 8.1 Turnover by the Creditors

Subject to Clause 8.2 (*Exclusions*) and to Clause 8.3 (*Permitted Assurance and Receipts*), if at any time prior to the Final Discharge Date, any Creditor receives or recovers:

- (a) any Payment or distribution of, or on account of, or in relation to, any of the Liabilities which is neither:
  - (i) a Permitted Payment; nor
  - (ii) made in accordance with Clause 16 (*Application of Proceeds*);
- (b) other than where Clause 6.2 (*Set-Off*) applies, any amount by way of set-off in respect of any of the Liabilities owed to it which does not give effect to a Permitted Payment;
- (c) notwithstanding paragraphs (a) and (b) above, and other than where Clause 6.2 (*Set-Off*) applies, any amount:
  - (i) on account of, or in relation to, any of the Liabilities:
    - (A) after the occurrence of a Distress Event; or
    - (B) as a result of any other litigation or proceedings against a member of the Group (other than after the occurrence of an Insolvency Event in respect of that member of the Group); or
  - (ii) by way of set-off in respect of any of the Liabilities owed to it after the occurrence of a Distress Event, other than, in each case, any amount received or recovered in accordance with Clause 16 (*Application of Proceeds*);
- (d) the proceeds of any enforcement of any Transaction Security except in accordance with Clause 16 (*Application of Proceeds*); or
- (e) other than where Clause 6.2 (*Set-Off*) applies, any distribution or Payment of, or on account of or in relation to, any of the Liabilities owed by any member of the Group

which is not in accordance with Clause 16 (*Application of Proceeds*) and which is made as a result of, or after, the occurrence of an Insolvency Event in respect of that member of the Group,

that Creditor will:

- (i) in relation to receipts and recoveries not received or recovered by way of set-off:
  - (A) hold an amount of that receipt or recovery equal to the Relevant Liabilities (or if less, the amount received or recovered) on trust for the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) and promptly pay or distribute that amount to the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) for application in accordance with the terms of this Agreement; and
  - (B) promptly pay or distribute an amount equal to the amount (if any) by which the receipt or recovery exceeds the Relevant Liabilities to the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) for application in accordance with the terms of this Agreement; and
- (ii) in relation to receipts and recoveries received or recovered by way of set-off, promptly pay an amount equal to that recovery to the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) for application in accordance with the terms of this Agreement.

## 8.2 Exclusions

Clause 8.1 (*Turnover by the Creditors*) shall not apply to any receipt or recovery:

- (a) relating to any payments made by BPIFAE under a BPIFAE Insurance Policy to a Senior Lender or the Senior Agent in accordance with the terms thereof; or
- (b) made to the Senior Creditors in accordance with Clause 17 (*Equalisation*).

## 8.3 Permitted Assurance and Receipts

Nothing in this Agreement shall restrict the ability of any Primary Creditor to:

- (a) arrange with any person which is not a member of the Group any assurance against loss in respect of, or reduction of its credit exposure to, a Debtor (including a BPIFAE Insurance Policy and any other assurance by way of credit based derivative or sub-participation); or
- (b) make any assignment or transfer permitted by Clause 20 (*Changes to the Parties*), which is permitted by:
  - (i) the Senior Facility Agreement; or
  - (ii) the Second Lien Facility Agreement,

and that Primary Creditor shall not be obliged to account to any other Party for any sum received by it as a result of that action.

#### 8.4 **Amounts Received by Debtors**

If any of the Debtors receives or recovers any amount which, under the terms of any of the Debt Documents, should have been paid to the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent), that Debtor will:

- (a) hold an amount of that receipt or recovery equal to the Relevant Liabilities (or if less, the amount received or recovered) on trust for the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) and promptly pay that amount to the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) for application in accordance with the terms of this Agreement; and
- (b) promptly pay an amount equal to the amount (if any) by which the receipt or recovery exceeds the Relevant Liabilities to the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) for application in accordance with the terms of this Agreement.

#### 8.5 **Saving Provision**

If, for any reason, any of the trusts expressed to be created in this Clause 8 should fail or be unenforceable, the affected Creditor or Debtor will promptly pay or distribute an amount equal to that receipt or recovery to the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) to be held on trust by the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) for application in accordance with the terms of this Agreement.

#### 8.6 **Turnover of Non-Cash Consideration**

For the purposes of this Clause 8, if any Creditor receives or recovers any amount or distribution in the form of Non-Cash Consideration which is subject to Clause 8.1 (*Turnover by the Creditors*) the cash value of that Non-Cash Consideration shall be determined in accordance with Clause 14.2 (*Cash value of Non-Cash Recoveries*).

### 9. **Redistribution**

#### 9.1 **Recovering Creditor's Rights**

- (a) Any amount paid or distributed by a Creditor (a "**Recovering Creditor**") to the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) under Clause 6 (*Effect of Insolvency Event*) or Clause 7 (*Turnover of Receipts*) shall be treated as having been paid or distributed by the relevant Debtor and shall be applied by the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) in accordance with Clause 16 (*Application of Proceeds*).

- (b) On an application by the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) pursuant to Clause 16 (*Application of Proceeds*) of a Payment or distribution received by a Recovering Creditor from a Debtor, as between the relevant Debtor and the Recovering Creditor an amount equal to the amount received or recovered by the Recovering Creditor and paid or distributed to the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) by the Recovering Creditor (the “**Shared Amount**”) will be treated as not having been paid or distributed by that Debtor.

## 9.2 Reversal of Redistribution

- (a) If any part of the Shared Amount received or recovered by a Recovering Creditor becomes repayable or returnable to a Debtor and is repaid or returned by that Recovering Creditor to that Debtor, then:
- (i) each Party that received any part of that Shared Amount pursuant to an application by the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) of that Shared Amount under Clause 9.1 (*Recovering Creditor's rights*) (a “**Sharing Party**”) shall, upon request of the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent), pay or distribute to the the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) for the account of that Recovering Creditor an amount equal to the appropriate part of its share of the Shared Amount (together with an amount as is necessary to reimburse that Recovering Creditor for its proportion of any interest on the Shared Amount which that Recovering Creditor is required to pay) (the “**Redistributed Amount**”); and
- (ii) as between the relevant Debtor and each relevant Sharing Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid or distributed by that Debtor.
- (b) The Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) shall not be obliged to pay or distribute any Redistributed Amount to a Recovering Creditor under paragraph (a)(i) above until it has been able to establish to its satisfaction that it has actually received that Redistributed Amount from the relevant Sharing Party.

## 9.3 Deferral of Subrogation

- (a) No Creditor (other than a Subordinated Creditor) or Debtor will exercise any rights which it may have by reason of the performance by it of its obligations under the Debt Documents to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights under the Debt Documents of any Creditor (other than a Subordinated Creditor) which ranks ahead of it in accordance with the priorities set out in Clause 2 (*Ranking and Priority*) until such time as all of the Liabilities owing to each prior ranking Creditor (or, in the case of any Debtor, owing to each Creditor (other than a Subordinated Creditor)) have been irrevocably discharged in full.

- (b) No Subordinated Creditor will exercise any rights which it may have to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights under the Debt Documents of any Creditor until such time as all of the Liabilities owing to each Creditor (other than a Subordinated Creditor) have been irrevocably discharged in full.
- (c) This Clause 9.3 shall not apply to BPIFAE.

## **10. Enforcement of Transaction Security**

### **10.1 Enforcement Instructions**

- (a) The Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) may refrain from enforcing the Transaction Security unless instructed otherwise by the Instructing Group.
- (b) Subject to the Transaction Security having become enforceable in accordance with its terms, the Instructing Group may give or refrain from giving instructions to the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) to enforce or refrain from enforcing the Transaction Security as they see fit.
- (c) The Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) is entitled to rely on and comply with instructions given in accordance with this Clause 10.1.

### **10.2 Manner of Enforcement**

If the Transaction Security is being enforced pursuant to Clause 10.1 (*Enforcement Instructions*), the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) shall enforce the Transaction Security in such manner (including, without limitation, the selection of any administrator (or any analogous officer in any jurisdiction) of any Debtor to be appointed by the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent)) as the Instructing Group shall instruct.

### **10.3 Exercise of Voting Rights**

- (a) Except with respect to voting on:
  - (i) a plan of reorganisation; or
  - (ii) another dispositive restructuring plan,

in each case, in a Bankruptcy Case of any member of the Group as provided under Clause 7.11(b) (*Reorganisation Securities; Plan of Reorganisation*), each Creditor (other than each Facility Agent and each Senior Arranger) will cast its vote in any proposal put to the vote by or under the supervision of any judicial or supervisory authority in respect of any insolvency, pre-insolvency or rehabilitation or similar proceedings relating to any member of the Group as instructed by the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent).

- (b) The Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) shall give instructions for the purposes of paragraph (a) above in accordance with any instructions given to it by the Instructing Group.

#### 10.4 **Waiver of Rights**

To the extent permitted under applicable law and subject to Clause 10.1 (*Enforcement Instructions*), Clause 10.2 (*Manner of Enforcement*), Clause 13.4 (*Fair value*) and Clause 16 (*Application of Proceeds*), each of the Secured Parties and the Debtors waives all rights it may otherwise have to require that the Transaction Security be enforced in any particular order or manner or at any particular time or that any amount received or recovered from any person, or by virtue of the enforcement of any of the Transaction Security or of any other security interest, which is capable of being applied in or towards discharge of any of the Secured Obligations is so applied.

#### 10.5 **Enforcement through Security Agent Only**

The Secured Parties shall not have any independent power to enforce, or have recourse to, any of the Transaction Security or to exercise any right, power, authority or discretion arising under the Security Documents (other than the Facility Agreements) except through the relevant Senior Security Agent.

### 11. **Subrogation and Reimbursement**

#### 11.1 **BPIFAE Insurance Policy – Subrogation**

The Parties acknowledge and agree that:

- (a) BPIFAE shall automatically be subrogated to the rights of the Senior Lenders under this Agreement and each other Senior Finance Document (including its rights with respect to voting) upon, and to the extent of, any payment made by it under or in respect of a BPIFAE Insurance Policy; and
- (b) the Secured Obligations in respect of which any such payment was made shall, notwithstanding such payment, be treated as being outstanding to BPIFAE for the purposes of the Senior Finance Documents until such time as they would have been discharged had BPIFAE not made that payment.

#### 11.2 **Subrogation**

- (a) Without prejudice to any right of indemnification or subrogation BPIFAE may have at law, in equity or otherwise, each Party agrees that BPIFAE will, subject to and in accordance with Clause 11.1 (*BPIFAE Insurance Policy - Subrogation*), be subrogated to the rights of the Senior Lenders under this Agreement upon the making of any payment by, or on behalf of, BPIFAE under the BPIFAE Insurance Policy and the Senior Lenders shall act in accordance with the instructions of BPIFAE in the enforcement of their rights under this Agreement and the other Finance Documents following such subrogation.



- (b) The Parties agree that the right of subrogation under paragraph (a) above shall arise irrespective of, and prevail over, any inconsistency with any right of subrogation arising under a BPIFAE Insurance Policy, or under the laws of France, and notwithstanding any conduct on the part of BPIFAE or the Senior Lenders.
- (c) Notwithstanding anything to the contrary in this Agreement, for the avoidance of doubt, in the event of any failure of the subrogation contemplated by this Clause 11.2, the Parties hereby consent to the transfer by the Senior Lenders of all existing Senior Lender Liabilities to BPIFAE, without the requirement for BPIFAE to accede to this Agreement.
- (d) Notwithstanding anything to the contrary in this Agreement, nothing shall restrict or prohibit a Senior Lender from transferring its rights and obligations or assigning its rights to BPIFAE.

## 12. Non-Distressed Disposals

### 12.1 Definitions

In this Clause 12:

- (a) “**Disposal Proceeds**” means the proceeds of a Non-Distressed Disposal; and
- (b) “**Non-Distressed Disposal**” means a disposal of:
  - (i) an asset of a member of the Group; or
  - (ii) an asset which is subject to the Transaction Security,to a person or persons outside the Group where:
  - (A) prior to the Senior Discharge Date, the Senior Agent notifies the Senior Security Agent that that disposal is permitted under the Senior Finance Documents;
  - (B) the Second Lien Agent notifies the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) that that disposal is permitted under the Second Lien Finance Documents; and
  - (C) that disposal is not a Distressed Disposal.

### 12.2 Facilitation of Non-Distressed Disposals

- (a) If a disposal of an asset is a Non-Distressed Disposal, the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) is irrevocably authorised (at the cost of the Borrower and without any consent, sanction, authority or further confirmation from any Creditor, other Secured Party, Subordinated Debtor or Debtor) but subject to paragraph (b) below:
  - (i) to release the Transaction Security or any other claim (relating to a Debt Document) over that asset;

- (ii) where that asset consists of shares in the capital of a member of the Group, to release the Transaction Security or any other claim (relating to a Debt Document) over that member of the Group's Property; and
  - (iii) to execute and deliver or enter into any release of the Transaction Security or any claim described in paragraphs (i) and (ii) above and issue any certificates of non-crystallisation of any floating charge or any consent to dealing that may, in the discretion of the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent), be considered necessary or desirable.
- (b) Each release of Transaction Security or any claim described in paragraph (a) above shall become effective only on the making of the relevant Non-Distressed Disposal.
- (c) Prior to the Senior Discharge Date and subject to paragraph (b) above, the Second Lien Security Agent shall, concurrently with the Senior Security Agent, give all such equivalent releases as given by the Senior Security Agent as contemplated by paragraph (a) above (including the release of the Transaction Security held by it) in order to give effect to paragraph (a) above.

### 12.3 Disposal Proceeds

If any Disposal Proceeds are required to be applied in mandatory prepayment of the Senior Liabilities or the Second Lien Liabilities then those Disposal Proceeds shall be applied in or towards Payment of:

- (a) **first**, the Senior Liabilities in accordance with the terms of the Senior Facility Agreement (without any obligation to apply those amounts towards the Second Lien Liabilities); and
- (b) **second**, after the discharge in full of the Senior Liabilities, the Second Lien Liabilities in accordance with the terms of the Second Lien Facility Agreement,

and the consent of any other Party shall not be required for that application.

## 13. Distressed Disposals and Appropriation

### 13.1 Facilitation of Distressed Disposals and Appropriation

If a Distressed Disposal or an Appropriation is being effected the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) is irrevocably authorised (at the cost of the Borrower and without any consent, sanction, authority or further confirmation from any Creditor, other Secured Party or Debtor):

- (a) **release of Transaction Security/non-crystallisation certificates**: to release the Transaction Security or any other claim over the asset subject to the Distressed Disposal or Appropriation and execute and deliver or enter into any release of that Transaction Security or claim and issue any letters of non-crystallisation of any floating charge or any consent to dealing that may, in the discretion of the Senior Security Agent (or,

following the Senior Discharge Date, the Second Lien Security Agent), be considered necessary or desirable;

- (b) **release of liabilities and Transaction Security on a share sale/Appropriation (Debtor):** if the asset subject to the Distressed Disposal or Appropriation consists of shares in the capital of a Debtor, to release:
- (i) that Debtor and any Subsidiary of that Debtor from all or any part of:
    - (A) its Borrowing Liabilities;
    - (B) its Guarantee Liabilities; and
    - (C) its Other Liabilities;
  - (ii) any Transaction Security granted by that Debtor or any Subsidiary of that Debtor over any of its assets; and
  - (iii) any other claim of a Subordinated Creditor or another Debtor over that Debtor's assets or over the assets of any Subsidiary of that Debtor,

on behalf of the relevant Creditors and Debtors;

- (c) **release of liabilities and Transaction Security on a share sale/Appropriation (Holding Company):** if the asset subject to the Distressed Disposal or Appropriation consists of shares in the capital of any Holding Company of a Debtor, to release:
- (i) that Holding Company and any Subsidiary of that Holding Company from all or any part of:
    - (A) its Borrowing Liabilities;
    - (B) its Guarantee Liabilities; and
    - (C) its Other Liabilities;
  - (ii) any Transaction Security granted by any Subsidiary of that Holding Company over any of its assets; and
  - (iii) any other claim of a Subordinated Creditor or another Debtor over the assets of any Subsidiary of that Holding Company,

on behalf of the relevant Creditors and Debtors;

- (d) **facilitative disposal of liabilities on a share sale/Appropriation:** if the asset subject to the Distressed Disposal or Appropriation consists of shares in the capital of a Debtor or the Holding Company of a Debtor and the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) decides to dispose of all or any part of:
- (i) the Liabilities (other than Liabilities due to any Senior Agent or Senior Arranger); or
  - (ii) the Debtors' Intra-Group Receivables,

owed by that Debtor or Holding Company or any Subsidiary of that Debtor or Holding Company on the basis that any transferee of those Liabilities or Debtors' Intra-Group Receivables (the "**Transferee**") will not be treated as a Primary Creditor or a Secured Party for the purposes of this Agreement), to execute and deliver or enter into any agreement to dispose of all or part of those Liabilities or Debtors' Intra-Group Receivables on behalf of the relevant Creditors and Debtors *provided that* notwithstanding any other provision of any Debt Document the Transferee shall not be treated as a Primary Creditor or a Secured Party for the purposes of this Agreement;

(e) ***sale of liabilities on a share sale/Appropriation:*** if the asset subject to the Distressed Disposal or Appropriation consists of shares in the capital of a Debtor or the Holding Company of a Debtor and the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) decides to dispose of all or any part of:

- (i) the Liabilities (other than Liabilities due to any Senior Agent or Senior Arranger); or
- (ii) the Debtors' Intra-Group Receivables,

owed by that Debtor or Holding Company or any Subsidiary of that Debtor or Holding Company on the basis that any transferee of those Liabilities or Debtors' Intra-Group Receivables will be treated as a Primary Creditor or a Secured Party for the purposes of this Agreement, to execute and deliver or enter into any agreement to dispose of:

- (A) all (and not part only) of the Liabilities owed to the Primary Creditors (other than to any Senior Agent or any Senior Arranger); and
- (B) all or part of any other Liabilities (other than Liabilities owed to any Senior Agent or any Senior Arranger) and the Debtors' Intra-Group Receivables,

on behalf of, in each case, the relevant Creditors and Debtors;

(f) ***transfer of obligations in respect of liabilities on a share sale/Appropriation:*** if the asset subject to the Distressed Disposal or Appropriation consists of shares in the capital of a Debtor or the Holding Company of a Debtor (the "**Disposed Entity**") and the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) decides to transfer to another Debtor (the "**Receiving Entity**") all or any part of the Disposed Entity's obligations or any obligations of any Subsidiary of that Disposed Entity in respect of:

- (i) the Intra-Group Liabilities; or
- (ii) the Debtor's Intra – Group Receivables,

to execute and deliver or enter into any agreement to:

- (A) agree to the transfer of all or part of the obligations in respect of those Intra-Group Liabilities or Debtors' Intra-Group Receivables on behalf of the relevant Intra-Group Lenders and Debtors to which those

obligations are owed and on behalf of the Debtors which owe those obligations; and

- (B) to accept the transfer of all or part of the obligations in respect of those Intra-Group Liabilities or Debtors' Intra-Group Receivables on behalf of the Receiving Entity or Receiving Entities to which the obligations in respect of those Intra-Group Liabilities or Debtors' Intra-Group Receivables are to be transferred.

Prior to the Senior Discharge Date the Second Lien Security Agent shall, concurrently with the Senior Security Agent, give all such equivalent releases as given by the Senior Security Agent as contemplated by this Clause 13 (including the release of the Transaction Security held by it) in order to give effect to this Clause 13.

**13.2 Form of Consideration for Distressed Disposals and Debt Disposals**

Subject to Clause 14.5 (*Security Agent Protection*), a Distressed Disposal or a Debt Disposal may be made in whole or in part for consideration in the form of cash or, if not for cash, for Non-Cash Consideration which is acceptable to the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent).

**13.3 Proceeds of Distressed Disposals and Debt Disposals**

The net proceeds of each Distressed Disposal and each Debt Disposal shall be paid, or distributed, to the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) for application in accordance with Clause 16 (*Application of Proceeds*) and, to the extent that:

- (a) any Liabilities Sale has occurred; or
- (b) any Appropriation has occurred,

as if that Liabilities Sale, or any reduction in the Secured Obligations resulting from that Appropriation, had not occurred.

**13.4 Fair value**

In the case of:

- (a) a Distressed Disposal; or
- (b) a Liabilities Sale,

effected by, or at the request of, the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent), the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) shall take reasonable care to obtain a fair market price having regard to the prevailing market conditions (though the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) shall have no obligation to postpone (or request the postponement of) any Distressed Disposal or Liabilities Sale in order to achieve a higher price).

**13.5 Fair value – safe harbours**

- (a) The Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) may seek to satisfy the requirement in Clause 13.4 (*Fair Value*) in any manner.
- (b) Without prejudice to the generality of paragraph (a) above, the requirement in Clause 13.4 (*Fair value*) shall be satisfied (and as between the Creditors and the Debtors shall be conclusively presumed to be satisfied) and the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) will be taken to have discharged all its obligations in this respect under this Agreement, the other Debt Documents and generally at law if:
  - (i) that Distressed Disposal or Liabilities Sale is made pursuant to any process or proceedings approved or supervised by or on behalf of any court of law;
  - (ii) that Distressed Disposal or Liabilities Sale is made by, at the direction of or under the control of, a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer (or any analogous officer in any jurisdiction) appointed in respect of a member of the Group or the assets of a member of the Group;
  - (iii) that Distressed Disposal or Liabilities Sale is made pursuant to a Competitive Sales Process; or
  - (iv) a Financial Adviser appointed by the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) pursuant to Clause 13.6 (*Appointment of Financial Adviser*) has delivered a Fairness Opinion to the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) in respect of that Distressed Disposal or Liabilities Sale.

### 13.6 **Appointment of Financial Adviser**

- (a) The Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) may engage, or approve the engagement of, (in each case on such terms as it may consider appropriate (including, without limitation, restrictions on that Financial Adviser's liability and the extent to which any advice, valuation or opinion may be relied on or disclosed)), pay for and rely on the services of a Financial Adviser to provide advice, a valuation or an opinion in connection with:
  - (i) a Distressed Disposal or a Debt Disposal;
  - (ii) the application or distribution of any proceeds of a Distressed Disposal or a Debt Disposal; or
  - (iii) any amount of Non-Cash Consideration which is subject to Clause 8.1 (*Turnover by the Creditors*).
- (b) For the purposes of paragraph (a) above, the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) shall act:

- (i) on the instructions of the Instructing Group if the Financial Adviser is providing a valuation for the purposes of Clause 14.2 (*Cash value of Non-Cash Recoveries*); or
- (ii) otherwise in accordance with Clause 13.7 (*Security Agent's Actions*).

### 13.7 Security Agent's Actions

For the purposes of Clause 13.1 (*Facilitation of Distressed Disposals and Appropriation*), Clause 13.2 (*Form of Consideration for Distressed Disposals and Debt Disposals*) and Clause 13.4 (*Fair value*) and Clause 13.5 (*Fair value – safe harbours*) the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) shall act:

- (a) in the case of an Appropriation or if the relevant Distressed Disposal is being effected by way of enforcement of the Transaction Security, in accordance with Clause 10.2 (*Manner of Enforcement*); and
- (b) in any other case, on the instructions of the Instructing Group.

## 14. Non-Cash Recoveries

### 14.1 Security Agent and Non-Cash Recoveries

To the extent the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) receives or recovers any Non-Cash Recoveries, it may (acting on the instructions of the Instructing Group) but without prejudice to its ability to exercise discretion under Clause 16.2 (*Prospective Liabilities*):

- (a) distribute those Non-Cash Recoveries pursuant to Clause 16 (*Application of Proceeds*) as if they were Cash Proceeds;
- (b) hold, manage, exploit, collect, realise and dispose of those Non-Cash Recoveries; and
- (c) hold, manage, exploit, collect, realise and distribute any resulting Cash Proceeds.

### 14.2 Cash value of Non-Cash Recoveries

- (a) The cash value of any Non-Cash Recoveries shall be determined by reference to a valuation obtained by the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) from a Financial Adviser appointed by the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) pursuant to Clause 13.6 (*Appointment of Financial Adviser*) taking into account any notional conversion made pursuant to Clause 16.4 (*Currency Conversion*), or as determined by the court in a Bankruptcy Case (as the case may be).
- (b) If any Non-Cash Recoveries are distributed pursuant to Clause 16 (*Application of Proceeds*), the extent to which such distribution is treated as discharging the Liabilities shall be determined by reference to the cash value of those Non-Cash Recoveries determined pursuant to paragraph (a) above.

### 14.3 Facility Agents and Non-Cash Recoveries

- (a) Subject to paragraph (b) below and to Clause 14.4 (*Alternative to Non-Cash Consideration*), if, pursuant to Clause 16.1 (*Order of Application*), a Facility Agent receives Non-Cash Recoveries for application towards the discharge of any Liabilities, that Facility Agent shall apply those Non-Cash Recoveries in accordance with the relevant Facility Agreement as if they were Cash Proceeds.
- (b) A Facility Agent may:
  - (i) use any reasonably suitable method of distribution, as it may determine in its discretion, to distribute those Non-Cash Recoveries in the order of priority that would apply under the relevant Facility Agreement if those Non-Cash Recoveries were Cash Proceeds;
  - (ii) hold any Non-Cash Recoveries through another person; and
  - (iii) hold any amount of Non-Cash Recoveries for so long as that Facility Agent shall think fit for later application pursuant to paragraph (a) above.

#### 14.4 **Alternative to Non-Cash Consideration**

- (a) If any Non-Cash Recoveries are to be distributed pursuant to Clause 16 (*Application of Proceeds*), the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) shall (prior to that distribution and taking into account the Liabilities then outstanding and the cash value of those Non-Cash Recoveries) notify the Primary Creditors entitled to receive those Non-Cash Recoveries pursuant to that distribution (the “**Entitled Creditors**”).
- (b) If:
  - (i) it would be unlawful for an Entitled Creditor to receive such Non-Cash Recoveries (or it would otherwise conflict with that Entitled Creditor’s constitutional documents for it to do so); and
  - (ii) that Entitled Creditor promptly so notifies the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) and supplies such supporting evidence as the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) may reasonably require,that Primary Creditor shall be a “**Cash Only Creditor**” and the Non-Cash Recoveries to which it is entitled shall be “**Retained Non-Cash**”.
- (c) To the extent that, in relation to any distribution of Non-Cash Recoveries, there is a Cash Only Creditor:
  - (i) the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) shall not distribute any Retained Non-Cash to that Cash Only Creditor (or to any Facility Agent on behalf of that Cash Only Creditor) but shall otherwise treat the Non-Cash Recoveries in accordance with this Agreement;



- (ii) if that Cash Only Creditor is a Senior Facility Creditor or a Second Lien Creditor the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) shall notify the relevant Facility Agent of that Cash Only Creditor's identity and its status as a Cash Only Creditor; and
  - (iii) to the extent notified pursuant to paragraph (ii) above, no Facility Agent shall distribute any of those Non-Cash Recoveries to that Cash Only Creditor.
- (d) Subject to Clause 14.5 (*Security Agent Protection*), the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) shall hold any Retained Non-Cash and shall, acting on the instructions of the Cash Only Creditor entitled to it, manage, exploit, collect, realise and dispose of that Retained Non-Cash for cash consideration and shall distribute any Cash Proceeds of that Retained Non-Cash to that Cash Only Creditor in accordance with Clause 16 (*Application of Proceeds*).
- (e) On any such distribution of Cash Proceeds which are attributable to a disposal of any Retained Non-Cash, the extent to which such distribution is treated as discharging the Liabilities due to the relevant Cash Only Creditor shall be determined by reference to:
- (i) the valuation which determined the extent to which the distribution of the Non-Cash Recoveries to the other Entitled Creditors discharged the Liabilities due to those Entitled Creditors; and
  - (ii) the Retained Non-Cash to which those Cash Proceeds are attributable.
- (f) Each Primary Creditor shall, following a request by the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) (acting in accordance with Clause 13.7 (*Security Agent's Actions*)), notify the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) of the extent to which paragraph (b)(i) above would apply to it in relation to any distribution or proposed distribution of Non-Cash Recoveries.

#### 14.5 **Security Agent Protection**

- (a) No Distressed Disposal or Debt Disposal may be made in whole or part for Non-Cash Consideration if the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) has reasonable grounds for believing that its receiving, distributing, holding, managing, exploiting, collecting, realising or disposing of that Non-Cash Consideration would have an adverse effect on it.
- (b) If Non-Cash Consideration is distributed to the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) pursuant to Clause 8.1 (*Turnover by the Creditors*) the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) may, at any time after notifying the Creditors entitled to that Non-Cash Consideration and notwithstanding any instruction from a Creditor or group of Creditors pursuant to the terms of any Debt Document, immediately realise and dispose of that Non-Cash Consideration for cash consideration (and distribute any Cash Proceeds of that Non-Cash Consideration to the relevant Creditors in accordance with Clause 16 (*Application of Proceeds*)) if the Senior Security

Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) has reasonable grounds for believing that holding, managing, exploiting or collecting that Non-Cash Consideration would have an adverse effect on it.

- (c) If the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) holds Retained Non-Cash for a Cash Only Creditor (each as defined in Clause 14.4 (*Alternative to Non-Cash Consideration*)) the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) may at any time, after notifying that Cash Only Creditor and notwithstanding any instruction from a Creditor or group of Creditors pursuant to the terms of any Debt Document, immediately realise and dispose of that Retained Non-Cash for cash consideration (and distribute any Cash Proceeds of that Retained Non-Cash to that Cash Only Creditor in accordance with Clause 16 (*Application of Proceeds*)) if the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) has reasonable grounds for believing that holding, managing, exploiting or collecting that Retained Non-Cash would have an adverse effect on it.

## **15. Further Assurance – Disposals and Releases**

### **15.1 Appointment – Power of Attorney**

Each Second Lien Creditor, Debtor, Subordinated Debtor and each Subordinated Creditor by way of security irrevocably appoints the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) as its attorney (with full power of substitution), on its behalf and in its name or otherwise, at such time until, in the case of:

- (a) a Second Lien Creditor, the Senior Discharge Date; and  
(b) a Debtor, a Subordinated Debtor and each Subordinated Creditor, the Final Discharge Date,

in each case, in such manner as the attorney thinks fit to do anything which it:

- (i) has authorised the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) to do under this Agreement; or  
(ii) is obliged to do but has not done under this Agreement within three Business Days after receiving notice from the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) requiring it to do so.

### **15.2 Ratification**

Each Second Lien Creditor, Debtor, Subordinated Debtor and Subordinated Creditor ratifies and confirms and agrees to ratify and confirm whatever any such attorney shall do in the exercise or purported exercise of the power of attorney granted by it in this Clause 15.

### **15.3 Delegation**

The Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) may delegate the power of attorney in Clause 15.1 (*Appointment – Power of Attorney*) on such terms as it sees fit.

#### 15.4 Further Assurances

Each Creditor, Subordinated Debtor and Debtor will:

- (a) do all things that the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) requests in order to give effect to Clause 12 (*Non-Distressed Disposals*) and Clause 13 (*Distressed Disposals and Appropriation*) (which shall include, without limitation, the execution of any assignments, transfers, releases or other documents that the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) may consider to be necessary to give effect to the releases or disposals contemplated by those Clauses); and
- (b) if the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) is not entitled to take any of the actions contemplated by those Clauses or if the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) requests that any Creditor or Debtor take any such action, take that action itself in accordance with the instructions of the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent),

*provided that* the proceeds of those disposals are applied in accordance with Clause 12 (*Non-Distressed Disposals*) or Clause 13 (*Distressed Disposals and Appropriation*) as the case may be.

### 16. Application of Proceeds

#### 16.1 Order of Application

Subject to Clause 16.2 (*Prospective Liabilities*), all amounts from time to time received or recovered by the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) pursuant to the terms of any Debt Document or in connection with the realisation or enforcement of all or any part of the Transaction Security, including, without limitation, any payment or distribution made in respect of all or any part of the Transaction Security in a Bankruptcy Case (for the purposes of this Clause 16, the “**Recoveries**”) shall be held by the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) on trust to apply them at any time as the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) (in its discretion) sees fit, to the extent permitted by applicable law (and subject to the provisions of this Clause 16), in the following order of priority:

- (a) **first**, in discharging any sums (including unpaid fees) owing to the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent), any Receiver or any Delegate;
- (b) **second**, in discharging all costs and expenses incurred by any Primary Creditor in connection with any realisation or enforcement of the Transaction Security taken in

accordance with the terms of this Agreement or any action taken at the request of the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) under Clause 6.5 (*Further Assurance – Insolvency Event*);

- (c) **third**, in payment or distribution to the Senior Agent on its own behalf and on behalf of the other Senior Facility Creditors for application towards the discharge of the Senior Liabilities (in accordance with the terms of the Senior Finance Documents);
- (d) **fourth**, in payment or distribution to the Second Lien Agent on its own behalf and on behalf of the other Second Lien Creditors for application (in accordance with the terms of the Second Lien Finance Documents) towards the discharge of the Second Lien Liabilities;
- (e) **fifth**, if none of the Debtors is under any further actual or contingent liability under any Senior Finance Document or Second Lien Finance Document, in payment or distribution to any person to whom the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) is obliged to pay or distribute in priority to any Debtor; and
- (f) **finally**, the balance, if any, in payment or distribution to the relevant Debtor.

## 16.2 **Prospective Liabilities**

Following a Distress Event the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) may, in its discretion:

- (a) hold any amount of the Recoveries which is in the form of cash, and any cash which is generated by holding, managing, exploiting, collecting, realising or disposing of any Non-Cash Consideration, in one or more interest bearing suspense or impersonal accounts in the name of the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) with such financial institution (including itself) as the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) shall think fit (the interest being credited to the relevant account); and
- (b) hold, manage, exploit, collect and realise any amount of the Recoveries which is in the form of Non-Cash Consideration,

in each case for so long as the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) shall think fit for later application under Clause 16.1 (*Order of Application*) in respect of:

- (i) any sum to any Security Agent, any Receiver or any Delegate; and
- (ii) any part of the Liabilities,

that the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) reasonably considers, in each case, might become due or owing at any time in the future.

## 16.3 **Investment of Cash Proceeds**

Prior to the application of the proceeds of the Security Property in accordance with Clause 16.1 (*Order of application*) the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) may, in its discretion, hold all or part of any Cash Proceeds in one or more interest bearing suspense or impersonal accounts in the name of the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) with such financial institution (including itself) and for so long as the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) shall think fit (the interest being credited to the relevant account) pending the application from time to time of those monies in the Senior Security Agent's (or, following the Senior Discharge Date, the Second Lien Security Agent's) discretion in accordance with the provisions of this Clause 16.

#### 16.4 **Currency Conversion**

- (a) For the purpose of, or pending the discharge of, any of the Secured Obligations the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) may:
  - (i) convert any moneys received or recovered by the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) (including, without limitation, any Cash Proceeds) from one currency to another, at the Senior Security Agent's (or, following the Senior Discharge Date, the Second Lien Security Agent's) Spot Rate of Exchange; and
  - (ii) notionally convert the valuation provided in any opinion or valuation from one currency to another, at the Senior Security Agent's (or, following the Senior Discharge Date, the Second Lien Security Agent's) Spot Rate of Exchange.
- (b) The obligations of any Debtor to pay in the due currency shall only be satisfied, in the case of:
  - (i) paragraph (a)(i) above, to the extent of the amount of the due currency purchased after deducting the costs of conversion; and
  - (ii) paragraph (a)(ii) above, to the extent of the amount of the due currency which results from the notional conversion referred to in that paragraph.

#### 16.5 **Permitted Deductions**

The Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) shall be entitled, in its discretion, (a) to set aside by way of reserve amounts required to meet and (b) to make and pay, any deductions and withholdings (on account of Taxes or otherwise) which it is or may be required by any law or regulation to make from any distribution or payment made by it under this Agreement, and to pay all Taxes which may be assessed against it in respect of any of the Charged Property, or as a consequence of performing its duties or exercising its rights, powers, authorities and discretions, or by virtue of its capacity as Security Agent under any of the Debt Documents or otherwise (other than in connection with its remuneration for performing its duties under this Agreement).

#### 16.6 **Good Discharge**

- (a) Any distribution or payment to be made in respect of the Secured Obligations by the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) may be made to the relevant Facility Agent on behalf of its Primary Creditors.
- (b) Any distribution or payment made as described in paragraph (a) above shall be a good discharge, to the extent of that payment or distribution, by the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent):
  - (i) in the case of a payment made in cash, to the extent of that payment; and
  - (ii) in the case of a distribution of Non-Cash Recoveries, as determined by Clause 14.2 (*Cash value of Non-Cash Recoveries*).
- (c) The Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) is under no obligation to make the payments to the Facility Agents under paragraph (a) above in the same currency as that in which the Liabilities owing to the relevant Primary Creditor are denominated pursuant to the relevant Debt Document.

#### 16.7 **Calculation of Amounts**

For the purpose of calculating any person's share of any amount payable to or by it, the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) shall be entitled to:

- (a) notionally convert the Liabilities owed to any person into a common base currency (decided in its discretion by the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent)), that notional conversion to be made at the spot rate at which the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) is able to purchase the notional base currency with the actual currency of the Liabilities owed to that person at the time at which that calculation is to be made; and
- (b) assume that all amounts received or recovered as a result of the enforcement or realisation of the Security Property are applied in discharge of the Liabilities in accordance with the terms of the Debt Documents under which those Liabilities have arisen.

#### 16.8 **Payments by the Senior Security Agent or Senior Agent**

- (a) Any payment made, or to be made, by the Senior Security Agent or Senior Agent (for and on behalf of itself and the other Senior Facility Creditors) for the benefit of a Second Lien Creditor pursuant to the terms of this Agreement shall be made to the Second Lien Security Agent or the Second Lien Agent only.
- (b) If, after the date of this Agreement, a change is made to the Second Lien Security Agent or the Second Lien Agent, the Senior Security Agent and the Senior Agent shall only make any payment to any new or replacement Second Lien Security Agent or the Second Lien Agent once the Senior Security Agent and the Senior Agent has satisfied all the necessary "*know your customer*" or other similar checks required to be undertaken by a Senior Facility Creditor.

## 17. Equalisation

### 17.1 Equalisation Definitions

For the purposes of this Clause 17:

“**Enforcement Date**” means the first date (if any) on which a Senior Facility Creditor takes enforcement action of the type described in paragraphs (a)(i), (iii), (iv) or (b) of the definition of “*Enforcement Action*” in accordance with the terms of this Agreement.

“**Exposure**” means, in relation to a Senior Lender, the aggregate amount of its participation (if any, and without double counting) in all Loans outstanding under the Senior Facility Agreement at the Enforcement Date (assuming all contingent liabilities which have become actual liabilities since the Enforcement Date to have been actual liabilities at the Enforcement Date (but not including, for these purposes only, any interest that would have accrued from the Enforcement Date to the date of actual maturity in respect of those liabilities) and assuming any transfer of claims between Senior Lenders pursuant to any loss-sharing arrangement in the Senior Facility Agreement which has taken place since the Enforcement Date to have taken place at the Enforcement Date) together with the aggregate amount of all accrued interest, fees and commission owed to it under the Senior Facility Agreement.

“**Utilisation**” means a “*Utilisation*” under and as defined in the Senior Facility Agreement or any Refinancing Equivalent.

### 17.2 Implementation of Equalisation

- (a) The provisions of this Clause 17 shall be applied at such time or times after the Enforcement Date as the Senior Security Agent shall consider appropriate.
- (b) Without prejudice to the generality of paragraph (a) above, if the provisions of this Clause 17 have been applied before all the Liabilities have matured and/or been finally quantified, the Senior Security Agent may elect to re-apply those provisions on the basis of revised Exposures and the Senior Facility Creditors shall make appropriate adjustment payments amongst themselves.

### 17.3 Equalisation

If, for any reason, any Senior Liabilities remain unpaid after the Enforcement Date and the resulting losses are not borne by the Senior Lenders in the proportions which their respective Exposures at the Enforcement Date bore to the aggregate Exposures of all the Senior Lenders at the Enforcement Date, the Senior Lenders will make such payments amongst themselves as the Senior Security Agent shall require to put the Senior Lenders in such a position that (after taking into account such payments) those losses are borne in those proportions.

### 17.4 Turnover of Enforcement Proceeds

If:

- (a) the Senior Security Agent or the Senior Agent is not entitled, for reasons of applicable law, to pay or distribute amounts received pursuant to the making of a demand under any guarantee, indemnity or other assurance against loss or the enforcement of the

Transaction Security to the Senior Facility Creditors but is entitled to pay or distribute those amounts to Primary Creditors (such Primary Creditors, the “**Receiving Creditors**”) who, in accordance with the terms of this Agreement, are subordinated in right and priority of payment to the Senior Facility Creditors; and

(b) the Senior Discharge Date has not yet occurred (nor would occur after taking into account such payments),

then the Receiving Creditors shall make such payments or distributions to the Senior Facility Creditors as the Senior Security Agent shall require to place the Senior Facility Creditors in the position they would have been in had such amounts been available for application against the Senior Liabilities.

#### 17.5 **Notification of Exposure**

Before each occasion on which it intends to implement the provisions of this Clause 17, the Senior Security Agent shall send notice to the Senior Agent (on behalf of the Senior Lenders) requesting that it notify it of, respectively, its Exposure and that of each Senior Lender (if any).

#### 17.6 **Default in Payment**

If a Primary Creditor fails to make a payment due from it under this Clause 17, the Senior Security Agent shall be entitled (but not obliged) to take action on behalf of the Senior Facility Creditor(s) to whom such payment was to be redistributed (subject to being indemnified to its satisfaction by such Senior Facility Creditor(s) in respect of costs) but shall have no liability or obligation towards such Senior Facility Creditor(s), any other Senior Facility Creditor or Primary Creditor as regards such default in payment and any loss suffered as a result of such default shall lie where it falls.

### 18. **Facilitation of Qualifying Senior Facility Refinancing**

#### 18.1 **Release of Transaction Security by Security Agent**

If, in relation to a Qualifying Senior Facility Refinancing, any amount received pursuant to the enforcement of the Transaction Security would not be available for application by the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) towards the discharge of the Refinancing Senior Liabilities in the order set out in paragraphs (a) to (f) of Clause 16.1 (*Order of Application*) to the same extent as that amount would have been available for application towards the discharge of the Senior Liabilities being refinanced, the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) is irrevocably authorised (at the cost of the Borrower and without any consent, sanction, authority or further confirmation from any Creditor, other Secured Party or Debtor) to release that Transaction Security if:

(a) immediately on such release, Security will be provided in favour of the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent), any Receiver, any Delegate, each Second Lien Creditor and each Senior Agent, Senior Arranger and Senior Lender under the Refinancing Senior Finance Documents over the same assets as under the relevant Security Document, on terms substantially the same



as the terms of that Security Document and subject to the same ranking as set out in Clause 2.2 (*Transaction Security*); and

- (b) that release and provision of Security would not have a material adverse effect on any of those Secured Parties *provided that* the retaking of Security and the restarting of any related Hardening Period shall not, in itself, constitute such a material adverse effect.

## 18.2 Facilitation

Subject to Clause 18.3 (*Exceptions*), each Secured Party shall, at the request (and cost) of the Borrower, promptly execute such documents and give such instructions to the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) as are reasonably necessary:

- (a) to provide substantially the same rights and remedies to the providers of any Refinancing Senior Facilities as those provided to the providers of the Initial Senior Facility in the Initial Senior Finance Documents including, without limitation, entering into further security, priority and intercreditor agreements; or
- (b) to implement successfully the terms of a Qualifying Senior Facility Refinancing by the providers of that refinancing and to give effect to the providing of Security as contemplated by this Clause 18 in respect of the Refinancing Senior Liabilities, including, without limitation, any amendment required to the terms of this Agreement or any other Senior Finance Document and any amendment, consent, waiver or release in respect of any Security Document and any grant of security pursuant to a new Security Document.

## 18.3 Exceptions

- (a) This Clause 18 shall not require any Secured Party to facilitate a release of, or amendment to, the Transaction Security or any guarantee, indemnity or other assurance against loss if so doing would have a material adverse effect on any Security Agent, Receiver, Delegate, Second Lien Creditor or any Senior Agent, Senior Arranger or Senior Lender under the Refinancing Senior Finance Documents *provided that* the retaking of Security or assurance against loss, and the restarting of any related Hardening Period, shall not, in itself, constitute such a material adverse effect.
- (b) This Clause 18 shall not require any Party to provide financial accommodation to any member of the Group in connection with, or otherwise to participate in, a Qualifying Senior Facility Refinancing.

## 19. Not Used

## 20. Changes to the Parties

### 20.1 Assignments and Transfers

No Party may:

- (a) assign any of its rights; or
- (b) transfer any of its rights and obligations,

in respect of any Debt Documents or the Liabilities except as permitted by this Clause 20.

#### 20.2 **No Change of Debtor/Subordinated Debtor**

Neither a Debtor nor a Subordinated Debtor may:

- (a) assign any of its rights; or
- (b) transfer any of its rights and obligations,

until after the Final Discharge Date.

#### 20.3 **Change of Subordinated Creditor**

No Subordinated Creditor may:

- (a) assign any of its rights;
- (b) transfer any of its rights and obligations; or
- (c) declare or create any trust of any of its rights, title, interest or benefits,

in respect of this Agreement, a Subordinated Liabilities Document or any Subordinated Liabilities to, or in favour of, any person.

#### 20.4 **Accession of Subordinated Creditors**

No person shall become a Subordinated Creditor unless and until:

- (a) that person is permitted to become a Subordinated Creditor by:
  - (i) prior to the Senior Discharge Date, the Senior Finance Documents; and
  - (ii) following the Senior Discharge Date, the Second Lien Finance Documents;
- (b) that person delivers to the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) a duly completed Creditor Accession Undertaking; and
- (c) the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) executes a Creditor Accession Undertaking duly completed and signed by that person.

#### 20.5 **New Subordinated Creditor**

If any person proposes to make any loan to, or grant any credit to, or makes any other financial arrangement having similar effect with, any Debtor, the Borrower will procure that such person giving, proposing to give, that loan, granting that credit or making that other financial arrangement (if not already a Party as a Subordinated Creditor) accedes to this Agreement as a

“Subordinated Creditor”, pursuant to Clause 20.8 (*Creditor Accession Undertaking*) prior to giving such loan, granting that credit or making that other financial arrangement.

#### 20.6 **Change of Senior Lender or Second Lien Lender**

A Senior Lender or a Second Lien Lender may:

- (a) assign any of its rights; or
- (b) transfer by novation any of its rights and obligations,

in respect of any Debt Documents or the Liabilities if:

- (i) that assignment or transfer is in accordance with the terms of the Facility Agreement to which it is a party; and
- (ii) any assignee or transferee has (if not already a Party as a Senior Lender or Second Lien Lender (as the case may be)) acceded to this Agreement, as a Senior Lender or a Second Lien Lender (as the case may be), pursuant to Clause 20.8 (*Creditor Accession Undertaking*).

#### 20.7 **Change of Facility Agent or Security Agent**

No person shall become a Facility Agent or a Security Agent unless at the same time, it accedes to this Agreement as a Senior Agent or Second Lien Agent (as the case may be) or a Senior Security Agent or Second Lien Security Agent (as the case may be), pursuant to Clause 20.8 (*Creditor Accession Undertaking*).

#### 20.8 **Creditor Accession Undertaking**

With effect from the date of acceptance by the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) and, (prior to the completion of a Qualifying Senior Facility Refinancing) by the Senior Agent, of a Creditor Accession Undertaking duly executed and delivered to the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) by the relevant acceding party or, if later, the date specified in that Creditor Accession Undertaking:

- (a) any Party ceasing entirely to be a Creditor shall be discharged from further obligations towards the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) and other Parties under this Agreement and their respective rights against one another shall be cancelled (except in each case for those rights which arose prior to that date); and
- (b) as from that date, the replacement or new Creditor shall assume the same obligations and become entitled to the same rights, as if it had been an original Party in the capacity specified in the Creditor Accession Undertaking.

#### 20.9 **New Debtor**

- (a) If any member of the Group becomes a Subsidiary Guarantor in accordance with clause 21.5 (*Additional Domestic Subsidiaries*) of the Senior Facility Agreement (or clause 20.5 (*Additional Domestic Subsidiaries*) of the Second Lien Facility Agreement, the

Borrower will procure that such Subsidiary Guarantor accedes to this Agreement as a Debtor and Subordinated Debtor.

- (b) With effect from the date of acceptance by the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) of a Debtor Accession Deed duly executed and delivered to the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) by the new Debtor or, if later, the date specified in the Debtor Accession Deed, the new Debtor shall assume the same obligations and become entitled to the same rights as if it had been an original Party as a Debtor and Subordinated Debtor.

#### 20.10 Additional Parties

Each of the Parties appoints the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) to receive on its behalf each Debtor Accession Deed and Creditor Accession Undertaking delivered to the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) and the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) shall, as soon as reasonably practicable after receipt by it, sign and accept the same if it appears on its face to have been completed, executed and, where applicable, delivered in the form contemplated by this Agreement or, where applicable, by the relevant Facility Agreement.

### 21. Costs and Expenses

#### 21.1 Transaction Expenses

The Borrower shall, promptly on demand, pay the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) the amount of all costs and expenses (including legal fees) (together with any applicable VAT) reasonably incurred by the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) and by any Receiver or Delegate in connection with the negotiation, preparation, printing, execution and perfection of:

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

#### 21.2 Amendment Costs

If a Debtor requests an amendment, waiver or consent, the Borrower shall, within three Business Days of demand, reimburse the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) for the amount of all costs and expenses (including legal fees) (together with any applicable VAT) reasonably incurred by the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) (and by any Receiver or Delegate) in responding to, evaluating, negotiating or complying with that request or requirement.

#### 21.3 Enforcement and Preservation Costs

The Borrower shall, within three Business Days of demand, pay to the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) the amount of all costs and expenses (including legal fees and together with any applicable VAT) incurred by it in connection with the enforcement of or the preservation of any rights under any Debt Document and the Transaction Security and any proceedings instituted by or against the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) as a consequence of taking or holding the Transaction Security or enforcing these rights.

#### 21.4 Stamp Taxes

The Borrower shall pay and, within three Business Days of demand, indemnify the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) against any cost, loss or liability the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Debt Document.

#### 21.5 Interest on Demand

If any Creditor or Debtor fails to pay any amount payable by it under this Agreement on its due date, interest shall accrue on the overdue amount (and be compounded with it) from the due date up to the date of actual payment (both before and after judgment and to the extent interest at a default rate is not otherwise being paid on that sum) at the rate which is 2% per annum over the rate at which the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) would be able to obtain by placing on deposit with a leading bank an amount comparable to the unpaid amounts in the currencies of those amounts for any period(s) that the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) may from time to time select *provided that* if any such rate is below zero, that rate will be deemed to be zero.

## 22. Others Indemnities

### 22.1 Indemnity to a Security Agent

- (a) Each Debtor jointly and severally shall promptly indemnify a Security Agent and every Receiver and Delegate against any cost, loss or liability (together with any applicable VAT) incurred by any of them as a result of:
- (i) any failure by the Borrower to comply with its obligations under Clause 21 (*Costs and Expenses*);
  - (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
  - (iii) the taking, holding, protection or enforcement of the Transaction Security;
  - (iv) the exercise of any of the rights, powers, discretions, authorities and remedies vested in a Security Agent, each Receiver and each Delegate by the Debt Documents or by law;

- (v) any default by any Debtor in the performance of any of the obligations expressed to be assumed by it in the Debt Documents;
  - (vi) instructing lawyers, accountants, tax advisers, surveyors, a Financial Adviser or other professional advisers or experts as permitted under this Agreement; or
  - (vii) acting as Security Agent, Receiver or Delegate under the Debt Documents or which otherwise relates to any of the Security Property (otherwise, in each case, than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct).
- (b) Each Debtor expressly acknowledges and agrees that the continuation of its indemnity obligations under this Clause 22.1 will not be prejudiced by any release or disposal under Clause 13 (*Distressed Disposals and Appropriation*) taking into account the operation of that Clause 13.
- (c) Each Security Agent and every Receiver and Delegate may, in priority to any payment to the Secured Parties, indemnify itself out of the Charged Property in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this Clause 22.1 and shall have a lien on the Transaction Security and the proceeds of the enforcement of the Transaction Security for all moneys payable to it.

## 22.2 **Borrower's indemnity to Primary Creditors**

The Borrower shall promptly and as principal obligor indemnify each Primary Creditor against any cost, loss or liability (together with any applicable VAT), whether or not reasonably foreseeable, incurred by any of them in relation to or arising out of the operation of Clause 13 (*Distressed Disposals and Appropriation*).

## 23. **Information**

### 23.1 **Dealings with Security Agent and Facility Agents**

Each Senior Facility Creditor and Second Lien Creditor shall deal with its Security Agent exclusively through its Facility Agent.

### 23.2 **Disclosure between Primary Creditors and Security Agents**

Notwithstanding any agreement to the contrary, each of the Debtors and the Subordinated Creditors consents, until the Final Discharge Date, to the disclosure by any Primary Creditor and a Security Agent to each other (whether or not through a Facility Agent or a Security Agent) of such information concerning the Debtors and the Subordinated Creditors as any Primary Creditor or a Security Agent shall see fit.

### 23.3 **Notification of prescribed events**

- (a) If a Senior Event of Default either occurs or ceases to be continuing the Senior Agent shall, upon becoming aware of that occurrence or cessation, notify the Second Lien Security Agent and the Second Lien Security Agent shall, upon receiving that notification, notify the Second Lien Agent.

- (b) If a Second Lien Event of Default either occurs or ceases to be continuing the Second Lien Agent shall, upon becoming aware of that occurrence or cessation, notify the Senior Security Agent and the Senior Security Agent shall, upon receiving that notification, notify the Senior Agent.
- (c) If a Senior Payment Default either occurs or ceases to be continuing the Senior Agent shall notify the Second Lien Security Agent and the Second Lien Security Agent shall, upon receiving that notification, notify the Second Lien Agent.
- (d) If a Senior Acceleration Event occurs the Senior Agent shall notify the Borrower and the Second Lien Agent.
- (e) If a Second Lien Acceleration Event occurs the Second Lien Agent shall notify each other Party.
- (f) If any Second Lien Creditor takes any action permitted under Clause 4.9 (*Limited Permitted Enforcement: Second Lien Creditors*), such Second Lien Creditor shall promptly notify each Facility Agent.
- (g) If the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) enforces, or takes formal steps to enforce, any of the Transaction Security it shall notify each Facility Agent of that action.
- (h) If any Primary Creditor exercises any right it may have to enforce, or to take formal steps to enforce, any of the Transaction Security it shall notify the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) and the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) shall, upon receiving that notification, notify each Party of that action.
- (i) If a Senior Mandatory Prepayment is waived the Senior Agent shall notify the Second Lien Security Agent of the amount of the Senior Mandatory Prepayment waived and the Second Lien Security Agent shall, upon receiving that notification, notify the Second Lien Agent.
- (j) If the Senior Security Agent receives a notice under paragraph (a) of Clause 4.10 (*Option to Purchase: Second Lien Lenders*) it shall upon receiving that notice, notify, and send a copy of that notice to, the Senior Agent.
- (k) Each Subordinated Creditor will notify the Senior Agent and the Second Lien Agent of the occurrence of any event of default (howsoever described) in respect of the Subordinated Liabilities promptly upon becoming aware of its occurrence.
- (l) The Borrower will:
  - (i) on written request of the Senior Agent, acting reasonably, from time to time, notify the Senior Agent in writing of the details of the aggregate amount of the Subordinated Liabilities and/or Second Lien Liabilities outstanding at any time; and
  - (ii) notify the Senior Agent and the Second Lien Agent of any amendment, termination or waiver of a Subordinated Liabilities Document.

#### 23.4 **Notifications by the Senior Agent or Senior Security Agent**

Any notice to be given by the Senior Security Agent or the Senior Agent (for and on behalf of itself and the other Senior Facility Creditors) for the benefit of a Second Lien Creditor pursuant to the terms of this Agreement shall be made to the Second Lien Security Agent or the Second Lien Agent only.

### 24. **Notices**

#### 24.1 **Communications in Writing**

Any communication to be made under or in connection with this Agreement shall be made in writing and, unless otherwise stated, may be made by fax or letter.

#### 24.2 **Security Agent's Communications with Primary Creditors**

- (a) The Senior Security Agent shall be entitled to carry out all dealings with the Primary Creditors through its respective Facility Agent and may give to the relevant Facility Agent, as applicable, any notice, document or other communication required to be given by the Senior Security Agent to such Primary Creditor.
- (b) The Second Lien Security Agent shall be entitled to carry out all dealings with the Second Lien Creditors through the Second Lien Facility Agent and may give to the Second Lien Facility Agent, any notice, document or other communication required to be given by the Second Lien Security Agent to a Second Lien Creditor.

#### 24.3 **Addresses**

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Agreement is:

- (a) in the case of a Debtor, a Subordinated Debtor and a Subordinated Creditor, that identified with its name below;
- (b) in the case of each Security Agent, that identified with its name below; and
- (c) in the case of each other Party, that notified in writing to the Security Agent on or prior to the date on which it becomes a Party,

or any substitute address, fax number or department or officer which that Party may notify to a Security Agent (or a Security Agent may notify to the other Parties, if a change is made by a Security Agent) by not less than five Business Days' notice.

#### 24.4 **Delivery**

- (a) Any communication or document made or delivered by one person to another under or in connection with this Agreement will only be effective:
  - (i) if by way of fax, when received in legible form; or



- (ii) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 24.3 (*Addresses*), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to a Security Agent will be effective only when actually received by a Security Agent and then only if it is expressly marked for the attention of the department or officer identified with that Security Agent's signature below (or any substitute department or officer as that Security Agent shall specify for this purpose).
- (c) Any communication or document made or delivered to the Borrower in accordance with this Clause 24.4 will be deemed to have been made or delivered to each of the Debtors.
- (d) Any communication or document which becomes effective, in accordance with paragraphs (a) to (c) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

#### 24.5 **Notification of Address and Fax Number**

Promptly upon receipt of notification of an address and fax number or change of address or fax number pursuant to Clause 24.3 (*Addresses*) or changing its own address or fax number, a Security Agent shall notify the other Parties.

#### 24.6 **Electronic Communication**

- (a) Any communication to be made between any two Parties under or in connection with this Agreement may be made by electronic mail or other electronic means (including, without limitation, by way of posting to a secure website) if those two Parties:
  - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means; and
  - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.
- (b) Any such electronic communication as specified in paragraph (a) above to be made between a Subordinated Creditor, a Subordinated Debtor or a Debtor and a Security Agent or a Primary Creditor may only be made in that way to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication.
- (c) Any such electronic communication as specified in paragraph (a) above made between any two Parties will be effective only when actually received (or made available) in readable form and in the case of any electronic communication made by a Party to a Security Agent only if it is addressed in such a manner as a Security Agent shall specify for this purpose.

- (d) Any electronic communication which becomes effective, in accordance with paragraph (c) above, after 5:00 p.m. in the place in which the Party to whom the relevant communication is sent or made available has its address for the purpose of this Agreement shall be deemed only to become effective on the following day.
- (e) Any reference in this Agreement to a communication being sent or received shall be construed to include that communication being made available in accordance with this Clause 24.6.

**24.7 English Language**

- (a) Any notice given under or in connection with this Agreement must be in English.
- (b) All other documents provided under or in connection with this Agreement must be:
  - (i) in English; or
  - (ii) if not in English, and if so required by a Security Agent, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

**25. Preservation**

**25.1 Partial Invalidity**

If, at any time, any provision of a Debt Document is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of that provision under the law of any other jurisdiction will in any way be affected or impaired.

**25.2 No Impairment**

If, at any time after its date, any provision of a Debt Document (including this Agreement) is not binding on or enforceable in accordance with its terms against a person expressed to be a party to that Debt Document, neither the binding nature nor the enforceability of that provision or any other provision of that Debt Document will be impaired as against the other party(ies) to that Debt Document.

**25.3 Remedies and Waivers**

No failure to exercise, nor any delay in exercising, on the part of any Party, any right or remedy under a Debt Document shall operate as a waiver of any such right or remedy or constitute an election to affirm any Debt Document. No election to affirm any Debt Document on the part of a Secured Party shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in each Debt Document are cumulative and not exclusive of any rights or remedies provided by law.

**25.4 Waiver of Defences**

The provisions of this Agreement or any Transaction Security will not be affected by an act, omission, matter or thing which, but for this Clause 25.4, would reduce, release or prejudice the subordination and priorities expressed to be created by this Agreement including (without limitation and whether or not known to any Party):

- (a) any time, waiver or consent granted to, or composition with, any Debtor or other person;
- (b) the release of any Debtor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Debtor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any Debtor or other person;
- (e) any amendment, novation, supplement, extension (whether of maturity or otherwise) or restatement (in each case, however fundamental and of whatsoever nature, and whether or not more onerous) or replacement of a Debt Document or any other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Debt Document or any other document or security;
- (g) any intermediate Payment of any of the Liabilities owing to the Primary Creditors in whole or in part; or
- (h) any insolvency or similar proceedings.

## **26. Consents and Amendments**

### **26.1 Required Consents**

- (a) Subject to paragraph (b) below and Clause 26.4 (*Exceptions*):
  - (i) Clause 17.1 (*Equalisation Definitions*) to Clause 17.3 (*Equalisation*) may be amended or waived with the consent of the Senior Agent, the Majority Senior Lenders and the Senior Security Agent to the extent that that amendment or waiver does not affect the Second Lien Creditors; and
  - (ii) subject to paragraph (a)(i) above, this Agreement may be amended or waived only with the consent of the Facility Agents, the Majority Senior Lenders, the Majority Second Lien Lenders and each Security Agent.

- (b) An amendment or waiver that has the effect of changing or which relates to:
- (i) Clause 4.10 (*Option to Purchase: Second Lien Lenders*), Clause 9 (*Redistribution*), Clause 16 (*Application of Proceeds*) or this Clause 26 (*Consents and Amendments*); or
  - (ii) the order of priority or subordination under this Agreement,
- shall not be made without the consent of:
- (A) the Facility Agents;
  - (B) the Senior Lenders;
  - (C) the Second Lien Lenders; and
  - (D) each Security Agent.

## 26.2 Amendments and Waivers: Transaction Security Documents

- (a) Subject to paragraph (b) below and to Clause 26.4 (*Exceptions*) and unless the provisions of any Debt Document expressly provide otherwise, the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) may, if authorised by the Instructing Group, and if the Borrower consents, amend the terms of, waive any of the requirements of or grant consents under, any of the Transaction Security Documents which shall be binding on each Party.
- (b) Subject to paragraph (c) of Clause 26.4 (*Exceptions*), any amendment or waiver of, or consent under, any Transaction Security Document which has the effect of changing or which relates to:
- (i) the nature or scope of the Charged Property;
  - (ii) the manner in which the proceeds of enforcement of the Transaction Security are distributed; or
  - (iii) the release of any Transaction Security,
- shall not be made without the prior consent of the Senior Facility Creditors whose consent to that amendment, waiver or consent is required under the Senior Facility Agreement and the Second Lien Creditors whose consent to that amendment, waiver or consent is required under the Second Lien Facility Agreement.
- (c) Prior to the Senior Discharge Date and subject to paragraph (b) above, each Second Lien Creditor agrees to amend the terms of, waive any of the requirements of, and grant any consent under, the Second Lien Security Documents that are equivalent to such amendments, waivers and consents granted by the Senior Facility Creditors in accordance with paragraph (a) above.

## 26.3 Effectiveness

- (a) Any amendment, waiver or consent given in accordance with this Clause 26 will be binding on all Parties and the Senior Security Agent (or, following the Senior Discharge

Date, the Second Lien Security Agent) may effect, on behalf of any Primary Creditor, any amendment, waiver or consent permitted by this Clause 26.

- (b) The Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) may engage, pay for and rely on the services of lawyers in determining the consent level required for and effecting any amendment, waiver or consent under this Agreement.

#### 26.4 Exceptions

- (a) Subject to paragraphs (c) and (d) below, if the amendment, waiver or consent may impose new or additional obligations on or withdraw or reduce the rights of any Party other than:

- (i) in the case of a Primary Creditor (other than any Facility Agent or any Senior Arranger), in a way which affects or would affect Primary Creditors of that Party's class generally; or
- (ii) in the case of a Debtor, to the extent consented to by the Borrower under paragraph (a) of Clause 26.2 (*Amendments and Waivers: Transaction Security Documents*),

the consent of that Party is required.

- (b) Subject to paragraphs (c) and (d) below, an amendment, waiver or consent which relates to the rights or obligations of a Facility Agent, a Senior Arranger or a Security Agent (including, without limitation, any ability of a Security Agent to act in its discretion under this Agreement) may not be effected without the consent of that Facility Agent or, as the case may be, that Senior Arranger or a Security Agent.

- (c) Neither paragraph (a) nor (b) above, nor paragraph (b) of Clause 26.2 (*Amendments and Waivers: Transaction Security Documents*) shall apply:

- (i) to any release of Transaction Security, claim or Liabilities; or
- (ii) to any consent,

which, in each case, the Senior Security Agent (or, following the Senior Discharge Date, the Second Lien Security Agent) gives in accordance with Clause 12 (*Non-Distressed Disposals*), Clause 13 (*Distressed Disposals and Appropriation*), or Clause 18 (*Facilitation of Qualifying Senior Facility Refinancing*).

- (d) Paragraphs (a) and (b) above shall apply to a Senior Arranger only to the extent that Liabilities are then owed to that Senior Arranger.

#### 26.5 Second Lien Commitments

If in relation to:

- (a) a request for a Consent in relation to any of the terms of this Agreement;

- (b) a request to participate in any other vote of Second Lien Creditors under the terms of this Agreement;
- (c) a request to approve any other action under this Agreement; or
- (d) a request to provide any confirmation or notification under this Agreement,

any Second Lien Creditor fails to respond to that request within 15 Business Days of that request being made:

- (i) in the case of paragraphs (a) to (c) above, that Second Lien Creditor's Second Lien Commitment shall be deemed to be zero for the purpose of calculating the Second Lien Commitments when ascertaining whether any relevant percentage (including, for the avoidance of doubt, unanimity) of the Second Lien Commitments has been obtained to give that Consent, carry that vote or approve that action;
- (ii) in the case of paragraphs (a) to (c) above, that Second Lien Creditor's status as a Second Lien Creditor shall be disregarded for the purposes of ascertaining whether the agreement of any specified group of Second Lien Creditors has been obtained to give that Consent, carry that vote or approve that action; and
- (iii) in the case of paragraph (d) above, that confirmation or notification shall be deemed to have been given.

#### 26.6 Deemed Consent

- (a) If, at any time prior to the Senior Discharge Date, the Senior Facility Creditors give a Consent in respect of the Senior Finance Documents then, if that action was permitted by the terms of this Agreement, the Second Lien Creditors, the Subordinated Debtors and the Subordinated Creditors will (or will be deemed to):
  - (i) give a corresponding Consent in equivalent terms in relation to each of the Debt Documents to which they are a party; and
  - (ii) do anything (including executing any document) that the Senior Facility Creditors may reasonably require to give effect to this paragraph (a).
- (b) If, at any time on or after the Senior Discharge Date and before the Second Lien Discharge Date, the Second Lien Creditors give a Consent in respect of the Second Lien Finance Documents then, if that action was permitted by the terms of this Agreement, the Subordinated Debtors and the Subordinated Creditors will (or will be deemed to):
  - (i) give a corresponding Consent in equivalent terms in relation to each of the Debt Documents to which they are a party; and
  - (ii) do anything (including executing any document) that the Second Lien Creditors may reasonably require to give effect to this paragraph (b).

#### 26.7 No Liability

None of the Senior Facility Creditors will be liable to any other Creditor, or Debtor for any Consent given or deemed to be given under this Clause 26.

## 27. **Anti-Layering**

Subject to the terms of this Agreement and until the Final Discharge Date, no Debtor shall, without the approval of the Majority Second Lien Lenders and any approvals required in accordance with the Senior Finance Documents, issue or allow to remain outstanding any Liabilities that:

- (a) are secured or expressed to be secured by the Transaction Security Documents on a basis (i) junior to any of the Senior Liabilities but (ii) senior to the Second Lien Liabilities;
- (b) are expressed to rank or rank so that they are subordinated to any of the Senior Liabilities but are senior to the Second Lien Liabilities; or
- (c) are contractually subordinated in right of payment to any of the Senior Liabilities and senior in right of payment to the Second Lien Liabilities.

## 28. **Counterparts**

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

## 29. **Governing law**

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

## 30. **Enforcement**

### 30.1 **Jurisdiction**

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a “**Dispute**”).
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) Notwithstanding paragraph (a) above, no Secured Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Secured Parties may take concurrent proceedings in any number of jurisdictions.

## 30.2 Service of Process

- (a) Without prejudice to any other mode of service allowed under any relevant law:
  - (i) each Debtor, Subordinated Debtor and Subordinated Creditor (other than Thermo):
    - (A) irrevocably appoints WFW Legal Services Limited of 15 Appold Street, London EC2A 2HB as its agent for service of process in relation to any proceedings before the English courts in connection with this Agreement; and
    - (B) agrees that failure by a process agent to notify the relevant Debtor of the process will not invalidate the proceedings concerned; and
  - (ii) Thermo in its capacity as a Subordinated Creditor (and not in any other capacity):
    - (A) irrevocably appoints WFW Legal Services Limited of 15 Appold Street, London EC2A 2HB as its agent for service of process in relation to any proceedings before the English courts in connection with this Agreement; and
    - (B) agrees that failure by a process agent to notify Thermo of the process will not invalidate the proceedings concerned.
- (b) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Borrower (in the case of an agent for service of process for a Debtor, a Subordinated Debtor or a Subordinated Creditor (other than Thermo)) or Thermo must immediately (and in any event within 5 days of such event taking place) appoint another agent on terms acceptable to the Senior Agent or, after the Senior Discharge Date, the Second Lien Agent. Failing this, the Senior Agent or the Second Lien Agent (as the case may be) may appoint another agent for this purpose.

**This Agreement has been entered into on the date stated at the beginning of this Agreement and executed as a deed by the Parties and is intended to be and is delivered by them as a deed on the date specified above.**



**Schedule 1****The Original Parties****Part 1****The Original Debtors**

<b>Name of Original Debtor</b>	<b>Registration/Identification number (or equivalent, if any) Original Jurisdiction</b>
Globalstar, Inc.	3731110
GSSI, LLC	3732317
Globalstar Security Services, LLC,	3747502
Globalstar C, LLC	3732313
Globalstar USA, LLC	2663064
Globalstar Leasing LLC	3731109
Spot LLC	20071321209
ATSS Canada, Inc.	2706412
Globalstar Brazil Holdings, L.P.	2453576
GCL Licensee LLC	4187922
GUSA Licensee LLC	4187919
Globalstar Licensee LLC	4187920
Globalstar Media, L.L.C.	40224959K
Globalstar Broadband Services Inc.	4833062
Globalstar International, LLC	6438610
Globalstar Holding US, LLC	6508346

**Part 2****The Original Subordinated Creditors**

<b>Name of Original Subordinated Creditor</b>	<b>Registration/Identification number (or equivalent, if any) Original Jurisdiction</b>
Thermo Funding Company LLC	20061128733
Globalstar, Inc.	3731110
GSSI, LLC	3732317
Globalstar Security Services, LLC,	3747502
Globalstar C, LLC	3732313
Globalstar USA, LLC	2663064
Globalstar Leasing LLC	3731109
Spot LLC	20071321209
ATSS Canada, Inc.	2706412
Globalstar Brazil Holdings, L.P.	2453576
GCL Licensee LLC	4187922
GUSA Licensee LLC	4187919
Globalstar Licensee LLC	4187920
Globalstar Media, L.L.C.	40224959K
Globalstar Broadband Services Inc.	4833062
Globalstar International, LLC	6438610
Globalstar Holding US, LLC	6508346

### Part 3

#### The Original Subordinated Debtors

<b>Name of Original Subordinated Debtor</b>	<b>Registration/Identification number (or equivalent, if any) Original Jurisdiction</b>
Globalstar, Inc.	3731110
GSSI, LLC	3732317
Globalstar Security Services, LLC,	3747502
Globalstar C, LLC	3732313
Globalstar USA, LLC	2663064
Globalstar Leasing LLC	3731109
Spot LLC	20071321209
ATSS Canada, Inc.	2706412
Globalstar Brazil Holdings, L.P.	2453576
GCL Licensee LLC	4187922
GUSA Licensee LLC	4187919
Globalstar Licensee LLC	4187920
Globalstar Media, L.L.C.	40224959K
Globalstar Broadband Services Inc.	4833062
Globalstar International, LLC	6438610
Globalstar Holding US, LLC	6508346

## Schedule 2

### Form of Debtor Accession Deed

**This Agreement** is made on [•] and made between:

- (1) [Insert Full Name of New Debtor] (the “**Acceding Debtor**”);
- (2) [Insert Full Name of Senior Security Agent] (the “**Senior Security Agent**”),<sup>1\*</sup> for itself and each of the other parties to the intercreditor agreement referred to below (other than the Second Lien Creditors); and
- (3) [Insert Full Name of Second Lien Security Agent] (the “**Second Lien Security Agent**”), for itself and each of the other Second Lien Creditors.

This agreement is made on [date] by the Acceding Debtor in relation to an intercreditor agreement (the “**Intercreditor Agreement**”) dated [•] 2019 between, amongst others, Globalstar, Inc., as the Borrower, BNP Paribas as Senior Security Agent, Global Loan Agency Services Limited as Second Lien Security Agent, the other Creditors and the other Debtors (each as defined in the Intercreditor Agreement).

The Acceding Debtor intends to [incur Liabilities under the following documents]/[give a guarantee, indemnity or other assurance against loss in respect of Liabilities under the following documents]:

[Insert details (date, parties and description) of relevant documents] the “**Relevant Documents**”.

**It is Agreed** as follows:

1. Terms defined in the Intercreditor Agreement shall, unless otherwise defined in this Agreement, bear the same meaning when used in this Agreement.
2. The Acceding Debtor and the [Senior Security Agent]/[Second Lien Security Agent] agree that the [Senior Security Agent]/[Second Lien Security Agent] shall hold:
  - (a) [any Security in respect of Liabilities created or expressed to be created pursuant to the Relevant Documents;
  - (b) all proceeds of that Security; and] <sup>2\*\*</sup>
  - (c) all obligations expressed to be undertaken by the Acceding Debtor to pay amounts in respect of the Liabilities to the Security Agent as trustee and agent for the Secured Parties (in the Relevant Documents or otherwise) and secured by the Transaction Security together with all representations and warranties expressed to be given by the Acceding Debtor (in the Relevant Documents or otherwise) in favour of the Security Agent as trustee and agent for the Secured Parties,

on trust for the [Finance Parties] [(as such term is defined in the [Senior Facility Agreement]/[Second Lien Facility Agreement])] on the terms and conditions contained in the Intercreditor Agreement and the [Senior Facility Agreement]/[Second Lien Facility Agreement].

<sup>1</sup> \*This will be the Senior Security Agent only prior to the Senior Discharge Date. The Senior Security Agent is not required to sign following the Senior Discharge Date.

<sup>2</sup> \*\*Include to the extent that the Security created in the Relevant Documents is expressed to be

granted to the Security Trustee as trustee for the Secured Parties.

3. The Acceding Debtor confirms that it intends to be party to the Intercreditor Agreement as a [Debtor]/[Subordinated Debtor], undertakes to perform all the obligations expressed to be assumed by a Debtor under the Intercreditor Agreement and agrees that it shall be bound by all the provisions of the Intercreditor Agreement as if it had been an original party to the Intercreditor Agreement.
4. [In consideration of the Acceding Debtor being accepted as a Subordinated Debtor for the purposes of the Intercreditor Agreement, the Acceding Debtor also confirms that it intends to be party to the Intercreditor Agreement as a [Subordinated Creditor], and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by an [Subordinated Creditor] and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement]. 3\*\*\*

[4]/[5] This Agreement and any non-contractual obligations arising out of or in connection with it are governed by, English law.

**This Agreement** has been signed on behalf of the Security Agent and executed as a deed by the Acceding Debtor and is delivered on the date stated above.

**The Acceding Debtor**

[Executed as a Deed ) By: [Full Name of Acceding Debtor] )

Director

Director/Secretary

**OR**

[Executed as a Deed

By: [Full name of Acceding Debtor]

Signature of Director

Name of Director in the presence of

Signature of witness

Name of witness

Address of witness

Occupation of witness]

Address for notices: Address:

Email:

<sup>3</sup>\*\*\*Include this paragraph in the relevant Debtor Accession Deed if the Acceding Debtor is also to accede as a Subordinated Creditor to the Intercreditor Agreement.

**The Security Agent**

[*Full Name of Current Security Agent*] By:

Date:

**Schedule 3**

**Form of Creditor Accession Undertaking**

To: *[Insert full name of current Security Agent]* <sup>4</sup>\* for itself and each of the other parties to the Intercreditor Agreement referred to below.

From: *[Acceding Creditor]*

**This Undertaking** is made on *[date]* by *[insert full name of new Senior Lender/Second Lien LenderSenior Agent/Second Lien Agent/Senior Arranger/Subordinated Creditor]* (the “**Acceding [Senior Lender/Second Lien LenderSenior Agent/Second Lien Agent/Senior Arranger/Subordinated Creditor]**”) in relation to the intercreditor agreement (the “**Intercreditor Agreement**”) dated *[•]*, amongst others, Globalstar, Inc., as the Borrower, BNP Paribas as Senior Security Agent, Global Loan Agency Services Limited as Second Lien Security Agent, the other Creditors and the other Debtors (each as defined in the Intercreditor Agreement). Terms defined in the Intercreditor Agreement shall, unless otherwise defined in this Undertaking, bear the same meanings when used in this Undertaking.

In consideration of the Acceding *[Senior Lender/Second Lien LenderSenior Agent/Second Lien Agent/Senior Arranger/Subordinated Creditor]* being accepted as a *[Senior Lender/Second Lien LenderSenior Agent/Second Lien Agent/Senior Arranger/Subordinated Creditor]* for the purposes of the Intercreditor Agreement, the Acceding *[Senior Lender/Second Lien LenderSenior Agent/Second Lien Agent/Senior Arranger/Subordinated Creditor]* confirms that, as from *[date]*, it intends to be party to the Intercreditor Agreement as a *[Senior Lender/Second Lien LenderSenior Agent/Second Lien Agent/Senior Arranger/Subordinated Creditor]* and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a *[Senior Lender/Second Lien LenderSenior Agent/Second Lien Agent/Senior Arranger/Subordinated Creditor]* and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement.

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

**[This Undertaking** has been entered into on the date stated above *[and is executed as a deed by the Acceding Creditor, if it is acceding as a Subordinated Creditor]* and is delivered on the date stated above.]

**Acceding [Creditor]**

**Acceding [Creditor]**

**[Executed as a Deed**  
*[insert full name of Acceding Creditor]*

.....  
By: Address: Fax:

<sup>4</sup> \*This will be the Senior Security Agent prior to the Senior Discharge Date. On and from the Senior Discharge Date this will be the Second Lien Security Agent.

Accepted by the [Security Agent] [Accepted by the Senior Agent]

---

for and on behalf of      for and on behalf of  
[Insert full name of current Security   [Insert full name of Senior Agent] Agent]  
Date:                      Date:]

**Signatures**

**The Debtors**

**The Borrower**

**Executed as a Deed** for and on behalf of  
**Globalstar, Inc**

as Borrower

/s/Lindsey Keeble

Name: Lindsey Keeble

Title: Attorney-in-Fact

Address: 1351 Holiday Square Boulevard  
Covington  
LA 70433  
United States of America

Fax: +1 (985) 335-1900

in the presence of:

/s/Kaajal Shah

Name: Kaajal Shah

Address: Watson Farley & Williams LLP  
15 Appold Street  
London EC2A 2HB

Occupation: Trainee Solicitor



**Executed as a Deed** for and on behalf of  
**Globalstar, Inc**

as Original Debtor

/s/Lindsey Keeble

Name: Lindsey Keeble

Title: Attorney-in-fact

Address: 1351 Holiday Square Boulevard

Covington

LA 70433

United States of America

Fax: +1 (985) 335 1900

in the presence of:

/s/Kaajal Shah

Name:Kaajal Shah

Address:Watson Farley & Wiliams LLP

15 Appold Street

London EC2A 2HB

Occupation:Trainee Solici

**The Senior Security Agent**

**Executed** as a **Deed** for and on behalf of  
**BNP Paribas**  
As Senior Security Agent

/s/Thierry Anezo

/s/Philippe Laude

Name: Thierry Anezo

Name: Philippe Laude

Title: Deputy Head of Transportation Management    Head of Transaction Management  
Export France                      Export France

Address: 35, rue de la Grive 75014 Paris

Address: 35, rue de la Grive 75014 Paris

In the presence of:

/s/Edward Bopin

Name: Edward Bopin

Address:

Occupation VP - BNPP

**The Second Lien Security Agent**  
**Executed** as a **Deed** for and on behalf of  
**GLAS Trust Corporation Limited**  
As Second Lien Security Agent

/s/Lee Morrell

Name: Lee Morrell

Title: Transaction Manager

Address: 45 Ludgate Hill  
London EC4M 7JU  
United Kingdom

Attn: Transaction Management Group/GSAT

Fax: +44 (0)20 3070 0113

E-mail [tmg@glas.agency](mailto:tmg@glas.agency)

In the presence of:

/s/Delun Fox

Name: Delun Fox

Address: 45 Ludgate Hill, ECGM 7JY

Occupation Manager

GLOBALSTAR, INC.

ANNUAL KEY EMPLOYEE BONUS PLAN  
(PLAN YEAR COINCIDING WITH 2019 FISCAL YEAR)

**Section 1. Purposes of the Plan**

The purposes of this Key Employee Bonus Plan ("**Plan**") of Globalstar, Inc. ("Company") are:

- Year, to reward designated key employees' successful efforts to exceed the Company's financial performance goals for the designated Plan
- to align these employees' financial interests with those of the Company's stockholders, and
- to provide these employees with a competitive, success-based bonus package.

**Section 2. Bonus Pool; Amounts Payable**

(a) The pool available for bonus distribution shall be determined based on the Company's Adjusted EBITDA performance during the authorized calendar year ("**Plan Year**"). The aggregate amount to be distributed under the Plan with respect to the 2019 Plan Year shall be \$1,330,000 if the Company's Adjusted EBITDA for the Plan Year is \$[\*] (the "**Base EBITDA**"). The Base EBITDA may be adjusted from time to time to align with the Company's operating budget.

For each 1% of Adjusted EBITDA over the Base EBITDA, the bonus pool will be increased by 1% of the percentage increase in Base EBITDA. For each 1% of Adjusted EBITDA below Base EBITDA, the bonus pool will be decreased by 2-1/2% of the percentage decrease in Base EBITDA until Adjusted EBITDA declines to less than 75% of Base EBITDA or the prior Plan Year's Adjusted EBITDA, whichever is higher, after which no bonus will be payable. See Exhibit I for potential bonus pool amounts.

For Plan purposes, Adjusted EBITDA means EBITDA adjusted on a basis consistent with Adjusted EBITDA previously reported by the Company, with further adjustments, if necessary, for extraordinary net costs or benefits, spectrum sale or lease proceeds, asset write-offs and other similar items impacting Adjusted EBITDA during the Plan Year as determined at the sole discretion of the Compensation Committee of the Board of Directors ("**Committee**").

(b) The portion of the pool payable to each participant shall be as recommended by the Chief Executive Officer and approved by the Compensation Committee, acting in its sole discretion.

**Section 3. Participants; Eligibility; Payment**

(a) The Compensation Committee (the Chairman of the Board of Directors and CEO being also Chairman of the Committee) shall designate the participants in the Plan within 90 days after the beginning of each Plan Year, and will report the roster of participants to the Board. The Plan, and participation of initially-designated key employees, shall be effective retroactive to January 1 of the Plan Year. The CEO, after reporting to the Committee, may also revise the roster of, or designate additional, participants from time to time with participation to be effective from date determined by the CEO.

(b) In order to be eligible to receive this bonus, a participant must be employed by the Company or any of its subsidiaries from the beginning of the Plan Year (subject to express partial year designation under Section 3(a)) and until the first business day that is three (3) business days after the Company files its annual report on Form 10-K for the Plan Year (such day the "**Payment Date**"). Failure of a participant to remain employed through the Payment Date for any reason whatsoever will terminate all entitlements under the Plan; provided, however, that the Committee may, but shall not be required to approve, on a case-by-case basis, payments under the Plan of prorated bonus for employees who, during the Plan Year, are hired as, or who replace, designated participants. The Committee may also, but shall not be required to, make case-by-case exceptions to termination of Plan participation resulting from termination of service, either during the Plan Year or before the Payment Date, because of death, disability, or voluntary retirement of a participant.

(c) The Company shall make payments on the Payment Date. All payments will be, made in cash or in common stock of the Company as determined by the Committee. If payments are made in stock, the shares shall be distributed accordance with the stock distribution provisions of Company's Amended and Restated 2006 Equity Incentive Plan and shall be fully vested, registered and marketable at the time distributed.

#### **Section 4. Committee**

(a) This Plan shall be administered by the Committee, which shall have full authority and discretion to interpret the Plan, to establish, amend and rescind rules relating to the Plan that are not inconsistent with this document, and to make all other determinations that may be necessary or advisable for the Plan's administration.

(b) Any interpretation of the Plan by the Committee and any decision by it relating to the Plan shall be final and binding on all persons.

#### **Section 5. Liability for Repayment**

In the event that, within two years after the Payment Date, discovered fraud or misrepresentation (as determined by the Committee) should result in a need for the Company to restate its annual financial statements for the Plan Year in a manner that reduces the Adjusted EBITDA figure that was used to determine the amount available for distribution under the Plan, then participants who have received distributions under the Plan in excess of the amounts they would have been entitled to receive, but for the fraud or misrepresentation, shall be liable to repay such excess to the Company, without interest, on demand.

#### **Section 6. Plan Not Exclusive**

This Plan shall not be construed as limiting the ability or discretion of the Committee to award additional compensation, including without limitation other bonuses, separate and apart from this Plan, to individual participants based upon subjective or other criteria.

#### **EXHIBIT I: TABLE OF POTENTIAL BONUS POOL AMOUNTS**

(in thousands)

[\*]

**Subsidiaries of Globalstar, Inc.**

As of December 31, 2019, the subsidiaries of Globalstar, Inc., their jurisdiction of organization and the percent of their voting securities owned by their immediate parent entity were as follows:

<b>Subsidiary</b>	<b>Organized Under Laws of</b>	<b>% of Voting Securities Owned by Immediate Parent</b>
GSSI, LLC	Delaware	100%
ATSS Canada, Inc.	Delaware	100%
Globalstar Brazil Holdings, L.P.	Delaware	100%
Globalstar do Brasil Holdings Ltda.	Brazil	100%
Globalstar do Brasil Ltda.	Brazil	100%
Globalstar Japan K.K.	Japan	100%
Globalstar Satellite Services Pte., Ltd	Singapore	100%
Globalstar Communications Mongolia LLC	Mongolia	100%
Globalstar Satellite Services Pty., Ltd	South Africa	70%
Globalstar C, LLC	Delaware	100%
Globalstar Leasing LLC	Delaware	100%
Globalstar Licensee LLC	Delaware	100%
Globalstar Security Services, LLC	Delaware	100%
Globalstar USA, LLC	Delaware	100%
GUSA Licensee LLC	Delaware	100%
Globalstar Canada Satellite Co.	Nova Scotia, Canada	100%
Globalstar de Venezuela, C.A.	Venezuela	100%
Globalstar Colombia, Ltda.	Colombia	100%
Globalstar Caribbean Ltd.	Cayman Islands	100%
Globalstar Republica Dominicana, S.A.	Dominican Republic	100%
GCL Licensee LLC	Delaware	100%
Globalstar Americas Acquisitions, Ltd.	British Virgin Islands	100%
Globalstar Americas Holding Ltd.	British Virgin Islands	100%
Globalstar Gateway Company S.A.	Nicaragua	100%
Globalstar Americas Telecommunications Ltd.	British Virgin Islands	100%
Globalstar Honduras S.A.	Honduras	100%
Globalstar Nicaragua S.A.	Nicaragua	100%
Globalstar de El Salvador, SA de CV	El Salvador	100%
Globalstar Panama, Corp.	Panama	100%
Globalstar Guatemala S.A.	Guatemala	100%
Globalstar Belize Ltd.	Belize	100%
Astral Technologies Investment Ltd.	British Virgin Islands	100%
Astral Technologies Nicaragua S.A.	Nicaragua	100%
SPOT LLC	Colorado	100%
Globalstar Asia Pacific	Korea	49%
Globalstar Media, LLC	Louisiana	100%
Globalstar Broadband Services, Inc.	Delaware	100%

<b>Subsidiary</b>	<b>Organized Under Laws of</b>	<b>% of Voting Securities Owned by Immediate Parent</b>
The World's End (Pty) Ltd.	Botswana	74%
Globaltouch West Africa Limited	Nigeria	30%
Globalstar International, LLC	Delaware	100%
Globalstar Telecomunicaciones Perú S.A.C.	Peru	100%
Globalstar Netherlands B.V.	Netherlands	100%
Mobile Satellite Services B.V.	Netherlands	100%
Globalstar Europe, S.A.S.	France	100%
Globalstar Gabon	Gabon	100%
Globalstar Europe Satellite Services, Ltd.	Ireland	100%
Globalstar Holding US, LLC	Delaware	100%
Globalstar Slovakia, S.R.O.	Slovakia	100%
Globalstar Argentina S.R.L.	Argentina	100%
GSAT Bucharest S.R.L.	Romania	100%
Globalstar Albania sh.p.k.	Albania	100%
Globalstar Communications Spain, S.L.	Spain	100%
Globalstar London Limited	United Kingdom	100%
Leosat Portugal, Unipessoal, LDA	Portugal	100%
Globalstar Montenegro	Montenegro	100%
Leosat Kenya Limited	Kenya	100%
Mobile Satellite Services Rwanda Ltd	Rwanda	100%
Globalstar Satellite Namibia (PTY) LTD	Namibia	70%
Globalstar Moçambique LDA	Mozambique	75%
Globalstar GE, SL	Equatorial Guinea	100%
Mobile Satellite Services Mexico S. de R.L. de C.V.	Mexico	100%
Global Star Majan LLC	Oman	100%
Globalstar Japan, Inc.	Japan	51%

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We consent to the incorporation by reference in Registration Statements on Form S-8 (Nos. 333-235505, 333-232178, 333-196327, 333-188538, 333-180178, 333-176281, 333-173218, 333-165444, 333-161510, 333-156884, 333-150871, 333-149747, 333-145283, and 333-138590) of Globalstar, Inc. of our report dated February 28, 2020 relating to the consolidated financial statements and effectiveness of internal control over financial reporting, appearing in this Annual Report on Form 10-K.

/s/ Crowe LLP

Oak Brook, Illinois  
February 28, 2020



**Certification of Principal Executive Officer of Globalstar, Inc.  
Pursuant to Rule 13a-14(a) and Rule 15d-14(a) of the Securities Exchange Act of 1934, as amended**

I, David B. Kagan, certify that:

1. I have reviewed this annual report on Form 10-K of Globalstar, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. I am responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15(d)-15(e)) and internal control over financial reporting (as defined in Exchange Act Rule 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under my supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to me by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under my supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report my conclusion about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. I have disclosed, based on my most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 28, 2020

By: /s/ David B. Kagan

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David B. Kagan  
Chief Executive Officer (Principal Executive Officer)

**Certification of Principal Financial Officer of Globalstar, Inc.  
Pursuant to Rule 13a-14(a) and Rule 15d-14(a) of the Securities Exchange Act of 1934, as amended**

I, Rebecca S. Clary, certify that:

1. I have reviewed this annual report on Form 10-K of Globalstar, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. I am responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15(d)-15(e)) and internal control over financial reporting (as defined in Exchange Act Rule 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under my supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to me by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under my supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report my conclusion about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. I have disclosed, based on my most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 28, 2020

By: /s/ Rebecca S. Clary

Rebecca S. Clary  
*Chief Financial Officer (Principal Financial Officer)*

**Certification of Principal Executive Officer Under Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. Section 1350**

Pursuant to section 906 of the Sarbanes-Oxley Act of 2002 (subsections (a) and (b) of Section 1350, Chapter 63 of Title 18, United States Code), the undersigned officer of Globalstar, Inc. (the "Company"), does hereby certify that:

This annual report on Form 10-K for the year ended December 31, 2019 of the Company fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934 and the information contained in the Form 10-K fairly presents, in all material respects, the financial condition and results of operations of the Company.

February 28, 2020

By: /s/ David B. Kagan

David B. Kagan

*Chief Executive Officer (Principal Executive Officer)*

**Certification of Principal Financial Officer Under Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. Section 1350**

Pursuant to section 906 of the Sarbanes-Oxley Act of 2002 (subsections (a) and (b) of Section 1350, Chapter 63 of Title 18, United States Code), the undersigned officer of Globalstar, Inc. (the "Company"), does hereby certify that:

This annual report on Form 10-K for the year ended December 31, 2019 of the Company fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934 and the information contained in the Form 10-K fairly presents, in all material respects, the financial condition and results of operations of the Company.

February 28, 2020

By: /s/ Rebecca S. Clary  
Rebecca S. Clary  
*Chief Financial Officer (Principal Financial Officer)*