

# BEST BUY CO INC

## FORM 8-K (Current report filing)

Filed 07/03/08 for the Period Ending 06/30/08

Address	7601 PENN AVE SOUTH RICHFIELD, MN 55423
Telephone	6122911000
CIK	0000764478
Symbol	BBY
SIC Code	5731 - Radio, Television, and Consumer Electronics Stores
Industry	Retail (Technology)
Sector	Services
Fiscal Year	02/03

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 8-K**

**CURRENT REPORT**

**Pursuant to Section 13 OR 15(d) of The Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported) **June 30, 2008**



**BEST BUY CO., INC.**

(Exact name of registrant as specified in its charter)

**Minnesota**

(State or other jurisdiction  
of incorporation)

**1-9595**

(Commission  
File Number)

**41-0907483**

(IRS Employer  
Identification No.)

**7601 Penn Avenue South  
Richfield, Minnesota**

(Address of principal executive offices)

**55423**

(Zip Code)

Registrant's telephone number, including area code **(612) 291-1000**

**N/A**

(Former name or former address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

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

## ITEM 2.01 Completion of Acquisition or Disposition of Assets.

As reported on its Current Reports on Form 8-K and Form 8-K/A filed with the U.S. Securities and Exchange Commission (“SEC”) on May 8, 2008, May 13, 2008, and June 12, 2008 (the “Previous Reports”), Best Buy Co., Inc. (“Best Buy” or the “registrant”) entered into a Sale and Purchase Agreement (the “SPA”), dated May 7, 2008, with The Carphone Warehouse Group PLC (“The Carphone Warehouse”). Under the terms of the SPA, The Carphone Warehouse contributed certain assets and liabilities into a newly-formed company registered in England and Wales named Best Buy International Limited (“BBY Europe”), in exchange for all of the ordinary shares of BBY Europe. On June 30, 2008, all conditions to closing under the SPA were met and Best Buy completed the transaction wherein its wholly-owned subsidiary, Best Buy Distributions Limited, acquired 50% of such ordinary shares of BBY Europe from CPW for an aggregate purchase price of \$2.167 billion. The effective acquisition date for accounting purposes is the close of business June 28, 2008, the end of CPW’s fiscal first quarter.

The registrant financed the purchase of BBY Europe shares with approximately \$1.1 billion of cash on hand, approximately \$600 million of borrowings under its \$2.5 billion revolving credit agreement and approximately \$500 million from a debt offering exempt from registration, the terms of which were disclosed in the registrant’s Current Report on Form 8-K filed with the SEC on June 24, 2008, which is incorporated by reference into this Item 2.01.

The registrant plans to consolidate the financial results of BBY Europe from the effective date of acquisition on a two-month lag to align with CPW’s quarterly reporting periods. As a result, the financial results of BBY Europe will not be reported in the registrant’s consolidated financial statements until its fiscal third quarter ending on November 29, 2008. The registrant intends to disclose any significant intervening events related to BBY Europe that occur in its fiscal quarters and materially affect its consolidated financial statements.

Pursuant to a Shareholders Agreement with CPW and its wholly-owned subsidiary, CPW Retail Holdings Limited, Best Buy’s designees to the BBY Europe board of directors have ultimate approval rights over select BBY Europe senior management positions and the annual capital and operating budgets of BBY Europe. In addition, pursuant to a £350 million Facility Agreement between the registrant, CPW and BBY Europe, CPW agreed to provide a revolving credit facility to BBY Europe. The registrant is named as the guarantor under the agreement, limited to 50% of the amount outstanding.

The foregoing description of the Shareholders Agreement and Facility Agreement and related matters does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the Shareholders Agreement and Facility Agreement, which are attached hereto as Exhibits 4.1 and 4.2, respectively, and are incorporated herein by reference.

The contents of the Previous Reports are incorporated by reference into this Item 2.01.

The news release issued on June 30, 2008, announcing the close of the transaction, is furnished as Exhibit No. 99 to this Current Report on Form 8-K. Some of the matters discussed in this Current Report on Form 8-K (including Exhibit 99) may constitute forward-looking statements within the meaning of the “safe harbor” provisions of the Private Securities Litigation Reform Act of 1995. These forward-looking statements include statements other than those made solely with respect to historical fact and are based on the intent, belief or current expectations of the registrant and its management. The registrant’s business and operations are subject to a variety of risks and uncertainties that might cause actual results to differ materially from those projected by any forward-looking statements. Factors that could cause such differences include, but are not limited to, those factors set forth in the press release attached hereto as Exhibit 99 and the risk factors set forth in the registrant’s filings with the SEC, which includes Item 1A, *Risk Factors*, of the registrant’s Annual Report on Form 10-K for the fiscal year ended March 1, 2008.

**Item 9.01 Financial Statements and Exhibits .**

(a) Financial Statements of Businesses Acquired.

Any required financial statements of the business acquired will be filed by amendment to this Current Report on Form 8-K not later than 71 days after the date on which this Current Report on Form 8-K is required to be filed.

(b) Pro Forma Financial Information.

Any required pro forma financial information will be filed by amendment to this Current Report on Form 8-K not later than 71 days after the date on which this Current Report on Form 8-K is required to be filed.

(d) Exhibits.

The following exhibits are filed or furnished, as described below, as Exhibits to this Report.

<u>Exhibit No.</u>	<u>Description of Exhibit</u>
4.1	Shareholders Agreement, dated June 30, 2008 (filed pursuant to Item 2.01), between The Carphone Warehouse Group PLC; CPW Retail Holdings Limited; Best Buy Co., Inc.; and Best Buy Distributions Limited
4.2	Facility Agreement, dated June 30, 2008 (filed pursuant to Item 2.01), between CPW Distribution Holdings Ltd; Best Buy Co., Inc.; and The Carphone Warehouse Group PLC
99	News release issued June 30, 2008 (furnished pursuant to Item 2.01). Any internet addresses provided in this release are for information purposes only and are not intended to be hyperlinks. Accordingly, no information in any of these internet addresses is included herein.

## SIGNATURES

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

BEST BUY CO., INC.  
(Registrant)

Date: July 3, 2008

By: /s/ SUSAN S. GRAFTON  
Susan S. Grafton  
Vice President, Controller and Chief Accounting Officer

**Dated**

**June 30, 2008**

**(1) THE CARPHONE WAREHOUSE GROUP PLC**

**(2) CPW RETAIL HOLDINGS LIMITED**

**(3) BEST BUY CO., INC.**

**-and-**

**(4) BEST BUY DISTRIBUTIONS LIMITED**

**SHAREHOLDERS AGREEMENT**

relating to the operation of

**CPW DISTRIBUTION HOLDINGS  
LIMITED (to be renamed Best Buy  
International Limited)**

## CONTENTS

1.	DEFINITIONS AND INTERPRETATION	5
2.	PURPOSE AND CORPORATE DETAILS OF JV CO	19
3.	SHAREHOLDER ASSURANCES	21
4.	PROVISION OF FINANCE	24
5.	MANAGEMENT STRUCTURE	26
6.	JV SHAREHOLDER RESERVED MATTERS	31
7.	SHAREHOLDER MEETINGS	32
8.	INFORMATION	32
9.	DEADLOCK RESOLUTION	34
10.	ANTI-DILUTION	36
11.	TRANSFER OF JV INVESTMENT	36
12.	DIVIDENDS	38
13.	RESTRICTIONS ON SHAREHOLDERS	39
14.	REPRESENTATIONS AND WARRANTIES	43
15.	ANNOUNCEMENTS AND CONFIDENTIALITY	43
16.	TERMINATION	45
17.	TRANSFER ON CHANGE OF CONTROL	46
18.	TRANSFER TERMS	49
19.	STRATEGIC OPTIONS	50
20.	RIGHT OF FIRST REFUSAL	50
21.	INADEQUACY OF DAMAGES	51
22.	TAX	52
23.	ENTIRE AGREEMENT AND SEVERANCE	52
24.	AMENDMENTS	53
25.	NO ASSIGNMENT	53

26.	REMEDIES AND WAIVERS	53
27.	COSTS	54
28.	DURATION	54
29.	TIME OF THE ESSENCE	55
30.	COUNTERPARTS	55
31.	NOTICES	55
32.	CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999	57
33.	SHAREHOLDER APPROVAL	57
34.	GOVERNING LAW	57
	SCHEDULE 1 PARTICULARS OF JV CO IMMEDIATELY AFTER CLOSING	58
	SCHEDULE 2 JV SUBSIDIARIES	59
	UK Subsidiaries	59
	European Subsidiaries	60
	US Subsidiary	62
	SCHEDULE 3 RESERVED MATTERS	63
	SCHEDULE 4 COMPULSORY TRANSFER	66
	SCHEDULE 5 FAIR MARKET VALUE	70
	SCHEDULE 6 DEED OF ADHERENCE TO SHAREHOLDERS' AGREEMENT	74
	SCHEDULE 7 EUROPEAN COUNTRIES	75
	SCHEDULE 8 TAX	76
1.	PREPARATION OF TAX DOCUMENTS	76
2.	CARRY BACK OF TAX LOSSES OR OTHER PREJUDICIAL ACTION	76
3.	ACCESS TO TAX DOCUMENTS AND RIGHT TO COMMENT	77
4.	NEGOTIATIONS WITH TAX AUTHORITIES	77
5.	TAX COMMITTEE	77
1.	U.S. TAX PROVISIONS	78



**THIS SHAREHOLDERS AGREEMENT** is made on June 30, 2008

**BETWEEN**

- (1) **THE CARPHONE WAREHOUSE GROUP PLC** a company registered in England and Wales (company number 03253714) whose registered office is at 1 Portal Way, London W3 6RS, United Kingdom ( "**CPW**" );
- (2) **CPW RETAIL HOLDINGS LIMITED** a company registered in England and Wales (company number 06585729) whose registered office is at 1 Portal Way, London W3 6RS, United Kingdom ( "**CPW Affiliate**" );
- (3) **BEST BUY CO., INC.** a company with a registered address at 7001 Penn Avenue South Richfield, MN 55423, United States of America ( "**BBY Hold Co**" ); and
- (4) **BEST BUY DISTRIBUTIONS LIMITED** a company registered in England and Wales (company number 06576708) whose registered office is at 100 New Bridge Street, London EC4V 6JA, United Kingdom ( "**BBY Distributions**" ).

**BACKGROUND**

- A BBY Hold Co, BBY Distributions, CPW and CPW Affiliate entered into the SPA, which provides for BBY Distributions to acquire 50% of the issued Ordinary Shares;
- B CPW has agreed to undertake a corporate reorganisation, prior to closing of the SPA, in order to transfer the JV Business to JV Co (and ensure that the Excluded Business does not form part of JV Co);
- C Upon closing of the SPA, JV Co shall be owned as to 50% by BBY Distributions and as to 49% by CPW and 1% by CPW Affiliate in respect of the issued Ordinary Shares;
- D The BBY Mobile Agreement entered into by and between BBY Stores, L.P., and CPW Mobile Limited dated as of 17 August 2007 (as amended) is to be amended and restated as of the date hereof; and
- E In order to give effect to the parties' agreement on various matters governing, *inter alia* , their respective interests, direct or otherwise, in JV Co and the management and provision of finance to JV Co, the parties hereto have agreed to enter into this Agreement.

IT IS AGREED as follows:

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In this Agreement the following definitions shall apply:

“**Acceptance Notice**” shall have the meaning given to it in Clause 20;

“**Acceptance Period**” shall have the meaning given to it in Clause 20;

“**Ancillary Competing Business**” means a Competing Business, which is acquired as part of a larger acquisition and which, in terms of revenues, constitutes no more than one-third of such larger acquisition and which causes, or would cause a JV Shareholder to be in breach of Clause 13.1.2;

“**Ancillary Competing Business Contribution**” shall have the meaning given to it in Clause 13.1.8;

“**Appointment Period**” has the meaning given to it in paragraph 2.1 of Schedule 5 ( *Fair Market Value* );

“**Appointment Reserved Matter**” means the Consolidation Reserved Matter in paragraph 1 of Part 1 of Schedule 3 ( *Reserved Matters* );

“**Auditors**” means Deloitte & Touche LLP unless otherwise determined in accordance with Part 2 of Schedule 3 ( *Reserved Matters* );

“**BBY Country**” means the United States of America, Canada, Mexico, China and Turkey;

“**BBY Director**” means a director or employee of a BBY Group Company;

“**BBY Group Company**” means BBY Hold Co and from time to time any holding company of BBY Hold Co or any subsidiary and/or subsidiary undertaking of BBY Hold Co (including BBY Distributions) or of such holding company, excluding any member of the JV Group;

“**BBY Guaranteed Obligations**” has the meaning given to it in Clause 3.1 ( *Guarantee* );

**“BBY Loan”** means the amount borrowed by JV Co from BBY Distributions under the terms of the BBY Loan Agreement as increased or decreased pursuant to the provisions of the SPA;

**“BBY Loan Agreement”** means the loan agreement in agreed form between BBY Distributions and JV Co in respect of the BBY Loan, to be entered into on Closing;

**“BBY Mobile Agreement”** means the agreement entered into by and between BBY Stores, L.P., and CPW Mobile dated as of 17 August 2007 (as amended) and to be amended and restated as of the Closing Date.

**“BBY Mobile Business”** means the marketing and sale of mobile products and accessories, as well as associated services (including, without limitation, airtime from network operators) and such other products, accessories and services as the parties to the BBY Mobile Agreement may agree from time to time within stand-alone stores, stores-within-stores and other distribution channels (including, without limitation, internet and direct sale processes) owned and operated by BBY Co., Inc. or its Affiliates (as such word is defined in the BBY Mobile Agreement) from time to time pursuant to the BBY Mobile Agreement;

**“BBY Mobile Competing Business”** means any business, enterprise or undertaking which is similar to or in competition with the BBY Mobile Business;

**“BBY’s Solicitors”** means Freshfields Bruckhaus Deringer LLP of 65 Fleet Street, London EC4Y 1HS;

**“BBY Transferee”** shall have the meaning given in Clause 3.1;

**“Big Box Retailing”** means the retail business of selling consumer electrical and electronics goods and services in stores which are primarily devoted to retailing such goods and services with a retail store format of more than 10,000 square feet, including online sales of such goods and services;

**“Business Day”** means a day (other than a Saturday or Sunday) on which banks are open for the transaction of general business in England;

**“Buy Notice”** shall have the meaning given in Clause 17.2.1;

**“CEO”, “CFO” and “COO”** shall have the meanings given to them in Clause 5.3.1;

**“Change of Control”** means a Competitor (together, if applicable, with Persons

Acting in Concert with such Competitor) acquiring a Controlling Interest in either BBY Hold Co or CPW, as the case may be;

“**Closing**” means the completion of SPA;

“**Closing Date**” means the closing date under the SPA;

“**COC Completion**” means completion of the sale and purchase of Shares in accordance with Clause 17.6;

“**COC Party**” shall have the meaning given in Clause 17.1;

“**Competing Business**” means a business, enterprise or undertaking which competes with (a) the JV Business, or (b) the business of Big Box Retailing, but excluding (i) online sales from one country into another country, and (ii) a BBY Mobile Competing Business;

“**Competitor**” means a mobile network operator, internet service provider, manufacturer or retailer of consumer electrical or electronics products with a share of that market in the US or the UK exceeding 5%; “**Compulsory Sale Amount**” has the meaning given to it in paragraph 2.1 of Schedule 4 ( *Compulsory Transfer* );

“**Compulsory Transfer Event**” means the occurrence of any of the events listed in paragraph 1 of Schedule 4 ( *Compulsory Transfer* );

“**Compulsory Transfer Notice**” has the meaning given to it in paragraph 2.1 Schedule 4 ( *Compulsory Transfer* );

“**Compulsory Transferor**” has the meaning given to it in paragraph 1 of Schedule 4 ( *Compulsory Transfer* );

“**Condition**” means closing of the SPA in accordance with its terms;

“**Confidential Information**” means any data or information whether oral, written or otherwise recorded, that is non-public, confidential and proprietary in nature, and shall include each of the following as long as they are non-public, confidential and proprietary in nature:

- (a) the negotiations concerning this Agreement;
- (b) the existence, provisions and subject matter of this Agreement;

- (c) any scientific, computer or other technical information, technology, research, design, idea, process, procedure, formula or improvement, or any portion or phase thereof;
- (d) information relating to any current or proposed products, services, methods, businesses or business plans, marketing, pricing, distribution and other business strategies;
- (e) lists of, or any other information relating to, any customers, suppliers, dealers, agents or employees and the relationships therewith;
- (f) any financial information relating to any of the foregoing; and
- (g) any annual capital expenditure plan, any annual operational and financial budget and the proprietary information of suppliers to and customers of the JV Business;

provided that Confidential Information shall not include the concept of bundling together certain products and services for purchase by customers in the ordinary course of business;

**“Consolidation Reserved Matters”** means those matters listed in Part 1 of Schedule 3 ( *Reserved Matters* );

**“Consortium Relief Agreement”** means the agreement between CPW, JV Co and BBY Distributions in respect of consortium tax relief to be entered into on the Closing Date, in the agreed form;

**“Continuing Party”** shall have the meaning given to it in clause 20;

**“Contribution”** means the European Non-JV Contribution or the Ancillary Competing Business Contribution, as the case may be;

**“Controlling Interest”** means:

- (a) owning (directly or indirectly) more than 50% of the voting share capital of the relevant company; or
- (b) being able to direct the casting of more than 50% of the votes exercisable at general meetings of the relevant undertaking on all, or substantially all, matters, except that in respect of the definition of “Persons Acting in

Concert” each of the above percentages shall read not less than 100%;

“**CPW Director**” means a director or employee of any CPW Group Company;

“**CPW Group**” means CPW and from time to time any holding company of CPW and subsidiaries and/or subsidiary undertakings of CPW (including without limitation CPW Affiliate) or of any such holding company, excluding (from Closing) the JV Group;

“**CPW Group Company**” means CPW and from time to time any holding company of CPW or any subsidiary and/or subsidiary undertaking of CPW (including without limitation CPW Affiliate) or of such holding company, excluding (from Closing) the JV Group;

“**CPW Guaranteed Obligations**” has the meaning given to it in Clause 3.6;

“**CPW Hold Co RCF**” means the revolving credit facility, in an aggregate amount of £550 million (five hundred and fifty), between CPW, Barclays Capital, HSBC Bank PLC, ING Bank N.V., London Branch and The Royal Bank of Scotland PLC, entered into on 13 March 2008;

“**CPW Loan**” means the amount borrowed by JV Co from CPW under the terms of the CPW Loan Agreement as increased or decreased pursuant to the provisions of the SPA;

“**CPW Loan Agreement**” means the loan agreement in agreed form between CPW and JV Co in respect of the CPW Loan, to be entered into on Closing;

“**CPW Mobile**” means CPW Mobile Limited (company number 06330995);

“**CPW RCF**” means the revolving credit facility, in an aggregate amount of £350 million (three hundred and fifty), between CPW, BBY Hold Co and JV Co in agreed form, to be entered into at Closing;

“**CPW Services Agreement**” means the agreement between CPW and Newco in relation to the supply of certain services from CPW to Newco Group in the agreed form and to be entered into on Closing;

“**CPW Transferee**” has the meaning given to it in Clause 3.6;

“**Deadlock Directors**” shall have the meaning given to it in Clause 9.2.1.1;

**“Encumbrance”** means any mortgage, charge, pledge, hypothecation, lien, assignment by way of security, title retention, option, right to acquire, right of pre-emption, right of set-off, counterclaim, trust arrangement or other security, preferential right or agreement to confer security, or any equity or restriction (but excluding liens arising by operation of law) and **“Encumber”** shall be construed accordingly;

**“European Non-JV Country ”** means any European Country where the JV Group does not carry out the JV Business;

**“European Non-JV Contribution”** has the meaning given in Clause 13.1.5;

**“European Country”** means those countries set out in Schedule 8 ( *Tax* );

**“European Subsidiaries”** means those subsidiary undertakings of JV Co incorporated outside the UK (except the US Subsidiary) listed in Part 2 of Schedule 2 ( *JV Subsidiaries* );

**“Excluded Business”** means

- (a) any member of the CPW Group;
- (b) all businesses carried on by and assets of the CPW Group including without limitation:
  - (i) the mobile virtual network operator business which it carries out in France, predominantly under the “Virgin” brand by Omer Telecom Limited; and
  - (ii) all of the fixed line telephony business and assets (including broadband data) carried on by the CPW Group (including under the brands of “Opal”, “TalkTalk” and “AOL”) in the UK, Republic of Ireland and Belgium and any other countries from time to time, excluding such businesses in Spain and Switzerland;
- (c) all freehold properties owned by the CPW Group and the JV Group as at the date of this Agreement; and
- (d) all Employee Benefit Trusts of The Carphone Warehouse Limited as at the date of this Agreement;

**“Executive Committee”** has the meaning given in Clause 9.2.1.2;

**“Existing Country”** means those countries where the JV Group is carrying on the JV Business as at the date of this Agreement being the UK, France, Spain, Belgium, Holland, Germany, Switzerland, Portugal, Republic of Ireland and Sweden excluding the United States of America;

**“Exit”** means a Listing or a Sale;

**“Exit Period”** means each period of 20 Business Days starting on each Trigger Date;

**“Expert”** shall have the meaning given in paragraph 5.4 of Part A of Schedule 8;

**“Fair Market Value”** means, as at the date of valuation, the fair market value of the relevant JV Shareholder’s JV Co Investment as agreed or determined in accordance with Schedule 5 (*Fair Market Value*);

**“Fiscal Year”** means the fiscal year of JV Co being the 12 month period to the annual accounting reference date in each year;

**“GAAP”** means Generally Accepted Accounting Principles and Practices in the United Kingdom from time to time;

**“Geek Squad”** means Geek Squad UK Limited;

**“Geek Squad Business”** means the business carried on by Geek Squad of the installation, maintenance and repair of software, hardware, computers, broadband services and other related software and hardware for any type of customers including without limitation residential and business broadband customers and the provision of and/or sale of related products and services;

**“GIS PLC Services Agreement”** means the agreement between ISE Net Solutions Limited ( **“ISE”** ) and CPW in relation to the supply of certain information technology services from ISE to CPW in the agreed form and to be entered into on Closing;

**“GIS Telco Services Agreement”** means the agreement between ISE Net Solutions Limited ( **“ISE”** ) and GIS Telecoms Limited ( **“GIS Telecoms”** ) in relation to the supply of certain information technology services from ISE to GIS Telecoms in the agreed form and to be entered into on Closing;

**“Group Company”** means in respect of BBY Hold Co and BBY Distributions, a



BBY Group Company and, in respect of CPW, a CPW Group Company;

“**holding company**” has the meaning given to it in Section 736 of the Companies Act 1985, as amended by Section 144 of the Companies Act 1989;

“**Independent Expert**” has the meaning given to it in paragraph 1.1 of Schedule 5 (*Fair Market Value*);

“**Initial Consideration Period**” has the meaning given to it in paragraph 1.2 of Schedule 5 (*Fair Market Value*);

“**Insurance Business**” means the business of providing insurance for mobile handsets, airtime contracts and accessories, as carried on by the JV Co Subsidiaries as at the date of this Agreement;

“**JV Articles of Association**” means the articles of association of JV Co from time to time;

“**JV Board**” means the Board of Directors of JV Co from time to time;

“**JV Business**” means the businesses of the JV Group from time to time, including without limitation:

(a) the mobile distribution business being the sale of mobile handsets and similar devices, the entering into of airtime contracts on behalf of mobile networks with non-business customers, the sale of insurance products on behalf of the Insurance Business and the sale of accessory products, all as carried on by the JV Subsidiaries;

(b) the mobile virtual network operator businesses carried on by the JV Group;

(c) the sale of fixed line telecommunication services and broadband services and associated products and services supplied by third party suppliers which are not members of the JV Group;

(d) the fixed line telephony business and assets carried out by the JV Group in Spain and Switzerland;

(e) the Insurance Business;

(f) the Geek Squad Business;

(g) the BBY Mobile Business; and

(h) any other business carried on by the JV Group after the Closing Date,

but excluding the Excluded Business;

**“JV Co”** means CPW Distribution Holdings Limited, a company registered in England and Wales (company number 06534088) whose registered address is at 1 Portal Way, London W3 6RS, United Kingdom;

**“JV Country”** means any country in the world where the JV Business is carried out by the JV Group at any time which at the date of this Agreement shall be the Existing Countries excluding the BBY Countries;

**“JV Constitutional Documents”** means the JV Articles of Association and the JV Memorandum of Association;

**“JV Deadlock”** has the meaning given to it in Clause 9.1.1;

**“JV Director”** means a director of JV Co from time to time;

**“JV Group”** means JV Co and the JV Subsidiaries;

**“JV Investment”** means in respect of any of the JV Shareholders:

- (a) all Shares held by the relevant JV Shareholder; and
- (b) the amount loaned or, to the extent not loaned, the amount agreed to be loaned pursuant to the relevant JV Shareholder Loan (together with all interest accrued, but unpaid, thereon);

**“JV Management Team”** means the senior management team of JV Co from time to time;

**“JV Memorandum of Association”** means the memorandum of association of JV Co from time to time;

**“JV Shareholder Loans”** means the CPW Loan and the BBY Loan;

**“JV Shareholder Reserved Matters”** means those matters listed in Part 2 of Schedule 3 (*Reserved Matters*);

**“JV Shareholder Shares”** means all of the issued shares in BBY Distributions held directly or indirectly by BBY Hold Co or by one or more BBY Group Company;

**“JV Shareholders”** means BBY Distributions, CPW and CPW Affiliate or any other party holding Shares from time to time;

**“JV Subsidiaries”** means the UK Subsidiaries, the European Subsidiaries and the US Subsidiary, in each case as listed in Schedule 2 ( *JV Subsidiaries* );

**“JV Tax Documents”** shall have the meaning given in paragraph 1.1(a) of Part A of Schedule 8;

**“Key Agreements”** means the SPA, BBY Loan Agreement, the CPW Loan Agreement, the CPW RCF, the CPW Services Agreement, the Telecoms Distribution Agreement, the Telecoms Services Agreement, the Newco Services Agreement and the GIS Telco Services Agreement;

**“Listing”** means the admission to listing or to trading on a recognised securities exchange in London or New York of any of the Ordinary Shares or any share capital of any member of the JV Group;

**“Listing Rules”** means the Listing Rules of the Financial Services Authority applicable to companies with shares listed with the UK Listing Authority and issued for trading on the London Stock Exchange Plc, as amended, modified or replaced from time to time.

**“Newco Services Agreement”** means the agreement between Newco and CPW in relation to the supply of certain services by Newco Group to CPW Group in the agreed form and to be entered into on Closing;

**“Notification Date”** has the meaning given to it in Schedule 5 ( *Fair Market Value* ) paragraph 1.2;

**“Ordinary Shares”** means ordinary shares of £1 each in the capital of JV Co;

**“Other Shareholders”** has the meaning given to it in paragraph 2.1 of Schedule 4 ( *Compulsory Transfer* );

**“parties”** means the parties to this Agreement;

**“Permitted Third Party”** means any third party purchaser of a JV Investment in accordance with Clause 20 ( *Right of First Refusal* ), provided that such party shall not be a Competitor;

**“Permitted Transferee”** means:

- (a) any BBY Group Company, in relation to a transfer of a JV Investment (or part thereof) held by BBY Distributions (or one of its permitted transferees);
- (b) any CPW Group Company, in relation to a transfer of a JV Investment (or part thereof) held by CPW (or one of its permitted transferees);

**“Persons Acting in Concert”** means persons who, pursuant to an agreement or understanding (whether formal or informal), actively co-operate through the acquisition by any of them of shares in a party, to obtain a Controlling Interest in relation to that party, or agree so to co-operate;

**“Receiving Agent”** means such independent third party as the JV Shareholders shall agree within a reasonable period of time after Closing;

**“Receiving Agent Engagement Letter”** means the engagement letter to be entered into within a reasonable period of time after Closing between the JV Shareholders and the Receiving Agent setting out the material terms of the appointment of the Receiving Agent;

**“Regulatory Approvals”** means any approvals required by any competent supranational, governmental or regulatory agencies or authorities;

**“Related Party”** means a BBY Director or BBY Group Company or a CPW Director or CPW Group Company (as the case may be);

**“Review Period”** means the period of 3 consecutive calendar months starting on the first day of the next calendar month after the day the relevant notice was received or deemed received by the intended recipient;

**“Sale”** means the sale of:

- (a) shares or an interest in shares (including the Shares) as a result of which a third party acquires a Controlling Interest in the JV Co or a member of the JV Group which holds (directly or indirectly) all or substantially all of the assets of the JV Group; or
- (b) all or substantially all of the business or the assets of the JV Group;

**“Sale Period”** shall have the meaning given to it in Clause 20.7

“**Sell Notice**” shall have the meaning given to it in Clause 17.2.2;

“**Seller**” shall have the meaning given to it in Clause 17.4;

“**Selling Party**” shall have the meaning given to it in Clause 20;

“**Shares**” means shares of whatever class in the capital of JV Co in issue from time to time;

“**SPA**” means the conditional sale and purchase agreement entered into on 7 May 2008 between CPW, CPW Affiliate, BBY Hold Co and BBY Distributions, under which BBY Distributions has agreed to acquire, and CPW and CPW Affiliate have between them agreed to sell, 50% of the Ordinary Shares in issue as at the Closing Date to BBY Distributions;

“**Start Date**” shall have the meaning given to it in Clause 20.2;

“**subsidiary undertaking**” is to be construed in accordance with section 258 of the Companies Act 1985 and a “**subsidiary**” is to be construed in accordance with section 736 of that Act;

“**Surviving Provisions**” means Clauses 13.1.10, 14, 21, 22, 31 and 34;

“**Tax**”, “**tax**”, “**Taxation**” or “**taxation**” means any form of taxation, duty, impost, levy, tariff of any nature whatsoever of the UK or elsewhere or any other decision by a Tax Authority, whether or not any such taxation, duty, impost, levy or tariff of any nature arises in respect of actual, deemed, gross or net income, profit, gain, value, receipt, payment, sale, use, occupation, franchise, value added property or right and includes, without limitation, any withholding amount subject to PAYE or other amount of or in respect of any of the foregoing payable by virtue of any Tax Statute and any penalty, charge, surcharge, fine or interest payable in connection with any such taxation, duty, impost, levy or tariff of any nature;

“**Tax Authority**” means HM Revenue and Customs or any authority or body, whether of the United Kingdom or elsewhere and whether national or otherwise, having the power or authority or other function in relation to Tax;

“**Tax Statute**” means any primary or secondary statute, instrument, enactment, order, law, by-law or regulation making any provision for or in relation to Tax;

“**Telecoms Distribution Agreement**” means the distribution agreement in agreed

form between CPW Telecom Holdings Limited and JV Co, under which the JV Co Group shall sell on behalf of CPW Telecom Holdings Limited fixed line telephony products (including broadband and data products and services), to be entered into on Closing;

**“Telecoms Services Agreement”** means the agreement between CPW Telecoms Holdings Limited ( **“CPW Telco”** ) and Newco in relation to the supply of certain telecommunications services by CPW Telco to Newco Group in the agreed form and to be entered into on Closing;

**“Transfer Notice”** shall have the meaning given to it in Clause 20;

**“Trigger Date”** means each date falling every two years after the Closing Date (which if not a Business Day shall be the first Business Day thereafter) provided that the first date shall be the fourth anniversary of the Closing Date (which if not a Business Day shall be the first Business Day thereafter);

**“UK”** means the United Kingdom;

**“UK Subsidiaries”** means those subsidiary undertakings of JV Co listed in Part 1 of Schedule 2 ( *JV Subsidiaries* ) that are incorporated in England and Wales;

**“Undertaking”** has the meaning given to it in paragraph 1 of Schedule 4 ( *Compulsory Transfer* );

**“Unadjusted Compulsory Disposal Amount”** has the meaning given to it in paragraph 2.1 of Schedule 4 ( *Compulsory Transfer* ); and

**“US Subsidiary”** means the subsidiary undertaking of JV Co listed in Part 3 of Schedule 2 ( *JV Subsidiaries* ) that is incorporated in the United States of America) and owned 50% each between CPW and BBY Hold Co; and

**“VAT”** means value added tax and any similar sales or turnover tax.

## 1.2 **Interpretation**

In this Agreement, unless otherwise specified:

1.2.1 the index and headings are for ease of reference only and shall not be taken

into account in construing this Agreement;

- 1.2.2 references to any Clause, paragraph or schedule are to those contained in this Agreement and all schedules to this Agreement are an integral part of this Agreement;
- 1.2.3 the expression this Clause shall, unless followed by reference to a specific provision, be deemed to refer to the whole Clause (not merely the sub-Clause, paragraph or other provision) in which the expression occurs;
- 1.2.4 references to a party mean a party to this Agreement including that party's successors in title and assigns or transferees permitted in accordance with the terms of this Agreement provided that the relevant property, right or liability has been properly assigned or transferred to such person;
- 1.2.5 a document is in the agreed form if it is in the form of a draft agreed between and initialled by or on behalf of the relevant parties to such document;
- 1.2.6 references to any gender shall include the others; and words in the singular shall include the plural and vice versa;
- 1.2.7 references to a person (or to a word importing a person) shall be construed so as to include:
  - 1.2.7.1 an individual, firm, partnership, trust, joint venture, company, corporation, body corporate, unincorporated body, association, organisation, any government, or state or any agency of a government or state, or any local or municipal authority or other governmental body (whether or not in each case having separate legal personality); and
  - 1.2.7.2 references to a person's representatives shall be to its officers, employees, legal or other professional advisers, sub-contractors, agents, attorneys and other duly authorised representatives;
- 1.2.8 in writing means any communication made by letter but does not include e-mail or other forms of electronic communication;
- 1.2.9 the words "include", "including" and "in particular" shall be construed as being by way of illustration or emphasis only and shall not be construed as,

nor shall they take effect as, limiting the generality of any preceding words;

- 1.2.10 the words “other” and “otherwise” shall not be construed *ejusdem generis* with any foregoing words where a wider construction is possible;
- 1.2.11 all references in this Agreement to monetary amounts shall be in £ (pounds) sterling; and the provisions of this agreement relating to JV Co (except Clauses 13 ( *Restrictions on Shareholders* ), 19 ( *Strategic Options* ) and 20 ( *Right of First Refusal* ) shall be deemed to apply *mutatis mutandis* to CPW Mobile.

## **2. PURPOSE AND CORPORATE DETAILS OF JV CO**

### **2.1 The JV Business**

The parties agree that:

- 2.1.1 JV Co shall from the Closing Date be the holding company of the JV Group;
- 2.1.2 notwithstanding any other provision of this Agreement CPW shall be entitled after the date of this Agreement to make any transfers to and from JV Group pursuant to Clause 20 ( *Further Assurances* ) of the SPA;
- 2.1.3 notwithstanding any other provision of this Agreement, the parties agree to act in good faith towards each other and that the JV Business shall be conducted in the best interest of the JV Group as a whole on sound, commercial, profit-making principles in order to promote the success of JV Co;
- 2.1.4 the central management of JV Co shall be located in the UK, and each of the JV Shareholders and BBY Hold Co shall use their best endeavours to ensure that JV Co is treated by all relevant authorities as being resident for Taxation and other purposes in the UK and in no other jurisdiction;

### **2.2 Branding**

- 2.2.1 CPW shall procure that the JV Group shall either have an exclusive right to use, or the ownership of, the brand “The Carphone Warehouse”. BBY Hold Co shall procure that the JV Group shall either have an exclusive right to use, or the ownership of, the brand “Best Buy” in respect of the JV Business. The parties shall agree a licence agreement to ensure that JV Co shall have an



exclusive right to use the brands in the JV Countries except in the event of a transfer of a JV Interest pursuant to a Sell Notice.

2.2.2 To develop a structure to achieve a net-neutral after-tax position for each party in relation to their brand licences, both annually and over time, taking into account each party's respective reasonable tax planning and other benefits and costs, and furthermore it is recognised that CPW Brands Limited currently charges a license fee to The Carphone Warehouse Limited in respect of such brand, and the parties agree to work together to develop a structure to achieve economic equalisation, taking into account each party's respective reasonable tax planning, and furthermore, the parties agree to work together in good faith to ensure tax efficiency with respect to branding.

2.2.3 JV Co and the JV Business shall trade under the name and brand of "Carphone Warehouse", "The Phone House", "NTT", "Geek Squad" or "Best Buy", as appropriate for each individual business within the JV Business, or such other brand as agreed from time to time by the JV Board.

### 2.3 **Independent Operation**

The JV Group shall be operated in accordance with Clause 5 ( *Management Structure* ) as an independent operation to the operations of the JV Shareholders, and the JV Group shall (and the JV Shareholders shall procure that the JV Group shall) make its own decisions on the services and the products the JV Group procures and supplies to its customers, provided the same are in accordance with the principles of Clause 2.1.3, and the provisions of this Agreement.

### 2.4 **JV Co Employee Incentive Scheme**

Subject to Clause 5.5, the JV Shareholders shall intend that, after Closing and in accordance with the provisions of this Agreement, the relevant member or members of the JV Group establish an employee incentive scheme for the benefit of the employees of the JV Group.

### 2.5 **Ownership and corporate details of JV Co**

Immediately after Closing, the JV Shareholders and corporate details of JV Co shall be as set out in Schedule 1 ( *JV Co Details* ).

### 3. SHAREHOLDER ASSURANCES

- 3.1 BBY Hold Co unconditionally and irrevocably guarantees to CPW and JV Co as a continuing obligation the due and punctual performance by BBY Distributions and, on or following any transfer by BBY Distributions of any or all of its equity interest in JV Co to another BBY Group Company (the “**BBY Transferee**”) of BBY Distributions’s or the BBY Transferee’s obligations under or pursuant to this Agreement and/or the Consortium Relief Agreement (the “**BBY Guaranteed Obligations**”).
- 3.2 BBY Hold Co agrees to indemnify CPW and the JV Group against all reasonable losses, reasonable damages, reasonable costs and reasonable expenses (including reasonable legal costs and expenses) which CPW and/or the JV Group may suffer or incur through or arising from any failure by BBY Hold Co to satisfy the guarantee under Clause 3.1.
- 3.3 BBY Hold Co shall not in any way or to any extent be released from its obligations under this guarantee by reason of any time or other indulgence, waiver, release or discharge granted by CPW and/or the JV Group to BBY Distributions or to any third party or by the acceptance of any compensation from or the making of any arrangement with BBY Distributions or any third party or any circumstances or any provision or rule of law whether statutory or otherwise affecting or preventing recovery from BBY Distributions of any sum due or rendering any debt, obligation or liability of BBY Distributions void or unenforceable and which but for this provision might operate to exonerate or discharge BBY Hold Co from its obligations to CPW and/or the JV Group under this guarantee and shall continue in force until BBY Distributions or BBY Hold Co on its behalf shall have fully performed and discharged all of the BBY Guaranteed Obligations. Any settlement or discharge between CPW and/or the JV Group and BBY Distributions shall be subject to the condition that no security or payment to CPW and/or JV Co by BBY Distributions or any third party shall be avoided or reduced by virtue of any provision or enactment relating to bankruptcy, insolvency or liquidation for the time being and from time to time in force.
- 3.4 Without prejudice to the rights of CPW and/or the JV Group against BBY Distributions as principal debtor BBY Hold Co shall as between CPW and/or the JV Group be deemed principal debtor and obligor in respect of the BBY Guaranteed Obligations and not merely a surety and accordingly it shall not be necessary for CPW and/or JV Co before seeking to enforce this guarantee to seek to enforce any security or lien it may hold from BBY Distributions or any third party or otherwise to

take any steps or proceedings against BBY Distributions.

- 3.5 Nothing in this Agreement (and in particular the consent of the JV Shareholders shall not be required) shall restrict and/or limit any action, claim or right that any of the parties wish to bring and/or enforce against the other pursuant to the terms of the SPA or the Consortium Relief Agreement.
- 3.6 On and following any transfer by CPW of any or all of its equity interest in JV Co to another CPW Group Company (the “**CPW Transferee**”), CPW unconditionally and irrevocably guarantees to BBY Distributions and JV Co, as a continuing obligation and, the due and punctual performance by CPW of the CPW Transferee’s obligations under or pursuant to this Agreement and/or the Consortium Relief Agreement (the “**CPW Guaranteed Obligations**”).
- 3.7 CPW agrees to indemnify BBY Distributions and the JV Group against all reasonable losses, reasonable damages, reasonable costs and reasonable expenses (including reasonable legal costs and expenses) which BBY Distributions and/or the JV Group may suffer or incur through or arising from any failure by CPW to satisfy the guarantee under Clause 3.6.
- 3.8 CPW shall not in any way or to any extent be released from its obligations under this guarantee by reason of any time or other indulgence, waiver, release or discharge granted by BBY Distributions and/or the JV Group to the CPW Transferee or to any third party or by the acceptance of any compensation from or the making of any arrangement with the CPW Transferee or any third party or any circumstances or any provision or rule of law whether statutory or otherwise affecting or preventing recovery from the CPW Transferee of any sum due or rendering any debt, obligation or liability of the CPW Transferee void or unenforceable and which but for this provision might operate to exonerate or discharge CPW from its obligations to BBY Distributions and/or the JV Group under this guarantee and shall continue in force until the CPW Transferee or CPW on its behalf shall have fully performed and discharged all of the CPW Guaranteed Obligations. Any settlement or discharge between CPW and/or the JV Group and the CPW Transferee shall be subject to the condition that no security or payment to BBY Distributions and/or the JV Group by the CPW Transferee or any third party shall be avoided or reduced by virtue of any provision or enactment relating to bankruptcy, insolvency or liquidation for the time being and from time to time in force.
- 3.9 Without prejudice to the rights of BBY Distributions and/or the JV Group against the CPW Transferee as principal debtor, CPW shall as between BBY Distributions

and/or the JV Group be deemed principal debtor and obligor in respect of the CPW Guaranteed Obligations and not merely a surety and accordingly it shall not be necessary for BBY Distributions and/or the JV Group, before seeking to enforce this guarantee to seek to enforce any security or lien it may hold from the CPW Transferee or any third party or otherwise to take any steps or proceedings against the CPW Transferee.

- 3.10 Nothing in this Agreement shall restrict and/or limit any action, claim or right that any of the parties or JV Co wish to bring and/or enforce pursuant to the terms of the SPA, and in particular the consent of the JV Shareholders shall not be required.
- 3.11 CPW shall be jointly and severally liable in respect of all of the obligations, warranties and undertakings provided by CPW Affiliate pursuant to this Agreement.
- 3.12 CPW and CPW Affiliate shall be regarded as one JV Shareholder holding the aggregate number of Shares between them for the purposes of interpreting and applying the provisions of Schedule 4 ( *Compulsory Transfer* ), Clause 6 ( *JV Shareholder Reserved Matters* ), Clause 17 ( *Transfer on a Change of Control* ) and Clause 20 ( *Right of First Refusal* ).
- 3.13 The JV Shareholders shall use reasonable endeavours to procure the performance, by CPW Mobile Limited, of its obligations under the BBY Mobile Agreement.
- 3.14 Notwithstanding any other provisions of this Agreement, if the JV Board has prevented JV Co from exercising a contractual right under any contract it may have with a JV Shareholder or any other Group Company of such JV Shareholder and/or from pursuing any dispute in respect of the same, in each case as a result of all of the JV Directors appointed by such JV Shareholder voting against JV Co taking such action at a JV Board Meeting, then such decision shall be capable of being proposed again at the same or different JV Board Meeting, provided that on such second proposal, the JV Directors appointed by such JV Shareholder shall not vote on the decisions of the JV Board regarding such dispute matter.

#### **4. PROVISION OF FINANCE**

##### **4.1 Financing of JV Co**

- 4.1.1 Subject to the remaining provisions of this Clause 4.1, JV Co shall be

financed out of cash flow and by way of the JV Shareholder Loans and, pending refinancing pursuant to Clause 4.1.3, the CPW RCF.

- 4.1.2 JV Co shall be entitled as it shall determine to utilise the CPW RCF for its working capital purposes.
- 4.1.3 The parties acknowledge and agree that it is the intention of JV Co to refinance the CPW RCF as soon as practicable after Closing by entering into a non-recourse revolving credit, or other non-recourse working capital facilities with third party providers of finance (subject to the terms available to JV Co from such providers of finance and to the provisions of this Agreement).
- 4.1.4 Pending refinancing of the CPW RCF as contemplated by Clause 4.1.3, CPW shall promptly notify BBY Hold Co and BBY Distributions of any Potential Event of Default or an Event of Default (both as defined in the CPW Hold Co RCF) which occurs and which, in each case, could result in the CPW Hold Co RCF being withdrawn, or amounts owing under the CPW Hold Co RCF becoming immediately due and repayable.
- 4.1.5 Save for the entry into and provision of the Shareholder Loans and the CPW RCF, and in accordance with the terms of each, no party shall be required to contribute any debt or equity capital to, or to guarantee any debt of, JV Co (or any other member of the JV Group) without that party's prior written consent.
- 4.1.6 Subject to the provisions of this Agreement, the JV Management Team shall be responsible for preparing any proposals for any additional finance required by the JV Group which proposals shall, if appropriate, be reviewed by the JV Board and approved as JV Shareholder Reserved Matters in accordance with this Agreement. To the extent that the JV Management Team determines that additional finance is required by the JV Group, and makes appropriate proposals to the JV Board, the parties shall consider in good faith any proposals in respect of such financing, and shall determine subject to Clause 4.1.5 whether (and on what terms) the JV Group shall seek to raise such finance (whether by way of debt or equity, whether from the JV Shareholders or from external funding sources, or otherwise).
- 4.1.7 The parties acknowledge that all amounts owed, outstanding or accrued in

the ordinary course of trading (including any VAT arising on such amounts) as between any member of the JV Group and any CPW Group Company, in respect of inter-company trading activity and the provision of services, facilities and benefits, shall be made in the ordinary course of business, in accordance with the applicable terms of such activity.

#### 4.2 **Draw down of JV Shareholder Loans**

- 4.2.1 It is agreed and acknowledged that the full amount of the CPW Loan shall be deemed to have been drawn down by JV Co on the Closing Date.
- 4.2.2 The BBY Loan shall be drawn down by JV Co in full on the Closing Date.
- 4.2.3 The parties shall procure that, on the Closing Date, 50% of the CPW Loan shall be repaid by JV Co to CPW by utilising all of the amount drawn down under the BBY Loan on the Closing Date. Such amount of the CPW Loan repaid shall no longer be capable of being drawn down by JV Co.
- 4.2.4 Each of the JV Shareholder Loans shall be increased or reduced (as the case may be) pursuant to Schedule 6 ( *Closing Statement* ) of the SPA.
- 4.2.5 The parties shall procure that the JV Shareholder Loans are capitalised in full on equal terms within 20 Business Days of Closing.

### 5. **MANAGEMENT STRUCTURE**

#### 5.1 **Constitution of JV Co**

Subject to the provisions of this Agreement relating to the Consolidation Reserved Matters and the JV Shareholder Reserved Matters the business and affairs of JV Co shall be managed by the JV Board and the JV Management Team, whose respective constitutions, procedures, responsibilities and restrictions shall be as set out in this Clause 5 and in Clause 6.

#### 5.2 **JV Board of Directors**

- 5.2.1 Subject to Clauses 5.5 and 6, the JV Board shall be responsible for the operation of the JV Business. The JV Board shall be the statutory board of directors of JV Co.
- 5.2.2 Subject to Clauses 5.5 and 6, the JV Management Team will operate the JV

Business on a day-to-day basis in accordance with the directions of the JV Board from time to time and the provisions of this Agreement. The JV Management Team shall not constitute a committee of the JV Board unless expressly appointed as such from time to time in respect of a specific matter.

- 5.2.3 From the Closing Date, the JV Board shall comprise six JV Directors. BBY Distributions shall always be entitled to appoint three JV Directors and CPW shall always be entitled to appoint three JV Directors. CPW Affiliate shall not be entitled to appoint any JV Directors.
- 5.2.4 A JV Director appointed by a JV Shareholder cannot be removed from the JV Board without the written consent of the JV Shareholder who has appointed such JV Director. In the event a JV Director resigns or dies in office, the JV Shareholder who appointed him shall be entitled to appoint his replacement.
- 5.2.5 Each JV Shareholder shall be free to appoint and to replace the JV Director(s) it is entitled to appoint without the consent of the other JV Shareholder.
- 5.2.6 The initial chairman of the JV Board from the Closing Date shall be appointed from one of and by the JV Directors appointed by BBY Distributions . Thereafter, the JV Board shall be entitled to appoint any other JV Director as the chairman of the JV Board from time to time. The chairman of the JV Board shall not have a casting vote in respect of any matter.
- 5.2.7 The quorum for a JV Board meeting shall be at least four JV Directors (whether present in person or by any other means permitted under this Agreement including by alternate or proxy) comprising of at least two JV Directors appointed by each JV Shareholder. All JV Board meetings shall be held in London unless the JV Shareholders decide otherwise.
- 5.2.8 If, within one hour of the time appointed for a JV Board meeting, there is no quorum, the JV Director(s) present shall adjourn the meeting to a place and time not less than five Business Days later. If at such adjourned meeting the number of JV Directors required to achieve a quorum in accordance with Clause 5.2.6 are not present within one hour from the time appointed for the adjourned meeting, then the requirement that such JV Director(s) shall be



present shall not apply and the JV Director(s) present may conduct the business of the meeting.

- 5.2.9 Meetings of the JV Board shall (if not held by telephone in accordance with the provisions of this Clause 5.2.9) be held at either JV Co's registered office, or such other location in London as a quorum of the JV Directors agree, at intervals of not more than three calendar months, although the JV Board shall hold a meeting as soon as reasonably practicable upon receiving notification from any JV Director in accordance with Clause 5.3.3 that any Consolidation Reserved Matter or JV Shareholder Reserved Matter or any other material matter requires their consideration. Meetings of the JV Board shall be convened in accordance with the provisions of this Agreement and with the JV Articles of Association and the JV Board shall be permitted to hold such meetings by way of video and/or telephone conferencing.
- 5.2.10 Save for in relation to Consolidation Reserved Matters and JV Shareholder Reserved Matters, the JV Board shall decide on all matters by a majority vote. All JV Directors shall have one vote. All decisions of the JV Board shall be communicated by the chairman or such JV Director as the JV Board shall determine to the JV Shareholders.
- 5.2.11 If a JV Director is unable to attend a JV Board meeting, he or the JV Shareholder that appointed him may by notice to JV Co appoint an alternate or issue a proxy and entrust a representative (which may be another JV Director) to attend and vote at the meeting on his behalf. The representative so entrusted shall have the same rights and powers as the director who entrusted him and (subject to his fiduciary duties) must vote in accordance with the instructions, if any, given in the proxy. One person may represent more than one director as an alternate or by proxy.
- 5.2.12 A written resolution signed by all of the JV Directors (or their duly appointed alternates), whether on the same document or on different documents in identical terms, shall be as valid and effective as a resolution duly passed at a duly constituted meeting of JV Directors, provided that such resolution shall be placed in the minute book of the JV Board as soon as possible thereafter.
- 5.2.13 The JV Board shall appoint a company secretary for the purpose of recording the minutes of all JV Board meetings and performing other secretarial

functions of the JV Board. The first Company Secretary shall be Tim Morris.

- 5.2.14 The JV Board will cause complete and accurate minutes to be kept of all JV Board meetings. Minutes of all meetings, including resolutions to be adopted by the JV Board, shall be signed by one JV Director appointed by each JV Shareholder in person and recorded by the company secretary appointed for the meeting. Minutes of all meetings of the JV Board shall be distributed to all the directors as soon as practicable after each meeting but not later than 20 Business Days from the end of such meeting. The secretary to the JV Board shall maintain a file of all JV Board meeting minutes, resolutions and decisions and make the same available for inspection during normal business hours by the JV Directors and the JV Shareholders.
- 5.2.15 JV Co shall indemnify each JV Director, so far as permitted by applicable law, against all claims and liabilities incurred pursuant to his duties as a director of JV Co, provided that any acts or omissions of a director which give rise to such claims and liabilities do not constitute intentional misconduct, gross negligence or violations of laws. JV Co shall also provide, at its own expense, appropriate directors' and officers' insurance cover for each JV Director.
- 5.2.16 To the extent that the JV Board resolves to do so, JV Co shall reimburse all reasonable travel costs incurred by a JV Director in travelling to and from any meeting of the JV Board.

### 5.3 **JV Management Team**

- 5.3.1 Subject to Clause 5.5, the JV Board shall appoint a Chief Executive Officer ( "**CEO**" ), a Chief Financial Officer ( "**CFO**" ) and a Chief Operating Officer ( "**COO**" ). The CEO or the JV Management Team will provide comprehensive and timely information to the JV Board in accordance with this Clause 5 and Clause 8.
- 5.3.2 The first CEO will be Roger Taylor and, subject to Clause 5.5 the COO, CFO and any future CEO will be appointed by the JV Board from time to time. The CEO will be the leader of the JV Management Team.
- 5.3.3 A JV Director shall promptly notify the JV Board of any Consolidation Reserved Matter and/or JV Shareholder Reserved Matter which requires

consideration by the JV Board, which shall then convene a meeting pursuant to Clause 5.2.9.

5.3.4 The JV Management Team shall take no action in respect of:

5.3.4.1 a Consolidation Reserved Matter, until it has received written confirmation from the JV Board or all of the directors of JV Directors appointed by BBY Distributions of the action that is to be taken; and/or

5.3.4.2 a JV Shareholder Reserved Matter, until it has received written confirmation from:

(a) the JV Board (following approval by unanimous vote of the JV Directors present at a meeting convened for the purpose of considering such JV Shareholder Reserved Matter); or

(b) both of the JV Shareholders,

of the action that is to be taken.

5.3.5 All material decisions taken by the JV Management Team shall be communicated to the JV Board by the CEO in monthly written reports in sufficient detail within 5 Business Days of the end of each calendar month or, if otherwise requested by the JV Board or a JV Director, within 3 Business Days from the date of such request.

#### 5.4 **Fiduciary duties**

The JV Shareholders shall each use their best endeavours to procure that any JV Director appointed by them from time to time shall act in good faith and in accordance with appropriate fiduciary duties.

#### 5.5 **Consolidation Reserved Matters**

5.5.1 All Consolidation Reserved Matters shall only be considered and approved or not approved (as the case may be) by the JV Board at a JV Board meeting convened and constituted in accordance with the provisions of this Agreement.

5.5.2 Any action or decision in relation to any Consolidation Reserved Matter shall

be determined by the approval of all of the JV Directors appointed by BBY Distributions and present at the relevant meeting of the JV Board (whether in person, by proxy, or represented by a duly appointed alternate), regardless of the affirmative or negative voting of the JV Directors appointed by CPW. BBY Distributions shall procure that the JV Directors appointed by BBY Distributions shall, however, consider in good faith any proposals (including contradictory proposals) put forward in good faith by any JV Directors appointed by CPW in relation to the discussion of a Consolidation Reserved Matter.

- 5.5.3 Subject always to the provisions of Clauses 5.5 and 6, if there is a contractual dispute between JV Co or any of its subsidiaries and a JV Shareholder or any of its subsidiaries, then in such circumstances, the directors appointed by such JV Shareholder shall not vote on decisions of the JV Board regarding the conduct of such dispute.

## **6. JV SHAREHOLDER RESERVED MATTERS**

### **6.1 JV Shareholder approval**

- 6.1.1 Notwithstanding any other provision of this Agreement, or any annual financial expenditure and/or annual financial budget, all JV Shareholder Reserved Matters even if contained within a budget approved as a Consolidation Reserved Matter shall require the prior consent of all JV Shareholders before JV Co makes any decision or takes any action in respect of any JV Shareholder Reserved Matter, such consent to be given in writing or at a separate meeting of the JV Shareholders (unless the provisions of Clause 6.1.2 apply).
- 6.1.2 All JV Shareholder Reserved Matters and/or any other decision in this Agreement requiring the consent of both JV Shareholders may, unless this Agreement expressly provides otherwise, be considered at a meeting of the JV Board, convened and constituted in accordance with the provisions of this Agreement and, notwithstanding Clause 6.1.2, shall be validly approved if approved by a unanimous vote of the JV Directors present at such meeting (whether in person, by proxy or by alternate).

## 7. SHAREHOLDER MEETINGS

The JV Shareholders shall procure the holding of JV Shareholder meetings in England in accordance with the JV Articles of Association and in any event not less than once annually.

## 8. INFORMATION

### 8.1 Information

The CEO shall procure the preparation and delivery or cause to be prepared and delivered to the JV Board the following financial statements and reports for JV Co that shall be prepared in accordance with GAAP (with a conversion to IFRS) and accompanied by an analysis, in reasonable detail, of the variance between the financial condition and the results of operations reported in such statements or reports and the corresponding amounts for the applicable period. Each JV Shareholder and the JV Board shall, to the extent it is able, procure that the JV Management Team shall comply with its obligations pursuant to this Clause 8.1.

8.1.1 **Annual statements.** As soon as practicable following the end of each Fiscal Year (and in any event, not later than 60 Business Days after the end of each Fiscal Year):

8.1.1.1 a balance sheet as at the end of such Fiscal Year; and

8.1.1.2 related income statement, Shareholder Loan accounts and changes therein, cash flow statement and a breakdown of all indebtedness under the CPW RCF and/or under any other facility for such Fiscal Year,

together with appropriate notes and supporting schedules, all of which will be audited and which will include the comparative corresponding statements for the two previous Fiscal Years if applicable.

8.1.2 **Quarterly statements.** As soon as practicable following the end of each of the four quarters in each Fiscal Year (and in any event, not later than 20 Business Days after the end of each such quarter):

8.1.2.1 a balance sheet as at the end of such quarter; and

8.1.2.2 related income statement, Shareholder Loan accounts and changes therein, cash flow statement and a breakdown of all indebtedness under the CPW RCF and/or under any other facility for such

quarter and for the Fiscal Year to date,

together with appropriate notes and supporting schedules, which will include the comparative corresponding figures for the prior Fiscal Year's quarter and Fiscal Year to date if applicable.

8.1.3 **Monthly statements.** As soon as practicable following the end of each of the first two calendar months of each quarter (and in any event, not later than 20 Business Days after the end of each such calendar month):

8.1.3.1 a balance sheet as at the end of such month;

8.1.3.2 related income statement, Shareholder Loan accounts and changes therein, cash flow statement and a breakdown of all indebtedness under the CPW RCF and/or under any other facility for the monthly period then ended and for Fiscal Year to date,

together with appropriate notes and supporting schedules, which will include the comparative corresponding figures for the same month in the prior Fiscal Year if applicable.

8.1.4 **Monthly cash reports.** A monthly report detailing the JV Co's projected cash needs for a rolling 12 calendar month period and the anticipated source of those funds.

8.1.5 **Weekly key metrics reports.** A weekly update of the key metrics of the JV Business as requested from time to time by the JV Board.

8.1.6 **Other reports.** Such other reports or financial data that a JV Shareholder may reasonably request from time to time provided that, if the CEO so determines within 20 Business Days of such a request, such reports or data will be provided at the requesting JV Shareholder's sole cost and expense.

## 8.2 **Operational and Financial Budget**

The JV Board may from time to time agree an annual operational and financial budget for the JV Group in accordance with the provisions of this Agreement (and, in particular, Clause 5.5 hereof). If there is any conflict or inconsistency between the terms of this Agreement and such annual operational and financial budget, the terms of this Agreement shall prevail.

### 8.3 Compliance

The JV Board shall ensure that the JV Co:

- 8.3.1 complies with all appropriate regulatory and legal requirements, including the requirements of the United States Foreign Corrupt Practices Act 1998 and the Sarbanes-Oxley Act, in each case as amended from time to time, and all applicable data protection legislation; and
- 8.3.2 adopts appropriate compliance and training protocols (which shall include compliance protocols, standards, policies, notices, procedures, training modules and a code of ethics).

## 9. DEADLOCK RESOLUTION

### 9.1 JV Deadlock

- 9.1.1 Subject to Clause 9.1.2, any two JV Directors appointed by the same JV Shareholder may declare in writing to all JV Directors that a JV Deadlock ( “**JV Deadlock**” ) has occurred where (i) in their view, acting in good faith, a serious issue, dispute, claim or difference has arisen or there has been a breakdown in the relations of the JV Board that will materially affect the day to day operation of and/or the long term development of the JV Business; or (ii) despite all reasonable endeavours by the JV Board to reach agreement, there has been a persistent failure on the part of the JV Directors to approve a JV Shareholder Reserved Matter having raised the matter at 3 separate meetings of the JV Board which will all be held within 20 Business Days of the date of the JV Deadlock has been raised.
- 9.1.2 A JV Deadlock may not be declared in respect of the following:-
  - 9.1.2.1 any Consolidation Reserved Matter ;
  - 9.1.2.2 any discussion and/or disagreement in respect of the provision and/or availability and/or the draw down of any additional funding by any JV Shareholder pursuant to Clause 4.1.5;
  - 9.1.2.3 any failure by a JV Shareholder to give its consent pursuant to Clauses 11.1 and 11.3;
  - 9.1.2.4 any discussion and/or disagreement in respect of any non-material

matter whether or not provided for in this Agreement that will not materially affect the day to day operation of and/or long term development of JV Co and the JV Business.

## 9.2 Resolution of Deadlock

- 9.2.1 Subject to Clause 9.1.2, in the event of a JV Deadlock, the following steps shall be taken in attempting to resolve the same:
- 9.2.1.1 first, the JV Board shall refer the matter to Roger Taylor on behalf of CPW and Bob Willett on behalf of BBY Hold Co and of BBY Distributions (or their respective successors of no lesser position in their respective companies) ( **“Deadlock Directors”** ) who shall use all reasonable endeavours to resolve the JV Deadlock amicably within 10 Business Days of the date of such referral. Any unanimous decision of the Deadlock Directors shall be final and binding on the JV Board, each JV Director and each JV Shareholder;
- 9.2.1.2 second, and if the Deadlock Directors have been unable to resolve the JV Deadlock within such 10 Business Days, the JV Board shall refer the matter to Charles Dunstone on behalf of CPW and Brad Anderson on behalf of BBY Hold Co and BBY Distributions (or their respective designates of no lesser position in their respective companies) (the **“Executive Committee”** ) who shall use all reasonable endeavours to resolve the JV Deadlock amicably within 20 Business Days of such referral. Any unanimous decision of the Executive Committee shall be final and binding on the JV Board, each JV Director and each JV Shareholder; and
- 9.2.1.3 third, and if the Executive Committee is unable to resolve a JV Deadlock within such 20 Business Days, the JV Shareholders shall have a further period of 20 Business Days within which to resolve the JV Deadlock amicably and, if they are unable to do so, JV Co shall continue to be managed and operated in a manner consistent with that in existence prior to the JV Deadlock). For the avoidance of doubt, a failure to resolve a JV Deadlock will not give rise to the liquidation of JV Co.



### 9.3 **Management during deadlock**

Unless and until a JV Deadlock has been finally resolved the parties agree that the management and operation of JV Co shall continue to be managed and operated in a manner consistent with the situation prior to the JV Deadlock.

## 10. **ANTI-DILUTION**

Save in accordance with the other provisions of this Agreement, no share capital of JV Co shall be issued.

## 11. **TRANSFER OF JV INVESTMENT**

### 11.1 **Transfer of Shares and Shareholder Loans**

11.1.1 Unless expressly provided for otherwise in this Agreement, a JV Shareholder shall not be entitled to offer, sell, transfer or dispose of its JV Investment (or part thereof whether legally and/or beneficially) without the prior express written consent of the other JV Shareholder.

11.1.2 Unless expressly provided for otherwise in this Agreement, each of BBY Distributions and BBY Hold Co shall procure that the relevant BBY Group Company shall not be entitled to offer, sell, transfer or dispose of any of its JV Shareholder Shares (or part thereof whether legally and/or beneficially) without the prior express written consent of CPW.

### 11.2 **Permitted transfers**

11.2.1 A JV Shareholder shall be permitted to transfer some or all of its JV Investment to any Permitted Transferee only in the event that such transfer is required in connection with (i) a bona fide internal reorganisation affecting the JV Shareholder concerned; or (ii) for reasonable and bona fide tax planning purposes, and in each case subject to such Permitted Transferee agreeing to transfer all of such JV Investment back to such transferor JV Shareholder or to another Permitted Transferee of the transferor JV Shareholder immediately upon the Permitted Transferee ceasing to be a Permitted Transferee of such transferor JV Shareholder.

11.2.2 BBY Hold Co shall procure that the provisions of Clauses 11.1 and 11.2.1 shall apply to any shares in BBY Distributions held by any member of the

BBY Group or any other party *mutatis mutandis* to JV Shareholder Shares held by any BBY Group Company.

11.2.3 The JV Shareholders shall procure that JV Co shall, subject to payment of stamp duty, if any, promptly register any transfer of Shares made in accordance with this Clause 11.2.

### 11.3 **Grant of security over Shares**

A JV Shareholder may not Encumber any of its Shares to any party without prior written consent of the other JV Shareholder.

### 11.4 **Compulsory Transfer Event, Change of Control, Permitted Third Party Transfers and Put Options**

11.4.1 If a Compulsory Transfer Event occurs, the provisions of Schedule 4 (*Compulsory Transfer*) shall apply.

11.4.2 If a Change of Control occurs, the provisions of Clause 17 (*Transfer on Change of Control*) shall apply.

11.4.3 The parties shall be permitted to transfer their JV Investment in accordance with Clause 20 (*Right of First Refusal*).

### 11.5 **Rights in respect of Shareholder Loans following a transfer**

Except in respect of a transfer to a Permitted Transferee:

11.5.1 in the event that a JV Shareholder sells, transfers or otherwise disposes of all or any part of its JV Investment, such JV Shareholder shall from the date of such sale, transfer or other disposal have no further entitlement to be paid interest and/or any other repayment by JV Co pursuant to the terms of the relevant Shareholder Loan (or part thereof) transferred pursuant to such sale, transfer or other disposal of that JV Shareholder's JV Investment (or part thereof);

11.5.2 a JV Shareholder which acquires a Shareholder Loan (or part thereof) pursuant to a transfer of a JV Investment (or part thereof) in accordance with the terms of this Agreement shall, notwithstanding the consideration paid for such JV Investment (or part thereof) be entitled to interest and/or any other repayment on the full amount of the Shareholder Loan (or part thereof) in

accordance with the terms of such Shareholder Loan so acquired pursuant to such sale, transfer or other disposal of a JV Investment (or part thereof);

- 11.5.3 if CPW sells, transfers or otherwise disposes of all or any part of its JV Investment, CPW shall be entitled to terminate the CPW RCF from the date of such transfer and be repaid all monies (including costs and interest) due thereunder to CPW.

#### 11.6 **Conditions applying to transfers**

It shall be a condition of any sale, transfer or other disposal of Shares or JV Investment to any person (including a Permitted Transferee) not being an existing JV Shareholder that the transferee shall enter into a deed substantially in the form of Schedule 6 (*Deed of Adherence to Joint Venture*) agreeing to become party to and to be bound by the terms of this Agreement and to assume the obligations of the transferring JV Shareholder and, thereafter, any reference to a party or a JV Shareholder herein shall be deemed to include (as appropriate having regard to the nature of the JV Investment being transferred) a reference to such transferee as if named herein as a party in such capacity.

- 11.7 This Clause 11 shall be subject to clause 9 of the Consortium Relief Agreement.

#### 12. **DIVIDENDS**

- 12.1 JV Co shall procure that the Auditors report on the amount of distributable reserves available to JV Co simultaneously with the Auditors' final preparation of JV Co's annual accounts. Any distribution of dividends (whether in cash or in specie) in any Fiscal Year to the JV Shareholders shall be:

- 12.1.1 in an amount as the JV Board shall determine, having regard to the profits available for distribution, their fiduciary duties, reasonable provisions and transfers to reserves and the ability of JV Co to meet its debts and debt obligations as they fall due; and

- 12.1.2 subject to approval as a JV Shareholder Reserved Matter, in accordance with Clause 6.

### 13. RESTRICTIONS ON SHAREHOLDERS

#### 13.1 Restrictions

- 13.1.1 Each of the JV Shareholders hereby further undertakes to the others and JV Co that it shall not and shall procure that each of its Group Companies shall not at any time whilst any of their respective Group Companies is a JV Shareholder:
- 13.1.1.1 to an extent that is materially detrimental to the business of the JV Business, either on its own behalf or for or with any other person directly or indirectly:
- (a) approach, canvass, solicit or otherwise endeavour to entice away from any member of the JV Group for its own benefit or the benefit of any other person carrying on business in competition with the JV Business in the JV Countries the business of any person who, at any time during the preceding 12 calendar months, has been a material customer of or material supplier to any member of the JV Group;
  - (b) use its knowledge of, or influence over, any material customer of or material supplier to any member of the JV Group, to or for its own benefit or the benefit of any other person carrying on business in competition with the JV Business;
- 13.1.1.2 either on its own behalf or for or with any other person, directly or indirectly, approach, canvas, solicit or otherwise endeavour to entice away any employee of any member of the JV Group, who has an annual gross remuneration package in excess of £150,000, with a view to the specific knowledge or skills of such person being used by or for the benefit of any person carrying on business in competition with the JV Business in the JV Countries or carrying on any other business in any country.
- 13.1.2 At any time whilst any of their respective Group Companies is a JV Shareholder, each of the JV Shareholders hereby undertakes not to (whether or not on such party's own behalf or for or with any other person), and shall procure that each of their respective Group Companies shall not, engage in, or be otherwise concerned with or interested in, a Competing Business within the territory of:

(a) any JV Country; or

(b) any BBY Country.

13.1.3 The provisions of Clause 13.1.2 shall not restrict or otherwise limit, within the territory of the BBY Countries:

13.1.3.1 the business or operations of the BBY Group Companies as such business or operations exist at the date of this Agreement;

13.1.3.2 the business or operations of the BBY Group Companies as such business or operations may evolve or develop, including by logical extension to the business or operations of the BBY Group Companies as such business or operations exist at the date of this Agreement; or

13.1.3.3 the ability of the BBY Group Companies to acquire any Big Box Retailing business or entity in the BBY countries.

13.1.4 Notwithstanding the provisions of Clause 13.1.3, the BBY Mobile Agreement shall apply with respect to any BBY Mobile Competing Business.

13.1.5 At any time whilst any of their respective Group Companies is a JV Shareholder, each of CPW and BBY Hold Co (or any Group Company of CPW or BBY Hold Co) may engage in, or be otherwise concerned with or interested in, a Competing Business in the territory of any European Non-JV Country, provided that such party (the **“Offeror”**) first offers the other party (the **“Offeree”**) the right to require that JV Co engages in such Competing Business (the **“Offer”**). The Offeree shall, before the expiration of the Review Period, notify the Offeror in writing whether it wishes to accept or reject the Offer. If the Offeree accepts the Offer, then, subject to agreement of the JV Board, the Offeree will provide in cash or otherwise (as agreed by the parties in accordance with Clause 13.1.9) to JV Co (or such other entity as the JV Shareholders agree, subject always to Clause 13.1.9, an **“Alternative Entity”**), an amount equal to 50% of the consideration payable for such Competing Business (the **“European Non-JV Contribution”**), and JV Co (or an Alternative Entity) shall engage in such Competing Business. If the Offeree does not accept the Offer, the Offer shall not be put to the JV

Board for consideration, and the Offeror may proceed to engage in such Competing Business on its own and solely for its own benefit.

- 13.1.6 Each of CPW and BBY Hold Co (or any Group Company of CPW or BBY Hold Co) may engage in, or be otherwise concerned with or interested in, a Competing Business in the territory of any country which is not:
- (a) a JV Country;
  - (b) a BBY Country; or
  - (c) a European Non-JV Country.
- 13.1.7 Notwithstanding the terms of Clause 13.1.2, and subject to Clause 13.1.3, each of CPW and BBY Hold Co (or any Group Company of CPW or BBY Hold Co) may acquire an Ancillary Competing Business provided that such acquiring JV Shareholder (or its relevant Group Company, as the case may be) notifies the non-acquiring JV Shareholder prior to the completion of the acquisition of the Ancillary Competing Business.
- 13.1.8 Following receipt of the notice referred to in Clause 13.1.7, the non-acquiring JV Shareholder may notify the acquiring JV Shareholder, before expiration of the Review Period, to indicate whether or not it requires the Ancillary Competing Business to be purchased by JV Co (or, subject to Clause 13.1.9, an Alternative Entity) at Fair Market Value in accordance with the terms of Schedule 5. If the non-acquiring JV Shareholder requires JV Co (or an Alternative Entity) to purchase the Ancillary Competing Business for Fair Market Value, the Ancillary Competing Business shall, immediately upon its acquisition, be transferred into JV Co (or the Alternative Entity) whereupon the non-acquiring JV Shareholder will provide in cash or otherwise (as agreed by the parties in accordance with Clause 13.1.9) to JV Co (or the Alternative Entity), an amount equal to 50% of the Fair Market Value of the acquired Ancillary Competing Business (the “**Ancillary Competing Business Contribution**”). If, following receipt of the notice referred to in Clause 13.1.7, the non-acquiring JV Shareholder notifies the acquiring JV Shareholder that it does not require JV Co (or an Alternative Entity) to purchase the Ancillary Competing Business, the acquiring JV Shareholder must dispose of the Ancillary Competing Business as soon as reasonably practicable (and in any event within twelve (12)

calendar months of the date of completion of the acquisition of the Ancillary Competing Business).

- 13.1.9 The parties shall determine and agree in good faith the most tax efficient method by which a Contribution shall be made. In the event that the parties cannot reach agreement, a Contribution shall be structured as an acquisition by JV Co, to be funded by cash lent equally by the JV Shareholders on the terms of the JV Shareholder Loans.
- 13.1.10 Each party undertakes to the others that it shall not and shall procure that each of its Group Companies shall not for a period of 18 calendar months after the date they cease to be such a JV Shareholder, breach any of the terms of this Clause 13.1.
- 13.1.11 Each of the undertakings contained in this Clause 13.1 shall be read and construed as an entirely separate and independent undertaking by the parties.
- 13.1.12 Fair Market Value of the acquired Competing Business for purposes of this Clause 13.1 shall be calculated in accordance with Schedule 5 which shall apply *mutatis mutandis* to such calculation.

### 13.2 **Delivery of documents**

Each JV Shareholder shall, on ceasing to hold a JV Investment, deliver or procure the delivery to JV Co on demand, all plans, budgets, documents provided pursuant to Clause 8 ( *Information* ), correspondence, budgets, schedules, documents, records and other materials (whether in eye or machine-readable form) belonging to or relating to the JV Business or JV Co together with all copies thereof (including, without limitation, computer disks) held by it or its agents or advisers and, if required by the remaining JV Shareholders, deliver notice in writing from a director of the JV Shareholder ceasing to hold Shares confirming that it has complied with the terms of this Clause 13.2.

### 13.3 **Reasonableness of restrictions**

The restrictions and exceptions thereto set out in this Clause 13 are considered reasonable by the parties and necessary for the protection of their proprietary and commercial interests and those of JV Co.

## **14. REPRESENTATIONS AND WARRANTIES**

Each party (as appropriate) makes the following representations and warranties in respect of itself in favour of the other parties:

- 14.1 it is duly registered and the signature, execution and performance of this Agreement and all ancillary documents have been duly authorised and are within its corporate power, and will not give rise to any breach of any instrument, agreement, law, order, judgment or decree by which it is bound;
- 14.2 all consents, licences or approvals required by law or regulation in order for it to enter into this Agreement have been obtained, are valid, are subsisting and any conditions have been adhered to; and
- 14.3 the signature, execution and performance of this Agreement and all ancillary documents will not give rise to any breach of any instrument, agreement, law, order, judgment or decree by which such party is bound.

## **15. ANNOUNCEMENTS AND CONFIDENTIALITY**

### **15.1 No announcements without agreement**

- 15.1.1 The parties hereby agree to use reasonable efforts to co-ordinate with each other in advance as to the form, content and timing of any announcements regarding the financial performance of the JV Group or the JV Business including without limitation where the matter in question may give rise to a legal or regulatory obligation for either JV Shareholder, and (so far as reasonably practicable) to take into account any reasonable comments of the other party.
- 15.1.2 Subject to Clauses 15.1.3 and 15.3 and save as required by law or with the prior written consent of the JV Shareholders, no statement or announcement of any nature relating to the subject matter of or the transaction referred to in this Agreement, the Key Agreements or the establishment of JV Co, or any financial data or result relating to the JV Co or the JV Shareholders, shall be made to the public, the press or otherwise unless in a form previously agreed in writing between the JV Shareholders.
- 15.1.3 Save for the restriction set out in Clause 15.1.2 above, the JV Co shall be entitled to issue press releases or media announcements relating to the day-to-day operations of JV Co without the approval of the JV Shareholders first being obtained.



- 15.1.4 The parties shall each use their respective reasonable endeavours to make announcements with respect to the financial performance of the JV Group or the JV Business only pursuant to a calendar of announcement dates to be agreed in accordance with Clause 15.1.5.
- 15.1.5 The parties shall agree a calendar of announcements pursuant to Clause 15.1.4 as soon as reasonably practicable following:
- (a) the Closing Date, in relation to such announcements to be made during the remainder of the current Fiscal Year; and
  - (b) the commencement of each Fiscal Year (and in any event within 20 Business Days thereof), in relation to such announcements to be made during each such Fiscal Year.

## 15.2 Confidentiality obligations

- 15.2.1 Save as provided by Clause 15.3, each party shall (and each JV Shareholder shall procure that each of its Permitted Transferees shall) keep confidential and not disclose to any person any Confidential Information.
- 15.2.2 Each of the parties agrees with and acknowledges to the others that, before the Closing Date, it has obtained and that during the term of this Agreement it will obtain Confidential Information and, accordingly, each of the parties hereby undertakes to the other and JV Co that it will not at any time after the Closing Date (save by compulsion of law) disclose or divulge any Confidential Information to any person (other than to officers or employees of the JV Group whose province it is to know the same).
- 15.2.3 Each JV Shareholder and JV Co shall at all times comply in all respects with all relevant legislation and applicable regulations in respect of the protection of information of any nature relating to customers of the JV Co.

## 15.3 Permitted disclosures

Subject to Clause 15.1 a party may disclose or permit the disclosure of Confidential Information:

- 15.3.1 to its representatives, advisors, Permitted Transferees or JV Shareholder Group Companies, to the extent necessary to enable it or them to perform or

cause to be performed or to enforce any of its rights or obligations under this Agreement provided that such representative, advisor, Permitted Transferee or JV Shareholder Group Companies, has executed a confidentiality undertaking equivalent to that set out in this Clause 15;

15.3.2 when required to do so:

15.3.2.1 by law; or

15.3.2.2 by or pursuant to the rules or any order of any court, tribunal or agency of competent jurisdiction; or

15.3.2.3 by any securities exchange or regulatory or governmental body having jurisdiction over it,

15.3.2.4 provided that the party making the disclosure shall use its reasonable efforts to consult with the other party in advance as to its form, content and timing, and shall (so far as reasonably practicable) take into account any reasonable comments of the other party;

15.3.3 to the extent that the Confidential Information has become publicly available or generally known to the public at the time of such disclosure otherwise than as a result of a breach of this Clause 15; or

15.3.4 if the other parties to this Agreement have given prior written approval to the disclosure.

#### 15.4 **Duration of confidentiality obligations**

The obligations in this Clause 15 shall continue to apply after termination of this Agreement and after any party has ceased to be party to this Agreement for a period of five years.

### 16. **TERMINATION**

16.1 This Agreement shall remain in full force and effect unless and until terminated in accordance with the provisions of this Clause 16.

16.2 This Agreement shall terminate upon:

- 16.2.1 one JV Shareholder (except CPW Affiliate) acquiring all of the JV Investment held by the other JV Shareholder (and any shareholder in the JV Co which is its Permitted Transferee) (except CPW Affiliate) pursuant to a Compulsory Transfer, as a result of a Change of Control, pursuant to Clause 20 ( *Right of First Refusal* ) or otherwise; or
  - 16.2.2 the making of an order or the passing of an effective resolution for the winding up of the JV Co except in respect of a restructure of JV Co for reasonable business and/or tax restructuring; or
  - 16.2.3 the execution of a written agreement to such effect by all the JV Shareholders.
- 16.3 The Surviving Provisions shall survive and remain in full force and effect notwithstanding their terms should this Agreement be terminated for any reason.

**17. TRANSFER ON CHANGE OF CONTROL**

- 17.1 On the occurrence of a Change of Control of CPW or BBY Hold Co, as the case may be, the party suffering the Change of Control ( **“COC Party”** ), shall within 20 Business Days of completion of the same notify the party not suffering the Change of Control ( **“Buyer”** ) of the Change of Control.
- 17.2 The Buyer shall within 10 Business Days of being notified by the COC Party under Clause 17.1 notify the COC Party as to which of the following options the Buyer wishes to take place:-
  - 17.2.1 that the Buyer shall buy all of the COC Party’s (or of any Permitted Transferee of the COC Party) JV Investment in accordance with this Clause 17, in which case the notice from the Buyer shall constitute a **“Buy Notice”** ;
  - 17.2.2 that the Buyer shall sell all of the Buyer’s (or of any Permitted Transferee of the COC Party) JV Investment to the COC Party in accordance with this Clause 17, in which case the notice from the Buyer shall constitute a **“Sell Notice”** ;
  - 17.2.3 that the Buyer wishes neither to buy nor to sell in accordance with Clauses 19.2.1 or 19.2.2, and instead remain as a JV Shareholder in accordance with the terms of this Agreement.

A failure by the Buyer to serve any notice on the COC Party during such 20 Business Day Period shall be deemed to constitute a notice by the Buyer that it wishes (pursuant to Clause 17.2.3 to remain as a JV Shareholder.

- 17.3 Each of CPW and BBY Hold Co shall procure (as the case may be) that each of their respective Permitted Transferees shall act in accordance with the instructions of the JV Shareholder of which it is the Permitted Transferee in order to give effect to the provision of this Clause 17.
- 17.4 A Buy Notice shall be deemed to constitute an offer by the Buyer to the COC Party to buy from the COC Party and/or its Permitted Transferee ( **“Seller”** ) all (but not some only) of the JV Investment held by the Seller at the Fair Market Value to be completed within the 10 Business Day period referred to in Clause 17.6. Once served, a Buy Notice may not be revoked without the written consent of the COC Party and the COC Party shall be bound to sell and the Buyer shall be bound to buy all of the Seller’s JV Investment at the Fair Market Value.
- 17.5 A Sell Notice shall be deemed to constitute an offer by the Buyer to the COC Party to sell to the COC Party all (but not some only) of the JV Investment held by the Buyer at the Fair Market Value to be completed within the 10 Business Day period referred to in Clause 17.6. Once served, a Sell Notice shall not be revoked without the written consent of the COC Party and the Buyer shall be bound to sell and the COC Party shall be bound to buy all of the Buyer’s JV Investment at the Fair Market Value.
- 17.6 Following agreement or determination of the Fair Market Value, completion of the sale and purchase under a Buy Notice or Sell Notice (as the case may be) shall (subject to Clause 33) take place at such reasonable time and place (and otherwise in accordance with all applicable time periods herein specified) as the Buyer or Seller (as the case may be) may specify, but being no more than 10 Business Days after such agreement or determination of the Fair Market Value, whereupon the following events described in this Clause 17.6 shall take place (herein collectively referred to as the **“COC Completion”**):
- 17.6.1 the party selling shall deliver to the party buying a duly executed transfer or transfers in favour of the party buying, or such other person as it may direct, together with the share certificates in respect of all Shares held by the party selling as part of its JV Investment;
- 17.6.2 the party selling and the party buying shall execute a sale and purchase

agreement incorporating the transfer terms set out in Clause 18 below;

- 17.6.3 the party selling shall deliver to the party buying a duly executed assignment in favour of the party buying of all of the selling party's Shareholder Loans.
- 17.6.4 the party buying shall pay the Fair Market Value, to the party selling by wire transfer or banker's draft for value, on the date of COC Completion; and
- 17.6.5 the party selling shall do all such other things and execute all such other documents as the party buying, or such other person as it may direct, may require to give effect to the sale and purchase and/or transfer of all of the JV Investment to the party buying.
- 17.7 If any party shall fail or refuse to transfer any of its JV Investment in accordance with its obligations hereunder, the JV Co shall authorise any person to execute and deliver on its behalf the necessary transfer and the JV Co shall receive the purchase money in trust for the party selling and cause the party buying to be registered as the holder of all Shares held by the party selling the relevant part of its JV Investment. The receipt by JV Co of the Fair Market Value shall be a good discharge to the party buying (and it shall not be bound to see to the application thereof).
- 17.8 The party selling hereby agrees that payment to it of such Fair Market Value shall constitute full and final satisfaction of the consideration due to it and, in particular, JV Co's indebtedness to the party selling in respect of any outstanding amounts drawn down under Shareholder Loans provided by the party selling to JV Co as at the date of COC Completion and, for the avoidance of doubt, the Seller agrees that no interest shall continue to accrue in its favour in respect of such Shareholder Loans from the date of occurrence of such Change of Control.
- 17.9 Upon completion of a transfer of all the selling party's JV Investment in accordance with this Clause 17, the party buying shall use all reasonable endeavours (but, save as provided below, without involving any financial obligations on its part) to procure the release of any guarantees or indemnities given by the party selling (or by any person controlled by or connected with the party selling) to or in respect of the JV Co provided that the reasonable costs in relation thereto shall be borne by the buying party save where such guarantee or indemnity given by the party selling (or by any person controlled by or connected with the party selling) is in form or substance substantially different from that given by the party buying in which event the party selling shall bear such costs.

17.10 Each Shareholder waives any of its rights of pre-emption on the transfer of the Shares whether contained in the JV Articles of Association, this Agreement or otherwise to the extent necessary to effect the provisions of this Clause 17, Clause 20 or Schedule 4 ( *Compulsory Transfer* ).

## 18. TRANSFER TERMS

18.1 This Clause sets out the terms on which any Shares are to be transferred under Clause 10 ( *Transfer of JV Investment* ), Clause 17 ( *Transfer on Change of Control* ), Clause 20 ( *Right of First Refusal* ), and Schedule 4 ( *Compulsory Transfer* ).

18.2 Any transfer of the Shares shall be on the following terms:

18.2.1 the Shares will be sold with full title guarantee, free from all Encumbrances and third party rights, together with all rights of any nature attaching to them including all rights to any dividends or other distributions declared, paid or made after the date of completion of such transfer;

18.2.2 the party selling shall deliver to the party buying duly executed transfer(s) in favour of the party buying or as it may direct, together with any share certificate(s) for the Shares and a certified copy of any authority under which such transfer(s) is/are executed and, against delivery of the transfer(s), the party buying shall pay the consideration for the Shares to the party selling in cleared funds for value on the relevant completion date;

18.2.3 the parties shall ensure (insofar as they are able) that the relevant transfer or transfers (subject to their being duly stamped, stamp duty to be paid by the party buying) are registered in the name of the party buying or as it may direct;

18.2.4 the party selling shall do all such other things and execute all other documents (including any deed) as the party buying may reasonably request to give effect to the sale and purchase of the Shares;

18.2.5 if requested by the party buying, the party selling shall ensure that all the JV Directors appointed by it or any of its Group Companies resign and the resignation(s) take effect without any liability on the JV Co for compensation for loss of office or otherwise.

## 19. STRATEGIC OPTIONS

At least once in every three consecutive years after the Closing Date the JV Board shall be entitled to appoint a reputable Investment Bank to review the JV Group and the JV Business and report to the JV Board on potential future strategic options for the JV Group and the JV Business including any potential Exit.

## 20. RIGHT OF FIRST REFUSAL

- 20.1 At any time during an Exit Period each JV Shareholder (the “**Selling Party**”) shall be entitled to give a sealed written notice to the Receiving Agent providing the other JV Shareholder (the “**Continuing Party**”) with written notice (a “**Transfer Notice**”) of the Selling Party’s offer to sell all (and not part) of its JV Investment to the Continuing Party. A Transfer Notice once served on the Receiving Agent shall be irrevocable.
- 20.2 The Receiving Agent shall not communicate to any JV Shareholder during any Exit Period as to whether or not he has received any sealed written notices pursuant to Clause 20.1 the Receiving Agent shall not open any Transfer Notice(s) until after the expiry of the relevant Exit Period unless all the JV shareholders agree otherwise in writing, at which stage it/they shall be opened by the Receiving Agent in the presence of a representative of each JV Shareholder at 9 am on the first Business Day after the expiry of the relevant Exit Period at the registered office of JV Co ( “**Start Date**”). If any one of such representatives do not attend such meeting the Receiving Agent may still open such notices and advise the JV Shareholders of the contents in writing as soon as reasonably possible and in any event no later than three Business Days thereafter (such date also being the “**Start Date**”).
- 20.3 If both JV Shareholders have delivered a Transfer Notice to the Receiving Agent the remaining provisions of this Clause 20 (except Clauses 20.8 and 20.9) shall not apply and the JV Shareholders shall acting reasonably and in good faith discuss alternative and mutually beneficial options in respect of their respective JV Investments including without limitation any potential Exit.
- 20.4 If only one JV Shareholder serves a Transfer Notice the Continuing Party shall have the right (but no obligation) to buy all (but not part) of the JV Investment of the Selling Party, at the price set out in Clause 20.5 first by giving a notice of intention within 20 Business Days and then by giving notice (the “**Acceptance Notice**”) to the Selling Party within 60 Business Days of the Start Date (the “**Acceptance Period**”). An Acceptance Notice once served on the Selling Party shall be irrevocable.

- 20.5 The price shall equal 60% of the Fair Market Value of the JV Investment of the Selling Party as agreed between the Selling Party and the Continuing Party or as determined in accordance with Schedule 5 ( *Fair Market Value* ).
- 20.6 Following service of an Acceptance Notice on the Selling Party the Continuing Party shall be bound to buy and the Selling Party shall be bound to sell (in each case subject only to any necessary approvals of its shareholders in general meeting and any Regulatory Approvals and any reasonable period of time in which to obtain such approvals) the JV Investment of the Selling Party and, in such event, completion of the sale and purchase of the JV Investment of the Selling Party shall take place within 40 Business Days after the agreement or determination of the price in accordance with Clause 20.5 and on the terms contained in Clause 20 and any such other terms as agreed by the Selling Party and the Continuing Party. Unless the Selling Party and Continuing Party decides otherwise (such matter shall not be a deadlock matter) the price shall be paid in cash and in full on completion of such sale and purchase.
- 20.7 If the Continuing Party does not serve an Acceptance Notice pursuant to Clause 20.4, the Selling Party shall be entitled (but not obliged) within a period of 60 Business Days commencing immediately after the end of the Acceptance Period ( "**Sale Period**" ) to enter into a legally binding agreement to transfer all (but not part) of its JV Investment on bona fide arm's length terms (which shall comply with Clause 12.6) to a Permitted Third Party at any price. For the avoidance of doubt the Selling Party shall not be entitled to enter into such legally binding agreement after the end of the Sale Period.
- 20.8 The JV Shareholders shall not be entitled to serve a Transfer Notice if a notice has been served under Clause 17 ( *Transfer on Change of Control* ) or under Schedule 4 ( *Compulsory Transfer* ).
- 20.9 Any time period referred to in this Clause 20 shall be deemed inclusive of the first and last day of such time period.

## 21. INADEQUACY OF DAMAGES

Without prejudice to any other rights or remedies that a party may have, each party acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this Agreement by another party. Accordingly, a party shall be entitled, without proof of special damages, to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of this Agreement.



**22. TAX**

The provisions of Schedule 8 shall apply in relation to Tax.

**23. ENTIRE AGREEMENT AND SEVERANCE**

**23.1 Entire agreement**

This Agreement, together with the Key Agreements, sets out the entire agreement between the parties, and supersedes any previous agreement between them in relation to the subject matter of this Agreement and the Key Agreements (including any relevant term sheets).

**23.2 Acknowledgment by parties**

Each party acknowledges that:

23.2.1 in entering into this Agreement and the Key Agreements, it does not rely on, and shall have no remedy in respect of, any representation (whether negligent or otherwise) made to it by any person (whether a party to this Agreement or not) which is not expressly set out or referred to in this Agreement;

23.2.2 the only remedy available to it in respect of any representation or warranty expressly set out or referred to in this Agreement shall, except where expressly provided for in this Agreement, be for breach of contract in respect of that term of this Agreement; and

23.2.3 nothing in this Clause 23 shall operate to exclude or restrict any liability for fraud or fraudulent misrepresentation.

**23.3 Conflict between agreements**

The parties intend that the provisions of the SPA shall prevail over this Agreement, the JV Constitutional Documents, the Key Agreements and any other agreements entered into between the parties in relation to the JV Business in the event of conflict and, accordingly, the parties shall, if necessary, exercise all voting and other rights and powers available to them whether as JV Shareholders or otherwise, or under this Agreement, to procure any amendment to the JV Constitutional Documents, the Key Agreements and any other agreements entered into between the parties in relation to the JV Business required to give effect to the provisions of this Agreement.

23.4 **Severance**

If any provision of this Agreement or part thereof is rendered void, illegal or unenforceable in any respect (whether against all or only some of the parties), the validity, legality and enforceability of the remaining provisions (and such aforesaid provision against the other parties) shall not in any way be affected or impaired thereby.

23.5 **No agency**

Nothing in this Agreement, and no action taken under this Agreement, shall create a relationship of principal and agent between any of the parties or (save as otherwise stated herein) otherwise authorise any party to bind any other party for any purpose.

**24. AMENDMENTS**

24.1 This Agreement may not be changed, altered, waived or, save as in accordance with this Agreement, terminated without the written consent of the parties to it.

24.2 The parties undertake to negotiate in good faith any amendments to this Agreement for purposes of accommodating any future changes in the regulatory environment which governs telecommunications in any JV Country.

**25. NO ASSIGNMENT**

Save as results from a transfer of Shares and/or a JV Investment as permitted under this Agreement, no party may assign its rights under this Agreement without the consent of the other parties.

**26. REMEDIES AND WAIVERS**

26.1 **No waiver or discharge**

No default by any party in the performance of or compliance with any provision of this Agreement shall be waived or discharged except with the express written consent of all other parties. A waiver by a party of a default by another party will not prevent the first party from subsequently requiring compliance with the waived obligation.

26.2 **Saving for future waivers**

No waiver by any party of any default by another party in the performance of or

compliance with any of the provisions of this Agreement shall operate or be construed as a waiver of any other or further default whether of a like or different character.

**26.3 Failure to exercise not a waiver**

26.3.1 No failure to exercise, nor delay or omission by any party in exercising, any right, power or remedy conferred on it under this Agreement or provided by law shall except with the express written consent of that party:

26.3.1.1 affect that right, power or remedy; or

26.3.1.2 operate as a waiver of it.

26.3.2 No single or partial exercise by any party of any right, power or remedy shall prevent any further exercise of that right, power or remedy or the exercise of any other right, power or remedy.

**26.4 Rights and remedies cumulative**

The rights, powers and remedies conferred on the parties by this Agreement are cumulative and not exclusive of any rights, powers and remedies provided by law or otherwise.

**27. COSTS**

Save where expressly agreed to the contrary, each party shall bear the legal, accountancy and other costs and expenses incurred by it in connection with the preparation and implementation of this Agreement and the Key Agreements.

**28. DURATION**

The rights and obligations of each JV Shareholder shall continue and be enforceable by or against it only while it or any of its Permitted Transferees is a JV Shareholder save for:

28.1 the Surviving Provisions which shall continue to have effect notwithstanding a party ceasing to be a JV Shareholder or termination of this Agreement; and

28.2 rights and obligations in respect of antecedent breaches of this Agreement or the JV Constitutional Documents.

**29. TIME OF THE ESSENCE**

Time shall be of the essence for the purposes of any provision of this Agreement.

**30. COUNTERPARTS**

This Agreement may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart shall constitute an original of this Agreement, but together the counterparts shall constitute one document.

**31. NOTICES**

**31.1 Service**

Any notice or other communication to be given under this Agreement shall be in writing and shall be delivered by hand or sent by prepaid registered mail, and shall be addressed to the party to be served at the address specified below:

**BBY Hold Co**

Keith Nelsen  
c/o Premier Corporate Services, Inc.  
590 Park Street  
Suite 6  
St Paul, Minneapolis  
55103, USA

With a copy to:

Attention: General Counsel, International  
7001 Penn Avenue South  
Richfield MN  
55423 USA

**BBY Distributions**

Keith Nelsen  
100 New Bridge Street  
London EC4V 6JA  
United Kingdom

**The Carphone Warehouse Group PLC and CPW Retail Holdings Limited**

Company Secretary and Chief Financial Officer

1 Portal Way  
London  
W3 6RS

or to such other address as a party may notify to each other party in writing as being its address for such purpose.

31.2 **Receipt**

31.2.1 Any notice sent by any party to any other ( “**Addressee**” ) which:

31.2.1.1 is delivered by hand during the normal business hours of the Addressee at the Addressee’s address shall be deemed, until the contrary is proved by the Addressee, to have been received by the Addressee at the time of delivery or, if outside such normal business hours, at the opening of business on the next following Business Day;

31.2.1.2 is posted by prepaid registered mail to the Addressee at the Addressee’s address shall be deemed, until the contrary is proved by the Addressee, to have been received by the Addressee on the fifth Business Day after the date of posting.

31.2.2 Notwithstanding anything contained to the contrary in this Agreement, any notice written or otherwise actually received by one party from another party shall be adequate notice to such party, unless otherwise required by any provision of this Agreement.

31.3 BBY Hold Co shall at all times maintain an agent for service of process in England in relation to any matter arising out of or in connection with this Agreement. Such agent shall be BBY Distributions and service of any claim form, judgment or other notice of legal process shall be sufficiently served on such party if served upon such agent.

31.4 BBY Hold Co shall inform CPW in writing of any change in its process agent or the address of its process agent within 14 days of such change provided that any new agent must be of a similar good standing to the original agent and have an address in England.

**32. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

32.1 JV Co shall be entitled, as a third party beneficiary, to enforce the provisions of Clause 3 ( *Shareholder Assurances* ), by reason of the Contracts (Rights of Third Parties) Act 1999. This right is subject to:

32.1.1 the rights of the parties to amend or vary this Agreement without the consent of JV Co; and

32.1.2 the other terms and conditions of this Agreement.

32.2 Except as provided in 32.1, a person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

**33. SHAREHOLDER APPROVAL**

Notwithstanding any time period stated in the Agreement, time shall be given to CPW and BBY Hold Co to obtain any necessary shareholder approval or non-approval (as their respective shareholders shall decide) pursuant to Chapter 10 and/or 11 of the Listing Rules or pursuant to the rules of the SEC, as appropriate, where such rules are applicable to any event or action or decision required to be taken under or pursuant to this Agreement. CPW and BBY Hold Co shall each act in good faith and in a reasonably timely manner in procuring the holding of a general meeting of their respective shareholders for the purposes of obtaining any such approval, or non-approval as the case may be.

**34. GOVERNING LAW**

This Agreement is governed by and is to be construed in accordance with the laws of England and Wales. Unless otherwise stated in this Agreement, the parties hereby irrevocably submit to the Dispute Resolution Procedure. The parties confirm that the forums provided for in the Dispute Resolution Procedure are not inconvenient forums and each party irrevocably waives any right it may have to object to their jurisdiction on the grounds of inconvenience or otherwise.

## SCHEDULE 1

### PARTICULARS OF JV CO IMMEDIATELY AFTER CLOSING

Name: CPW Distribution Holdings Limited

Registered Number: 6534088

Registered Office: 1 Portal Way, London, W3 6RS, UK

Subsidiaries: The JV Subsidiaries

Shareholders: The Carphone Warehouse Group PLC – 49% of the issued Ordinary Shares  
CPW Retail Holdings Limited – 1% of the issued Ordinary shares  
Best Buy Distributions Limited – 50% of the issued Ordinary Shares

Accounting Reference Period: 31 March

Auditors: Deloitte & Touche LLP

**SCHEDULE 2**  
**JV SUBSIDIARIES**

**Part 1**

**UK Subsidiaries**

The Carphone Warehouse Limited (Co. No. 2142673)

The Carphone Warehouse UK Limited (Co. No. 3827277)

CPW Co 16 Limited ( Co. No. 6617436)

Mobiles.co.uk Limited (Co. No. 6320783)

The Phone House Holdings (UK) Limited (Co. No. 3663563)

Geek Squad UK Limited (Co. No. 6032807)

ISE-Net Solutions Limited (Co. No. 2881162)

Talk Mobile Limited (Co. No. 4154716)

Fresh Telecom Limited (Co. No. 3843665)

Evergreen Services Holdings Limited (Co. No. 2441554)

Evergreen Services (2) Limited (Co. No. 4682207)

Cellcom Limited (Co. No. 1847868)

Spinvox Limited (Co. No. 4825183)

Note:

CPW Mobile Limited (Co. No. 6330995) and its subsidiary company CPW Co 16 Limited (Co. No. 6617436) will not be subsidiary companies of Newco on the Closing Date.



## **Part 2**

### **European Subsidiaries**

The Carphone Warehouse Limited (Ireland)

Compro- Telematics BV (The Netherlands)

Provitel Groothandel BV (The Netherlands)

The Phone House BV (The Netherlands)

The Phone House NV (Belgium)

The Phone House Deutschland GmbH (Germany)

The Phone House Netherlands Business Centers BV (The Netherlands)

The Phone House Netherlands BV (The Netherlands)

The Phone House Netherlands Franchise BV (The Netherlands)

The Phone House Netherlands Retail BV (The Netherlands)

The Phone House Netherlands Retail Regio Midden BV (The Netherlands)

The Phone House Netherlands Retail Regio Noord BV (The Netherlands)

The Phone House Netherlands Retail Regio Zuid BV (The Netherlands)

The Phone House Services GmbH (Germany)

The Phone House Shop Management GmbH (Germany)

The Phone House Telecom GmbH (Germany)

GEAB The Phone House AB (Sweden)

Helvetiatel GmbH (Switzerland)

MSG The Phone House AB (Sweden)

MTIS Limited (Ireland)

New Technology Insurance (Ireland)

N-Tel Telecom GmbH (Switzerland)

Sociedade Gestora de Participacoes Socias SA

OSFONE- Comercio de Aparelhos de Telecomunicacoes Lda

OSFONE NEGOCIOS- Comercio de Aparelhos de Telecomunicacoes Lda

The Phone House Holdings (UK) Spanish branch

The Phone House Direct S.L (Spain)

The Phone House Movil S.L.U (Spain)

Phonehouse International AB (Sweden)

Telechoice Espana SA (Spain)

The Phone House Canarias S.L.U (Spain)

The Phone House SAS (France)

The Phone House LTDA (The Phone House Comercio e Aluguer de bens e Services Lda) (Portugal)

The Phone House SA (Switzerland)

The Phone House Services Telecom SAS (France)

The Phone House Spain S.L (Spain)

TPH Trading France EURL

Talktalk Telecom GmbH (Switzerland)

Xtra Telecom SA (Spain)

F.M. Investments B.V.

F.M. Development B.V.

Typhone E-Concepts B.V.

F.M. Corporate Communications B.V.

**Part 3**

**US Subsidiary**

BBY Consulting LLC (50% owned by the BBY Hold Co Group)

## **SCHEDULE 3**

### **RESERVED MATTERS**

#### **Part 1**

##### **Consolidation Reserved Matters**

1. Selecting, appointing, terminating and setting the compensation (including any bonus, profit sharing or other incentive scheme) of the CEO, CFO and COO.
2. Establishing and approving the annual capital expenditure budget of the JV Group in the ordinary course of business in each Fiscal Year.
3. Establishing and approving the annual operational and financial budget of the JV Group in the ordinary course of business in each Fiscal Year.

## **Part 2**

### **JV Shareholder Reserved Matters**

The following shall apply in respect of every member of the JV Group:

1. any material change in nature of the JV Business;
2. any modification to the JV Constitutional Documents including any alteration to the rights attaching to the Shares;
3. increasing the share capital of JV Co or authorising or issuing any Shares or rights to subscribe for or convert into or call for the issue of such Shares;
4. redeeming, purchasing or otherwise acquiring any of the JV Co's issued Shares;
5. entering into or amending any contractual arrangement with any Related Party except as provided for in the Key Agreements and except pursuant to Clause 3.5 ( SPA );
6. liquidating, dissolving or otherwise taking any steps to effect a recapitalisation or reorganisation of JV Co;
7. selling, leasing, assigning or charging all or any substantial portion of JV Co's assets or undertaking;
8. except in respect of working capital in the ordinary course of business disposing or acquiring any asset, undertaking or stock with a value in excess of £25 million in a single or a number of related transactions;
9. incorporating any new subsidiary or acquiring any share in any other company;
10. entering into any joint venture or partnership or non-arm's-length arrangement with any person;
11. instigating or settling any litigation proceedings with a value of more than £1 million (including against a JV Shareholder or Group Company or other party to this Agreement in respect of a breach of this Agreement), except if a JV Shareholder is conflicted, when in such circumstances the JV Directors appointed by the non-conflicted JV Shareholders only shall decide upon such matter;
12. entering into any lease or licences of any property with an annual rental value of more than £3 million in any Fiscal Year;

13. incurring any indebtedness (except Shareholder Loans and the CPW RCF) of any nature (including any guarantee or indemnity of any third party liability or obligation) which is outside the ordinary course of business for more than £25 million except as specifically provided for in any annual operational and financial budget;
14. subject to paragraph 15 below, making to any party any loans or any other form of credit other than in the ordinary course of business in excess of £25 million;
15. making any loan or form of credit to any Related Party;
16. making any material decisions towards any Exit;
17. changing the Auditors;
18. amending any Key Agreement or any other material contract entered into by JV Co from time to time (such other material contracts being contracts in excess of £1 million in respect of a single or number of related material contracts);
19. declaring or paying any dividends or other distributions upon any of the Shares in accordance with Clause 12 ( *Dividends* );
20. altering the accounting reference date or changing the accounting policies of any member of the JV Group;
21. entering into any factoring agreement in respect of any debts other than in the ordinary course of business;
22. appointing any additional JV Directors resulting in the total number of JV Directors being more than 6 (Six).

## SCHEDULE 4

### COMPULSORY TRANSFER

#### 1. Compulsory Transfer Events

A JV Shareholder (for the purposes of this Schedule 4, a “**Compulsory Transferor**”) shall be obliged to sell its JV Investment in accordance with the terms of this Schedule 4 if, in relation to any JV Shareholder or a JV Parent who is not an individual (for the purposes of this paragraph 1 only, an “**Undertaking**”):

- 1.1 a petition shall be presented and advertised for the making of an administration order in relation to such Undertaking or if an effective resolution is passed for the winding-up of such Undertaking except for the purpose of a solvent reconstruction or amalgamation or where such petition has been withdrawn within 20 Business Days of it being presented; and/or
- 1.2 any encumbrance shall take possession or an administrative receiver or a receiver shall be validly appointed over the Undertaking, property and assets of such Undertaking or any part thereof; and/or
- 1.3 analogous circumstances have occurred in respect of such Undertaking in any country whatsoever,

each of the events listed in paragraphs 1.1 to 1.3 above being a “**Compulsory Transfer Event**” .

#### 2. Consequences of a Compulsory Transfer Event

- 2.1 If a Compulsory Transfer Event occurs the other JV Shareholder not being the Compulsory Transferor ( “**Other Shareholder**” ) shall be entitled to serve a notice ( “**Compulsory Transfer Notice**” ) within 10 Business Days of the occurrence of such Compulsory Transfer Event on the Compulsory Transferor requiring the Compulsory Transferor to transfer all of its JV Investment to the Other Shareholder held by the Other Shareholders at the time of the Compulsory Transfer Event in consideration for the payment by the Other Shareholder(s) of:

- 2.1.1 an amount equal to the par value of the Shares in respect of its Shares; and

2.1.2 an amount equal to all outstanding amounts drawn down by the JV Group under the JV Shareholder Loan provided by the Compulsory Transferor (together with if CPW is the Compulsory Transferor all outstanding amounts drawn down by the JV Group under the CPW RCF) to the JV Group (together with accrued, but unpaid, interest thereon) as at the date of the Compulsory Transfer Event,

(together the “**Unadjusted Compulsory Disposal Amount**”) such Unadjusted Compulsory Disposal Amount to be increased or decreased by way of an early prepayment charge or deduction (as the case may be) in respect of such Shareholder Loans as follows:

2.1.3 if the Unadjusted Compulsory Disposal Amount is less than 50% of the Fair Market Value of the Compulsory Transferor’s JV Investment, the Other Shareholder shall pay an additional amount equal to the difference between 50% such Fair Market Value of the Compulsory Transferor’s JV Investment and the Unadjusted Compulsory Disposal Amount;

2.1.4 if the Unadjusted Compulsory Disposal Amount is greater than 50% of the Fair Market Value of the Compulsory Transferor’s JV Investment, the Unadjusted Compulsory Disposal Amount payable by the Other Shareholder shall be reduced by an amount equal to the difference between the Unadjusted Compulsory Disposal Amount and 50% of such Fair Market Value of the Compulsory Transferor’s JV Investment,

(the total amount payable to a Compulsory Transferor pursuant to this paragraph 2.1 being the “**Compulsory Sale Amount**”), provided always that in no circumstances shall the Compulsory Sale Amount exceed 50% of such Fair Market Value of the Compulsory Transferor’s JV Investment as at the date of the Compulsory Transfer Event.

## 2.2 **Application of the Compulsory Sale Amount**

The Compulsory Transferor hereby agrees that receipt of the Compulsory Sale Amount shall constitute full and final satisfaction of the Compulsory Transferor’s JV Investment and, in particular, JV Co’s indebtedness to the Compulsory Transferor in respect of any outstanding amounts drawn down



by the JV Group under the Shareholder Loan provided by the Compulsory Transferor to (together with if CPW is the Compulsory Transferor all outstanding amounts drawn down by the JV Group under the CPW RCF) to the JV Group as at the date of the Compulsory Transfer Event and for the avoidance of doubt the Compulsory Transferor agrees that no interest shall continue to accrue to it in respect of such indebtedness from the date of the Compulsory Transfer Event.

- 2.3 In the event that a Compulsory Transfer Event specified in paragraph 1.2 above applies, and the Other Shareholder has served a Compulsory Transfer Notice on the Compulsory Transferor in respect thereof then the Other Shareholder shall make available to JV Co a Shareholder Loan in an amount equal to the Shareholder Loan the Compulsory Transferor has opted not to provide. The Other Shareholder(s) may not revoke a Compulsory Transfer Notice.
- 2.4 With effect from the service of a Compulsory Transfer Notice:
- 2.4.1 no further Shares shall be issued or required to be offered to the Compulsory Transferor;
- 2.4.2 the Compulsory Transferor and any JV Director appointed by the Compulsory Transferor shall be deemed to have resigned forthwith and forthwith cease to be required in order to form a quorum at meetings of JV Shareholders and the JV Board (as the case may be) and the decision of the Other Shareholder or JV Directors or appointed by the Other Shareholder(s) (as appropriate) on such issues shall in all cases prevail. The Compulsory Transferor shall indemnify JV Co against any and all claims whatsoever that may arise from any JV Director being deemed to resign in accordance with this paragraph 2.4.2; and
- 2.4.3 the Compulsory Transferor shall be deemed to have ceded its right to vote and/or receive dividends in respect of its Shares in favour of the Other Shareholder.

### **3. Transfer duties**

Any transfer duties payable as a result of any transfer required pursuant to the terms

of this Schedule 4 shall be borne by the Compulsory Transferor and if the Other Shareholder pays any such transfer duties the Compulsory Transferor agrees that it shall pay to such Other Shareholder an amount equal to such transfer duty within 5 Business Days of a demand for payment from such Other Shareholder.

## SCHEDULE 5

### FAIR MARKET VALUE

The following provisions shall apply for the purposes of determining Fair Market Value:

#### 1. Calculation of Fair Market Value

- 1.1 This Schedule outlines the scope and nature of the calculation of Fair Market Value and, if the JV Shareholders cannot agree Fair Market Value, the appointment of an independent expert ( "**Independent Expert**" ) to determine Fair Market Value.
- 1.2 In the event a calculation of Fair Market Value is required in accordance with this Agreement by the JV Shareholders, any JV Shareholder may notify the other JV Shareholder (the date or deemed date of receipt of such notice being the "**Notification Date**" ) and the JV Shareholders will seek to agree a sum equal to Fair Market Value between themselves within a period of 15 Business Days, or such additional time as agreed between the JV Shareholders, of the Notification Date ( "**Initial Consideration Period**" ).

#### 2. Appointment of Independent Expert

- 2.1 In the event the JV Shareholders do not agree a sum equal to Fair Market Value in accordance with paragraph 1.2, they will each use their reasonable endeavours to agree upon the appointment of the Independent Expert, which will be an investment bank, within 3 Business Days of the expiry of the Initial Consideration Period ( "**Appointment Period**" ).
- 2.2 At the commencement of the Appointment Period, the JV Shareholders must also instruct the Auditors to select (but not appoint) a suitable investment bank to act as Independent Expert (including ascertaining the availability of the investment bank to perform that role).
- 2.3 In the event that the JV Shareholders are unable to reach agreement upon an Independent Expert within the Appointment Period, subject to paragraph 11, they shall appoint as independent expert the suitable investment bank selected by the Auditors for that purpose pursuant to paragraph 2.2 and that appointment will be made within two Business Days after the expiry of the Appointment Period.

### 3. Instruction to Independent Expert

Forthwith upon the appointment of the Independent Expert, the JV Shareholders will instruct the Independent Expert to calculate and determine in writing the sum which in its opinion represents the Fair Market Value for the relevant JV Investment in accordance with the provisions of this Schedule 5.

### 4. Valuation principles

- 4.1 The Independent Expert will determine the Fair Market Value of the relevant JV Investment between a willing buyer and a willing seller with no premium for control or discount for a minority shareholding taking into account the matters set out in paragraph 4.3 and such other matters that the Independent Expert considers appropriate in its reasonable discretion.
- 4.2 The JV Shareholders may make submissions to the Independent Expert as to the valuation methodology to be applied in the circumstances giving rise to the valuation of the Fair Market Value in accordance with their rights to make submissions in paragraph 7.3.
- 4.3 The Fair Market Value shall be calculated by the Independent Expert in accordance with this Schedule 5 as follows:
  - 4.3.1 for the purposes of Schedule 4 ( *Compulsory Transfer* ) and Clause 17 ( *Transfer of a Change of Control* ) the Fair Market Value shall be calculated as at the date (as the case may be) of the Compulsory Transfer Event or the Business Day immediately prior to the completion of the Change of Control;
  - 4.3.2 for the purposes of Clause 13.1.8 the Fair Market Value shall be calculated as at the day the Competing Business was acquired;
  - 4.3.3 for the purposes of Clause 20 the Fair Market Value shall be calculated as at the date of the Acceptance Notice;
  - 4.3.4 no addition or discount shall be made in respect of any effect the Change of Control, including JV Co being owned by a Competitor, may have on the Fair Market Value;
  - 4.3.5 no addition or discount shall be made to reflect the fact that the JV

Investment might constitute a minority interest or a majority interest, nor the provision of Clause 5.5 ( *Consolidation Reserved Matters* ); and

- 4.3.6 no addition or discount shall be made to reflect the fact that any licence agreement entered into pursuant to Clause 2.2.1 may be terminated or are terminated as a result of the Compulsory Transfer Event or the Change of Control.

**5. Expert not arbitrator**

The Independent Expert will act as a third party expert charged with giving a binding determination and not as an arbitrator, and the Independent Expert's decision will be final and binding on the JV Shareholders.

**6. Relevant date for purpose of assessment**

The relevant date for the purposes of calculation of Fair Market Value of the relevant JV Investment, referred to as "the date of valuation" in this Schedule 5, will be the relevant date referred to in paragraph 4.3 of this Schedule 5.

**7. Independent Expert's due diligence**

To perform the assessment of Fair Market Value, the Independent Expert will be permitted to conduct due diligence as follows:

- 7.1 review of the business and financial information of JV Co;
- 7.2 discuss (as the Independent Expert shall in its sole discretion decide) with the JV Shareholders and/or the JV Board and/or and JV Management Team the current operations, financial conditions and positioning within the industry, strategic guidelines and prospects, including any plans approved in accordance with this Agreement for expansion in other product areas; and
- 7.3 the Independent Expert will take account of any written representations made by the JV Shareholders only where such representations are provided to the Independent Expert no later than 5 Business Days before the assessment of Fair Market Value is due under paragraph 9 of this Schedule 5.

**8. Co-operation with the Independent Expert**

Subject to any principle of law or ruling of any regulatory body to the contrary, the JV Shareholders will afford as soon as reasonably practicable upon request and to the Independent Expert all facilities and access to their respective premises, personal papers, books, accounts, records, returns and other documents as may be in their respective possession or under their respective control so far as such records and documents may be reasonably required by the Independent Expert to make its determination.

**9. Timing of determination**

The Independent Expert shall be instructed to and will finalise its assessment of Fair Market Value within 20 Business Days of referral.

**10. Cost of Independent Expert**

Each of the JV Shareholders will bear the costs and expenses of all advisers, witnesses and employees retained by it and the costs and expenses of the Independent Expert will be borne by:

- 10.1 the Compulsory Transferor, in the case of a Compulsory Transfer Event; and
- 10.2 the JV Shareholders pro rata to their respective holdings of Shares, in any other case.

**11. Terms of engagement**

The terms of appointment of the Independent Expert will be agreed upon at the time the engagement is undertaken. Failing agreement on the terms of appointment, the Independent Expert's reasonable standard form terms and usual conditions applicable to valuation work will apply.

**SCHEDULE 6**

**DEED OF ADHERENCE TO SHAREHOLDERS' AGREEMENT**

By this deed [I] [we] [of] [whose registered office is at] [ ] who intend[s] to become the holder[s] of [ ] ordinary Shares of [ ] £[ ]1 each in the issued share capital of [ ] a company registered in England and Wales (company number[ ]) whose registered office is at [ ] ("**JV Co**") **hereby agree** that as and with effect from [ ] [I] [we] will observe, perform and be fully bound by and assume the benefit of the provisions of a shareholders agreement dated [ ] and made between (1) The Carphone Warehouse Group plc, (2) Best Buy Co., Inc., (3) Best Buy Distributions Limited and (4) CPW Distribution Holdings Limited (a copy of which is attached to this deed [together with copies of *[insert details of any instrument modifying the original agreement]* ] and has been initialed by [me] [us] for identification purposes) in all respects as if [I] [we] [was] [were] an original party to the Shareholders Agreement and [was] [were] referred to therein as the JV Shareholder.

**IN WITNESS** of which this deed has been executed and delivered on the date hereof

**EXECUTED** (but not delivered until the date )

hereof) as a deed by a director:

)

)

)

Director

Witness

## SCHEDULE 7

### EUROPEAN COUNTRIES

Albania  
Andorra  
Armenia  
Austria  
Azerbaijan  
Belarus  
Belgium  
Bosnia and Herzegovina  
Bulgaria  
Croatia  
Cyprus  
Czech Republic  
Denmark  
Estonia  
Finland  
France  
Georgia  
Greece  
Hungary  
Iceland  
Italy  
Kazakhstan  
Kosovo  
Latvia  
Liechtenstein  
Lithuania  
Macedonia  
Malta  
Moldova  
Monaco  
Montenegro  
Norway  
Poland  
Romania  
Russia  
San Marino  
Serbia  
Slovakia  
Slovenia  
Switzerland  
Ukraine



## SCHEDULE 8

### TAX

#### Part A - Tax Conduct

#### 1. PREPARATION OF TAX DOCUMENTS

1.1 Save as provided below and subject to the provisions of Schedule 7 to the SPA, CPW (or such professional advisers as CPW may select subject to BBY Distributions' approval (as to both professional adviser and as to the scope of the service to be performed) as to independence as defined by the US Securities and Exchange Commission and/or other US regulatory bodies) shall be responsible for:

- (a) the preparation, authorisation and submission of all notices, elections, claims, returns, computations and ancillary information relating to Tax of each member of the JV Group (the “**JV Tax Documents**”);
- (b) the preparation and submission of all correspondence relating to such JV Tax Documents; and
- (c) the negotiation and agreement of all matters relevant to the Tax position of the JV Group,

for both periods before and after Closing.

1.2 CPW shall procure (to the best of its endeavours) that no JV Tax Document is submitted to any tax authority which is not true and accurate in all material respects.

1.3 CPW, shall not be directly responsible for the matters outlined in paragraphs 1.1 and 1.2 above in respect of the members of the JV Group which are not resident for tax purposes in the UK in respect of periods commencing on or after Closing. However, CPW undertakes that it shall supervise to the extent it can and support those members of the JV Group which are not resident for tax purposes in the UK in carrying out their respective obligations referred to above and, together with BBY Distributions, shall procure those companies carry out their respective obligations set out in this Schedule.

#### 2. CARRY BACK OF TAX LOSSES OR OTHER PREJUDICIAL ACTION

2.1 None of BBY Distributions, CPW or CPW Affiliate shall, unless otherwise agreed, do any act or thing (including, in particular, the carry back of losses from accounting periods ending after Closing) after Closing which:

- (a) might affect a Company's liability to make claims or allowances or Reliefs in respect of any period ending on or prior to the Closing Date; or
- (b) would reduce or extinguish any allowance relating to any period ending on or prior to the Closing Date.

2.2 None of BBY Distributions, CPW or CPW Affiliate shall, unless agreed by them to the contrary, amend, disregard, withdraw or disclaim any elections, claims or benefits or disclaim any initial or writing down allowances or any other capital allowances in respect of any period ending on or prior to the Closing Date.

### **3. ACCESS TO TAX DOCUMENTS AND RIGHT TO COMMENT**

3.1 CPW shall provide or, in respect of the non-UK tax resident members of the JV Group, procure that there shall be provided BBY Distributions with copies of all tax returns submitted for each member of the JV Group and any other tax returns which are required to be submitted in relation to the JV Group within 15 Business Days of the submission of such returns.

3.2 BBY Distributions and CPW (to the extent that it does not already have such access) shall be afforded access (including the taking of copies) to all JV Tax Documents and any other information (including information in relation to the computation of any Tax return) it may require in relation to the Tax position of any member of the JV Group.

3.3 Notwithstanding paragraph 1.1 above, BBY Distributions shall be entitled to request a draft of any JV Tax Document from CPW in respect of the UK tax resident members of the JV Group or from the relevant non-UK tax resident member of the JV Group (where applicable) and comment on any such JV Tax Document in advance of its submission, provided that it gives CPW reasonable notice of its intention to comment on such JV Tax Document.

### **4. NEGOTIATIONS WITH TAX AUTHORITIES**

4.1 The provisions of the Schedule 7 to the SPA shall apply in respect of any notice, demand, assessment, letter or other document issued or action taken by or on behalf of a tax authority or any person (including any member of the JV Group) indicating that any person is or may be placed or sought to be placed under a Tax liability, being a Tax liability which would give rise to a liability for the Seller under Schedule 7 to the SPA and in respect of any Group Relief Claims between the JV Group and any member of the CPW Group. This provision shall apply in respect of all other matters (whether relating to pre-Closing or post-Closing periods).

4.2 CPW shall keep BBY Distributions informed of any negotiations with any Tax Authority regarding any Tax liability of any member of the JV Group or, in respect of any non-UK resident member of the JV Group, shall procure to the extent possible that such information is provided. Before any Material Correspondence is submitted or Material Agreement is reached with any Tax Authority, draft copies and details of the Material Correspondence or Material Agreement shall be given by CPW (or, where applicable CPW shall procure to the extent possible that those shall be given by the relevant non-UK resident member of the JV Group) to BBY Distributions at least 15 Business Days (unless the parties agree otherwise) before the proposed submission of such Material Correspondence or conclusion of such Material Agreement.

4.3 If, within 15 Business Days of receiving details of Material Correspondence or proposed Material Agreements referred to in paragraph 4.1, BBY Distributions makes any representations to CPW, those representations shall (and, in the case of any non UK resident member of the JV Group, CPW shall procure to the extent possible that those representations shall), to the extent that they are reasonable, be reflected in the Material Correspondence or Material Agreement with the relevant Tax Authority.

### **5. TAX COMMITTEE**

5.1 The JV Tax Committee shall meet at intervals of not more than one calendar month. Meetings of the JV Tax Committee may be held by way of video and/or telephone conferencing.

5.2 The JV Tax Committee shall, in good faith, consider the following matters:

- (a) any dispute or failure to reach agreement in respect of any matter in this Schedule 9 or any other matter relating to the Tax position of the JV Group;
- (b) any proposed transaction, or arrangements or agreements relating to the JV Group which may have a material impact on the Tax position of the JV Group or on any BBY Group Company or CPW Group Company in respect of but not limited to any of the aforementioned companies' relationship with a Tax Authority or any liability to Tax of any such company;
- (c) any tax planning or mitigation proposals which may have a material impact on the Tax position or the reputation of any member of the JV Group or on any BBY Group Company or CPW Group Company, or on the relationship of any such person with any Tax Authority;
- (d) any material dispute with any Tax Authority in relation to any member of the JV Group;

5.3 All material recommendations and decisions taken by the JV Tax Committee shall be communicated to the JV Management Team or JV Board (as agreed by the parties) in an agreed written report and the JV Management Team or the JV Board (as appropriate), shall be obliged to follow the recommendations of the JV Tax Committee save where there are overriding commercial reasons for not doing so or to do so would not be in the best interests of the shareholders of BBY Hold Co and/or CPW.

5.4 If the JV Committee, having discussed any matter in good faith, fail to reach agreement in relation to any matter on Tax, the JV Tax Committee shall refer the matter for determination by an independent internationally recognised firm of chartered accountants or Attorneys or Solicitors in the relevant jurisdiction or jurisdictions in relation to which the dispute arises (the “**Expert**”). The Expert shall be appointed by agreement by the majority of representatives of the JV Tax Committee. The Expert shall decide the matter in question as an expert (and not as an arbitrator) and his decision shall be final, except in the case of manifest error in which case a different Expert shall be appointed by the agreement by the majority of representatives of the JV Tax Committee. Both parties shall make all relevant information available to the Expert. The costs of the Expert shall be borne by the parties in such proportions as the Expert considers to be fair and reasonable in all the circumstances.

## **Part B - US Tax Provisions**

### **1. U.S. TAX PROVISIONS**

1.1 In respect of any periods after Closing, BBY Hold Co may, after consulting with CPW and taking account of its opinion, choose the U.S. tax classification for any entity within the JV Group or owned by a member of the JV Group. In addition, to the extent BBY Hold Co desires to change the entity classification for an entity, and the only way to effect that change is to reorganize the entity into a newly created entity, CPW shall consent to that reorganization, unless CPW can identify a negative tax consequence to CPW or any other entity within the JV Group as a result of taking such action.

1.2 Under the terms of the SPA, JV Co was, prior to the Closing Date, and will be immediately after the Closing Date, considered a partnership for U.S. federal income tax purposes. The parties hereby covenant and agree to refrain from taking any action that is inconsistent with treating JV Co as a partnership for U.S. federal income tax purposes.

1.3 JV Co will make an election under section 6231(a)(1)(B)(ii) of the Code to have the TEFRA audit provisions of subchapter C of chapter 23 of the Code apply to JV Co. BBY Distributions shall be the “tax matters partner” within the meaning of section 6231 of the Code.

1.4 JV Co’s taxable year shall be the year ended 31 March and for purposes of determining the net profits, net losses, or any other items allocable to any period, net profits, net losses, and any such other items shall be determined on a daily, monthly, or other basis, as determined by the tax matters partner using any permissible method under section 706 of the Code and the Treasury Regulations issued thereunder.

1.5 The income, gains, taxes, deductions and credits of the JV Co shall, except as otherwise provided herein, be allocated to each of the JV Shareholders for U.S. federal income tax purposes in proportion to the Ordinary Shares owned by each JV Shareholder.

1.6 In accordance with section 704(c) of the Code and the Treasury Regulations thereunder, income, gain, loss, and deduction with respect to any property contributed to the capital of JV Co shall, solely for U.S. federal income tax purposes, be allocated among the JV Shareholders so as to take account of any variation between the adjusted basis of such property to the JV Co for U.S. federal income tax purposes and its initial Book Value. In the event that the Book Value of any asset is subsequently adjusted in accordance with subparagraph (b) or subparagraph (d) of the definition of Book Value, any allocation of income, gain, loss, and deduction with respect to such asset shall thereafter take account of any variation between the adjusted tax basis of the asset to the JV Co and its Book Value in the same manner as under section 704(c) of the Code and the Treasury Regulations promulgated thereunder.

- (a) Except as provided in paragraph 1.6(b), below, JV Co shall elect to apply the “traditional method” described in Treas. Reg. § 1.704-3(b) with respect to any contributed property or any property whose Book Value is subsequently adjusted pursuant to subparagraph (b) or subparagraph (d) of the definition of Book Value.
- (b) Notwithstanding the immediately preceding sentence, the parties agree and understand that a section 754 election was made for JV Co and applied to the sale of the 50% interest in the JV Co that occurred on the closing of the SPA. As a result of that election, BBY Distributions was entitled to increase the basis in one-half of the property owned by JV Co for U.S. federal income tax purposes. The parties hereby agree that JV Co shall elect to apply the “remedial method” described in Treas. Reg. § 1.704-3(d) with respect to any asset subject to section 197(f) of the Code for U.S. federal income tax purposes.
- (c) Allocations pursuant to this paragraph 1.6 are solely for purposes of U.S. federal, state and local taxes and shall not affect, or in any way be taken into account in computing, any JV Shareholder’s share of net profits, net losses, or distributions pursuant to any provision of this Agreement.

1.7 If any gain recognized on the disposition of the JV Co’s property represents “recapture” of previously allocated deductions by virtue of the application of Section 1245 of the Code or Section 1250 of the Code (“Recapture Gain”), such Recapture Gain shall be allocated, solely for income tax purposes, in accordance with Treas. Reg. § 1.1245-1(e)(2) and Treas. Reg. § 1.1250-1(f).

1.8 Tax credits and tax credit recapture and any similar items shall be allocated (solely for US. federal income tax purposes) among the JV Shareholders in a manner determined by the tax matters member, provided such allocation is in compliance with the Code and

regulations issued pursuant thereto (including, without limitation, Treas. Reg. § 1.704-1(b)(4)(ii)).

1.9 CPW undertakes that it will not, and undertakes that it will procure that each CPW Group Company and member of the JV Group will not, take any action which so far as it is aware could result in any income, profit or gains of any member of the JV Group (other than the US Subsidiary) or any BBY Group Company being subject to Tax in the US.

1.10 The parties acknowledge and agree that, by virtue of BBY Distribution's ownership of the JV Group, certain U.S. tax and information filings will have to be prepared for the members of the JV Group as required under the Code for which CPW will have responsibility under paragraph 1.1 of Part A of Schedule 8. As such, the parties agree to cooperate to share such information as is required in order to enable the timely filing of those returns.

1.11 Where under this paragraph any member of the JV Group is required to take, enter into election or take any other action for US tax purposes, BBY Hold Co shall set out in writing any such action that is required and give the relevant member of the JV Group reasonable notice of such action.

1.12 BBY Hold Co shall indemnify, or procure that the relevant JV Co or any member of the CPW Group is indemnified in respect of any Tax liability incurred by any member of the JV Co Group or the CPW Group as a result of taking such action.

1.13 BBY Distributions agrees to consult with CPW to the extent the provisions in this Part B cause any UK tax or other non-US tax issues for JV Co or the JV Group and BBY Distributions and CPW will work together to ensure that the JV Co and the JV Group remain as tax efficient as possible; provided that the provisions in this Part B shall not force the JV Co or the JV Group into actions that cause material tax inefficiencies for any of the relevant companies outside the US.

### Part C - Definitions

**"Book Value"** means with respect to any asset, the asset's adjusted basis for federal income tax purposes, except as follows:

(a) The initial Book Value of any asset contributed by a JV Shareholder to the JV Co shall be the gross fair market value of such asset, and such value shall be determined by the tax matters partner.

(b) The Book Values of all JV Co assets shall be adjusted to equal their respective gross fair market values, as determined by the tax matters partner, as of the following times: (i) the acquisition of any additional interest in the JV Co by any new or existing JV Shareholder either in exchange for more than a *de minimis* capital contribution or in exchange for the provision of services for the benefit of the JV Co; (ii) the distribution by JV Co to a JV Shareholder of more than a *de minimis* amount of JV Co property, unless all JV Shareholders receive simultaneous distributions of undivided interests in the distributed property in proportion to their interests in the JV Co; and (iii) the liquidation of the JV Co within the meaning of Treas. Reg. § 1.704-1(b)(2)(ii)(g).

(c) The Book Value of any JV Co asset distributed to any JV Shareholder shall be adjusted to equal the gross fair market value, as determined by the tax matters partner, of such asset on the date of distribution.

(d) The Book Values of JV Co assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to sections 734(b) or 743(b) of the Code, but only to the extent that such adjustments are taken into account in determining capital accounts pursuant to Treas. Reg. § 1.704-1(b)(2)(iv)(m).

If the Book Value of an asset has been determined or adjusted pursuant to subparagraphs (a), (b), or (d), such Book Value shall thereafter be adjusted by the depreciation or amortization taken into account with respect to such asset for purposes of computing net profits and net losses;

“**Code**” means the United States Internal Revenue Code of 1986, as amended;

“**JV Tax Committee**” means the tax committee consisting of two representatives of BBY Distributions and two representatives of CPW or such number or representatives of BBY Distributions and CPW as CPW and BBY Distributions agree as long as there are always the same number of representatives of BBY Distributions and CPW (including a secretary to be appointed by agreement between the parties);

“**Material Agreement**” means any agreement with any Tax Authority which may be of material importance to any member of the JV Group or any BBY Group Company as regards the relationship with any Tax Authority, or the liability to Tax, of any member of the JV Group or any BBY Group Company;

“**Material Correspondence**” means any correspondence with any Tax Authority which may be of material importance to any member of the JV Group or any BBY Group Company as regards the relationship with any Tax Authority, or the liability to Tax, of any member of the JV Group or any BBY Group Company;

“**Relief**” has the meaning given in Schedule 7 to the SPA.

**EXECUTION PAGE**

**EXECUTED AND DELIVERED** by the parties as a deed and witnessed on the date hereof.

**EXECUTED** as a **DEED** by

**THE CARPHONE WAREHOUSE**

**GROUP PLC**

acting by:

Director /s/ ROGER TAYLOR

Director/Secretary /s/ TIM MORRIS

**EXECUTED** as a **DEED** by

**CPW RETAIL HOLDINGS**

**LIMITED**

acting by:

Director /s/ ROGER TAYLOR

Director/Secretary /s/ TIM MORRIS

**EXECUTED** as a **DEED** by

**BEST BUY CO., INC.**

acting by:

Director /s/ ROBERT A. WILLETT

Director/Secretary /s/ ROBERT A. WILLETT

**EXECUTED** as a **DEED** by

**BEST BUY DISTRIBUTIONS LIMITED**

acting by:

Director /s/ ROBERT A. WILLETT

Director/Secretary /s/ ROBERT A. WILLETT

**£350,000,000  
FACILITY AGREEMENT**

**June 30, 2008**

**CPW DISTRIBUTION HOLDINGS LTD  
the Company**

**BEST BUY CO., INC  
the Guarantor**

**THE CARPHONE WAREHOUSE GROUP PLC  
the Lender**

---



## CONTENTS

<u>Clause</u>		<u>Page</u>
1.	Definitions and interpretation	1
2.	The Facility	11
3.	Purpose	11
4.	Conditions of Utilisation	12
5.	Utilisation	12
6.	Optional Currencies	13
7.	Repayment	15
8.	Prepayment and Cancellation	15
9.	Interest	17
10.	Interest Periods	17
11.	Changes to the Calculation of Interest	18
12.	Fees	19
13.	Tax Gross Up	20
14.	Indemnities	21
15.	Costs and Expenses	22
16.	Guarantee	23
17.	Representations	25
18.	Information Undertakings	26
19.	Financial Covenant	27
20.	General Undertakings	28
21.	Events of Default	30
22.	Changes to the Parties	33
23.	Payment Mechanics	34
24.	Set-Off	35
25.	Notices	36
26.	Calculations and Certificates	37
27.	Partial Invalidity	37
28.	Remedies and Waivers	37
29.	Amendments and Waivers	37
30.	Counterparts	37
31.	Governing Law	38
32.	Enforcement	38
33.	Lender indebtedness	38

---

<u>Schedule</u>	<u>Page</u>
1. Conditions Precedent	39
2. Utilisation Request	40
3. Form of Compliance Certificate	41
4. Timetables	42
Signatories	43

---

**THIS AGREEMENT** is dated June 30, 2008 and made

**BETWEEN :**

- (1) **CPW DISTRIBUTION HOLDINGS LTD** , a company incorporated in England and Wales with registration number 6534088 (the **Company** );
- (2) **BEST BUY CO., INC** (the **Guarantor** ); and
- (3) **THE CARPHONE WAREHOUSE GROUP PLC** , a company incorporated in England and Wales with registration number 3253714 (the **Lender** ).

**IT IS AGREED** as follows:

## **SECTION 1**

### **INTERPRETATION**

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

##### **1.1 Definitions**

In this Agreement:

**Acceptable Bank** means a commercial bank or trust company which has a rating of A or higher by Standard & Poor's Ratings Group or Fitch Limited or A2 or higher by Moody's Investors Services, Inc. or a comparable rating from an internationally recognised credit rating agency for its long-term debt obligations.

**Authorisation** means an authorisation, permit, consent, approval, resolution, licence, exemption, filing or registration.

**Availability Period** means the period from and including the date of this Agreement to and including the date which is one Month before the Final Maturity Date or such other later date as may be agreed by the Lender acting reasonably.

**Available Commitment** means the Lender's Commitment minus:

- (a) the Base Currency Amount of any outstanding Loans; and
- (b) in relation to any proposed Utilisation, the Base Currency Amount of any Loans that are due to be made on or before the proposed Utilisation Date,

other than any Loans that are due to be repaid or prepaid on or before the proposed Utilisation Date.

**Base Currency** means sterling.

**Base Currency Amount** means, in relation to a Loan, the amount specified in the Utilisation Request delivered by the Company for that Loan (or, if the amount requested is not denominated in the Base Currency, that amount converted into the Base Currency at the Lender's Spot Rate of Exchange on the date which is three Business Days before the Utilisation Date or, if later, on the

date the Lender receives the Utilisation Request) adjusted to reflect any repayment or prepayment of the Loan.

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

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

exceeds:

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

**Business Day** means a day (other than a Saturday or Sunday) on which banks are open for general business in London and:

- (a) (in relation to any date for payment or purchase of a currency other than euro) the principal financial centre of the country of that currency; or
- (b) (in relation to any date for payment or purchase of euro) any TARGET Day.

**Commitment** means £350,000,000, to the extent not cancelled or reduced under this Agreement.

**Compliance Certificate** means a certificate substantially in the form set out in Schedule 3 (Form of Compliance Certificate).

**Default** means an Event of Default or any event or circumstance specified in Clause 21 (Events of Default) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default.

**EBIT** means, in relation to any Relevant Period, the total consolidated operating profit of the Group for that Relevant Period before taking into account:

- (a) Net Interest Expense;
- (b) Tax;
- (c) any share of the profit of any associated company or undertaking, except for dividends received in cash by any member of the Group; and
- (d) all extraordinary and exceptional items,

as determined (except as needed to reflect the terms of Clause 19 (Financial Covenant)) from the financial statements of the Group and Compliance Certificates delivered under Clause 18.1 (Financial Statements) and Clause 18.2 (Compliance Certificate).

**EBITDA** means, in relation to any Relevant Period, EBIT for that Relevant Period after adding back all amounts provided for depreciation, amortisation and write-downs of goodwill and other intangible assets, as determined (except as needed to reflect the terms of Clause 19 (Financial

Covenant)) from the financial statements of the Group and Compliance Certificates delivered under Clause 18.1 (Financial Statements) and Clause 18.2 (Compliance Certificate).

**Event of Default** means any event or circumstance specified as such in Clause 21 (Events of Default).

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

**Final Maturity Date** means the fifth anniversary of the date of this Agreement.

**Finance Document** means this Agreement and any other document designated as such by the Lender, the Guarantor and the Company.

**Financial Indebtedness** means, without double counting, any indebtedness for or in respect of:

- (a) moneys borrowed;
- (b) any amount raised by acceptance under any acceptance credit facility;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with GAAP, be treated as a finance or capital lease;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any amount raised under any other transaction (including any forward sale or purchase agreement) intended to and having the commercial effect of a borrowing;
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any interest rate or foreign exchange rate or price (and, when calculating the value of any derivative transaction, only the marked to market value shall be taken into account);
- (h) shares which are expressed to be redeemable before the Final Maturity Date;
- (i) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution (provided that, for all purposes, any counter-indemnity obligation relating to the obligations of a member of the Group arising in the ordinary course of its trade for purposes other than to raise finance, shall not be included in this paragraph (i)); and
- (j) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (i) above.

**Financial Year** means a financial year of the Company.

**GAAP** means generally accepted accounting principles, standards and practices in the United Kingdom, being IFRS.

**Guarantee** means the guarantee of the Guarantor contained in Clause 16.

**Group** means the Company and its Subsidiaries for the time being.

**IFRS** means international accounting standards within the meaning of the IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements.

**Interest Period** means, in relation to a Loan, each period determined in accordance with Clause 10 (Interest Periods) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 9.3 (Default interest).

**Legal Reservations** means any applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application.

**Lender's Spot Rate of Exchange** means the rate of exchange at which the Lender can, acting reasonably, purchase the relevant currency with the Base Currency in the London foreign exchange market.

**LIBOR** means, in relation to a Loan:

- (a) the applicable Screen Rate; or
- (b) (if no Screen Rate is available for the currency or Interest Period of that Loan) the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Lender at its request quoted by the Reference Banks to leading banks in the London interbank market,

as of the Specified Time on the Quotation Day for the offering of deposits in the currency of that Loan and for a period comparable to the Interest Period for that Loan.

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

**Margin** means 0.75 per cent. per annum

**Market Disruption Event** means:

- (a) at or about noon on the Quotation Day for the relevant Interest Period the Screen Rate is not available and none of the Reference Banks supplies a rate to the Lender to determine LIBOR for the relevant currency and period; or
- (b) before close of business in London on the Quotation Day for the relevant Interest Period, the Company receives notification from the Lender that the cost to it of obtaining matching deposits in the Relevant Interbank Market would be in excess of LIBOR.

**Material Adverse Effect** means a material adverse effect on the ability of the Company to perform and comply with the financial covenant in Clause 19 (Financial Covenant) and/or any payment obligations under any Finance Document.

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

- (a) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day;

- (b) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month;
- (c) notwithstanding sub-paragraph (a) above, a period which commences on the last Business Day of a month will end on the last Business Day in the next month or the calendar month in which it is to end, as appropriate.

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

**Net Debt** means, as at any particular time, Total Debt as at that time, less:

- (a) any cash in hand or on deposit at call with any bank or financial institution incorporated in any OECD country;
- (b) certificates of deposit, maturing within one year after the relevant date of calculation, issued by an Acceptable Bank;
- (c) any investment in marketable obligations issued or guaranteed by the government of the United States of America, the U.K. or a member state of the European Union with a credit rating of AAA by Standard & Poor's Ratings Group or Fitch Limited or Aaa by Moody's Investors Services, Inc. or by an instrumentality or agency of the government of the United States of America, the U.K. or such member state of the European Union having an equivalent credit rating to the government of the United States of America, the U.K. or such member state of the European Union respectively;
- (d) open market commercial paper, corporate bonds or similar investments:
  - (i) for which a recognised trading market exists;
  - (ii) issued in the United States of America, the U.K. or a member state of the European Union with a credit rating of AAA by Standard & Poor's Ratings Group or Fitch Limited or Aaa by Moody's Investors Services, Inc.;
  - (iii) which mature within one year after the relevant date of calculation or which are repayable at call; and
  - (iv) which, on the relevant date of calculation, has a:
    - (A) short term credit rating of either A-1 by Standard & Poor's Ratings Group, F-1 by Fitch Limited or P-1 by Moody's Investors Services, Inc. in the case of investments maturing within one year of issue; or
    - (B) long term credit rating of either A by Standard & Poor's Ratings Group or Fitch Limited or A2 by Moody's Investors Services, Inc. in the case of any other investments; or
- (e) the value of any investment in any money market or similar fund which in each case has a credit rating of either AAA by Standard & Poor's Ratings Group or Fitch Limited or Aaa by Moody's Investors Services, Inc. provided that:
  - (i) that investment is repayable at call; or
  - (ii) (A) under the terms of that fund, a member of the Group has the right to be repaid the value of that investment on not more than 7 days' notice; and

- (B) the maximum amount invested in such funds does not exceed £25,000, 000 (or its equivalent in any other currencies) in aggregate at any time,

to the extent that:

- (X) the items in paragraphs (a) to (e) above (inclusive) are denominated in any freely convertible and transferable currencies;
- (Y) those items are beneficially owned by any member of the Group and are unencumbered by any Security (except for any Security securing obligations to the Lender under the Finance Documents); and
- (Z) no other person (except as a result of mandatory provisions of law applying to companies generally in the relevant jurisdiction of incorporation) has a prior claim which would at that time rank in priority to a claim by any other unsecured and unsubordinated creditor against those items on an insolvency of the relevant member of the Group.

**Net Interest Expense** means, in relation to any Relevant Period, the aggregate amount of interest and any other finance charges (whether or not paid, payable or capitalised) accrued by the Group in that Relevant Period in respect of Total Debt:

- (a) including the interest element of leasing and hire purchase payments;
- (b) including commitment fees, commissions, arrangement fees and guarantee fees; and
- (c) including amounts in the nature of interest payable in respect of any shares redeemable before the Final Maturity Date,

after (but without double counting):

- (i) adding back the net amount payable (or deducting the net amount receivable) by members of the Group in respect of that Relevant Period under any interest or (so far as they relate to interest) currency hedging arrangements; and
- (ii) deducting interest income of the Group in respect of that Relevant Period to the extent freely distributable to the Company in cash,

all as determined (except as needed to reflect the terms of Clause 19 (Financial Covenant)) from the financial statements of the Group and Compliance Certificates delivered under Clause 18.1 (Financial Statements) and Clause 18.2 (Compliance Certificate).

**Optional Currency** means a currency (other than the Base Currency) which complies with the conditions set out in Clause 4.3 (Conditions relating to Optional Currencies).

**Participating Member State** has the meaning given to it in council Regulation EC. No 1103/97 of 17th June, 1997 made under Article 235 of the Treaty on European Union.

**Party** means a party to this Agreement and includes its successors in title.

**Qualifying Lender** means a person which is beneficially entitled to interest payable to that person in respect of an advance under a Finance Document and is:

- (a) a company resident in the United Kingdom for United Kingdom tax purposes; or



- (b) a partnership, each member of which is a company resident in the United Kingdom for United Kingdom tax purposes or a company not resident in the United Kingdom for tax purposes but which carries on a trade in the United Kingdom through a branch or agency and is required to bring into account in computing its chargeable profits for the purposes of section 11(2) of the Taxes Act the whole of any share of interest payable to it in respect of that advance which is attributable to it by reason of sections 114 and 115 of the Taxes Act; or
- (c) a company not resident in the United Kingdom for United Kingdom tax purposes which carries on a trade in the United Kingdom through a branch or agency and brings interest payable to it in respect of that advance into account in computing its chargeable profits for the purposes of section 11(2) of the Taxes Act, and therefore satisfies one of the conditions in section 349B of the Taxes Act.

**Quotation Day** means, in relation to any period for which an interest rate is to be determined,

- (a) (if the currency is sterling) the first day of that period;
- (b) (if the currency is euro) two TARGET Days before the first day of that period; or
- (c) (for any other currency) two Business Days before the first day of that period,

unless market practice differs in the Relevant Interbank Market for a currency, in which case the Quotation Day for that currency will be determined by the Lender in accordance with market practice in the Relevant Interbank Market (and if quotations for that currency and period would normally be given by leading banks in the Relevant Interbank Market on more than one day, the Quotation Day will be the last of those days).

**Reference Banks** means the principal London offices of Barclays Bank PLC and HSBC Bank PLC or such other banks as may be appointed by the Lender in consultation with the Company and the Guarantor.

**Relevant Date** means 31 March or 30 September in any year or the closest Saturday to these dates on which the Group prepares consolidated accounts.

**Relevant Interbank Market** means the London interbank market.

**Relevant Period** means each period of 52 or 53 weeks ending on a Relevant Date.

**Repeating Representations** means each of the representations set out in Clauses 17.1 (Status) to 17.4 (Power and Authority) and 17.5 (No Default).

**Rollover Loan** means one or more Loans:

- (a) made or to be made on the same day that a maturing Loan is due to be repaid;
- (b) the aggregate amount of which is equal to or less than the maturing Loan;
- (c) in the same currency as the maturing Loan (unless it arose as a result of the operation of Clause 6.2 (Unavailability of a currency)); and
- (d) made or to be made to the Company for the purpose of refinancing a maturing Loan.

**Screen Rate** means in relation to LIBOR, the British Bankers Association Interest Settlement Rate for the relevant currency and period displayed on the appropriate page of the Reuters screen. If the

agreed page is replaced or service ceases to be available, the Lender may specify another page or service displaying the appropriate rate after consultation with the Company.

**Security** means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement intended to and having substantially the same effect.

**Specified Time** means a time determined in accordance with Schedule 4 (Timetables).

**Subsidiary** means a subsidiary within the meaning of section 736 of the Companies Act 1985 and, for the purpose of Clause 19 (Financial Covenant) and in relation to financial statements of the Group, a subsidiary undertaking within the meaning of section 258 of the Companies Act 1985.

**TARGET** means the Trans-European Automated Real-time Gross Settlement Express Transfer payment system which utilises interlinked national real time gross settlement systems and the European Central Bank's payment mechanism and which began operations on 4 January 1999.

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

**TARGET Day** means:

- (a) until such time as TARGET is permanently closed down and ceases operations, any day on which both TARGET and TARGET2 are; and
- (b) following such time as TARGET is permanently closed down and ceased operations, any day on which TARGET2 is, open for the settlement of payments in euro.

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

**Taxes Act** means the Income and Corporation Taxes Act 1988.

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

**Tax Deduction** means a deduction or withholding for or on account of Tax from a payment under a Finance Document.

**Tax Payment** means an increased payment made by the Company to the Lender under Clause 13.1 (Tax Gross-Up).

**Total Debt** means, as at any particular time, the aggregate outstanding principal, capital or nominal amount (and any fixed or minimum premium payable on prepayment or redemption) of the Financial Indebtedness of members of the Group owed to persons outside the Group other than any indebtedness referred to in paragraph (g) of the definition of Financial Indebtedness, and any guarantee or indemnity in respect of that indebtedness, and without double-counting items referred to in the definition of Financial Indebtedness.

For this purpose, any amount outstanding or repayable in a currency other than sterling shall on that day be taken into account:

- (a) if an audited consolidated balance sheet of the Group has been prepared as at that day, in their sterling equivalent at the rate of exchange used for the purpose of preparing that balance sheet; and
- (b) in any other case, in their sterling equivalent at the rate of exchange that would have been used had an audited consolidated balance sheet of the Group been prepared as at that day in accordance with GAAP.

**Treaty on European Union** means the Treaty of Rome signed on 25th March, 1957 as amended by the Single European Act 1986 and the Maastricht Treaty on 7th February, 1992.

**UK Listing Rules** means the listing rules of the UK Listing Authority.

**Unpaid Sum** means any sum due and payable but unpaid by the Company and/or the Guarantor under the Finance Documents.

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

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

**Utilisation Request** means a notice substantially in the form set out in Schedule 2 (Utilisation Request).

**VAT** means value added tax as provided for in the Value Added Tax Act 1994 and any other tax of a similar nature.

## 1.2 Construction

- (a) Any reference in this Agreement to:
  - (i) **assets** includes present and future properties, revenues and rights of every description;
  - (ii) **determines** or **determined** means, in relation to Clause 13 (Tax Gross Up), a determination made in the absolute discretion of the person making the determination;
  - (iii) a **Finance Document** or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended or novated;
  - (iv) **financial statements** of the Company includes a reference to the audited and unaudited consolidated financial statements to be delivered under Clause 18.1 (Financial Statements);
  - (v) **indebtedness** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
  - (vi) a **person** includes any person, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) or two or more of the foregoing;
  - (vii) a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or

supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;

- (viii) a provision of law is a reference to that provision as amended or re-enacted; and
  - (ix) unless a contrary indication appears, a time of day is a reference to London time.
- (b) Section, Clause and Schedule headings are for ease of reference only.
- (c) Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.
- (d) A Default (other than an Event of Default) is **“continuing”** if it has not been remedied or waived and an Event of Default is **“continuing”** if it has not been waived.
- (e) If the directors of any member of the Group obtain a moratorium under Section 1A of the Insolvency Act 1986, the ending of such moratorium will not remedy any Event of Default which occurred as a result of such moratorium.

### **1.3 Third Party Rights**

A person who is not a Party has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement.

**SECTION 2**  
**THE FACILITY**

**2. THE FACILITY**

**2.1 The Facility**

Subject to the terms of this Agreement, the Lender makes available to the Company a multicurrency revolving credit facility in an amount equal to the Commitment.

**3. PURPOSE**

**3.1 Purpose**

The Company shall apply the amounts borrowed by it under the Facility towards the general corporate purposes of the Group.

**3.2 Monitoring**

The Lender is not bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

## SECTION 3

### UTILISATION

#### 4. CONDITIONS OF UTILISATION

##### 4.1 Initial conditions precedent

The Company may not deliver a Utilisation Request unless the Lender has received all of the documents and other evidence listed in Schedule 1 (Conditions Precedent) in form and substance satisfactory to the Lender, acting reasonably. The Lender shall notify the Company and the Guarantor promptly upon being so satisfied.

##### 4.2 Further conditions precedent

The Lender will only be obliged to make a Loan if on the date of the Utilisation Request and on the proposed Utilisation Date:

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

##### 4.3 Conditions relating to Optional Currencies

A currency will constitute an Optional Currency in relation to a Loan if it:

- (a) is readily available in the amount required and freely convertible into the Base Currency in the Relevant Interbank Market on the Quotation Day and the Utilisation Date for that Loan; or
- (b) is approved by the Lender.

##### 4.4 Maximum Number of Loans

Unless the Lender agrees, a Utilisation Request may not be given if, as a result, there would be more than 10 Loans outstanding.

#### 5. UTILISATION

##### 5.1 Delivery of a Utilisation Request

The Company may utilise the Facility by delivery to the Lender of a duly completed Utilisation Request not later than the Specified Time.

##### 5.2 Completion of a Utilisation Request

- (a) Each Utilisation Request is irrevocable and will not be regarded as having been duly completed unless:
  - (i) the proposed Utilisation Date is a Business Day within the Availability Period;

- (ii) the currency and amount of the Utilisation comply with Clause 5.3 (Currency and amount);
- (iii) the proposed Interest Period complies with Clause 10 (Interest Periods); and
- (iv) it specifies the account and bank (which must be in the principal financial centre of the country of the currency of the Utilisation or, in the case of euro, the principal financial centre of a Participating Member State or London) to which the proceeds of the Utilisation are to be credited.

(b) Only one Loan may be requested in each Utilisation Request.

### **5.3 Currency and amount**

(a) The currency specified in a Utilisation Request must be the Base Currency or an Optional Currency.

(b) The amount of the proposed Loan must be:

- (i) if the currency selected is the Base Currency, a minimum of £5,000,000 and an integral multiple of £1,000,000 or, if less, the Available Commitment; or
- (ii) if the currency selected is an Optional Currency, the minimum amount (or an integral multiple, if required) specified by the Lender as being the minimum amount for that currency (being the amount determined by the Lender to be the nearest appropriate equivalent amount to the amount described in sub-paragraph (i) above) or, if less, the Available Commitment.

### **5.4 Availability of Loans**

(a) If the conditions set out in this Agreement have been met, the Lender shall make each Loan available by the Utilisation Date.

(b) The Lender is not obliged to make a Loan if, as a result, the Loans would exceed the Commitment.

(c) The Lender shall determine the Base Currency Amount of each Loan which is to be made in an Optional Currency.

## **6. OPTIONAL CURRENCIES**

### **6.1 Selection of currency**

The Company shall select the currency of a Loan in a Utilisation Request.

### **6.2 Unavailability of a currency**

(a) If before the Specified Time on any Quotation Day:

- (i) the Optional Currency requested is not readily available to the Lender in the amount required; or
- (ii) compliance with the Lender's obligation to make available a Loan in the proposed Optional Currency would contravene a law or regulation applicable to it,

the Lender will give notice to the Company to that effect by the Specified Time on that day. In this event, the Lender will be required to make the Loan in the Base Currency (in an amount equal to the Base Currency Amount or, in respect of a Rollover Loan, an amount equal to the Base Currency Amount of the maturing Loan that is to be repaid).

- (b) A Loan will still be treated as a Rollover Loan if it is not denominated in the same currency as the maturing Loan by reason only of the operation of this subclause.



## SECTION 4

### REPAYMENT, PREPAYMENT AND CANCELLATION

#### 7. REPAYMENT

- (a) The Company must repay each Loan in full on the last day of the Interest Period applicable to that Loan.
- (b) Subject to the other terms of this Agreement, any amounts repaid under paragraph (a) above may be reborrowed.

#### 8. PREPAYMENT AND CANCELLATION

##### 8.1 Mandatory prepayment - Illegality

If it becomes unlawful in any jurisdiction for the Lender to perform any of its obligations as contemplated by this Agreement or to fund or have outstanding any Loan:

- (a) the Lender shall promptly notify the Company upon becoming aware of that event;
- (b) upon the Lender notifying the Company, the Commitment will be immediately cancelled; and
- (c) the Company shall repay the Loans on the last day of the Interest Period for each Loan occurring after the Lender has notified the Company or, if earlier, the date specified by the Lender in the notice delivered to the Company (being no earlier than the last day of any applicable grace period permitted by law).

##### 8.2 Automatic cancellation

The Commitment will be automatically cancelled at the close of business on the last day of the Availability Period.

##### 8.3 Voluntary cancellation

The Company may, if it gives the Lender and the Guarantor not less than five Business Days' (or such shorter period as the Lender may agree) prior notice, cancel the whole or any part (being a minimum amount of £5,000,000 and an integral multiple of £1,000,000) of the Available Commitment.

##### 8.4 Voluntary prepayment of Loans

The Company may, if it gives the Lender and the Guarantor not less than five Business Days' (or such shorter period as the Lender may agree) prior notice, prepay the whole or any part of any Loan (but, if in part, being an amount that reduces the Base Currency Amount of the Loan by a minimum amount of £5,000,000 and an integral multiple of £1,000,000).

##### 8.5 Restrictions

- (a) Any notice of cancellation or prepayment given by any Party under this Clause 8 (Prepayment and Cancellation) shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.

- (b) Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and, subject to any Break Costs, without premium or penalty.
- (c) Any part of the Facility which is repaid in accordance with Clause 7 (Repayment) or prepaid in accordance with Clause 8.4 (Voluntary prepayment of Loans) may be reborrowed in accordance with the terms of this Agreement.
- (d) The Company shall not repay or prepay all or any part of the Loans or cancel all or any part of the Commitment except at the times and in the manner expressly provided for in this Agreement.
- (e) No amount of the Commitment cancelled under this Agreement may be subsequently reinstated.

## SECTION 5

### COSTS OF UTILISATION

#### 9. INTEREST

##### 9.1 Calculation of interest

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

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

##### 9.2 Payment of interest

The Company shall pay accrued interest on each Loan on the last day of its Interest Period (and if that Interest Period is longer than six Months, on the dates falling at six monthly intervals after the first day of the Interest Period).

##### 9.3 Default interest

- (a) If the Company fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which is the sum of 1 per cent. and the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a Loan in the currency of the overdue amount for successive Interest Periods, each of a duration selected by the Lender (acting reasonably). Any interest accruing under this Clause 9.3 shall be immediately payable by the Company on demand of the Lender.
- (b) However if the overdue amount is principal of a Loan and became due on a day other than the last day of an Interest Period relating to that Loan, the first Interest Period applicable to that overdue amount shall be of a duration equal to the unexpired portion of that Interest Period and the rate of interest on that overdue amount for that Interest Period shall be the sum of 1 per cent. and the rate applicable to it immediately before it became due.
- (c) Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.

##### 9.4 Notification of rates of interest

The Lender shall promptly notify the Company of the determination of a rate of interest under this Agreement.

#### 10. INTEREST PERIODS

##### 10.1 Selection of Interest Periods

- (a) Each Loan has one Interest Period only.

- (b) The Company must select an Interest Period for a Loan in the Utilisation Request for that Loan.
- (c) Subject to this Clause 10, the Company may select an Interest Period of one, two, three or six Months or for four or five weeks or any other period agreed between the Company and the Lender.
- (d) An Interest Period for a Loan shall not extend beyond the Final Maturity Date.

## **10.2 Non-Business Days**

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

## **11. CHANGES TO THE CALCULATION OF INTEREST**

### **11.1 Absence of Quotations**

Subject to Clause 11.2 (Market disruption), if LIBOR is to be determined by reference to the Reference Banks but a Reference Bank does not supply a quotation by 11.00 a.m. on the Quotation Day, the applicable LIBOR shall be determined on the basis of the quotations of the remaining Reference Bank.

### **11.2 Market disruption**

If a Market Disruption Event occurs in relation to a Loan for any Interest Period, then the rate of interest on that Loan for the Interest Period shall be the rate per annum which is the sum of:

- (a) the Margin; and
- (b) the rate notified to the Company by the Lender as soon as practicable and in any event before interest is due to be paid in respect of that Interest Period, to be that which expresses as a percentage rate per annum the cost to the Lender of funding that Loan from whatever source it may reasonably select.

### **11.3 Alternative Basis of Interest or Funding**

- (a) If a Market Disruption Event occurs and the Lender or the Company so requires, the Lender and the Company shall enter into negotiations (for a period of not more than thirty days) with a view to agreeing a substitute basis for determining the rate of interest.
- (b) Any alternative basis agreed pursuant to paragraph (a) above shall be binding on all Parties.

### **11.4 Break Costs**

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

## **12. FEES**

### **12.1 Arrangement Fee**

- (a) Subject to paragraph (b) below, the Company shall pay to the Lender an arrangement fee in the Base Currency computed at a rate of 0.325 per cent. of the Commitment (such amount being GBP 1,137,500 (One Million One Hundred Thirty Seven Thousand and Five Hundred pounds sterling)). The arrangement fee is payable in 60 (sixty) instalments of GBP 18,958.34 (Eighteen Thousand Nine Hundred and Fifty Eight pounds sterling and Thirty Four pence) from the date of this Agreement and monthly thereafter until the Final Maturity Date.
- (b) If the whole Commitment is cancelled under this Agreement, the obligation of the Company to pay any further instalments of the arrangement fee referred to in paragraph (a) above after the date of cancellation shall terminate.

### **12.2 Commitment Fee**

- (a) The Company shall pay to the Lender a commitment fee in the Base Currency computed at the rate of 0.30 per cent. of the undrawn, uncanceled amount of the Commitment during the Availability Period.
- (b) The accrued commitment fee is calculated on a daily basis and is payable from and including the date of this Agreement quarterly in arrear. The accrued commitment fee is also payable to the Lender on the date the Commitment is cancelled in full.

## SECTION 6

### ADDITIONAL PAYMENT OBLIGATIONS

#### 13. TAX GROSS UP

##### 13.1 Tax Gross-Up

- (a) Each of the Company and the Guarantor shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.
- (b) The Company, the Guarantor or the Lender shall promptly upon becoming aware that the Company or the Guarantor must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the other parties accordingly.
- (c) If a Tax Deduction is required by law to be made by the Company or the Guarantor, as the case may be, the amount of the payment due from the Company or the Guarantor, as the case may be, shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.
- (d) The Company and the Guarantor is not required to make an increased payment to the Lender under (c) above for a Tax Deduction in respect of tax imposed by the United Kingdom from a payment of interest on the Loan, if on the date on which the payment falls due, the Company or the Guarantor is able to demonstrate that the payment could have been made to the Lender without the Tax Deduction if it was a Qualifying Lender, but on that date the Lender is not or has ceased to be a Qualifying Lender other than as a result of any change after the date it became a Party under this Agreement in (or the interpretation, administration, or application of) any law or double taxation agreement, or any published practice or concession of any relevant taxing authority.
- (e) If the Company or the Guarantor is required to make a Tax Deduction, it shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.
- (f) Within thirty days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Company or the Guarantor, as the case may be, shall deliver to the Lender evidence reasonably satisfactory to the Lender that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

##### 13.2 Tax Credit

If the Company or the Guarantor makes a Tax Payment and the Lender determines that:

- (a) a Tax Credit is attributable either to an increased payment of which that Tax Payment forms part, or to that Tax Payment; and
- (b) the Lender has obtained, utilised and retained that Tax Credit,

the Lender shall pay an amount to the Company or the Guarantor, as the case may be, which the Lender determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been made by the Company or the Guarantor, as the case may be.

### 13.3 Stamp Taxes

The Company shall pay and, within three Business Days of demand, indemnify the Lender against any cost, loss or liability the Lender incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document.

### 13.4 Value Added Tax

- (a) All consideration expressed to be payable under a Finance Document by any Party to the Lender shall be deemed to be exclusive of any VAT. If VAT is chargeable on any supply made by the Lender to any Party in connection with a Finance Document, that Party shall pay to the Lender (in addition to and at the same time as paying the consideration) an amount equal to the amount of the VAT.
- (b) Where a Finance Document requires any Party to reimburse the Lender for any costs or expenses, that Party shall also at the same time pay and indemnify the Lender against all VAT incurred by the Lender in respect of the costs or expenses to the extent that the Lender reasonably determines that it is not entitled to a credit or repayment in respect of that VAT.

## 14. INDEMNITIES

### 14.1 Currency Indemnity

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

### 14.2 Other Indemnities

The Company shall, within three Business Days of demand, indemnify the Lender against any cost, loss or liability incurred by the Lender as a result of:

- (a) the occurrence of any Event of Default;
- (b) a failure by the Company to pay any amount due under a Finance Document on its due date;

- (c) funding, or making arrangements to fund a Loan requested by the Company in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by the Lender alone); or
- (d) a Loan (or part of a Loan) not being prepaid in accordance with a notice of prepayment given by the Company.

## **15. COSTS AND EXPENSES**

### **15.1 Amendment Costs**

If:

- (a) the Company requests an amendment, waiver or consent; or
- (b) an amendment is required pursuant to Clause 23.7 (Change of Currency),

the Company shall, within three Business Days of demand, reimburse the Lender for the amount of all costs and expenses (including legal fees) reasonably incurred by the Lender in responding to, evaluating, negotiating or complying with that request or requirement.

### **15.2 Enforcement Costs**

The Company shall, within three Business Days of demand, pay to the Lender the amount of all costs and expenses (including legal fees) incurred by the Lender in connection with the enforcement of, or the preservation of any rights under, any Finance Document.



**SECTION 7**  
**GUARANTEE**

**16. GUARANTEE**

**16.1 Guarantee**

Subject to the provisions of Clause 16.2 (Limitation), the Guarantor, at the Company's request, irrevocably and unconditionally undertakes with the Lender that whenever the Company does not pay any amount when due under or in connection with any Finance Document, the Guarantor shall within 5 Business Days of demand pay that amount as if it was the principal obligor.

**16.2 Limitation**

Notwithstanding the other provisions of this Clause 16, the Guarantee is not intended to be, and shall not be construed as, a guarantee of the whole of the indebtedness of the Company under any Finance Document, and the maximum liability of the Guarantor under the Guarantee shall be limited to an amount which is equivalent to 50% of the amount unpaid by the Company under any Finance Document.

**16.3 Waiver of defences**

The obligations of the Guarantor under the Guarantee will not be affected by an act, omission, matter or thing which, but for this Clause, would reduce, release or prejudice any of its obligations under the Guarantee (without limitation and whether or not known to it or the Lender) including:

- (a) with the prior written consent of the Guarantor, any time, waiver or consent granted to, or composition with, the Lender or other person;
- (b) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Lender or any other person;
- (c) with the prior written consent of the Guarantor, any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of any Finance Document or any other document or security including without limitation any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- (d) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document or any other document or security; or
- (e) any insolvency or similar proceedings.

**16.4 Immediate recourse**

The Guarantor waives any right it may have of first requiring the Lender (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from the Guarantor under the Guarantee. This waiver applies irrespective of any law or any provision of a Finance Document to the contrary.

**16.5 Additional security**

The Guarantee is in addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by the Lender.

**16.6 Guarantee payment**

- (a) The Company shall immediately on demand reimburse the Guarantor for any payment it makes under the Guarantee.
- (b) The Company irrevocably and unconditionally authorises the Guarantor to pay any claim made or purported to be made under the Guarantee.

## SECTION 8

### REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT

#### 17. REPRESENTATIONS

The Company makes the representations and warranties set out in this Clause 17 to the Lender on the date of this Agreement.

##### 17.1 Status

- (a) It is a corporation, duly incorporated and validly existing under the law of its jurisdiction of incorporation.
- (b) It and each of its Subsidiaries has the power to own its assets and carry on its business as it is being conducted.

##### 17.2 Binding Obligations

Subject to the Legal Reservations, the obligations expressed to be assumed by it in each Finance Document are legal, valid, binding and enforceable obligations.

##### 17.3 Non-Conflict with Other Obligations

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

- (a) any law or regulation applicable to it;
- (b) the constitutional documents of any member of the Group; or
- (c) any material agreement or instrument relating to Financial Indebtedness or any other material agreement or instrument binding upon it or any member of the Group or any of its or any member of the Group's assets.

##### 17.4 Power and Authority

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

##### 17.5 No Default

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

##### 17.6 Pari Passu Ranking

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

### **17.7 No Proceedings Pending or Threatened**

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

### **17.8 Repetition**

The Repeating Representations are deemed to be made by the Company by reference to the facts and circumstances then existing on the date of each Utilisation Request and on the first day of each Interest Period.

## **18. INFORMATION UNDERTAKINGS**

The undertakings in this Clause 18 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or the Commitment is in force.

### **18.1 Financial Statements**

- (a) The Company shall supply to the Lender, as soon as the same become available, but in any event within 120 days after the end of each of its Financial Years, its audited consolidated financial statements for that Financial Year; and
- (b) As soon as the same become available, but in any event within 90 days after the end of the first half of each of its Financial Years, its unaudited consolidated financial statements for that financial half year.

### **18.2 Compliance Certificate**

- (a) The Company shall supply to the Lender and the Guarantor, with each set of financial statements delivered pursuant to paragraph (a) or (b) of Clause 18.1 (Financial Statements), a Compliance Certificate:
  - (i) setting out (in reasonable detail) computations as to compliance with Clause 19 (Financial Covenant) as at the date as at which those financial statements were drawn up or as at the last day of the relevant period;
  - (ii) setting out the extent of any adjustments to EBITDA pursuant to Clause 19.3 (EBITDA adjustments); and
  - (iii) confirming that no Default is continuing (or if a Default is continuing, specifying the Default and the steps being taken to remedy it).
- (b) Each Compliance Certificate shall be signed by two directors of the Company.

### **18.3 Requirements as to Financial Statements**

- (a) Each set of financial statements delivered by the Company pursuant to Clause 18.1 (Financial Statements) shall be certified by a director of the Company as fairly representing its financial condition and operations as at the end of and for the period in relation to which those financial statements were drawn up.
- (b) The Company shall procure that the consolidated financial statements of the Company delivered pursuant to Clause 18.1 (Financial Statements) are prepared using GAAP.

## **18.4 Information: Miscellaneous**

The Company shall supply to the Lender:

- (a) all documents dispatched by the Company to its shareholders generally (or any class of them) or its creditors generally at the same time as they are dispatched;
- (b) promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against any member of the Group, and which might, if adversely determined, have a Material Adverse Effect; and
- (c) promptly, such further information regarding the financial condition, business and operations of any member of the Group as the Lender may reasonably request.

## **18.5 Notification of Default**

- (a) The Company shall notify the Lender and the Guarantor of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence.
- (b) Promptly upon a request by the Lender and/or the Guarantor, the Company shall supply to the Lender and/or the Guarantor a certificate signed by two of its directors or senior officers on its behalf certifying that so far as they are aware (without personal liability) no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

## **19. FINANCIAL COVENANT**

### **19.1 Financial Condition**

- (a) The Company shall ensure that the ratio of Net Debt (as at any Relevant Date falling on 31 March 2009 and thereafter) to EBITDA (in respect of the Relevant Period ending on that Relevant Date) will not be greater than 3.0 to 1.
- (b) In the event the Company acquires any business or part of any business or any company or any shares in any company where such acquisition would constitute a Class 1 transaction for the purpose of the UK Listing Rules, the financial ratio mentioned in (a) above shall not be tested on any Relevant Date which falls less than six (6) months after the completion of such acquisition.

### **19.2 Financial Covenant Calculations**

EBIT, EBITDA, Net Interest Expense, Net Debt and Total Debt shall be calculated and interpreted on a consolidated basis in accordance with GAAP and shall be expressed in sterling.

### **19.3 EBITDA adjustments**

- (a) This Clause 19.3 applies if, and to the extent that, any member of the Group acquires or disposes of any business or Subsidiary after the date of this Agreement.
- (b) For any Relevant Period ending less than 12 Months after the date on which any such business or Subsidiary is acquired, EBITDA will be calculated on a pro forma basis as if such business or Subsidiary had been acquired by the Group at the beginning of that Relevant Period.

- (c) For any Relevant Period ending less than 12 Months after the date on which any such business or Subsidiary is disposed of, EBITDA will be calculated on a pro forma basis as if such business or Subsidiary had been disposed of by the Group at the beginning of that Relevant Period.
- (d) If any adjustment is made to EBITDA for any Relevant Period pursuant to this Clause 19.3, the Company will set out in the Compliance Certificate for that Relevant Period details of that adjustment.

## **20. GENERAL UNDERTAKINGS**

The undertakings in this Clause 20 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or the Commitment is in force.

### **20.1 Authorisations**

The Company shall promptly:

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

any Authorisation required under any law or regulation of its jurisdiction of incorporation to enable it to perform its obligations under the Finance Documents and to ensure the legality, validity, enforceability or admissibility in evidence in its jurisdiction of incorporation of any Finance Document.

### **20.2 Compliance with Laws**

The Company shall comply in all respects with all laws, regulations and Authorisations to which it may be subject, if failure so to comply would materially impair its ability to perform its obligations under the Finance Documents.

### **20.3 Negative Pledge**

- (a) Subject to paragraph (c) below, the Company shall not (and shall ensure that no other member of the Group will) create or permit to subsist any Security over any of its assets.
- (b) Subject to paragraph (c) below, the Company shall not (and shall ensure that no other member of the Group will):
  - (i) sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by any other member of the Group;
  - (ii) sell, transfer or otherwise dispose of any of its receivables on recourse terms;
  - (iii) enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
  - (iv) enter into any other preferential arrangement intended to have and having substantially the same commercial effect,

in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.

- (c) Paragraphs (a) and (b) above do not apply to:
- (i) any netting or set-off or lien arrangement (including, but not limited to, cash pooling arrangements), entered into by any member of the Group in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances;
  - (ii) any lien arising by operation of law and in the ordinary course of trading;
  - (iii) any lien created by a Subsidiary in favour of a bank in the ordinary course of its banking arrangements pursuant to standard banking terms of business;
  - (iv) any Security over or affecting any asset acquired by a member of the Group after the date of this Agreement if:
    - I. the Security was not created in contemplation of the acquisition of that asset by a member of the Group;
    - II. the principal amount secured has not been increased in contemplation of or since the acquisition of that asset by a member of the Group; and
    - III. the Security is removed or discharged within three Months of the date of acquisition of such asset;
  - (v) any Security over or affecting any asset of any company which becomes a member of the Group after the date of this Agreement, where the Security is created prior to the date on which that company becomes a member of the Group, if:
    - I. the Security was not created in contemplation of the acquisition of that company;
    - II. the principal amount secured has not increased in contemplation of or since the acquisition of that company; and
    - III. the Security is removed or discharged within three Months of that company becoming a member of the Group;
  - (vi) any Security created with the prior written consent of the Lender and the Guarantor;
  - (vii) any Security over goods and documents of title to goods arising in the ordinary course of letter of credit transactions entered into in the ordinary course of trading; or
  - (viii) any Security securing indebtedness and/or any sale and leaseback involving an asset or assets the principal amount of which (when aggregated with the principal amount of any other indebtedness which has the benefit of Security and/or any sale and leaseback involving an asset or assets other than any permitted under paragraphs (i) to (vii) above) does not exceed £25,000,000 (or its equivalent in another currency or currencies) outstanding at any time.

## **20.4 Insurance**

The Company shall (and shall ensure that each other member of the Group will) maintain insurances on and in relation to its business and assets with reputable underwriters or insurance companies

against those risks, and to the extent, usually insured against by prudent companies located in the same or a similar location and carrying on a similar business.

## **20.5 Ranking of Obligations**

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

## **21. EVENTS OF DEFAULT**

Each of the events or circumstances set out in this Clause 21 is an Event of Default.

### **21.1 Non-Payment**

The Company does not pay on the due date any amount payable pursuant to a Finance Document at the place at and in the currency in which it is expressed to be payable unless:

- (a) its failure to pay is caused by administrative or technical error; and
- (b) payment is made within three Business Days of its due date.

### **21.2 Financial and other Covenants**

- (a) Any requirement of Clause 19 (Financial Covenant) is not satisfied;
- (b) The Company does not comply with Clause 3.1 (Purpose) or 20.5 (Ranking of Obligations);
- (c) No Event of Default under paragraph (b) above will occur if the failure to comply is capable of remedy and is remedied within 21 days of the Lender giving notice to the Company or the Company becoming aware of the failure to comply.

### **21.3 Insolvency**

- (a) The Company or the Guarantor is unable or admits inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness.
- (b) The value of the assets of the Company or the Guarantor is less than its liabilities (taking into account contingent and prospective liabilities).
- (c) A moratorium is declared in respect of any indebtedness of the Company or the Guarantor.

### **21.4 Insolvency Proceedings**

Any corporate action, legal proceedings or other procedure or step is taken (other than a petition for winding-up filed by a creditor which is contested in good faith and is withdrawn or discharged by the date which is the earlier of 21 days after its presentation and the hearing date for such petition) in relation to:

- (a) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Company or the Guarantor;



- (b) a composition, assignment or arrangement with any creditor of the Company or the Guarantor;
- (c) the appointment of a receiver, administrator, administrative receiver, compulsory manager, liquidator (other than in respect of a solvent liquidation of a member of the Group other than the Company) or other similar officer in respect of the Company or the Guarantor or any of its assets;
- (d) enforcement of any Security over any assets of the Company securing an amount in excess of £5,000,000 (or its equivalent in any other currency or currencies),

or any analogous procedure or step is taken in any jurisdiction.

#### **21.5 Creditors' process**

Any expropriation, attachment, sequestration, distress or execution affects any asset or assets of the Company and is not discharged within 14 days.

#### **21.6 Unlawfulness**

- (a) It is or becomes unlawful for the Company or the Guarantor to perform all or any of its obligations under the Finance Documents.
- (b) Any Finance Document is not valid or effective in accordance with its terms or is alleged by the Company or the Guarantor to be ineffective in accordance with its terms for any reason.

#### **21.7 Repudiation**

The Company or the Guarantor repudiates a Finance Document.

#### **21.8 Acceleration**

On and at any time after the occurrence of an Event of Default the Lender may, by notice to the Company and the Guarantor:

- (a) cancel the Commitment whereupon it shall immediately be cancelled;
- (b) declare that all or part of the Loans, together with accrued interest, and all other amounts accrued under the Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable; and/or
- (c) declare that all or part of the Loans be payable on demand, whereupon they shall immediately become payable on demand by the Lender.

#### **21.9 Right to Cure Financial Covenant**

Notwithstanding anything to the contrary contained in this Clause 21, in the event that the Company fails to comply with the requirements of the financial covenant referred to in Clause 19 (Financial Covenant) (the **Financial Covenant**), until the thirtieth day subsequent to delivery of the Compliance Certificate, the Company shall have the right to arrange the contribution of equity by way of cash injection to the capital of the Company (collectively, the **Cure Right**), and with the consent of the Lender (such consent not to be unreasonably withheld) and upon the receipt by the Company of such cash (the **Cure Amount**) pursuant to the exercise by the Company of such Cure Right the Financial Covenant shall be recalculated giving effect to the following pro forma adjustments:

- (a) EBITDA shall be increased, in accordance with the definition thereof, solely for the purpose of measuring the Financial Covenant and not for any other purpose under this Agreement, by an amount equal to the Cure Amount;
- (b) if, after giving effect to the foregoing recalculations, the Company shall then be in compliance with the Financial Covenant, the Company shall be deemed to have satisfied the requirements of the Financial Covenant as of the relevant date of determination with the same effect as though there had been no failure to comply therewith at such date, and the applicable breach or default of the Financial Covenant which had occurred shall be deemed cured for all purposes of this Agreement.

## SECTION 9

### CHANGES TO THE PARTIES

#### **22. CHANGES TO THE PARTIES**

##### **22.1 Assignment and Transfer by the Company**

The Company may not assign any of its rights or transfer any of its rights or obligations under the Finance Documents without the prior written consent of the Lender and the Guarantor.

##### **22.2 Assignment and Transfer by the Lender**

The Lender may not assign any of its rights or transfer any of its rights and obligations under the Finance Documents without the prior written consent of the Guarantor.

**SECTION 10**  
**ADMINISTRATION**

**23. PAYMENT MECHANICS**

**23.1 Payments to the Lender**

- (a) On each date on which the Company and/or the Guarantor is required to make a payment under a Finance Document, the Company and/or the Guarantor shall make the same available to the Lender (unless a contrary indication appears in a Finance Document) for value on the due date at the time and in such funds specified by the Lender as being customary at the time for settlement of transactions in the relevant currency in the place of payment.
- (b) Payment shall be made to such account in the principal financial centre of the country of that currency (or, in relation to euro, London) with such bank as the Lender specifies.

**23.2 Distributions to the Company**

The Lender may (with the consent of the Company or in accordance with Clause 24 (Set-Off)) apply any amount received by it for the Company in or towards payment (on the date and in the currency and funds of receipt) of any amount due from the Company under the Finance Documents or in or towards purchase of any amount of any currency to be so applied.

**23.3 Partial Payments**

- (a) If the Lender receives a payment that is insufficient to discharge all the amounts then due and payable by the Company and/or the Guarantor under the Finance Documents, the Lender shall apply that payment towards the obligations of the Company under the Finance Documents in the following order:
  - (i) **first** , in or towards payment *pro rata* of any unpaid fees, costs and expenses of the Lender under the Finance Documents;
  - (ii) **secondly** , in or towards payment *pro rata* of any accrued fees, interest or commission due but unpaid under this Agreement;
  - (iii) **thirdly** , in or towards payment *pro rata* of any principal due but unpaid under this Agreement; and
  - (iv) **fourthly** , in or towards payment *pro rata* of any other sum due but unpaid under the Finance Documents.
- (b) Paragraphs (a) will override any appropriation made by the Company.

**23.4 No set-off by the Company**

Subject to the provisions of Clause 33 (Lender indebtedness), all payments to be made by the Company under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

### **23.5 Business Days**

- (a) Any payment which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).
- (b) During any extension of the due date for payment of any principal or an Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

### **23.6 Currency of Account**

- (a) A repayment of a Loan or Unpaid Sum or a part of a Loan or Unpaid Sum shall be made in the currency in which that principal amount is denominated on its due date.
- (b) Each payment of interest shall be made in the currency in which the relevant amount in respect of which it is payable is denominated.
- (c) Each payment in respect of costs, expenses or Taxes shall be made in the currency in which they are incurred.
- (d) Each other amount payable under the Finance Documents is payable in sterling.

### **23.7 Change of Currency**

- (a) Unless otherwise prohibited by law, if more than one currency or currency unit are at the same time recognised by the central bank of any country as the lawful currency of that country, then:
  - (i) any reference in the Finance Documents to, and any obligations arising under the Finance Documents in, the currency of that country shall be translated into, or paid in, the currency or currency unit of that country designated by the Lender (after consultation with the Company and the Guarantor); and
  - (ii) any translation from one currency or currency unit to another shall be at the official rate of exchange recognised by the central bank for the conversion of that currency or currency unit into the other, rounded up or down by the Lender (acting reasonably).
- (b) If a change in any currency of a country occurs, this Agreement will, to the extent the Lender (acting reasonably and after consultation with the Company and the Guarantor) specifies to be necessary, be amended to comply with any generally accepted conventions and market practice in the Relevant Interbank Market and otherwise to reflect the change in currency.

## **24. SET-OFF**

The Lender may set off any matured obligation due from the Company under the Finance Documents (to the extent beneficially owned by the Lender) against any matured obligation owed by the Lender to the Company, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Lender may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

## **25. NOTICES**

### **25.1 Communications in Writing**

Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by fax or letter.

### **25.2 Addresses**

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with the Finance Documents is, in the case of each of the Company, the Guarantor and the Lender, that identified with its name below or any substitute address, fax number or department or officer as the Party may notify to the Lender (or the Lender may notify to the other Parties, if a change is made by the Lender) by not less than five Business Days' notice.

### **25.3 Delivery**

- (a) Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:
  - (i) if by way of fax, when received in legible form; or
  - (ii) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 25.2 (Addresses), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to the Lender or the Guarantor will be effective only when actually received by the Lender or the Guarantor and then only if it is expressly marked for the attention of the department or officer identified with the Lender's or the Guarantor's signature below (or any substitute department or officer as the Lender or the Guarantor shall specify for this purpose).
- (c) Any communication made to the Lender or the Guarantor by fax must subsequently be confirmed by way of letter provided that non-receipt of such letter by the Lender or the Guarantor does not invalidate or render ineffective in any way the initial fax communication.

### **25.4 English Language**

- (a) Any notice given under or in connection with any Finance Document must be in English.
- (b) All other documents provided under or in connection with any Finance Document must be:
  - (i) in English; or
  - (ii) if not in English, and if so required by the Lender, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

**26. CALCULATIONS AND CERTIFICATES**

**26.1 Accounts**

In any litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by the Lender are *prima facie* evidence of the matters to which they relate.

**26.2 Certificates and Determinations**

Any certification or determination by the Lender of a rate or amount under any Finance Document is, in the absence of manifest error, *prima facie* evidence of the matters to which it relates.

**26.3 Day Count Convention**

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 365 days for any amounts denominated in the Base Currency, a year of 360 days for amounts denominated in any Optional Currency or, in any case where the practice in the Relevant Interbank Market differs, in accordance with that market practice.

**27. PARTIAL INVALIDITY**

If, at any time, any provision of the Finance Documents is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

**28. REMEDIES AND WAIVERS**

No failure to exercise, nor any delay in exercising, on the part of the Lender, any right or remedy under the Finance Documents shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

**29. AMENDMENTS AND WAIVERS**

Any term of the Finance Documents may be amended or waived only with the consent of the Lender, the Company and the Guarantor and any such amendment or waiver will be binding on all Parties.

**30. COUNTERPARTS**

Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.

## SECTION 11

### GOVERNING LAW AND ENFORCEMENT

#### 31. GOVERNING LAW

This Agreement is governed by English law.

#### 32. ENFORCEMENT

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute regarding the existence, validity or termination of this Agreement) (a **Dispute**).
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) This Clause 32 is for the benefit of the Lender only. As a result, the Lender shall not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Lender may take concurrent proceedings in any number of jurisdictions.

#### 33. LENDER INDEBTEDNESS

Notwithstanding any other provisions of this Agreement:

- (a) any indebtedness owed by the Lender to the Company shall accrue interest at the percentage rate per annum which is the aggregate of the:
  - (i) Margin; and
  - (ii) LIBOR;
- (b) the amount payable by the Company under this Agreement on any relevant date shall be the amount owed by the Company under this Agreement minus the amount of any indebtedness including interest accrued thereon owed by the Lender to the Company on such date; and
- (c) without prejudice to the generality of the foregoing, if the Lender exercises its rights pursuant to Clause 21.8 (Acceleration) or if the Commitment is otherwise cancelled in accordance with this Agreement:
  - (i) the amount payable by the Company under this Agreement shall be reduced by the amount of any indebtedness including interest accrued thereon owed by the Lender to the Company; and
  - (ii) if after applying the reduction in paragraph (i) above indebtedness is still owed by the Lender to the Company, the Lender shall pay such indebtedness including interest accrued thereon to the Company as the Company may direct.

For the purpose of this Clause 33, indebtedness shall exclude intra-group trading indebtedness.

**THIS AGREEMENT** has been entered into on the date stated at the beginning of this Agreement.



## SCHEDULE 1

### CONDITIONS PRECEDENT

#### 1. The Company

- 1.1 A copy of the constitutional documents of the Company.
- 1.2 A copy of a resolution of the board of directors of the Company:
  - (a) approving the terms of, and the transactions contemplated by, the Finance Documents to which it is a party and resolving that it execute the Finance Documents to which it is a party;
  - (b) authorising a specified person or persons to execute the Finance Documents to which it is a party on its behalf; and
  - (c) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices (including, if relevant, any Utilisation Request) to be signed and/or despatched by it under or in connection with the Finance Documents to which it is a party.
- 1.3 A specimen of the signature of each person authorised by the resolution referred to in paragraph 1.2 above.
- 1.4 A certificate of the Company (signed by a director) confirming that borrowing the Commitments would not cause any borrowing or similar limit binding on the Company to be exceeded.
- 1.5 A certificate of an authorised signatory of the Company certifying that each copy document relating to it specified in this paragraph 1 of Schedule 1 is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement.

#### 2. Other Documents and Evidence

- 2.1 A copy of any other Authorisation or other document, opinion or assurance which the Lender considers to be necessary (if it has notified the Company accordingly prior to the date of this Agreement) in connection with the entry into and performance of the transactions contemplated by any Finance Document or for the validity and enforceability of any Finance Document.
- 2.2 Evidence that the fees then due from the Company pursuant to Clause 12 (Fees) have been paid or will be paid by the first Utilisation Date.

**SCHEDULE 2**

**UTILISATION REQUEST**

From: CPW Distribution Holdings Ltd

To: The Carphone Warehouse Group PLC

Dated:

Dear Sirs

**CPW Distribution Holdings Ltd —£350,000,000 Facility Agreement  
dated [ ] (the Facility Agreement)**

1. We wish to draw-down a Loan on the following terms:

Proposed Utilisation Date: [ ] (or, if that is not a Business Day, the next Business Day)

Currency of Loan: [ ]

Amount: [ ] or, if less, the Available Commitment

Interest Period: [ ]

2. We confirm that each condition specified in Clause 4.2 (Further conditions precedent) is satisfied on the date of this Utilisation Request.

3. The proceeds of this Loan should be credited to [account].

4. This Utilisation Request is irrevocable.

Yours faithfully

\_\_\_\_\_  
Authorised Signatory of  
CPW Distribution Holdings Ltd

\_\_\_\_\_  
Authorised Signatory of  
CPW Distribution Holdings Ltd

**SCHEDULE 3**

**FORM OF COMPLIANCE CERTIFICATE**

To: The Carphone Warehouse Group PLC

From: CPW Distribution Holdings Ltd

Dated:

Dear Sirs

**CPW Distribution Holdings Ltd — £350,000,000 Facility Agreement  
dated [ ] (the Facility Agreement)**

1. We refer to the Facility Agreement. This is a Compliance Certificate.
2. [We confirm that no Default is continuing.](1)
3. We confirm that the ratio of Net Debt to EBITDA in respect of the Relevant Period ended on [ ] was [ ] to 1;  
and
4. [EBITDA has been adjusted pursuant to Clause 19.3 (EBITDA adjustments) as follows: [ ].]

This certificate is given without personal liability.

Signed:

\_\_\_\_\_  
Director  
of  
**CPW Distribution Holdings Ltd**

\_\_\_\_\_  
Director  
of  
**CPW Distribution Holdings Ltd**

- 
- (1) If this statement cannot be made, the certificate should identify any Default that is continuing and the steps, if any, being taken to remedy it.

## SCHEDULE 4

### TIMETABLES

**D** - refers to the number of Business Days before the relevant Utilisation Date/the first day of the relevant Interest Period.

	<u>Loans in sterling</u>	<u>Loans in other currencies</u>
Delivery of a duly completed Utilisation Request (Clause 5.1 (Delivery of a Utilisation Request))	D-1 1.00 p.m.	D-3 1.00 p.m.
Lender gives notice in accordance with Clause 6.2 (Unavailability of a currency)		Quotation Day 10.00 a.m.
LIBOR is fixed	Quotation Day as of 11.00 a.m.	Quotation Day as of 11.00 a.m.

## SIGNATORIES

### The Company

#### CPW DISTRIBUTION LTD

By: /s/ Roger Taylor \_\_\_\_\_

/s/ Tim Morris \_\_\_\_\_

CPW Distribution Ltd  
1 Portal Way  
London W3 6RS

### The Guarantor

#### BEST BUY CO., INC

By: /s/ Keith Nelsen \_\_\_\_\_

7601 Penn Avenue South  
Richfield  
MN 55423-3645 - USA.

### The Lender

#### THE CARPHONE WAREHOUSE GROUP PLC

By: /s/ Roger Taylor \_\_\_\_\_

/s/ Tim Morris \_\_\_\_\_

The Carphone Warehouse Group PLC  
1 Portal Way  
London W3 6RS



June 30, 2008

For immediate release

**The Carphone Warehouse Group PLC Announces Results of Extraordinary  
General Meeting;  
Transaction with Best Buy Completed**

June 30, 2008 (London and Minneapolis) — The Carphone Warehouse Group PLC and Best Buy Co., Inc. (NYSE: BBY) today announced the closing of their transaction to create a new venture aimed at addressing the evolving consumer electronics needs of European consumers, following the passing of resolutions relating to the transaction with Best Buy at the extraordinary general meeting held today by The Carphone Warehouse.

As a result of the passing of these resolutions, all conditions relating to the completion of the transaction have now been satisfied or waived, and the transaction is therefore now complete in all respects.

To effect the transaction, earlier today Best Buy paid The Carphone Warehouse cash consideration of approximately £1.1 billion (\$2.1 billion). The consideration was comprised of cash on hand of \$1.1 billion and \$1.0 billion of debt proceeds. The debt proceeds were derived from bank line borrowings of approximately \$500 million and five-year senior note proceeds of approximately \$500 million. The effective date of the transaction is the close of business June 28, 2008, the end of The Carphone Warehouse's fiscal first quarter.

The closing of the transaction marks the formation of a new company comprised of The Carphone Warehouse's existing retail and mobile service businesses. These businesses consist of more than 2,400 stores in nine European countries under the Carphone Warehouse and Phone House brands and The Carphone Warehouse's share of its existing relationships with Best Buy. Both The Carphone Warehouse and Best Buy each now own 50 percent of the new company. The Carphone Warehouse continues to own 100 percent of its fixed line telecoms business in the U.K., comprising TalkTalk, AOL Broadband and Opal; and its share of the Virgin Mobile France joint venture.

*For Further Information*

**For analyst and institutional inquiries**

Peregrine Riviere  
Carla Bloom  
Jennifer Driscoll  
Charles Marentette  
Wade Bronson

**07909 907193**  
**07891 094542**  
**612 291 6110**  
**612 291 6184**  
**612 291 5693**

**For media inquiries**

Shane Conway

**07932 199 659**

Anthony Carlisle (Citigate Dewe Rogerson)

**07973 611 888****020 7638 9571**

Sue Busch

**612 291 6114****Best Buy's Forward-Looking and Cautionary Statements:**

This news release contains forward-looking statements within the meaning of the U.S. Private Securities Litigation Reform Act of 1995 as contained in Section 27A of the U.S. Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934 that reflect Best Buy management's current views and estimates regarding future market conditions, company performance and financial results, business prospects, new strategies, the competitive environment and other events. You can identify these statements by the fact that they use words such as "anticipate," "believe," "estimate," "expect," "intend," "project," "plan," "outlook," and other words and terms of similar meaning. These statements involve a number of risks and uncertainties that could cause actual results to differ materially from the potential results discussed in the forward-looking statements. Among the factors that could cause actual results and outcomes to differ materially from those contained in such forward-looking statements are the following: failure to receive necessary approvals for the transaction; failure to achieve anticipated benefits of the transaction; and integration challenges relating to the new venture. Other factors include the following: general economic conditions, acquisitions and development of new businesses, divestitures, product availability, sales volumes, pricing actions and promotional activities of competitors, profit margins, weather, changes in law or regulations, foreign currency fluctuation, availability of suitable real estate locations, Best Buy's ability to react to a disaster recovery situation, and the impact of labor markets and new product introductions on overall profitability. A further list and description of risks, uncertainties and other matters can be found in Best Buy's annual report and other reports filed from time to time with the U.S. Securities and Exchange Commission ("SEC"), including, but not limited to, Best Buy's Annual Report on Form 10-K filed with the SEC on April 30, 2008. Best Buy cautions that the foregoing list of important factors is not complete and assumes no obligation to update any forward-looking statement that it may make.

**About The Carphone Warehouse Group PLC**

The Carphone Warehouse is Europe's largest independent retailer of mobile phones and related services, with over 2,400 stores across nine countries. Our proposition is to offer customers impartial advice across the widest range of handsets, networks and tariffs in the market. We trade as The Carphone Warehouse in the U.K. and Ireland, and as Phone House in our other European markets. In addition, under the TalkTalk and AOL brands we are a

leading provider of residential telecoms services in the U.K., with over 2.7 million broadband customers and 2.7 million voice customers. The business was founded in 1989 by CEO Charles Dunstone.

**About Best Buy Co., Inc.**

Best Buy Co., Inc. (NYSE: BBY) operates an international portfolio of brands with a commitment to growth and innovation. Our employees strive to provide customers around the world with superior experiences by responding to their unique needs and aspirations. We sell consumer electronics, home-office products, entertainment software, appliances and related services through approximately 1,300 retail stores across the United States, throughout Canada and in China. Our multi-channel operations include: Best Buy (BestBuy.com, BestBuy.ca, BestBuy.com.cn and BestBuyMobile.com), Future Shop (FutureShop.ca), Geek Squad (GeekSquad.com and GeekSquad.ca), Pacific Sales Kitchen and Bath Centers (PacificSales.com), Magnolia Audio Video (Magnoliaav.com), Jiangsu Five Star Appliance Co. (Five-Star.cn) and Speakeasy (Speakeasy.net). Best Buy supports the communities in which its employees work and live through volunteerism and grants that benefit children and education.