



**Registration of a Charge**

Company name: **ORBIAN FINANCIAL SERVICES XIX LIMITED**

Company number: **09729525**

Received for Electronic Filing: **30/06/2017**



X69OHSEX

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**Details of Charge**

Date of creation: **30/06/2017**

Charge code: **0972 9525 0001**

Persons entitled: **DEUTSCHE BANK TRUST COMPANY AMERICAS**

Brief description:

**Contains fixed charge(s).**

**Contains floating charge(s) (floating charge covers all the property or undertaking of the company).**

**Contains negative pledge.**

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**Authentication of Form**

This form was authorised by: **a person with an interest in the registration of the charge.**

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**Authentication of Instrument**

Certification statement: **I CERTIFY THAT THE ELECTRONIC COPY INSTRUMENT  
DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION  
IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **PARIS CRIBBEN**



## **CERTIFICATE OF THE REGISTRATION OF A CHARGE**

Company number: 9729525

Charge code: 0972 9525 0001

The Registrar of Companies for England and Wales hereby certifies that a charge dated 30th June 2017 and created by ORBIAN FINANCIAL SERVICES XIX LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 30th June 2017 .

Given at Companies House, Cardiff on 4th July 2017

The above information was communicated by electronic means and authenticated by the Registrar of Companies under section 1115 of the Companies Act 2006



**Companies House**



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

June 30, 2017

**Orbian Financial Services XIX Limited**

and

**Deutsche Bank Trust Company Americas**

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**OFS Notes Debenture**

**THIS OFS NOTES DEBENTURE** is dated June 30, 2017.

## **PARTIES**

- (1) **Orbian Financial Services XIX Limited**, a limited liability company incorporated under the laws of England with company number **09729525** whose registered office is at New Broad Street House, 35 New Broad Street, London, EC2M 1NH (the “**Company**”).
- (2) **Deutsche Bank Trust Company Americas**, a New York banking corporation, as collateral trustee for the benefit of the Secured Parties (as defined below) (in such capacity, the “**OFS Collateral Trustee**”).

## **BACKGROUND**

- (A) The Company is a special purpose private limited company formed for the purposes of, among others, purchasing Receivables and Related Buyer Obligations from Suppliers and financing such purchases through various financing facilities (including the issuance of OFS Notes) and the Company intends to be a note-issuing company for the purposes of Regulation 5 of the Taxation of Securitisation Companies Regulations 2006 and retain a profit of not less than €5,000 per annum;
- (B) The Company has requested that the OFS Collateral Trustee act as OFS Collateral Trustee for the benefit of the Related Secured Parties and the OFS Collateral Trustee has agreed to so act.
- (C) To secure the Secured Liabilities, and any other liabilities which it may have to the Secured Parties, the Company has, pursuant to this debenture, granted security interests over its present and future assets and undertaking to the OFS Collateral Trustee for the benefit of the Secured Parties.
- (D) This debenture is the OFS Notes Security Agreement referred to in the definition of that term in the Receivables Funding and Servicing Agreement.

## **AGREED TERMS**

### **1. DEFINITIONS AND INTERPRETATION**

#### **1.1 Definitions**

In this debenture, a capitalised term used but not defined herein shall have the meaning assigned to such term in the Receivables Funding and Servicing Agreement.

“**Account Agreement**” means Schedule 4 to the Issuing and Payment Agency Agreement.

“**Administrator**” means an administrator appointed to manage the affairs, business and property of the Company pursuant to paragraph 14 of Schedule 3.

“**Administrator Obligations**” means all present and future moneys, obligations and liabilities owed by the Company to the OFS Notes Administrator under or in connection with the OFS Notes Administration Agreement, whether in respect of fees, expenses or otherwise.

“**Backup Servicer Obligations**” means all present and future moneys, obligations and liabilities owed by the Company to the Backup Servicer under or in connection with the Receivables Funding and Servicing Agreement, the Buyer Contract and the Supplier Contracts, whether in connection with the Backup Servicing Fee, expenses or otherwise.

**“Business Day”** means a day (other than a Saturday, Sunday or public holiday) when banks in London and New York are generally open for business.

**“Buyer Secured Liabilities”** means all present and future moneys, obligations and liabilities owed by the Company to the Buyers or the Parent under or in connection with the Buyer Contract, whether in connection with fees, expenses or otherwise.

**“Cash”** means each of cash and amounts standing to the credit of a bank account.

**“Collateral”** means all present and future assets and property of the Company which are expressed to be subject to the security interests created by this debenture, including (without limitation) the assets and property described in Schedule 1.

**“Collateral Trustee Obligations”** means all present and future moneys, obligations and liabilities owed by the Company to the OFS Collateral Trustee under or in connection with the OFS Notes Program Documents, the Buyer Contract and the Supplier Contracts, whether in connection with fees, expenses or otherwise.

**“Company Sole Member”** means Orbian Management Limited, a limited liability company incorporated under the laws of England with company number 03522614 whose registered office is at New Broad Street House, 35 New Broad Street, London, EC2M 1NH.

**“Costs”** means all costs, charges, expenses and liabilities of any kind including, without limitation, costs and damages in connection with litigation, professional fees and expenses, disbursements and any value added tax charged on Costs.

**“Encumbrance”** means any mortgage, charge (whether fixed or floating, legal or equitable), pledge, lien, assignment by way of security, or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

**“Financial Collateral”** shall have the meaning given to that expression in the Financial Collateral Regulations.

**“Financial Collateral Regulations”** means the Financial Collateral Arrangements (No. 2) Regulations 2003 (*SI 2003/3226*).

**“Issuing and Paying Agent Obligations”** means all present and future moneys, obligations and liabilities owed by the Company to the Issuing Agent and the Paying Agent under or in connection with the Issuing and Payment Agency Agreement, whether in connection with fees, expenses or otherwise.

**“OFS Noteholders Obligations”** means all present and future moneys, obligations and liabilities owed by the Company to the OFS Noteholders under or in connection with the OFS Notes.

**“OFS Notes”** or **“Notes”** means a bearer promissory note of Orbian Financial Services XIX Limited in definitive or global form, denominated in a Permitted Currency, which, unless the purchaser falls within certain defined categories set out more particularly in the Notes Purchase Agreement, shall be in a principal amount of at least £100,000 (or its equivalent in an alternative currency), substantially in the relevant form scheduled to the Issuing and Payment Agency Agreement or such other form as may be agreed from time to time between the Issuer and the Issuing Agent.

**“Primary Secured Liabilities”** means the OFS Noteholders Obligations together with all interest (including, without limitation, default interest) accruing in respect of such moneys or liabilities.

**“Receivables Funding and Servicing Agreement”** means the receivables funding and servicing agreement of even date herewith (as amended, supplemented and restated from time to time) among

the Company, Orbian Management Limited, as Servicer, and Deutsche Bank Trust Company Americas, as OFS Collateral Trustee and Backup Servicer.

**“Receiver”** means a receiver and/or manager of any or all of the Collateral appointed under paragraph 5 of Schedule 3.

**“Related Receivable”** means, in respect of an OFS Note, the Receivable purchased by the Company with the proceeds of that OFS Note.

**“Secondary Secured Liabilities”** means, collectively, the Administrator Obligations, the Issuing and Payment Agent Obligations, the Servicer Obligations, the Backup Servicer Obligations and the Collateral Trustee Obligations.

**“Secondary Secured Parties”** means the OFS Collateral Trustee, the Servicer, the Back Up Servicer, the Issuing and Paying Agent, the Depository, the Account Bank and the OFS Notes Administrator.

**“Secured Liabilities”** means the Primary Secured Liabilities, the Secondary Secured Liabilities and the Buyer Secured Liabilities.

**“Secured Parties”** means the OFS Collateral Trustee, the Servicer, the Back Up Servicer, the Issuing and Paying Agent, the OFS Notes Administrator, the Depository, the Account Bank, each Buyer, the Parent and each OFS Noteholder.

**“Security Financial Collateral Arrangement”** shall have the meaning given to that expression in the Financial Collateral Regulations.

**“Security Period”** means the period starting on the date of this debenture and ending on the date on which all the Secured Liabilities have been unconditionally and irrevocably paid and discharged in full and no further Secured Liabilities are capable of being outstanding.

**“Servicer Obligations”** means all present and future moneys, obligations and liabilities owed by the Company to the Servicer under or in connection with the Receivables Funding and Servicing Agreement, the Buyer Contract and the Supplier Contracts, in connection with the Servicing Fee and Servicer Advances.

## 1.2 Interpretation

Unless the context otherwise requires, in this debenture:

- (a) any reference to any statute or statutory provision includes a reference to any subordinate legislation made under that statute or statutory provision, to any modification, re-enactment or extension of that statute or statutory provision and to any former statute or statutory provision which it consolidated or re-enacted before the date of this debenture;
- (b) a reference to one gender includes a reference to the other gender;
- (c) words in the singular include the plural and vice versa;
- (d) a reference to a clause of or Schedule is to a clause of or Schedule to this debenture;
- (e) a reference to an **amendment** includes a supplement, variation, novation or re-enactment (and **amended** shall be construed accordingly);
- (f) a reference to **assets** includes present and future properties, undertakings, revenues, rights and benefits of every description;

- (g) a reference to an **authorisation** includes an authorisation, consent, licence, approval, resolution, exemption, filing, registration and notarisation;
- (h) a reference to **this debenture** (or any specified provision of it) or any other document shall be construed as a reference to this debenture, that provision or that document as in force for the time being and as amended or novated from time to time;
- (i) a reference to a **person** shall be construed as including a reference to an individual, firm, corporation, unincorporated body of persons or any state or any agency of a person;
- (j) a reference to a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation; and
- (k) the headings do not form part of this debenture or any part of it and do not affect its interpretation.

### 1.3 **Clawback**

If the OFS Collateral Trustee considers that an amount due which has been paid or otherwise discharged is capable of being avoided or otherwise set aside on liquidation or administration of the Company or otherwise, and that there is a reasonable prospect of such liquidation or administration occurring and of such payment being so avoided or set aside, then that amount shall not be considered to have been irrevocably paid for the purposes of this debenture.

## 2. **COVENANT TO PAY**

The Company shall pay and discharge the Secured Liabilities when they become due.

## 3. **GRANT OF SECURITY**

### 3.1 **Charging clause**

As a continuing security for the payment and discharge of the Primary Secured Liabilities, the Company with full title guarantee:

- (a) assigns to the OFS Collateral Trustee by way of security all the Collateral listed in paragraphs (i), (ii), (iii), (iv), (ix), (x), (xi) and (xii) of Schedule 1 together with any such Collateral acquired by the Company in the future;
- (b) charges to the OFS Collateral Trustee, by way of first fixed charge, all the Collateral listed in paragraphs (v) to (viii) of Schedule 1 together with any such Collateral acquired by the Company in the future;
- (c) charges to the OFS Collateral Trustee, by way of first floating charge, all the undertaking, property, assets and rights of the Company at any time not effectively charged or assigned pursuant to clause 3.1(a) and clause 3.1 (b).

provided, however, that, with respect to any Related Secured Obligation in respect of any OFS Note, the security interests granted herein with respect to any OFS Notes Program Account shall only subsist to the extent that Collateral for such OFS Note is at such time held in such OFS Notes Program Account.

### 3.2 **Automatic conversion of floating charge**

The floating charge created by clause 3.1(c) shall automatically and immediately (without notice) be converted into a fixed charge over the relevant Collateral if:

- (a) the Company:
  - (i) creates, or attempts to create, over all or any part of the Collateral an Encumbrance or any trust in favour of another person without the prior written consent of the Secured Parties; or
  - (ii) disposes or attempts to dispose of all or any part of the Collateral (other than property subject only to the floating charge while it remains uncrystallised, which property may be disposed of in the ordinary course of business); or
- (b) a Receiver is appointed over all or any of the Collateral that is subject to the floating charge; or
- (c) any person levies or attempts to levy any distress, attachment, execution or other process against all or any part of the Collateral; or
- (d) any of the Secured Parties receive notice of the appointment of, or a proposal or an intention to appoint, an administrator of the Company.

### 3.3 **Conversion of floating charge by notice**

Upon the occurrence of any of the circumstances set out in paragraph 1 of Schedule 3 (and for so long as such circumstances continue unremedied and unwaived), the OFS Collateral Trustee may in its sole discretion by written notice to the Company convert the floating charge created under this debenture into a fixed charge as regards any part of the Collateral specified by the OFS Collateral Trustee in that notice.

### 3.4 **Assets acquired after any floating charge crystallisation**

Any asset acquired by the Company after any crystallisation of the floating charge created under this debenture which, but for such crystallisation, would be subject to such floating charge shall (unless the OFS Collateral Trustee confirms in writing to the contrary) be charged to the OFS Collateral Trustee by way of first fixed charge.

### 3.5 **Limited recourse**

Notwithstanding anything to the contrary contained herein:

- (a) the Company's obligations with respect to each OFS Note shall be payable solely from, and secured solely by, the Collateral attributable to the Related Receivable for such OFS Note, and the holder thereof shall not have recourse to or be secured by any other Collateral; and



- (b) all Collateral attributable to any Supplier Receivable is exclusively for the account of the Buyer making a payment to the Company in respect of that Supplier Receivable and no other Secured Party shall be entitled to an interest in that Collateral (even if the security interest held on behalf of that Secured Party ranks in priority to the security interest held on behalf of that Buyer).

The OFS Collateral Trustee hereby declares that:

- (x) the OFS Collateral Trustee shall hold its security interests encumbering the Collateral in respect of an OFS Note solely for the benefit of the Related Secured Parties in respect of such OFS Note;
- (y) the OFS Collateral Trustee shall hold its security interests encumbering the Collateral attributable to any Supplier Receivable solely for the benefit for the Buyer making a payment to the Company in respect of that Supplier Receivable; and
- (z) the Secured Parties shall, in circumstances in which they are entitled to direct the OFS Collateral Trustee to exercise the remedies hereunder, be entitled to so direct the OFS Collateral Trustee only with regard to the Collateral securing the obligations due to them.

### 3.6 **Second ranking fixed charge**

In order to secure the full and punctual payment, and the performance by the Company of all of the Secondary Secured Liabilities owing from time to time by the Company to the Secondary Secured Parties, the Company hereby grants to the OFS Collateral Trustee, on behalf of and for the benefit of the Secondary Secured Parties, as their interests specified herein may appear, a continuing second fixed charge over all of its right, title and interest in, to and under the OFS Notes Operating Account and all funds, Cash, financial assets and other property from time to time credited to the OFS Notes Operating Account or carried therein.

### 3.7 **Further charge**

As a continuing security for the payment and discharge of the Buyer Secured Liabilities, the Company with full title guarantee:

- (a) assigns to the OFS Collateral Trustee by way of second ranking security all the Collateral listed in paragraphs (i), (ii), (iii), (iv), (ix), (x), (xi) and (xii) of Schedule 1, and by way of a third ranking security the Collateral listed in paragraph (ix) of Schedule 1, together, in each case, with any such Collateral acquired by the Company in the future;
- (b) charges to the OFS Collateral Trustee, by way of second fixed charge, all the Collateral listed in paragraphs (v) to (viii) of Schedule 1 together with any such Collateral acquired by the Company in the future;
- (c) charges to the OFS Collateral Trustee, by way of second floating charge, all the undertaking, property, assets and rights of the Company at any time not effectively charged or assigned pursuant to clause 3.1(a) and clause 3.7 (b).

The provisions of clauses 3.2 to 3.4 shall apply to this security in the same way as for the security granted in clause 3.1 and those clauses shall be construed accordingly.

#### **4. LIABILITY OF COMPANY**

##### **4.1 Liability not discharged**

The liability of the Company under this debenture in respect of any of the Secured Liabilities shall not be discharged, prejudiced or affected by:

- (a) any security, guarantee, indemnity, remedy or other right held by or available to the OFS Collateral Trustee or any of the Secured Parties being or becoming wholly or partially illegal, void or unenforceable on any ground; or
- (b) the OFS Collateral Trustee or any of the Secured Parties renewing, determining, varying or increasing any facility or other transaction in any manner or concurring in, accepting or varying any compromise, arrangement or settlement or omitting to claim or enforce payment from any other person; or
- (c) any other act or omission which but for this provision might have discharged or otherwise prejudiced or affected the liability of the Company.

##### **4.2 Immediate recourse**

The Company waives any right it may have of requiring the OFS Collateral Trustee or any of the Secured Parties to enforce any security or other right or claim any payment from or otherwise proceed against any other person before enforcing this debenture against the Company.

##### **4.3 Company obligations unaffected**

The security interests arising under this debenture are granted as security only and shall not (a) transfer or in any way affect or modify, or relieve the Company from, any obligation to perform or satisfy, any term, covenant, condition or agreement to be performed or satisfied by the Company under or in connection with this debenture or any other OFS Notes Program Document to which it is a party, or (b) impose any obligation on any Secured Party or the OFS Collateral Trustee to perform or observe any such term, covenant, condition or agreement or impose any liability on any Secured Party or the OFS Collateral Trustee for any act or omission on the part of the Company relative thereto or for any breach of any representation or warranty on the part of the Company contained therein or made in connection therewith.

#### **5. ACCOUNTS**

The following procedures shall govern the receipt and administration of payments relating to the Notes.

##### **5.1 Establishment of the OFS Notes Program Accounts.**

The Company shall establish with Deutsche Bank AG, London Branch (the "Account **Bank**"), in its own name, each of the OFS Notes Program Accounts in accordance with the Receivables Funding and Servicing Agreement, the OFS Notes Administration Agreement and the Account Agreement.

## 5.2 **OFS Notes Program Accounts as Segregated Accounts.**

The OFS Notes Program Accounts shall be segregated accounts as described in the Account Agreement.

## 5.3 **Maintenance of OFS Notes Program Accounts as Eligible Accounts**

If at any time any of the OFS Notes Program Accounts ceases to be an Eligible Account, the Company shall (a) promptly notify the Servicer and the OFS Notes Administrator of such occurrence, and (b) promptly following the request of the OFS Collateral Trustee or a Buyer establish a new account to serve as the replacement relevant OFS Notes Program Account, as applicable, which new account shall conform to the definition of an Eligible Account and shall be deemed for all purposes to be the relevant OFS Notes Program Account, and within five (5) Business Days of establishing such new account shall direct the OFS Collateral Trustee to transfer all funds on deposit in, or credits to, and all assets and property held in, the relevant non-eligible OFS Notes Program Account, as applicable, to such new account. Each of the parties to this debenture agrees that it will execute such agreements, including, without limitation, any account control agreement relating to such replacement OFS Notes Program Account, as applicable, as is necessary to create and maintain in favour of the OFS Collateral Trustee (for the benefit of the Secured Parties with respect thereto) a security interest in and over such replacement OFS Notes Program Account which is equivalent to the OFS Collateral's Trustee's security interest in the OFS Notes Program Account that such new OFS Notes Program Account replaces.

## 5.4 **Priority of Payments – Purchaser Collection Account**

5.4.1 The OFS Collateral Trustee shall make the following same-day transfers of amounts standing to the credit of the Purchaser Collection Account, subject to the following priority of payments:

- (a) to the extent that such funds are allocated to Purchased Receivables purchased with OFS Note Proceeds, firstly to the OFS Notes Collateral Account;
- (b) to the extent that such funds are allocated to Retained Receivables, firstly to the OFS Notes Collateral Account;
- (c) to the extent that such funds are allocated to Supplier Receivables, to the OFS Notes Disbursement Account; and
- (d) to the extent that such funds are not allocated to Purchased Receivables, Retained Receivables or Supplier Receivables, to the OFS Notes Operating Account.

### 5.4.2 *Required Credits to the OFS Notes Collateral Account*

The Company shall (to the extent that it does not occur by virtue of clause 5.4.1) cause the following credits to be made to the OFS Notes Collateral Account for further application to the OFS Notes Disbursement Account or OFS Notes Payment Account, as applicable:

- (a) all Collections in respect of all Purchased Receivables purchased with OFS Note Proceeds, (to be further paid to the OFS Notes Payment Account in accordance with clause 5.5.4 (a));

- (b) any OFS Note Proceeds (to be further paid to the OFS Notes Disbursement Account, in respect of each Receivable identified in the related Borrowing Notice, in accordance with clause 5.5.3 (ii)); and
- (c) all other funds received by the Company from any other source whatsoever related to or in connection with Purchased Receivables or OFS Notes Proceeds (but not any funds received by the Company related to or connected with any Supplier Receivables, which shall be credited to the OFS Notes Disbursement Account in accordance with clause 5.4.1(c)).

Pursuant to this debenture, the OFS Collateral Trustee is irrevocably authorised and empowered, as the attorney-in-fact of the Company, to endorse any cheque or any other instrument or security requiring the endorsement of the Company to be credited to the Purchaser Collection Account or the OFS Notes Collateral Account.

Notwithstanding the foregoing provisions of this section 5.4, if at any time the Company, or any Person on behalf of the Company, receives any proceeds or payments required to be deposited in the Purchaser Collection Account or the OFS Notes Collateral Account, the Company shall hold, or shall procure that such Person holds, all such amounts as the agent of, and in trust for, the OFS Collateral Trustee and the Company shall, or shall procure that such Person shall, forthwith upon receipt by such party, turn over such amount to the OFS Collateral Trustee to be credited to the Purchaser Collection Account or the OFS Notes Collateral Account in the same form as received by such Person and, if received in the form of a cheque, instrument or security requiring endorsement, duly endorsed on behalf of such Person to the order of the OFS Collateral Trustee. If any such cheque, instrument or security shall not be so endorsed, the OFS Collateral Trustee is irrevocably authorised and empowered pursuant to the debenture to endorse the same on behalf of the Company as its attorney-in-fact.

The OFS Collateral Trustee has no duty or responsibility to ensure the Company's compliance with the foregoing provisions of this debenture and it shall have no liability if the Company fails to comply with such provisions.

## **5.5 Application of Funds Credited to the OFS Notes Collateral Account and Priority of Payments**

- 5.5.1 The Company shall not apply, deliver or otherwise release all or any part of the Collateral (including, without limitation, any moneys held by the OFS Collateral Trustee, the Account Bank or the Issuing and Paying Agent) or request the OFS Collateral Trustee, the Account Bank, or the Issuing and Paying Agent to apply, deliver or otherwise release all or any part of the Collateral (including, without limitation, any moneys held by the OFS Collateral Trustee, the Account Bank or the Issuing and Paying Agent), and the OFS Collateral Trustee shall not apply, deliver or otherwise release all or any part of the Collateral except as expressly permitted by the OFS Notes Program Documents and the Company shall ensure that the Account Bank and the Issuing and Paying Agent shall not apply, deliver or otherwise release all or any part of the Collateral except as expressly permitted by the OFS Notes Program Documents.
- 5.5.2 Invoices for expenses due and owing from the Company in connection with the OFS Notes may be submitted to the Servicer and the Backup Servicer from time to time. If the Servicer and the Backup Servicer receive, and the Servicer (prior to the occurrence of a Servicer Termination Event) or the Backup Servicer (after the delivery of a Notice of Termination) approves an invoice in respect of such incurred expenses (such incurred and invoiced expenses, "**Invoiced Expenses**"), the OFS Collateral

Trustee shall, pursuant to a Confirmed Instruction delivered by the Servicer (or the Backup Servicer), distribute such Invoiced Expenses from Purchase Funds available in connection with a Borrowing Notice delivered in respect of the next occurring Borrowing Notice Delivery Date (if any) to the appropriate Persons in accordance with paragraph 5.5.3 below (but only from such Purchase Funds). If the Servicer and the Backup Servicer shall not have received invoices in respect of amounts due and owing from the Company prior to any Borrowing Notice Delivery Date, the Company shall not have any obligation to distribute amounts due in respect of such invoices from Purchase Funds received on the date the related OFS Notes are sold, and such amounts shall constitute "Invoiced Expenses" in respect of the next issuance of OFS Notes.

#### 5.5.3 *Priority of Payment – Purchase Funds*

The OFS Collateral Trustee shall, based on a Confirmed Instruction delivered by the Servicer (or the Backup Servicer) with respect thereto and only to the extent that Purchase Funds are available in the OFS Notes Collateral Account, subject to the following priority of payments, make the following transfers of amounts representing in aggregate the amount of such Purchase Funds in same-day funds; provided that no payment shall be made from the OFS Notes Collateral Account of amounts representing any Purchase Funds following the occurrence of an OFS Notes Termination Event of the type set forth in clauses (c), (g) or (h) of the definition thereof until the Servicer has (after consultation with the Issuing and Paying Agent) attempted to repurchase or redeem such OFS Note using the Purchase Funds relating to such OFS Note and, if such efforts are unsuccessful, the Purchase Funds shall be deemed to constitute Collections in respect of the Collateral for such OFS Note and shall be applied in accordance with clause 5.5.4; and provided further that (a) no payment shall be made pursuant to clauses (iii) and (iv) below if, as a result of such payment, there would be insufficient funds to pay the related Purchase Price specified in clause (ii) below and (b) no Purchase Funds representing OFS Note Proceeds shall be used to make payments related to clauses (ii) and (iii) below unless the payment is made in respect of the Receivable or, as applicable, Related Secured Obligations related to the OFS Note from which such OFS Note Proceeds arise:

- (i) if an OFS Notes Termination Event of the type set forth in clauses (c), (g) or (h) of the definition thereof has occurred, to the holder of the relevant OFS Note, an amount equal to any redemption or repurchase price in respect of any OFS Note which the Servicer has agreed with the holder of such OFS Note shall be redeemed or repurchased (as contemplated above);
- (ii) to the OFS Notes Disbursement Account, an amount equal to the Purchase Price of the Eligible Receivable(s) and Related Buyer Obligation(s) specifically identified in the Borrowing Notice relating to the relevant Purchase Funds, in accordance with the OFS Notes Program Documents, to be further applied in accordance with the Receivables Financing and Servicing Agreement and clause 5.7 hereof;
- (iii) to the OFS Collateral Trustee for distribution *pari passu* and *pro rata* to the OFS Collateral Trustee, the OFS Notes Administrator, the Issuing and Paying Agent, the Account Bank, the Depositary and the Backup Servicer, an amount equal to the aggregate amount of the OFS Collateral Trustee Obligations, the Administrator Obligations, the Issuing and Paying Agent Obligations and the Backup Servicer Obligations, in each case solely with respect to fees and Invoiced Expenses and solely in connection with such OFS Note, respectively, and, for these

purposes, such fees and Invoiced Expenses shall be deemed to accrue pro rata in respect of each OFS Note outstanding at such time as such fees and Invoiced Expenses accrued;

- (iv) to the Servicer, an amount equal to the Servicing Fee solely in connection with such OFS Note and, for these purposes, such Servicing Fee shall be deemed to accrue pro rata in respect of each OFS Note outstanding at such time as such Servicing Fee accrued;
- (v) to the Company, an amount of not less than €5,000 per annum in respect of the Company's retained profit; and
- (vi) to the extent that any Purchase Funds remain available in the OFS Notes Collateral Account after the application contemplated in paragraphs (i) to (v) above, an amount equal to such remaining available amount of Purchase Funds to the OFS Notes Operating Account.

#### 5.5.4 *Priority of Payment – Collections*

The OFS Collateral Trustee shall, based on a Confirmed Instruction delivered by the Servicer (or the Backup Servicer) with respect thereto and to the extent Collections are available in the OFS Notes Collateral Account, subject to the following priority of payments, make the following transfers of such Collections in same-day funds,

- (a) if Collections are made with respect to payment for Purchased Receivables, to the OFS Notes Payment Account, for payment to the holder of the OFS Note the proceeds of which financed the purchase of the related Purchased Receivable(s) and related Buyer Obligation(s), if such day is the Maturity Date for such OFS Note or the Business Day immediately preceding the Maturity Date for such OFS Note;
- (b) if the Collections are made with respect to the payment for Retained Receivables, either (i) to the OFS Notes Operating Account; or (ii) upon Confirmed Instruction, to the OFS Notes Disbursement Account to fund the further purchase of Eligible Receivables;
- (c) to the extent that any Collections remain available in the OFS Notes Collateral Account after the application contemplated in paragraphs (a) and (b) above, an amount equal to such remaining available amount of Collections to the OFS Notes Operating Account for application pursuant to clause 5.6 of this debenture.

- 5.5.5 If the OFS Collateral Trustee shall receive notice from the Servicer (at the request of the Issuing and Paying Agent pursuant to the Issuing and Payment Agency Agreement) prior to 9:30 a.m. (London time) on any day on which an OFS Note is to mature that the Related Collections with respect to such OFS Note on deposit in the OFS Notes Payment Account are insufficient to pay the obligations relating to such OFS Note in full, the OFS Collateral Trustee shall, by 10:00 a.m. (London time) on such day notify the Issuing and Paying Agent of the actual amount of Related Collections with respect to such OFS Note that will be available on such day, taking into account any amounts applied pursuant to clause 5.6.3.

#### 5.6 **Priority of Payments - OFS Notes Operating Account**

- 5.6.1 In order to provide for the payment by the Company of certain fees, expenses and indemnities as and when due and owing, the OFS Collateral Trustee shall, based on a Confirmed Instruction delivered by

the Servicer (or the Backup Servicer, as applicable) with respect thereto and to the extent funds are available in the OFS Notes Operating Account, subject to the following priority of payments, make the following same-day transfers of such funds:

- (a) to the Company for application in the payment of any taxes, audit fees and other fees or expenses relating to the Company's limited liability company existence, maintenance and administration (without duplication of amounts payable pursuant to clause 5.5.3 of this debenture) and amounts due and payable to any Governmental Authority;
- (b) to the Company for application in the payment, pari passu and pro rata, of any indemnities or other amounts then due and owing by the Company to any Secured Party (other than the OFS Noteholders), in accordance with the OFS Notes Program Documents; and
- (c) to the Company for application in the payment, pari passu and pro rata, of any other amounts (other than (i) principal, interest (or discount) or default interest in respect of any OFS Note and (ii) amounts in respect of Collateral Trustee Obligations, Servicer Obligations and Backup Servicer Obligations) then due and owing by the Company to any OFS Notes Secured Party (other than the OFS Noteholders, the OFS Collateral Trustee, the Servicer and the Backup Servicer), in accordance with the OFS Notes Program Documents (provided that the foregoing shall not restrict the payment of such amounts to Deutsche Bank Trust Company Americas or Orbian Management Limited in capacities other than OFS Collateral Trustee or Backup Servicer, in the case of Deutsche Bank Trust Company Americas, or Servicer, in the case of Orbian Management Limited);

provided that, after the occurrence of an OFS Notes Termination Event, no distribution from the OFS Notes Operating Account shall be made without the prior written consent of the OFS Notes Administrator and the Servicer. In addition, the OFS Collateral Trustee may, to the extent funds are available (taking into account future obligations and cash flow requirements), make transfers to the Company Sole Member in payment of dividends declared by the Company in accordance with the OFS Notes Program Documents.

#### 5.6.2 [Reserved].

5.6.3 Notwithstanding the provisions of this clause 5.6, if the Servicer has notified the Company that the expected OFS Note Proceeds with respect to any potential OFS Note issuance will not be greater than or equal to the sum of the Purchase Price for the related Receivables plus any related fees payable in accordance with clause 5.5.3, the Company may, in its sole discretion, instruct the Servicer to issue and deliver a Confirmed Instruction to the OFS Collateral Trustee to, and the OFS Collateral Trustee shall, based on such Confirmed Instruction and to the extent funds are not required to make payments pursuant to clauses (a) through to (c) of clause 5.6.1, transfer to the OFS Notes Collateral Account from the OFS Notes Operating Account on the same Business Day that the applicable OFS Notes are issued an amount equal to the difference between the expected OFS Note Proceeds with respect to such issuance and the Purchase Price of the related Receivables plus any related fees payable in accordance with clause 5.5.3 of this debenture. Any such deposit into the OFS Notes Collateral Account shall constitute Purchase Funds and be applied to the payment of such Purchase Price and such fees.

#### 5.7 **Priority of Payments – OFS Notes Disbursement Account**

The OFS Collateral Trustee shall, based on a Confirmed Instruction by the Servicer (or the Backup Servicer), as applicable, make the following same-day transfers of amounts standing to the credit of the OFS Notes Disbursement Account, subject to the following priority of payments:

- (a) to the extent that such funds are deposited pursuant to clause 5.4.1 (c), to the applicable Supplier;
- (b) to the extent that such funds represent proceeds of an issuance of OFS Notes with respect to each Receivable identified on the related Borrowing Notice, to the applicable Supplier in payment of the Purchase Price for such Receivable payable by the Company; and
- (c) to the extent that such funds are deposited with respect to the purchase of any Retained Receivable, to the applicable Supplier in payment of the Purchase Price for such Retained Receivable.

## **6. REPRESENTATIONS AND WARRANTIES**

The Company represents and warrants to the OFS Collateral Trustee (which representations and warranties shall be deemed to be repeated on and as of each issuance of OFS Notes) as follows: -

### **6.1 Status**

The Company (a) is a limited company organised under the laws of England, (b) is duly licensed or qualified to do business and in good standing in each jurisdiction where the failure to be so licensed or qualified could have a material adverse effect on its assets or could impair its ability to perform any of its obligations hereunder or under any other OFS Notes Program Document to which it is a party and (c) has all requisite power and authority to conduct its business as contemplated hereby and to execute, deliver and perform its obligations under, this debenture and the other OFS Notes Program Documents to which it is a party.

### **6.2 Compliance with Other Instruments**

The execution, delivery and performance of this debenture and the other OFS Notes Program Documents to which the Company is a party will not (a) violate any existing applicable law, rule or regulation or any provision of its certificate of incorporation and memorandum and articles of association or (b) conflict with, result in a breach of, or constitute a default under, any terms or provisions of any indenture, mortgage or other agreement or instrument to which the Company is a party or by which it or any of its assets is bound which would be material in the context of this debenture.

### **6.3 Binding Agreement**

The execution, delivery and performance of the OFS Notes Program Documents to which the Company is a party have been duly authorised by all necessary action of the Company. The OFS Notes Program Documents to which the Company is a party have been duly executed and delivered by the Company and each constitutes a legal, valid and binding obligation of the Company, enforceable according to its terms, subject, as to enforceability, to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).



#### 6.4 **Authorisations**

All authorisations, consents, approvals, registrations, filings, exemptions and licenses with or from governmental or regulatory authorities that are necessary hereunder, or for the execution and delivery of the OFS Notes Program Documents to which the Company is a party, or for the performance by the Company of its obligations hereunder or under such other OFS Notes Program Documents have been effected and obtained and, so long as may be required for the Company to comply with this debenture or any other such OFS Notes Program Document, will remain in full force and effect.

#### 6.5 **Security Interests**

- (a) This debenture creates a valid and continuing security interest in the Collateral in favour of the OFS Collateral Trustee, on behalf of the Secured Parties, which security interest is prior to all other Liens, and is enforceable as such as against creditors of and purchasers from the Company in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance, reorganisation, moratorium and other similar laws affecting creditors' rights generally or by general equitable principles, whether considered in a proceeding at law or in equity and by an implied covenant of good faith and fair dealing. All action necessary to perfect such security interest has been duly taken.
- (b) The Company owns and has good and marketable title to the Collateral free and clear of any Liens, encumbrance or claim of any Person.
- (c) The Company has received all consents and approvals, if any, required to the transfer to the OFS Collateral Trustee, on behalf of the Related Secured Parties, of its interest and rights in the Collateral hereunder.
- (d) The Company has caused the filing of all appropriate filings in the proper filing office in the appropriate jurisdictions under applicable law in order to perfect the security interest in the Collateral granted to the OFS Collateral Trustee, on behalf of the Secured Parties hereunder.
- (e) [Reserved].
- (f) The Company has taken all steps necessary to grant to the OFS Collateral Trustee, on behalf of the Secured Parties, sole dominion and control over the OFS Notes Collateral Account, the OFS Notes Payment Account, the OFS Notes Disbursement Account, the OFS Notes Operating Account and the Purchaser Collection Account.
- (g) Other than the security interest granted to the OFS Collateral Trustee, on behalf of the Related Secured Parties pursuant to this debenture, the Company has not granted any lien in, assigned, sold, or otherwise conveyed or disposed of any of the Collateral. The Company has not authorised and is not aware of the filing of any notice or other filings against it that include a description of collateral covering the Collateral other than any filings relating to the security interest granted to the OFS Collateral Trustee, on behalf of the Secured Parties, under this debenture, or that has been terminated. The Company is not aware of any judgment or tax lien filings against it. The Company is not aware of any filing that has been released or terminated with respect to the Collateral.

- (h) The Company has not consented to the OFS Collateral Trustee's, the Issuing and Paying Agent's or the Account Bank's compliance with the instructions of any Person other than the OFS Collateral Trustee, on behalf of the Secured Parties.
- (i) The Company is the account holder of the Collateral described in paragraphs (vi) to (ix) of Schedule 1 and clause 3.5.
- (j) For the avoidance of doubt, nothing herein shall require the OFS Collateral Trustee to file financing statements or continuation statements, or be responsible for maintaining the security interests purported to be created as described herein.

## 6.6 **Other Representations and Warranties**

The Company reaffirms that each of the representations and warranties listed above are true and correct.

In addition to the other representations and warranties of the Company contained in this debenture and the other OFS Notes Program Documents, the Company represents and warrants to the OFS Collateral Trustee, the Buyers and the Parent (which representations and warranties shall be deemed to be repeated on each date that OFS Notes are issued) that:

- (a) All information, exhibits, financial statements, documents, books, records or other reports furnished or to be furnished at any time by or on behalf of the Company to the Servicer, the OFS Notes Administrator, the Buyers, the Parent or the OFS Collateral Trustee in connection with this debenture or any other OFS Notes Program Document to which it is a party is or will be complete and accurate in all material respects as of its date or (except as otherwise disclosed to the Servicer, the OFS Collateral Trustee, the Buyers, the Parent and the OFS Notes Administrator) as of the date so furnished.
- (b) No OFS Note Proceeds will be used for any purpose that violates any applicable law, rule or regulation.
- (c) The Company has complied in all material respects with the Servicer Policies.
- (d) The Company's complete name is set forth in the OFS Notes Program Documents to which it is a party, and it does not use and has not during the last five years used any other name, trade name, doing-business name or fictitious name, except for names set forth in a written notice delivered to the OFS Collateral Trustee and the Servicer.
- (e) The Buyer's entry into its Buyer Contract was not the product of any general fraud, fraud in the inducement, illegality, misrepresentation or duress on the part of the Company or the Servicer (or any officer, director, employee or agent thereof) or (to the Company's or the Servicer's knowledge) any other Person.
- (f) All requirements of applicable laws (and regulations thereunder) in respect of the Purchased Receivables have been complied with in all material respects by the Servicer and the Company.

- (g) No Insolvency Event or Unmatured Insolvency Event has occurred with respect to the Buyer or the applicable Supplier.
- (h) No Purchased Assets or any Related Buyer Obligation with respect to any Purchased Receivable purchased with OFS Notes Proceeds, has been satisfied, subordinated, waived, amended or rescinded.
- (i) No Purchased Asset has been sold, transferred, assigned, pledged or encumbered by the Company to any Person other than the OFS Collateral Trustee, on behalf of the Related Secured Parties with respect to the OFS Note the proceeds of which financed the purchase of such Purchased Asset. Upon payment by the Company of the related Purchase Price for any Purchased Asset, the Company shall have good and indefeasible title to and will be the sole owner of such Purchased Asset, free of any Lien other than Permitted Liens or as contemplated by the OFS Notes Program Documents.
- (j) Each Purchased Receivable, Related Buyer Obligation and the Buyer Contract constitutes a legal, valid and binding obligation of the Buyer, enforceable according to its terms, subject, as to enforceability, to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).
- (k) Other than the security interests granted to the OFS Collateral Trustee, on behalf of the Secured Parties, the Company has not assigned, sold, granted a lien in, or otherwise conveyed or disposed of, any Purchased Asset to any other Person. The Company has not authorised and is not aware of the filing of any notice or other filing against it that include a description of any Purchased Assets other than any filing on behalf of the OFS Collateral Trustee related to this debenture or that has been terminated. The Company is not aware of any judgment or tax lien filings against it.
- (l) The Company has not done anything to convey any right to any Person that would result in such Person having a right to payments due under any Purchased Receivable purchased with OFS Notes Proceeds or otherwise to impair the rights of the OFS Collateral Trustee in any Purchased Assets or the proceeds thereof.
- (m) The Company has a positive net worth and is able to and does pay its liabilities as they mature. The Company is not in default under any obligation to pay money to any Person except for matters being disputed in good faith that do not involve an obligation of the Company on a promissory note. The Company will not use the proceeds from the transactions contemplated by the OFS Notes Program Documents, the Buyer Contract and the Supplier Contracts to give any preference to any creditor or class of creditors, and the transactions contemplated thereby will not leave the Company with remaining assets that are unreasonably small compared to its ongoing operations.
- (n) The Company is not purchasing the Purchased Assets with any intent to hinder, delay or defraud any of its creditors; the Company will not be rendered insolvent as a result of its purchase of Purchased Assets.

- (o) No right of rescission, setoff, counterclaim or defence exists or has been asserted or threatened with respect to any Receivable or Buyer Obligation. The operation of the terms of any Receivable or Buyer Obligation or the exercise of any right thereunder will not render such Receivable or Buyer Obligation unenforceable in whole or in part and such Receivable or Buyer Obligations is not subject to any such right of rescission, setoff, counterclaim or defence.

## **7. AFFIRMATIVE COVENANTS OF THE COMPANY**

The Company hereby covenants and agrees that until all the Secured Liabilities have been paid and performed in full and this debenture shall have terminated:

### **7.1 Intentionally Omitted.**

### **7.2 Preservation and Maintenance of Existence**

The Company shall preserve and maintain its valid existence and good standing in England and its license or qualification and good standing in each jurisdiction necessary for the conduct of its business and observe all limited liability company formalities and procedures required by its memorandum and articles of association, laws of England and all other jurisdictions in which it conducts business, and shall keep its jurisdiction of incorporation and the office where it keeps its records concerning the Collateral at the location therefor specified herein.

### **7.3 Compliance with Laws**

The Company shall observe and comply with the requirements of all applicable laws, ordinances, judgments, rules, regulations, certifications, franchises, permits, licenses, directions, requirements and orders of any Governmental Authority that may then be applicable to the Company, a violation of or non-compliance with which could, singly or in the aggregate, reasonably be expected to cause:

- (a) a Material Adverse Change on the financial condition, operations or business of the Company, unless the same shall be contested by the Company in good faith and by appropriate proceedings diligently conducted by the Company; or
- (b) a Material Adverse Change on the ability of the Company to perform its obligations under the OFS Notes Program Documents, except such thereof as shall be contested in good faith and by appropriate proceedings diligently conducted by the Company; provided that the Company shall give the OFS Collateral Trustee, the OFS Notes Administrator and the Servicer prompt notice of such contest and that a reserve or other appropriate provision as shall be required in accordance with GAAP shall have been made therefor.

### **7.4 Maintenance of Books and Records; Inspection**

The Company shall:

- (a) maintain full and complete limited liability company books, records and bank accounts separate and apart from those of the Company Sole Member and make true and correct entries of all its dealings and business and financial affairs;
- (b) permit reasonable audits by the OFS Collateral Trustee and the Servicer to the extent and for the purposes set forth herein and in the Receivables Funding and Servicing Agreement;

- (c) bear the expense of all such third party audits; and
- (d) at all times keep accurate and complete books and records with respect to the Collateral and agrees that the OFS Collateral Trustee and the Servicer, or their respective representatives, shall have the right, in accordance with the provisions hereof and of the Receivables Funding and Servicing Agreement, to call at the Company's place of business to inspect and examine the books and records of the Company relating to the Collateral and to make extracts therefrom and copies thereof.

## 7.5 **Separateness**

The Company shall maintain an existence that is separate and distinct from its Affiliates, owner and members (including the Servicer) to the extent required to ensure the legal separateness of the Company and avoid the substantive consolidation of the Company with its Affiliates, owner or members (including the Servicer). The Company shall:

- (a) maintain its own separate books and records;
- (b) maintain its own separate bank accounts;
- (c) not commingle its assets with those of any other Person;
- (d) conduct its business in its own name and strictly comply with all organisational formalities to maintain its separate existence;
- (e) maintain its own separate financial statements showing its assets and liabilities separate and apart from those of any other Person;
- (f) pay its own liabilities only out of its own funds;
- (g) maintain an arm's-length relationship with its Affiliates and its members and enter into transactions with Affiliates only on commercially reasonable terms;
- (h) pay the salaries of its own employees, if any, from its own funds and maintain a sufficient number of employees in light of its contemplated business operations;
- (i) not guarantee or become obligated for the debts of any other entity or hold out its credit as being available to satisfy the obligations of any other Person;
- (j) not acquire obligations or securities of its members;
- (k) allocate fairly and reasonably any overhead for shared office space and for service performed by any shared employee;
- (l) use separate stationery, invoices and checks bearing its own name;
- (m) not pledge its assets for the benefit of any other Person or make any loans or advances to any other Person (other than pursuant to the OFS Notes Program Documents and as permitted under the Receivables Funding and Servicing Agreement);

- (n) at all times hold itself out to the public and all other Persons as a legal entity separate from its members and any other Persons;
- (o) correct any known misunderstandings regarding its separate identity;
- (p) maintain itself as a limited purpose company whose primary activities are restricted in its organisational documents to include (i) entering into Supplier Contracts and purchasing or otherwise acquiring Eligible Receivables from Suppliers; (ii) entering into the Buyer Contract; (iii) owning, holding, granting security interests or selling interests in Receivables and Buyer Obligations; (iv) entering into agreements for the selling and servicing of Receivables and Buyer Obligations; (v) issuing OFS Notes and using the proceeds thereof to purchase or acquire Receivables and Related Buyer Obligations; and (vi) undertaking activities incidental thereto;
- (q) ensure that at all times not less than two members of its board of directors shall be individuals who are not, and have never been, direct, indirect or beneficial stockholders, officers, directors, employees, Affiliates, associates or suppliers of any Supplier, the Buyer, the Servicer, any of their Affiliates or any Affiliate thereof; and
- (r) maintain adequate capital in light of its contemplated business operations.

#### 7.6 **Notice of Certain Events**

The Company shall:

- (a) promptly and in any event not more than one (1) Business Day after it (or its agents) becomes aware thereof, notify the OFS Collateral Trustee, the Buyers, the Parent, the Servicer and the OFS Notes Administrator of (i) the occurrence of any OFS Notes Termination Event and (ii) the institution of any action, suit, or proceeding against the Company that, if adversely determined, would be reasonably likely to cause a Material Adverse Change with respect to the financial condition or operations of the Company or its ability to perform its obligations under any OFS Notes Program Document; and
- (b) in the event it (or its agents) becomes aware of the occurrence of any default or event of default under any of the OFS Notes Program Documents, the Buyer Contract or the related Supplier Contracts, promptly give notice thereof to the OFS Collateral Trustee, the Servicer and the OFS Notes Administrator.

#### 7.7 **Payment of Taxes**

The Company shall pay or cause to be paid in accordance with the Priority of Payments when due all Taxes, including taxes levied or assessed upon the Company, all or any part of its property and assets, including the Collateral or in respect of amounts owing by the Company in respect of the OFS Notes, if any, to which it is subject unless such Taxes are being contested in good faith and in proper proceedings and appropriate reserves are being maintained by the Company in connection therewith.

#### 7.8 **Other Agreements**

The Company shall require each party that enters into an agreement with the Company on or after the date hereof to agree not to institute against, or join any person in instituting against, the Company, any bankruptcy, reorganisation, arrangement, examination, insolvency or liquidation proceedings, or other similar proceedings under the laws of any jurisdiction, for one year and a day after the date on which the latest maturing OFS Note or the latest maturing obligation of the Company is paid in full, and shall require that such provision survive the termination of such agreement and the replacement of such party pursuant to such agreement.

#### 7.9 **Miscellaneous**

The Company shall:

- (a) pay all liabilities incurred under the OFS Notes Program Documents when due in accordance with the Priority of Payments;
- (b) take all actions necessary to perfect or protect the OFS Collateral Trustee's interests, including filing financing statements or other appropriate instruments and enforcing all rights under the OFS Notes Program Documents;
- (c) notify the OFS Collateral Trustee of any creditor claim, other than those claims and obligations contemplated by the OFS Notes Program Documents; and
- (d) maintain good title to all of its assets free and clear of any Liens, except Permitted Liens.

#### 7.10 **Preservation, Maintenance and Servicing of Collateral and OFS Collateral Trustee's Lien**

The Company shall:

- (a) at its own expense, take such action as is reasonably necessary and proper with respect to the Collateral in order to preserve, maintain and service such Collateral;
- (b) do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered such instruments of transfer and exercise any rights, privileges, options, elections or powers of the Company pertaining to the Collateral or take such other steps or actions as may be necessary, to create and perfect the security interests granted hereunder in the Collateral, to ensure that such security interests rank prior to all other Liens (other than Permitted Liens) and to preserve the priority of such security interests and the validity and enforceability thereof. Upon any delivery of Collateral to the extent not so created by this debenture, the Company shall be obligated to create for the benefit of the OFS Collateral Trustee, on behalf of the Secured Parties, valid Liens (ranking ahead of all other Liens, but with corresponding priority rights as between the Secured Parties as are contemplated in this debenture) on and valid and perfected security interests in the Collateral (with priorities corresponding to the priorities under this debenture), so delivered in favour of the Secured Parties and to deliver such Collateral to the OFS Collateral Trustee, free and clear of any other Lien, together with satisfactory assurances thereof, and to pay any reasonable costs incurred by any of the Secured Parties, the OFS Collateral Trustee or otherwise in connection with such delivery;
- (c) if reasonably requested by the OFS Collateral Trustee, deliver to the OFS Collateral Trustee from time to time an opinion of counsel that any security interest granted hereunder is a

perfected security interest (or the equivalent) in the jurisdiction the laws of which would govern the perfection of such security interest;

- (d) defend the Collateral against all claims of any kind or nature of all persons at any time claiming the same or any interest therein adverse to the interests of the OFS Collateral Trustee or any Secured Party, and the Company shall not cause, permit or suffer to exist any Lien upon the Collateral other than the Liens granted hereby. Upon written request of the Company, the OFS Collateral Trustee will assist the Company in defending such claims; provided that the OFS Collateral Trustee shall be reimbursed for all expenses related to defending such claims; and
- (e) provide the OFS Collateral Trustee with the right (but not the obligation) to file one or more financing or continuation statements, and amendments thereto (as shall be provided to the OFS Collateral Trustee in accordance with paragraph 12 of Schedule 3), or other notice filings, and hereby provides the OFS Collateral Trustee with the right (but not the obligation) to take all such further action and execute all such further documents and instruments (as shall be provided to the OFS Collateral Trustee in accordance with paragraph 12 of Schedule 3) as may be necessary or desirable in the OFS Collateral Trustee's reasonable discretion in order to create, preserve, perfect and protect the security interest granted hereby, without the signature of the Company (where permitted by law). Whenever applicable law requires the signature of the Company on a document to be filed to preserve, perfect or protect the security interest granted hereby, the Company hereby appoints the OFS Collateral Trustee as the Company's attorney-in-fact, with full power of substitution, to sign the Company's name on any such document.

#### **7.11 Company to Observe Obligations**

The Company shall observe and perform its obligations under each OFS Notes Program Document during the term of each such agreement.

#### **7.12 Maintenance of Licenses**

The Company shall maintain all licenses, permits, charters and registrations, if any, which are material to the conduct of its business.

#### **7.13 Use of Proceeds**

The Company shall use the proceeds of OFS Notes solely to (a) purchase Eligible Receivables and Related Buyer Obligations in accordance with the Supplier Contracts and (b) pay other amounts contemplated by and in accordance with the Priority of Payments.

#### **7.14 Compliance with Other Covenants**

The Company shall comply with its covenants set forth in the other OFS Notes Program Documents.

### **8. NEGATIVE COVENANTS OF THE COMPANY**

The Company hereby covenants and agrees that, until the Secured Liabilities have been paid and performed in full and this debenture shall have terminated, the Company shall not, directly or indirectly:

#### **8.1 Enter into Agreements**



Enter into any agreement or incur any obligation other than (a) the OFS Notes Program Documents and (b) agreements and obligations expressly permitted by the OFS Notes Program Documents.

**8.2 Liens; Encumber Assets**

Create, incur, assume, pledge, hypothecate, mortgage or otherwise encumber its assets or permit to exist any Lien upon any of its assets, other than Permitted Liens.

**8.3 Other Indebtedness**

Create, assume, incur, suffer to exist or otherwise become or remain liable in respect to any indebtedness other than (a) liabilities, fees, expenses and indemnities hereunder and under the other OFS Notes Program Documents, (b) the OFS Notes and (c) in connection with a Permitted Financing Arrangement.

**8.4 OFS Note Operations**

(a) Take or permit to be taken any action that would result in the issuance and sale of the OFS Notes, as contemplated by this debenture or the Issuing and Paying Agent Agreement, being subject to the registration requirements of any Securities Law; (b) issue any promissory note or other obligation other than the OFS Notes and its membership interest or otherwise in connection with a Permitted Financing Arrangement; or (c) issue or sell OFS Notes in violation of any applicable law or regulation.

**8.5 Dividend Limitation**

Declare or pay any dividend in respect of, or make any distribution in respect of or redeem or purchase any of its membership interests; provided that the foregoing shall not prohibit the Company from paying as a dividend to the Company Sole Member amounts permitted to be declared and paid as dividends or distributed to the Company Sole Member in accordance with applicable law where the directors certify to the OFS Collateral Trustee that they have reviewed the assets and liabilities of the Company and its projected cash flows and have concluded that the dividend can be declared and paid without prejudicing the Company's capability to pay its debts as they fall due.

**8.6 Other Agreements**

Enter into or be a party to any agreement or incur any obligation other than (a) the OFS Notes Program Documents, or (b) agreements and obligations expressly permitted by the OFS Notes Program Documents, or (c) agreements providing financing to the Company for the purchase of Receivables and Related Buyer Obligations from Suppliers and agreements necessitated by the Company's entry into such financing agreements; provided that such financing agreements (and other related agreements) shall be permitted by and entered into solely in accordance with the Receivables Financing and Servicing Agreement (collectively, "**Permitted Financing Arrangements**") and (d) such other agreements necessary for the normal conduct of its business and that do not materially adversely affect the Company's business, nor engage in any business or activity other than those necessary for, or incidental to, its role in the transactions contemplated by the OFS Notes Program Documents or any Permitted Financing Arrangement.

**8.7 Other Activities**

Engage in any activity in contravention of its certificate of incorporation or memorandum and articles of association.

**8.8 Capital Expenditure**

Make any expenditure (by long-term or operating lease or otherwise) for capital assets (both realty and personalty) except for expenditures arising out of or in connection with the exercise of its rights and performance of its obligations under or pursuant to the OFS Notes Program Documents or any Permitted Financing Arrangement.

**8.9 Capital Structure**

Make any changes in its equity capital structure (including the terms of its outstanding membership interests).

**8.10 Bank Accounts**

Establish or maintain any account other than the OFS Notes Program Accounts or any other account established in accordance with (a) the terms of this debenture and the other OFS Notes Program Documents for the benefit of the Secured Parties or (b) any Permitted Financing Arrangement, other than one corporate bank account for the deposit of any profits.

**8.11 Change Jurisdiction of Formation**

Change its jurisdiction of formation unless the Company shall have given the Parent, the OFS Collateral Trustee and the Servicer at least thirty (30) days' prior written notice thereof, subject to the prior written consent of the OFS Collateral Trustee, and if the Company changes its jurisdiction of organisation, the Company shall effect whatever appropriate filings and other actions as are necessary in order that the security interests in the Collateral shall remain, after such relocation, valid, effective and of the same priority.

**8.12 Change Name or Identity**

Change its name or identity or any other provisions of any of its organisational documents in any manner unless it shall have (a) given the OFS Collateral Trustee, the Servicer and the OFS Notes Administrator at least thirty (30) days' prior written notice thereof, and (b) effected any necessary or appropriate filings of notice or other filings or amendments thereto.

**8.13 Amend Charter Documents**

Amend its certificate of incorporation or memorandum and articles of association in any respect unless such amendment has been approved in writing by the Parent and it has given prior written notice to the OFS Collateral Trustee, the Servicer and the OFS Notes Administrator.

**8.14 Amend OFS Notes Program Documents**

Amend, modify, supplement, terminate and/or waive any provisions of this debenture, any other OFS Notes Program Document, the Buyer Contract and/or any Supplier Contract otherwise than with the consent of the Parent and the OFS Notes Administrator and in accordance with this debenture.

**8.15 Merger, Consolidation**

Merge, consolidate with or into, or convey, transfer, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favour of any Person.

**8.16 Subsidiaries**

Create or acquire any subsidiary without the prior written consent of the OFS Collateral Trustee and the Parent.

**8.17 Pay Taxes**

Fail to pay any tax, assessment, charge or fee levied or assessed against the Collateral or to defend any action, if such failure to pay or defend may adversely affect the priority or enforceability of the Company's right, title or interest in, to and under the Collateral or the Collateral Trustee's Liens on, and security interest in, the Collateral.

**8.18 Dispose of Assets**

Sell, assign (by operation of law or otherwise), lease, transfer, liquidate (other than according to its terms) or otherwise dispose of any of the Collateral, except to the extent explicitly permitted by the OFS Notes Program Documents.

**8.19 Use of Proceeds**

Use the proceeds of OFS Notes for any purpose other than to (a) acquire or purchase related Receivables and Related Buyer Obligations pursuant to the Supplier Contracts and (b) repay other amounts contemplated by and in accordance with the Priority of Payments.

**8.20 OFS Notes Operating Account**

Deposit any funds in the OFS Notes Operating Account other than amounts paid to the Company in accordance with clause 5.5.4 (b) or capital contributions from the Company Sole Member.

**8.21 Investment Company Laws**

Take any action, or omit to take any action, or cause any action to be taken or omitted, or permit any authorised person to take or omit to take any action, that would result in the Company being required to be registered as an investment company under any Investment Company Law.

**9. POWERS OF THE OFS COLLATERAL TRUSTEE**

**9.1 Powers**

The OFS Collateral Trustee shall have the powers set out in Schedule 2.

**9.2 Acknowledgment**

For the avoidance of doubt, if it is determined that an OFS Notes Secured Party has an interest in, to or under the Collateral for any other OFS Note with respect to which it is not a Related Secured Party (or in respect of obligations that are not related to such other OFS Note) ("**Other Related Collateral**"), then the OFS Collateral Trustee, on behalf of itself and such OFS Notes Secured Party, agrees that the

interest of the OFS Collateral Trustee and such OFS Notes Secured Party in, to or under such Other Related Collateral shall be subordinate in all respects to the claims or rights of the Related Secured Parties with respect to such Other Related Collateral in accordance with the Priority of Payments. For all purposes hereunder:

- (a) this debenture (including, without limitation, the allocation provisions hereof) shall constitute a subordination agreement for the purposes of any Insolvency Law. The subordination provided for herein is intended to and shall be deemed to constitute a complete subordination, and, as such, shall be applicable whether or not the Company is a debtor in any case or proceeding arising under any Insolvency Law or out of any Insolvency Event,
- (b) any reference to an OFS Note shall include all obligations of the Company, whether now or hereafter existing under such OFS Note, and whether for principal, interest, fees, expenses or otherwise, and without limiting the generality of the foregoing, "interest" owing on such OFS Note shall expressly include any and all interest accruing after the commencement of any bankruptcy case or other insolvency proceeding in which the Company is the debtor, notwithstanding any provision or rule of law that might restrict the rights of any holder of an interest in such OFS Note, as against the Company or anyone else, to collect such interest,
- (c) "payments" prohibited under the subordination provisions of this debenture shall include any distributions of any type, whether cash, other debt instruments, or any equity instruments, regardless of the source thereof, and
- (d) the holder of any interest in an OFS Note retains such holder's right to vote to accept or reject any plan of reorganisation proposed for the Company in any subsequent bankruptcy or insolvency proceeding of the Company; provided, however, that, regardless of any such vote or of the exercise of any other rights such holder (or its agents) may have under any Insolvency Law, and without limiting the generality of the other clauses of this paragraph, any distributions that such holder is to receive on account of such holder's interest in such OFS Note from the Company under any such plan of reorganisation, from any collateral, from any guarantor, or from any other source, shall be subordinated in right of payment as set forth herein and shall instead be distributed in the order of priority set forth herein. This paragraph shall survive the termination of this debenture.

### 9.3 **OFS Collateral Trustee's Consent to Amendments of the Related Documents**

- (a) Subject to clause 9.3 (b) below but notwithstanding any other provision in any OFS Notes Program Document, the OFS Collateral Trustee may agree with the Company to amend, modify, supplement, terminate and/or waive the relevant provisions of this debenture, any other OFS Notes Program Document, the Buyer Contract and/or any Supplier Contract (including, without limitation, an amendment, modification, supplement, termination or waiver which relates to a Reserved Matter) only with the prior consent of the Buyers, the Parent and the OFS Noteholders holding at least 66⅔ per cent of the principal amount outstanding of the OFS Notes.
- (b) The OFS Collateral Trustee may without the consent of the OFS Noteholders (but only with the prior written consent of the Buyers and the Parent), agree with the Company to amend, modify, supplement, terminate and/or waive the relevant provisions of this debenture, any other OFS Notes Program Document, the Buyer Contract and/or any Supplier Contract (other

than an amendment, modification, supplement, termination or waiver which relates to a Reserved Matter) (as applicable), if any such amendment, modification, supplement, termination or waiver of this debenture, any other OFS Notes Program Document, the Buyer Contract and/or any Supplier Contract is, in the sole opinion of the OFS Collateral Trustee, of a formal, minor or technical nature or is made to correct a manifest error and is, in each case, not materially prejudicial to the interests of the OFS Noteholders. The OFS Collateral Trustee shall be provided with an Officer's Certificate and shall rely on such Officer's Certificate with respect to such matters.

Any such amendment, modification, supplement, termination or waiver shall be binding on the OFS Noteholders and shall be notified by the Company to the OFS Noteholders as soon as practicable.

"Reserved Matter" means any proposal:

- (a) to change any date fixed for payment of principal or interest or any other amount in respect of the OFS Notes, to reduce the amount of principal or interest or any other amount payable on any date in respect of the OFS Notes or to alter the method of calculating the amount of any payment in respect of the OFS Notes on redemption or maturity or the date for any payment due under the OFS Notes;
- (b) to effect the exchange, conversion or substitution of the OFS Notes for, or the conversion of the OFS Notes into, shares, bonds or other obligations or securities of the Company or any other person or body corporate formed or to be formed;
- (c) to change the currency in which amounts due in respect of the OFS Notes are payable;
- (d) to change the majority required to provide OFS Noteholder consent pursuant to clause 9.3 (a) of the OFS Notes Debenture; or
- (e) to amend this definition.

## **10. ENFORCEMENT**

### **10.1 Enforcement events**

The security constituted by this debenture shall be immediately enforceable in any of the circumstances set out in paragraph 1 of Schedule 3. The parties to this debenture agree that the provisions of Schedule 3 shall apply to this debenture and shall be binding between them.

### **10.2 Receiver's powers**

A Receiver shall have, in addition to the powers conferred on receivers by statute, the further powers set out in Schedule 3.

### **10.3 Right of appropriation**

To the extent that the any security interest over the Collateral constitutes Financial Collateral and this debenture and the obligations of the Company hereunder constitute a Security Financial Collateral Arrangement, the OFS Collateral Trustee shall have the right, at any time after the security constituted by this debenture has become enforceable, to appropriate all or any of that Collateral in or towards the payment and/or discharge of the Secured Liabilities in such order as the OFS Collateral Trustee in its absolute discretion may from time to time determine. The value of any Collateral appropriated in

accordance with this clause shall be the price of that Collateral at the time the right of appropriation is exercised as listed on any recognised market index, or determined by such other method as the Related Secured Parties may select (including independent valuation). The Company agrees that the methods of valuation provided for in this clause are commercially reasonable for the purposes of the Financial Collateral Regulations.

#### **10.4 Enforcement of rights and claims against the Parent and the Buyers**

- (a) Subject to sub-paragraph (b) below, the OFS Collateral Trustee agrees (for the benefit of the Parent and each of the Buyers) that it shall only (and shall ensure that any Receiver and any person acting for or on behalf of the OFS Collateral Trustee, or for or on behalf of any Receiver, shall only) enforce any rights or claims under or in relation to any Receivable or any Related Buyer Obligation or under or in relation to the Buyer Contract in the courts of Munich and agrees that the courts of Munich shall have exclusive jurisdiction in relation to these matters (in the same manner as described in, and without prejudice to, the Buyer Contract).
- (b) Where, in respect of any Receivable, any other courts are expressed, under the terms of the contract under which that Receivable arose, to have jurisdiction, those courts shall have exclusive jurisdiction in relation to any rights or claims in respect of that Receivable and the OFS Collateral Trustee agrees (for the benefit of the Parent and each of the Buyers) that it shall only (and shall ensure that any Receiver and any person acting for or on behalf of it, or for or on behalf of any Receiver, shall only) enforce any rights or claims under or in relation to that Receivable in those courts.

### **11. COSTS AND INDEMNITY**

#### **11.1 Costs**

The Company shall pay to or reimburse the OFS Collateral Trustee and any Receiver on demand, on a full indemnity basis, all Costs incurred by the Related Secured Parties and/or any Receiver in relation to:

- (a) this debenture or the Collateral; or
- (b) protecting, perfecting, preserving or enforcing (or attempting to do so) any of the Related Secured Parties' or the Receiver's rights under this debenture; or
- (c) suing for, or recovering, any of the Secured Liabilities,

(including, without limitation, the Costs of any proceedings in relation to this debenture or the Secured Liabilities) together with, in the case of clause 11.1(b) and clause 11.1(c), interest on the amount due at the default rate of interest specified in this OFS Notes Debenture.

#### **11.2 Indemnity**

The OFS Collateral Trustee and any Receiver and its respective employees and agents shall be indemnified on a full indemnity basis out of the Collateral in respect of all actions, liabilities and Costs incurred or suffered in or as a result of:

- (a) the exercise or purported exercise of any of the powers, authorities or discretions vested in them under this debenture;
- (b) any matter or thing done or omitted to be done in relation to the Collateral under those powers; or
- (c) any default or delay by the Company in performing any of its obligations under this debenture.

### 11.3 Compensation

- (a) Subject to the Priority of Payments, the Company agrees (i) to pay to the OFS Collateral Trustee, from time to time, such reasonable compensation as shall be agreed to in writing between the Company and the OFS Collateral Trustee for all services rendered by it hereunder with respect to the Company, and (ii) to reimburse the OFS Collateral Trustee upon its request for all reasonable expenses and disbursements incurred or made by the OFS Collateral Trustee in accordance with any provision of, or carrying out its duties and obligations under, the OFS Notes Program Documents (including the reasonable fees and the expenses of its counsel), except any expense, disbursement or advance as may be attributable to the gross negligence or wilful misconduct on the part of the OFS Collateral Trustee.
- (b) Subject to the Priority of Payments, the Company agrees to pay, indemnify and hold the OFS Collateral Trustee harmless from and against any and all recording and filing fees and any and all liabilities with respect to, or resulting from any delay in paying, stamp and other taxes, if any, that may be payable or determined to be payable in connection with the execution and delivery of or consummation of any of the actions contemplated by, or any amendment, supplement or modification of, or any waiver or consent under or in respect of, this debenture, the other OFS Notes Program Documents and any such other documents, and to pay, indemnify and hold the OFS Collateral Trustee and its directors, officers, agents and employees harmless from and against any and all other liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements (collectively, "**Losses**") of any kind or nature whatsoever with respect to the execution, delivery, enforcement, performance and administration of this debenture, the other OFS Notes Program Documents, any such other documents and the transactions contemplated thereby (all the foregoing, collectively, the "**OFS Collateral Trustee Indemnified Liabilities**"); provided that the Company shall have no obligation under this debenture to the OFS Collateral Trustee with respect to OFS Collateral Trustee Indemnified Liabilities arising from or relating to (i) the gross negligence or wilful misconduct of the OFS Collateral Trustee or (ii) any culpable action or inaction of the Servicer, the Backup Servicer or the OFS Notes Administrator.
- (c) This section shall survive the termination of this debenture and the removal or replacement of the OFS Collateral Trustee.

## 12. RELEASE

Subject to clause 15.4, upon the expiry of the Security Period (but not otherwise) the OFS Collateral Trustee shall, at the request and cost of the Company, take whatever action is necessary to release the Collateral from the security constituted by this debenture.

### **13. APPOINTMENT OF OFS COLLATERAL TRUSTEE**

#### **13.1 Appointment**

By accepting the benefits of the security interests granted in this debenture, each Secured Party is deemed to hereby designate and appoint Deutsche Bank Trust Company Americas as the OFS Collateral Trustee under this debenture, and authorise Deutsche Bank Trust Company Americas, as OFS Collateral Trustee, to take such action on its behalf, and to exercise such powers and perform such duties, as are delegated to the OFS Collateral Trustee by the terms of this debenture. Notwithstanding any provision to the contrary elsewhere in this debenture, the OFS Collateral Trustee shall not have any duties or responsibilities except those expressly set forth in this debenture. If an OFS Notes Termination Event has occurred, the OFS Collateral Trustee shall exercise such of the rights and powers vested in it by this debenture and use the same degree of care and skill in their exercise as it exercises with respect to its own property but in any event with no less care than a prudent person would exercise or use under the circumstances in the conduct of his own affairs. The OFS Collateral Trustee hereby accepts its appointment as OFS Collateral Trustee subject to, and in reliance upon, the provisions of this clause 13.1.

#### **13.2 Performance of Duties**

The OFS Collateral Trustee may perform any of its duties under the OFS Notes Program Documents directly or by or through agents, custodians, nominees or attorneys-in-fact; provided that no such delegation shall relieve the OFS Collateral Trustee of primary liability for the performance of such duties; notwithstanding the foregoing, if each of the Parent, the Servicer (so long as no Servicer Termination Event or OFS Notes Termination Event has occurred) and the Backup Servicer has given its prior written consent to such delegation and such delegation has been made with due care, the OFS Collateral Trustee shall not be liable for such performance by its agents, custodians, nominees or attorneys in fact. The OFS Collateral Trustee shall also be entitled to consult with counsel and experts in connection with any of its duties under the OFS Notes Program Documents and shall not be liable for any action reasonably taken or omitted to be taken by them or it in good faith in accordance with the advice of such counsel or experts.

#### **13.3 Exculpatory Provisions**

- (a) Neither the OFS Collateral Trustee nor any of its officers, directors, employees, agents, attorneys-in-fact or Affiliates shall be (i) liable for any action lawfully taken or omitted to be taken by it or such Person under or in connection with the OFS Notes Program Documents (except for its, or such Person's, own gross negligence or wilful misconduct) or (ii) responsible in any manner to any Person for any recitals, statements, representations or warranties made by the Company or any officer thereof contained in the OFS Notes Program Documents or in any certificate, report, statement or other document referred to or provided for therein, or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of the OFS Notes Program Documents or the security interests granted hereunder, or for any failure of the Company to perform its obligations thereunder. The OFS Collateral Trustee shall not be under any obligation to any Person to ascertain or to inquire as to the observance or performance by the Company of any of the agreements contained in, or conditions of, the OFS Notes Program Documents or to inspect the properties, books or records of the Company. The OFS Collateral



Trustee shall be under no obligation to exercise any of the trusts or powers vested in it by this debenture or to make any investigation of matters arising hereunder or to institute, conduct or defend any litigation hereunder or in relation hereto at the request, order or direction of any OFS Notes Secured Party unless such OFS Notes Secured Party shall have offered to the OFS Collateral Trustee security or indemnity satisfactory to it against the costs, expenses and liabilities that may be incurred therein or thereby. Subject to clause 11.3 (b), the OFS Collateral Trustee shall not be required to expend or risk its own funds or otherwise incur any liability, financial or otherwise, in the performance of its obligations under the OFS Notes Program Documents, nor shall it be required to take any action unless it has adequate assurance that indemnity shall be provided to it.

- (b) The OFS Collateral Trustee assumes no responsibility for the validity, effectiveness, value, sufficiency or enforceability of this debenture against the other parties hereto, of the other OFS Notes Program Documents against the parties thereto, or of any security interest in the Collateral for any OFS Note (or any part thereof) against any obligor thereunder. The OFS Collateral Trustee shall have no responsibility for maintaining the value of the Collateral for any OFS Note; provided that the OFS Collateral Trustee shall be responsible for holding, releasing and disposing of the Collateral for any OFS Note in accordance with the provisions hereof. The OFS Collateral Trustee shall have the right to take or cause to be taken all action recommended pursuant to any opinion of its legal counsel received by the OFS Collateral Trustee pursuant to this debenture as may be necessary or appropriate to perfect (and maintain such perfection) and protect the security interests granted hereby, including, without limitation, the priority thereof, subject to provisions reasonably satisfactory to the OFS Collateral Trustee for the payment or reimbursement to it of all reasonable costs and expenses related to such actions.
- (c) Notwithstanding any provision to the contrary contained in the OFS Notes Program Documents, in performing its obligations to transfer amounts and make payments to any Person in accordance with this debenture or in its performance of any other obligation under any OFS Notes Program Document, the OFS Collateral Trustee shall be entitled to rely in good faith upon the information duly furnished to it by or on behalf of the Company, Servicer, Backup Servicer, OFS Notes Administrator and the Issuing and Paying Agent and, if an OFS Notes Termination Event shall have occurred, the Controlling Party on the terms herein described. If the OFS Collateral Trustee has been given notice that a transfer or payment by the OFS Collateral Trustee is required to be made on a specified date and on such specified date the OFS Collateral Trustee shall not have received all information necessary for the making of such transfer or payment pursuant to a Confirmed Instruction delivered by the Servicer (or the Backup Servicer), then the OFS Collateral Trustee shall promptly give notice to the Company, the OFS Notes Administrator and the Servicer or, if an OFS Notes Termination Event shall have occurred, to the Controlling Party, specifying, to the extent reasonably within the knowledge of the OFS Collateral Trustee, such absence of information or any inability to confirm information necessary for the making of such transfer or payment. If the OFS Collateral Trustee has been given notice that a transfer or payment by the OFS Collateral Trustee is required to be made on a specified date and on such specified date any information necessary for the making of such transfer or payment is not furnished by or on behalf of the Company or, if an OFS Notes Termination Event shall have occurred, the Controlling Party, and instructions necessary for the making of such transfer or payment are not received from or on behalf of the Company

pursuant to a Confirmed Instruction (after delivery by the OFS Collateral Trustee of the notice required by the preceding sentence), in sufficient time to effect such transfer or payment, then, upon notice by the OFS Collateral Trustee to the Company, the OFS Notes Administrator and the Servicer or, if an OFS Notes Termination Event shall have occurred, to the Controlling Party, the OFS Collateral Trustee's obligations with respect to such transfer or payment shall be suspended and the OFS Collateral Trustee shall not be liable for the failure to make such transfer or payment. Notwithstanding the foregoing, the OFS Collateral Trustee may carry out transfers and payments of amounts specified herein without specific instructions from the Company or, if an OFS Notes Termination Event shall have occurred, the Controlling Party, if the OFS Collateral Trustee has actual knowledge of the information required for the making of such transfer and payments.

- (d) In no event shall the OFS Collateral Trustee be responsible or liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the OFS Collateral Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.
- (e) OFS Collateral Trustee shall not incur any liability for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of OFS Collateral Trustee (including but not limited to any act or provision of any present or future law or regulation or governmental authority, any act of God or war, civil unrest, local or national disturbance or disaster, any act of terrorism, or the unavailability of the Federal Reserve Bank wire or facsimile or other wire or communication facility).

#### **13.4 Reliance by OFS Collateral Trustee**

The OFS Collateral Trustee shall be entitled to conclusively rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter, cablegram, telegram, telecopy, telex or telex message, statement, order or other document or conversation reasonably believed by it in good faith to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including, without limitation, counsel to the Company), accountants and other experts selected by the OFS Collateral Trustee.

#### **13.5 Notice of OFS Notes Termination Event**

The OFS Collateral Trustee shall not be deemed to have knowledge or notice of the occurrence of any OFS Notes Termination Event unless a Responsible Officer of the OFS Collateral Trustee has received written notice from any OFS Noteholder, the Servicer, the Company or the OFS Notes Administrator referring to this debenture and describing such OFS Notes Termination Event, or unless a Responsible Officer of the OFS Collateral Trustee has actual knowledge of such OFS Notes Termination Event.

#### **13.6 Successor OFS Collateral Trustee**

- (a) Any Person into which the OFS Collateral Trustee may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its trust business and assets as a whole

or substantially as a whole, or any Person resulting from any such conversion, sale, merger, consolidation or transfer to which the OFS Collateral Trustee is a party, shall (provided it is otherwise qualified to serve as the OFS Collateral Trustee hereunder) be and become a successor OFS Collateral Trustee hereunder and be vested with all of the title to the Collateral for each OFS Note and all of the trusts, powers, discretions, immunities, privileges and other matters as was its predecessor without the execution or filing of any instrument or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding; provided that the prior written consent of the OFS Notes Administrator, the OFS Noteholders and the Servicer shall have been obtained with respect to such successor OFS Collateral Trustee.

- (b) The OFS Collateral Trustee may resign as OFS Collateral Trustee upon thirty (30) days' notice to the Company and the OFS Notes Administrator or the Company may remove the OFS Collateral Trustee at any time upon thirty (30) days' notice to the Issuing and Paying Agent, the OFS Noteholders and the Servicer; provided, however, that any such resignation or removal shall not be effective unless and until (i) a successor OFS Collateral Trustee is appointed pursuant to this debenture and (ii) the prior written consent of the Servicer and the OFS Noteholders shall have been obtained; provided further that if no successor OFS Collateral Trustee shall have been appointed within thirty (30) days following the date of such notice of resignation to the Company or the date of notice of removal to the OFS Collateral Trustee, the OFS Collateral Trustee or the Company may petition any court of competent jurisdiction for the appointment of a successor OFS Collateral Trustee. If the OFS Collateral Trustee shall resign or be removed as OFS Collateral Trustee under this debenture, then the Company (or the OFS Notes Administrator on its behalf) shall appoint a commercial bank having a long-term debt rating of at least Baa1 and a short-term debt rating of at least P-1, in each case from Moody's, as successor collateral trustee for the Secured Parties. Upon acceptance of such appointment by such successor collateral trustee and any notice filing to reflect such appointment, such successor OFS Collateral Trustee shall succeed to the rights, powers and duties of the OFS Collateral Trustee, and the term "OFS Collateral Trustee" shall mean such successor OFS Collateral Trustee effective upon its appointment, and the former OFS Collateral Trustee's rights, powers and duties as OFS Collateral Trustee shall be terminated (subject to its lien securing any amounts due and owing to it under the OFS Notes Program Documents), without any other or further act or deed on the part of such former OFS Collateral Trustee and the successor OFS Collateral Trustee shall be entitled to amend any UCC financing statements and any other filings, recordation and declarations it deems advisable or necessary in connection with such termination and cancellation. After any retiring OFS Collateral Trustee's resignation under this debenture as OFS Collateral Trustee, the provisions of this section shall inure to such retiring OFS Collateral Trustee's benefit as to any actions taken or omitted to be taken by it while it was OFS Collateral Trustee under this debenture.

### 13.7 **Scope of Performance**

- (a) In acting with respect to this debenture, the OFS Collateral Trustee shall be required to perform only such duties as are specifically set forth in this debenture and applicable law as in effect from time to time. The OFS Collateral Trustee undertakes to perform such duties and only such duties as are specifically set forth in this debenture.

- (b) The Collateral Trustee in its capacity hereunder shall be afforded the same indemnities, protections, rights, powers and immunities set forth in the Issuing and Payment Agency Agreement and the OFS Notes Administration Agreement as if such indemnities, protections, rights, powers and immunities were specifically set forth herein.
- (c) In order to comply with laws, rules, regulations and executive orders in effect from time to time applicable to banking institutions, including those relating to the funding of terrorist activities and money laundering ("**Applicable Law**"), the Collateral Trustee is required to obtain, verify, record and update certain information relating to individuals and entities which maintain a business relationship with the Collateral Trustee. Accordingly, each of the parties agrees to provide the Collateral Trustee upon its request from time to time such identifying information and documentation as may be available for such party in order to enable the Collateral Trustee to comply with Applicable Law.

#### **14. ASSIGNMENT AND TRANSFER**

##### **14.1 Assignment by OFS Collateral Trustee**

The OFS Collateral Trustee may at any time, provided that it has received the prior written consent of the Company and the Parent, assign or transfer the whole or any part of the OFS Collateral Trustee's rights and/or obligations under this debenture to any Person.

##### **14.2 Assignment by Company**

The Company may not assign any of its rights or transfer any of its obligations under this debenture or enter into any transaction, which would result in any of those rights or obligations passing to another person.

#### **15. FURTHER PROVISIONS**

##### **15.1 Independent security**

This debenture shall be in addition to and independent of every other security or guarantee which the Secured Parties may at any time hold for any of the Secured Liabilities and no prior security held by the Secured Parties over the whole or any part of the Collateral shall merge in the security created by this debenture.

##### **15.2 [Reserved].**

##### **15.3 Continuing security**

This debenture shall remain in full force and effect as a continuing security for the Secured Liabilities, notwithstanding any settlement of account or intermediate payment or other matter or thing whatsoever, unless and until the OFS Collateral Trustee discharges this debenture in writing.

##### **15.4 Discharge conditional**

Any release, discharge or settlement between the Company and the OFS Collateral Trustee shall be deemed conditional upon no payment or security received by the OFS Collateral Trustee in respect of the Secured Liabilities being avoided, reduced or ordered to be refunded pursuant to any law relating to

insolvency, bankruptcy, winding-up, administration, receivership or otherwise and, notwithstanding any such release, discharge or settlement:

- (a) the OFS Collateral Trustee or its nominee shall be at liberty to retain this debenture and the security created by or pursuant to this debenture, including all certificates and documents relating to the whole or any part of the Collateral, for such period as the OFS Collateral Trustee shall deem necessary to provide the OFS Collateral Trustee with security against any such avoidance, reduction or order for refund; and
- (b) the OFS Collateral Trustee shall be entitled to recover the value or amount of such security or payment from the Company subsequently as if such release, discharge or settlement had not occurred.

#### **15.5 Certificates**

A certificate or determination by the OFS Collateral Trustee as to any amount for the time being due to it from the Company shall (in the absence of any manifest error) be conclusive evidence of the amount due.

#### **15.6 Rights cumulative**

The rights and powers of the OFS Collateral Trustee conferred by this debenture are cumulative, may be exercised as often as the OFS Collateral Trustee considers appropriate, and are in addition to its rights and powers under the general law.

#### **15.7 Waivers and amendments**

- (a) Any waiver or variation of any right by the OFS Collateral Trustee (whether arising under this debenture or under the general law) shall only be effective if it is in writing and signed by the OFS Collateral Trustee and applies only in the circumstances for which it was given and shall not prevent the OFS Collateral Trustee from subsequently relying on the relevant provision.
- (b) This Agreement may be supplemented, modified or amended only by written instrument approved by the Parent and the Buyers and signed on behalf of the parties hereto.
- (c) No waiver of any provision of this Agreement, or consent to any departure by any party hereto from this Agreement shall be effective unless approved by the Parent and the Buyers and in a writing signed by the parties, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.
- (d) Prior to the execution of any supplement, modification, amendment, termination or waiver of any provision of this debenture, the OFS Notes Collateral Trustee shall be entitled to receive or rely upon such opinions of counsel or officer's certificate as it deems necessary, in its reasonable discretion.

#### **15.8 Further exercise of rights**

No act or course of conduct or negotiation by or on behalf of the OFS Collateral Trustee shall in any way preclude the OFS Collateral Trustee from exercising any right or power under this debenture or constitute a suspension or variation of any such right or power.

**15.9 Delay**

No delay or failure to exercise any right or power under this debenture shall operate as a waiver.

**15.10 Single or partial exercise**

No single or partial exercise of any right under this debenture shall prevent any other or further exercise of that or any other such right.

**15.11 Consolidation**

The restriction on the right of consolidation contained in Section 93 of the Law of Property Act 1925 shall not apply to this debenture.

**15.12 Partial invalidity**

The invalidity, unenforceability or illegality of any provision (or part of a provision) of this debenture under the laws of any jurisdiction shall not affect the validity, enforceability or legality of the other provisions.

**15.13 Counterparts**

This debenture may be executed and delivered in any number of counterparts, each of which is an original and which together have the same effect as if each party had signed the same document.

**15.14 Third party rights**

- (a) This debenture confers a benefit on certain persons named therein (including, without limitation, the Buyers and the Parent) who are not a party to this debenture (each for the purposes of this clause a "**Third Party**") and, subject to the remaining provisions of this clause, is intended to be enforceable by each Third Party by virtue of the Contracts (Rights of Third Parties) Act 1999.
- (b) The rights of each Third Party specified in sub-paragraph (a) are without prejudice to any rights they may have as beneficiaries or otherwise of the security granted under this debenture.
- (c) Each obligation of the Company and the OFS Collateral Trustee under this debenture shall be treated as conferring a benefit on each Buyer and the Parent.

**15.15 Perpetuity period**

The perpetuity period applicable to all trusts declared by this debenture shall be 80 years.

**16. NOTICES**

**16.1 Service**

Any notice or other communication given under this debenture shall be in writing and shall be served by delivering it personally or by sending it by pre-paid first-class post or by fax to the address or fax number and for the attention of the relevant party as set out in Schedule 4 or such other address or fax number as may be notified in writing from time to time by the relevant party to the other party.

## 16.2 **Receipt**

Receipt of any notice, given under clause 16.1 above, shall be deemed to be:

- (a) if delivered personally, at the time of delivery; or
- (b) in the case of pre-paid first-class letter, 48 hours from the date of posting; or
- (c) in the case of a fax, when received in legible form,

but if deemed receipt occurs:

- (i) before 9:00 am on a Business Day, the notice shall be deemed to have been received at 9:00 am on that day; or
- (ii) after 5:00 pm on a Business Day or on a day that is not a Business Day, the notice shall be deemed to have been received at 9:00 am on the next Business Day.

## 16.3 **Proof of service**

In proving service of a notice, it shall be sufficient to prove that the envelope containing such notice was addressed to the address of the relevant party as set out in Schedule 4 (or as otherwise notified by that party under clause 16.1 above) and delivered either:

- (a) to that address, or
- (b) into the custody of the postal authorities as a pre-paid recorded delivery first-class letter.

## 16.4 **Emails invalid**

Notice given under this debenture shall not be validly served if sent by e-mail.

## 17. **GOVERNING LAW AND JURISDICTION**

### 17.1 **Governing law**

This debenture and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed according to English law.

### 17.2 **Jurisdiction**

Other than as specifically set forth in section 10.4 above, the parties to this debenture irrevocably agree that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this debenture or its subject matter or formation (including non-contractual disputes or claims). Nothing in this clause shall limit the right of the Related Secured Parties to take proceedings against the Company in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

### 17.3 **Agent for service**

- (a) The Company irrevocably appoints Orbian Management Limited of New Broad Street House, 35 New Broad Street, London, EC2M 1NH [facsimile: +44 (0) 20 7575 7401] as its agent to receive on its behalf in England or Wales service of any proceedings under clause 17.2 above. Such service shall be deemed completed on delivery to such agent (whether or not it is forwarded to and received by the Company) and shall be valid until such time as the OFS Collateral Trustee has received prior written notice from the Company that such agent has ceased to act as agent. If for any reason such agent ceases to be able to act as agent or no longer has an address in England or Wales, the Company shall forthwith appoint a substitute acceptable to the OFS Collateral Trustee and deliver to the OFS Collateral Trustee the new agent's name, address [and fax number] within England and Wales, failing which the OFS Collateral Trustee may select a substitute agent to receive on the Company's behalf service of any proceedings arising out of or in connection with this debenture.
- (b) The OFS Collateral Trustee irrevocably appoints Orbian Management Limited of New Broad Street House, 35 New Broad Street, London, EC2M 1NH [facsimile: +44 (0) 20 7575 7401] as its agent to receive on its behalf in England or Wales service of any proceedings under clause 17.2 above. Such service shall be deemed completed on delivery to such agent (whether or not it is forwarded to and received by the OFS Collateral Trustee) and shall be valid until such time as the Company and the Parent has received prior written notice from the OFS Collateral Trustee that such agent has ceased to act as agent. If for any reason such agent ceases to be able to act as agent or no longer has an address in England or Wales, the OFS Collateral Trustee shall forthwith appoint a substitute acceptable to the Company and the Parent and deliver to the Company and the Parent the new agent's name, address and fax number within England and Wales, failing which the Company or the Parent may select a substitute agent to receive on the OFS Collateral Trustee's behalf service of any proceedings arising out of or in connection with this debenture.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.



## Schedule 1 Collateral

- (i) all of the Company's right, title and interest in, to and under all Receivables owned by the Company;
- (ii) to the extent not otherwise included in the foregoing, all of the Company's right, title and interest in, to and under all the Related Buyer Obligations with respect to all Purchased and Retained Receivables;
- (iii) to the extent not otherwise included in any of the foregoing, all of the Company's right, title and interest in, to and under all Purchased Assets with respect to the Purchased and Retained Receivables;
- (iv) to the extent not otherwise included in any of the foregoing, all of the Company's right, title and interest in, to and under all amounts, including Collections and all other proceeds, payable to the Company in connection with the Purchased Receivables and Retained Receivables, the Related Buyer Obligations and the Purchased Assets described in paragraphs (i) to (iii) above, pursuant to the terms of the Purchased Receivables, the Related Buyer Obligations and the Purchased Assets described in paragraphs (i) to (iii) above and all rights, claims, powers, privileges and remedies of the Company, whether arising by contract or at law or in equity or otherwise, related to the foregoing;
- (v) to the extent not otherwise included in any of the foregoing, all of the Company's right, title and interest in, to and under the OFS Notes Program Documents, to the extent of all moneys due and to become due to the Company under the OFS Notes Program Documents to the extent related to the Assets described in paragraphs (i) to (iv) above, or in connection therewith, whether payable as fees, expenses, costs, indemnities, insurance recoveries, termination payments, damages for breach of any of the OFS Notes Program Documents or otherwise, and all rights, remedies, powers, privileges and claims of the Company under or with respect to the OFS Notes Program Documents, whether arising pursuant to the terms of the OFS Notes Program Documents or otherwise available to the Company at law or in equity, including, without limitation, the rights of the Company to enforce the OFS Notes Program Documents and to give or withhold any and all consents, requests, notices, directions, approvals, extensions or waivers under or with respect to the OFS Notes Program Documents to the same extent as the Company could but for the assignment and security interest granted to the OFS Collateral Trustee for the benefit of the Secured Parties;
- (vi) to the extent not otherwise included in any of the foregoing, all of the Company's right, title and interest in, to and under the Purchaser Collection Account and the Disbursement Account;
- (vii) to the extent not otherwise included in any of the foregoing, all of the Company's right, title and interest in, to and under the OFS Notes Collateral Account;
- (viii) to the extent not otherwise included in any of the foregoing, all of the Company's right, title and interest in, to and under the OFS Notes Payment Account;
- (ix) to the extent not otherwise included in any of the foregoing, all of the Company's right, title and interest in, to and under the OFS Notes Operating Account;
- (x) to the extent not otherwise included in any of the foregoing, all of the Company's right, title and interest in, to and under any and all payments under any credit enhancement, insurance, indemnity,

warranty or guaranty paid or payable by reason of loss or damage to, or in respect of payments due or required to be made under, or otherwise in respect of, any of the foregoing;

- (xi) to the extent not otherwise included in any of the foregoing, all of the Company's right, title and interest in, to and under all present and future claims, demands, causes and choses in action in respect of any or all of the foregoing; and
- (xii) to the extent not otherwise included in any of the foregoing, all of the Company's right, title and interest in, to and under any and all proceeds of any of the foregoing.

## **Schedule 2 Powers of OFS Collateral Trustee**

### **1. POWER TO REMEDY**

The OFS Collateral Trustee shall be entitled (but shall not be bound) to remedy a breach at any time by the Company of any of its obligations contained in this debenture and the Company irrevocably authorises the OFS Collateral Trustee and its agents to do all such things as are necessary or desirable for that purpose, subject to the provisions set forth in paragraph 7 of this Schedule 2.

### **2. EXERCISE OF RIGHTS**

The rights of the OFS Collateral Trustee under paragraph 1 of this Schedule 2 are without prejudice to any other rights of the OFS Collateral Trustee under this debenture and the exercise of those rights shall not make the OFS Collateral Trustee liable to account as a mortgagee in possession.

### **3. PRIOR ENCUMBRANCES**

At any time after the security constituted by this debenture shall have become enforceable or after any powers conferred by any Encumbrance having priority to this debenture shall have become exercisable, the OFS Collateral Trustee may:

- (a) redeem such or any other prior Encumbrance or procure its transfer to itself; and
- (b) settle any account of the holder of any prior Encumbrance.

The settlement of any such account shall be conclusive and binding on the Company and all moneys paid by the OFS Collateral Trustee to an encumbrancer in settlement of such an account shall, as from its payment by the OFS Collateral Trustee, be due from the Company to the OFS Collateral Trustee on current account and shall bear interest and be secured as part of the Secured Liabilities.

### **4. CONVERSION OF CURRENCY**

For the purpose of or pending the discharge of any of the Secured Liabilities the OFS Collateral Trustee may convert any moneys received, recovered or realised by the OFS Collateral Trustee under this debenture (including the proceeds of any previous conversion under this paragraph 4) from its existing currencies of denomination into such other currencies of denomination as the OFS Collateral Trustee may think fit and any such conversion shall be effected at the OFS Collateral Trustee's then prevailing spot selling rate of exchange for such other currency against the existing currency. Each previous reference in this paragraph 4 to a currency extends to funds of that currency and, for the avoidance of doubt, funds of one currency may be converted into different funds of the same currency.

### **5. NEW ACCOUNTS**

- 5.1 If OFS Collateral Trustee receives notice of any subsequent Encumbrance or other interest affecting all or part of the Collateral, the OFS Collateral Trustee may open a new account or accounts for the Company in the OFS Collateral Trustee's books and (without prejudice to the OFS Collateral Trustee's right to combine accounts) no money paid to the credit of the Company in any such new account will be appropriated towards or have the effect of discharging any part of the Secured Liabilities.

- 5.2 Any such new account opened in accordance with paragraph 5.1 of this Schedule 2 will be deemed to be an OFS Notes Program Account and subject to the security constituted by this debenture.
- 5.3 If the OFS Collateral Trustee does not open a new account or accounts immediately on receipt of notice under paragraph 5.1 of this Schedule 2, then, unless the OFS Collateral Trustee gives express written notice to the contrary to the Company, as from the time of receipt of the relevant notice by the OFS Collateral Trustee all payments made by the Company to the OFS Collateral Trustee shall be treated as having been credited to a new account of the Company and not as having been applied in reduction of the Secured Liabilities.

## **6. OFS COLLATERAL TRUSTEE'S SET-OFF RIGHTS**

If the OFS Collateral Trustee shall have more than one account for the Company in its books the OFS Collateral Trustee may at any time after:

- (a) the security constituted by this debenture has become enforceable; or
- (b) any of the Related Secured Parties have received notice of any subsequent Encumbrance or other interest affecting all or any part of the Collateral,

transfer, without prior notice, all or any part of the balance standing to the credit of any account to any other account which may be in debit but the OFS Collateral Trustee shall notify the Company of the transfer once made.

## **7. INDULGENCE**

The OFS Collateral Trustee may in its discretion grant time or other indulgence or make any other arrangement, variation or release with any person or persons not being a party to this debenture (whether or not such person or persons are jointly liable with the Company) in respect of any of the Secured Liabilities or of any other security for them without prejudice either to this debenture or to the liability of the Company for the Secured Liabilities.

## Schedule 3 Enforcement

### 1. ENFORCEMENT EVENTS

This debenture shall be enforceable if:

- (a) any of the Secured Liabilities shall not be paid or discharged when the same ought to be paid or discharged by the Company (whether on demand or at scheduled maturity or by acceleration or otherwise, as the case may be); or
- (b) the Company shall be in breach of any of its obligations under this debenture or under any other agreement between the Company and the Secured Parties and that breach (if capable of remedy) has not been remedied to the satisfaction of the Secured Parties within 14 days of notice by the Secured Parties to the Company to remedy the breach; or
- (c) the Company:
  - (i) becomes unable to pay its debts as they fall due (and/or the value of the Company's assets is less than the amount of its liabilities, taking into account the Company's contingent and prospective liabilities); or
  - (ii) commences negotiations with any one or more of its creditors with a view to the general readjustment or rescheduling of its indebtedness; or
  - (iii) makes a general assignment for the benefit of, or a composition with, its creditors; or
- (d) the Company passes any resolution or takes any corporate action or a petition is presented or proceedings are commenced or any action is taken by any person for its winding-up, dissolution, administration or re-organisation or for the appointment of a receiver, administrative receiver, administrator, trustee or similar officer of it or of any or all of its revenues and assets; or
- (e) a distress, execution, attachment or other legal process is levied or enforced upon or sued against all or any part of the assets of the Company and remains undischarged for seven days; or
- (f) any event occurs in relation to the Company that is analogous to those set out in paragraph 1(c), paragraph 1(d) or paragraph 1(e) of this Schedule 3; or
- (g) any representation, warranty or statement made or deemed to be made by the Company under this debenture is or proves to have been incorrect or misleading when made or deemed to be made; or
- (h) an Event of Default (as defined in any Note Purchase Agreement) occurs

and in any such event (whether or not the event is continuing), without prejudice to any other rights of the Related Secured Parties, the powers of sale under the Law of Property Act 1925 shall immediately be exercisable and the OFS Collateral Trustee (acting on the written instruction of the OFS Noteholders holding at least 66 2/3 per cent of the principal amount then Outstanding of the OFS Notes) shall enforce all or any part of the security created by this debenture as it sees fit.

## **2. STATUTORY POWER OF SALE**

The powers of sale conferred upon mortgagees under the Law of Property Act 1925 shall, as between the OFS Collateral Trustee and a purchaser from the OFS Collateral Trustee, arise on and be exercisable at any time after the execution of this debenture, but the OFS Collateral Trustee shall not exercise such power of sale until the security constituted by this debenture has become enforceable under paragraph 1 of this Schedule 3.

## **3. PROTECTION OF THIRD PARTIES**

No purchaser, mortgagee or other person dealing with the OFS Collateral Trustee or any Receiver shall be concerned:

- (a) to enquire whether any of the Secured Liabilities have become due or payable or remain unpaid or undischarged, or whether the power the OFS Collateral Trustee or a Receiver is purporting to exercise has become exercisable; or
- (b) to see to the application of any money paid to the OFS Collateral Trustee or any Receiver.

## **4. NO LIABILITY AS MORTGAGEE IN POSSESSION**

Neither the OFS Collateral Trustee nor any Receiver nor any Administrator shall be liable to account as mortgagee in possession in respect of all or any of the Collateral nor shall any of them be liable for any loss upon realisation of, or for any neglect or default of any nature whatsoever in connection with, all or any of the Collateral for which a mortgagee in possession might as such be liable.

## **5. APPOINTMENT OF RECEIVER**

5.1 At any time after the security constituted by this debenture has become enforceable, or at the request of the Company, the OFS Collateral Trustee may without further notice:

- (a) appoint under seal or by writing under hand of a duly authorised officer of the OFS Collateral Trustee any one or more person or persons to be a receiver or a receiver and manager of all or any part of the Collateral; and
- (b) (subject to Section 45 of the Insolvency Act 1986) from time to time under seal or by writing under hand of a duly authorised officer of the OFS Collateral Trustee, remove any person appointed to be Receiver and may in like manner appoint another in his place.

Where more than one person is appointed Receiver, they will have power to act separately (unless the appointment by the OFS Collateral Trustee specifies to the contrary).

5.2 The OFS Collateral Trustee may fix the remuneration of any Receiver appointed by it without the restrictions contained in Section 109 of the Law of Property Act 1925 and the remuneration of the Receiver shall be a debt secured by this debenture which shall be due and payable immediately upon its being paid by the OFS Collateral Trustee.

## **6. POWERS ADDITIONAL**

- 6.1 The powers of sale and appointing a Receiver conferred by this debenture shall be in addition to all statutory and other powers of the OFS Collateral Trustee under the Insolvency Act 1986, the Law of Property Act 1925 or otherwise and shall be exercisable without the restrictions contained in Sections 103 and 109 of the Law of Property Act 1925 or otherwise.
- 6.2 The power to appoint a Receiver (whether conferred by this debenture or by statute) shall be and remain exercisable by the OFS Collateral Trustee notwithstanding any prior appointment in respect of all or any part of the Collateral.

## **7. AGENT OF THE COMPANY**

Any Receiver appointed by the OFS Collateral Trustee under this debenture shall be the agent of the Company and the Company shall be solely responsible for his acts and remuneration as well as for any defaults committed by him.

## **8. POWERS OF RECEIVER**

Any Receiver appointed by the OFS Collateral Trustee under this debenture shall in addition to the powers conferred on him by the Law of Property Act 1925 and the Insolvency Act 1986 have power to do all such acts and things as an absolute owner could do in the management of such of the Collateral over which the Receiver is appointed and in particular the powers set out in Schedule 3.

## **9. ORDER OF APPLICATION OF PROCEEDS**

All moneys received by the OFS Collateral Trustee or a Receiver in the exercise of any enforcement powers conferred by this debenture shall be applied in the following order of priority but in each case only to the extent that all payments of a higher priority have been made in full:

- (a) to the payment of all liabilities which are required by law to be discharged ahead of the Secured Parties;
- (b) to the payment of all unpaid fees, costs and other liability incurred by or on behalf of the OFS Collateral Trustee and any Receiver, attorney or agent appointed by it, on a *pari passu* and *pro rata* basis;
- (c) to the payment of the Primary Secured Liabilities, on a *pari passu* and *pro rata* basis (save that any obligation in respect of an OFS Note shall be solely discharged from the Collateral for such OFS Note);
- (d) to the payment of the Secondary Secured Liabilities on a *pari passu* and *pro rata* basis solely out of any remaining balance in the OFS Notes Operating Account;
- (e) to the payment of the Buyer Secured Liabilities, on a *pari passu* and *pro rata* basis; and
- (f) to the payment of any remaining proceeds to the Company or any other person entitled to it under the OFS Notes Program Documents.

## **10. SECTION 109(8) LAW OF PROPERTY ACT 1925**

Neither the OFS Collateral Trustee nor any Receiver shall be bound (whether by virtue of section 109 (8) of the Law of Property Act 1925, which is varied accordingly, or otherwise) to pay or appropriate any

receipt or payment first towards interest rather than principal or otherwise in any particular order as between any of the Secured Liabilities.

#### **11. SUSPENSE ACCOUNT**

All moneys received by any of the Related Secured Parties or a Receiver under this debenture may, at the discretion of the OFS Collateral Trustee or Receiver, be credited to any suspense or securities realised account and shall bear interest at such rate, if any, as may be agreed in writing between the OFS Collateral Trustee and the Company and may be held in such account for so long as the OFS Collateral Trustee or Receiver thinks fit.

#### **12. POWER OF ATTORNEY**

By way of security the Company irrevocably appoints the OFS Collateral Trustee and every Receiver separately to be the attorney of the Company and in its name and on its behalf and as its act and deed to execute any documents, and do any acts and things which:

- (a) the Company is required to execute and do under this debenture; and/or
- (b) any attorney may deem proper or desirable in exercising any of the powers, authorities and discretions conferred by this debenture or by law on the OFS Collateral Trustee or any Receiver.

#### **13. RATIFICATION OF ACTS OF ATTORNEY**

The Company ratifies and confirms and agrees to ratify and confirm anything which any of its attorneys may do in the proper and lawful exercise or purported exercise of all or any of the powers, authorities and discretions referred to in paragraph 12 of this Schedule 3.

#### **14. APPOINTMENT OF AN ADMINISTRATOR**

- 14.1 The OFS Collateral Trustee may without notice to the Company appoint any one or more persons to be an administrator of the Company pursuant to paragraph 14 Schedule B1 of the Insolvency Act 1986 if this debenture becomes enforceable.
- 14.2 Any appointment under this paragraph 14 shall:
  - (a) be in writing signed by a duly authorised signatory of the OFS Collateral Trustee, and
  - (b) take effect, in accordance with paragraph 19 of Schedule B1 of the Insolvency Act 1986, when the requirements of paragraph 18 of that Schedule B1 are satisfied.
- 14.3 The OFS Collateral Trustee may (subject to any necessary approval from the court) end the appointment of an Administrator by notice in writing in accordance with this paragraph 14 and appoint under that paragraph a replacement for any Administrator whose appointment ends for any reason.



Further powers of Receiver:

**1. TO EMPLOY PERSONNEL AND ADVISORS**

A Receiver may provide services and employ, or engage, such managers, contractors and other personnel and professional advisors on such terms as he deems expedient.

**2. TO MAKE VAT ELECTIONS**

A Receiver may make such elections for value added tax purposes as he thinks fit.

**3. TO CHARGE REMUNERATION**

A Receiver may charge and receive such sum by way of remuneration (in addition to all costs, charges and expenses incurred by him) as the OFS Collateral Trustee may prescribe or agree with him.

**4. TO MANAGE OR RECONSTRUCT THE COMPANY'S BUSINESS**

A Receiver may carry on, manage, develop, reconstruct, amalgamate or diversify or concur in carrying on, managing, developing, reconstructing, amalgamating or diversifying the business of the Company.

**5. TO MAKE SETTLEMENTS**

A Receiver may make any arrangement, settlement or compromise between the Company and any other person which he may think expedient.

**6. TO MAKE CALLS ON COMPANY MEMBERS**

A Receiver may make calls conditionally or unconditionally on the members of the Company in respect of the uncalled capital with such and the same powers for that purpose and for the purpose of enforcing payments of any calls so made as are conferred by the articles of association of the Company on its directors in respect of calls authorised to be made by them.

**7. TO APPOINT STAFF AND AGENTS**

A Receiver may appoint managers, officers, servants, workmen and agents for the aforesaid purposes at such salaries and for such periods and on such terms as he may determine.

**8. TO INSURE**

A Receiver may, if he thinks fit, but without prejudice to the indemnity contained in clause 11.1, effect with any insurer any policy or policies of insurance either in lieu or satisfaction of, or in addition to, such insurance.

**9. LAW OF PROPERTY ACT 1925**

A Receiver may exercise all powers provided for in the Law of Property Act 1925 in the same way as if he had been duly appointed under that act and exercise all powers provided for an administrative receiver in Schedule 1 of the Insolvency Act 1986.

**10. TO BORROW**

A Receiver may for any of the purposes authorised by this debenture raise money by borrowing from the Related Secured Parties or from any other person on the security of all or any of the Collateral in respect of which he is appointed upon such terms (including if the OFS Collateral Trustee shall consent to terms under which such security ranks in priority to this debenture) as he shall think fit.

**11. TO REDEEM PRIOR ENCUMBRANCES**

A Receiver may redeem any prior Encumbrance and settle and pass the accounts to which the Encumbrance relates and any accounts so settled and passed shall be conclusive and binding on the Company and the moneys so paid will be deemed to be an expense properly incurred by him.

**12. INCIDENTAL POWERS**

A Receiver may do all such other acts and things as he may consider incidental or conducive to any of the matters or powers in this Schedule 3 or which he lawfully may or can do as agent for the Company.

**13. SCOPE OF POWERS**

Any exercise of any of these powers may be on behalf of the Company, the directors of the Company (in the case of the power contained in paragraph 6 of this Schedule 3) or himself.

## **Schedule 4 Notice details**

The **Company**:

**Orbian Financial Services XIX Limited**

New Broad Street House  
35 New Broad Street  
London, EC2M 1NH  
Attention: Andrew Notman  
Fax Number: 44 020 7575 7401

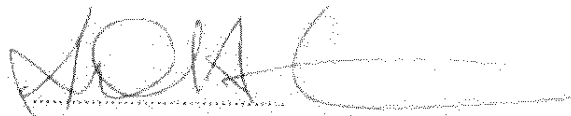
With a copy to:  
James D. Houston, Chief Legal Officer  
Orbian Management Limited  
2175 Salk Ave., Ste 160  
Carlsbad, CA, USA 92008  
Telephone: (760) 891-2300

The **OFS Collateral Trustee**:

Deutsche Bank Trust Company Americas,  
60 Wall Street, 16<sup>th</sup> Floor, Mail Stop NYC60-  
1630, New York, New York 10005,  
Attention: Structured Finance Services –  
Trust & Security Services, Facsimile: (212)  
553-2463

With a copy to:  
Deutsche Bank AG, London Branch  
Winchester House  
1 Great Winchester Street  
London EC2N 2DB  
United Kingdom  
Attention: Alberto Pipi  
Telephone: +44(20)754-76411  
Facsimile: +44(20)754-76732

Executed as a deed by **ORBIAN  
FINANCIAL SERVICES XIX LIMITED**  
acting by James D. Houston, its Chief  
Legal Officer and Paris C. Cribben, its  
Assistant General Counsel


  
.....  
Chief Legal Officer

  
.....  
Assistant General Counsel

Executed as a deed by **DEUTSCHE  
BANK TRUST COMPANY  
AMERICAS**, not in its individual  
capacity but solely as Collateral  
Trustee acting by Michelle M-Lee,  
who, in accordance with the laws of  
the territory in which Deutsche Bank  
Trust Company Americas is  
incorporated [is/are] acting under the  
authority of Deutsche Bank Trust  
Company Americas

  
.....  
Authorised signatory

**LISA KARLSEN  
VICE PRESIDENT**

  
.....  
Authorised signatory

**MICHELLE LEE  
VICE PRESIDENT**