

DATED

21 July 2023

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**GLOBAL LOAN AGENCY SERVICES LIMITED**  
(as Agent)

**ICG ALTERNATIVE INVESTMENT LIMITED**  
(as Arranger)

**THE LENDERS**

**AQUILA MIDCO 2 LIMITED**  
(together with its Subsidiaries as Original Debtors)

**AQUILA MIDCO 1 LIMITED**  
(as Subordinated Creditor)

- and -

**GLAS TRUST CORPORATION LIMITED**  
(acting as Security Agent)

**INTERCREDITOR AGREEMENT**



Matter ref: 158131/000018  
Ref: HANDYALI/4144-1674-8872

Hogan Lovells International LLP  
Atlantic House, Holborn Viaduct, London EC1A 2FG

## CONTENTS

CLAUSE	PAGE
1. DEFINITIONS AND INTERPRETATION	1
2. RANKING AND PRIORITY	23
3. SENIOR FACILITY CREDITORS AND SENIOR FACILITY LIABILITIES	23
4. HEDGE COUNTERPARTIES AND SUPER SENIOR HEDGING LIABILITIES AND EXCESS HEDGING LIABILITIES	34
5. INTRA-GROUP LENDERS AND INTRA-GROUP LIABILITIES	45
6. SUBORDINATED LIABILITIES	47
7. EFFECT OF INSOLVENCY EVENT	50
8. TURNOVER OF RECEIPTS	51
9. REDISTRIBUTION	54
10. ENFORCEMENT OF TRANSACTION SECURITY	55
11. NON-DISTRESSED DISPOSALS	58
12. DISTRESSED DISPOSALS AND APPROPRIATION	59
13. NON-CASH RECOVERIES	63
14. ACQUISITION AND INSURANCE CLAIMS	65
15. FURTHER ASSURANCE – DISPOSALS AND RELEASES	67
16. APPLICATION OF PROCEEDS	68
17. EQUALISATION	71
18. THE SECURITY AGENT	75
19. CHANGES TO THE PARTIES	87
20. COSTS AND EXPENSES	92
21. OTHER INDEMNITIES	93
22. INFORMATION	95
23. NOTICES	96
24. PRESERVATION	98
25. CONSENTS, AMENDMENTS AND OVERRIDE	100
26. CONTRACTUAL RECOGNITION OF BAIL-IN	106
27. COUNTERPARTS	108
28. ELECTRONIC EXECUTION	108
29. GOVERNING LAW	109
30. ENFORCEMENT	109
SIGNATURES	118

**SCHEDULES**

<b>1.</b>	<b>FORM OF DEBTOR ACCESSION DEED</b>	<b>111</b>
<b>2.</b>	<b>FORM OF CREDITOR ACCESSION UNDERTAKING</b>	<b>114</b>
<b>3.</b>	<b>FORM OF DEBTOR RESIGNATION REQUEST</b>	<b>116</b>
<b>4.</b>	<b>FORM OF SUPER SENIOR HEDGING CERTIFICATE</b>	<b>117</b>

THIS AGREEMENT is made on

21 July 2023

**BETWEEN:**

- (1) **Global Loan Agency Services Limited**, a company incorporated under the laws of England and Wales and with registration number 08318601 with its registered office at 55 Ludgate Hill, London, EC4M 7JW as agent of the other Finance Parties under the Finance Documents (the "**Agent**");
- (2) **The Financial Institutions** named on the signing pages as **Lenders**;
- (3) **ICG Alternative Investment Limited** (the "**Arranger**");
- (4) **Aquila Midco 1 Limited**, a company registered under the law of England and Wales with registration number 14971961 ("**Holdco**") as Subordinated Creditor;
- (5) **Aquila Midco 2 Limited**, a company registered under the law of England and Wales with registration number 14972051 as (the "**Parent**");
- (6) **The companies** named on the signing pages as **Intra-Group Lenders**;
- (7) **The Subsidiaries** of the Parent named on the signing pages as Debtors (together with the Parent and the Company, the "**Original Debtors**"); and
- (8) **GLAS Trust Corporation Limited**, a company incorporated under the laws of England and Wales and with registration number 07927175 with its registered office at 55 Ludgate Hill, London, EC4M 7JW as security trustee for the Secured Parties (the "**Security Agent**").

IT IS AGREED as follows:

**SECTION 1**

**INTERPRETATION**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Agreement defined terms have the meaning given to them in the Facilities Agreement unless otherwise defined in this Agreement, and

"**1992 ISDA Master Agreement**" means the Master Agreement (Multicurrency - Cross Border) as published by the International Swaps and Derivatives Association, Inc.

"**2002 ISDA Master Agreement**" means the 2002 Master Agreement as published by the International Swaps and Derivatives Association, Inc.

"**Acceleration Event**" means a notice being served by the Agent in accordance with Clause 28.18 (*Acceleration*) or Clause 28.19 (*Super Senior Acceleration*) of the Facilities Agreement.

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

Notwithstanding the foregoing, in relation to any member of the NatWest Group, the term "Affiliate" shall not include:

- (a) the UK government or any member or instrumentality thereof, including His Majesty's Treasury and UK Financial Investments Limited (or any directors, officers, employees or entities thereof); or
- (b) any persons or entities controlled by or under common control with the UK government or any member or instrumentality thereof (including His Majesty's Treasury and UK Financial Investments Limited) and which are not part of NatWest Group plc and its subsidiaries or subsidiary undertakings.

For the purposes of this definition, "**NatWest Group**" means NatWest Group plc and its subsidiaries and subsidiary undertakings.

"**Allocated Super Senior Hedging Amount**" means, with respect to a Super Senior Hedge Counterparty, the portion of the Super Senior Hedging Amount allocated to that Super Senior Hedge Counterparty less any portion released by that Super Senior Hedge Counterparty, in each case in accordance with Clause 4.14 (*Allocation of Super Senior Hedging Liabilities*).

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

"**Ancillary Facility**" means any ancillary facility made available in accordance with the Facilities Agreement.

"**Ancillary Facility Liabilities**" means the Liabilities owed by the Debtors to the Ancillary Lenders with respect to any Ancillary Facility.

"**Ancillary Lender**" means each Lender (or Affiliate of a Lender) which makes available an Ancillary Facility.

"**Appropriation**" means the appropriation (or similar process) of the shares in the capital of a member of the Group (other than the Parent) by the Security Agent (or any Receiver or Delegate) which is effected (to the extent permitted under the relevant Security Document and applicable law) by enforcement of the Transaction Security.

"**Arranger**" means the Arranger under and as defined in the Facilities Agreement.

"**Automatic Early Termination**" means the termination or close-out of any hedging transaction prior to the maturity of that hedging transaction which is brought about automatically by the terms of the relevant Hedging Agreement and without any party to the relevant Hedging Agreement taking any action to terminate that hedging transaction.

"**Borrowing Liabilities**" means, in relation to a member of the Group, the liabilities and obligations (not being Guarantee Liabilities) it may have as a principal debtor to a Creditor (other than to the Arranger or the Agent) or a Debtor in respect of Financial Indebtedness arising under the Debt Documents (whether incurred solely or jointly and including, without limitation, liabilities and obligations as a Borrower under the Finance Documents).

"**Cash Proceeds**" means:

- (a) proceeds of the Security Property which are in the form of cash; and
- (b) any cash which is generated by holding, managing, exploiting, collecting, realising or disposing of any proceeds of the Security Property which are in the form of Non-Cash Consideration.

**"Charged Property"** means all of the assets which from time to time are, or are expressed to be, the subject of the Transaction Security.

**"Close-Out Netting"** means:

- (a) in respect of a Hedging Agreement or a Hedging Ancillary Document based on a 1992 ISDA Master Agreement, any step involved in determining the amount payable in respect of an Early Termination Date (as defined in the 1992 ISDA Master Agreement) under section 6(e) (*Payments on Early Termination*) of the 1992 ISDA Master Agreement before the application of any subsequent Set-off (as defined in the 1992 ISDA Master Agreement);
- (b) in respect of a Hedging Agreement or a Hedging Ancillary Document based on a 2002 ISDA Master Agreement, any step involved in determining an Early Termination Amount (as defined in the 2002 ISDA Master Agreement) under section 6(e) (*Payments on Early Termination*) of the 2002 ISDA Master Agreement before the application of any subsequent set-off under section 6(f) of the 2002 ISDA Master Agreement; and
- (c) in respect of a Hedging Agreement or a Hedging Ancillary Document not based on an ISDA Master Agreement, any step involved on a termination of the hedging transactions under that Hedging Agreement pursuant to any provision of that Hedging Agreement which has a similar effect to either provision referenced in paragraphs (a) and (b) above.

**"Common Assurance"** means any guarantee, indemnity or other assurance against loss in respect of any of the Liabilities, the benefit of which (however conferred) is, to the extent legally possible and subject to any Agreed Security Principles, given to all the Secured Parties in respect of their Liabilities.

**"Common Currency"** means Sterling.

**"Common Currency Amount"** means, in relation to an amount, that amount converted (to the extent not already denominated in the Common Currency) into the Common Currency at the Security Agent's Spot Rate of Exchange on the Business Day prior to the relevant calculation.

**"Common Transaction Security"** means any Transaction Security which to the extent legally possible and subject to any Agreed Security Principles:

- (a) is created in favour of the Security Agent as trustee for the other Secured Parties in respect of their Liabilities; or
- (b) in the case of any jurisdiction in which effective Security cannot be granted in favour of the Security Agent as trustee for the Secured Parties is created in favour of:
  - (i) all the Secured Parties in respect of their Liabilities; or
  - (ii) the Security Agent under a parallel debt structure for the benefit of all the Secured Parties,

and which ranks in the order of priority contemplated in Clause 2 (*Transaction Security*).

**"Competitive Sales Process"** means any auction or other competitive sales process conducted with the advice of a Financial Adviser appointed by, or approved by, the Security

Agent pursuant to Clause 12.5 (*Appointment of Financial Adviser*), which process is conducted with a view to obtaining a fair market price in the then prevailing market conditions and the procedures for such process do not preclude the Senior Lenders from participating as prospective buyers or bidders (including as part of a consortium) or financiers to any potential purchaser on the basis of equal information, access rights or other criteria as are available to each other prospective buyer or bidder (or financiers to any potential purchaser).

**"Consent"** means any consent, approval, release or waiver or agreement to any amendment.

**"Consultation Period"** has the meaning given to that term in Clause 3.9(c) (*Permitted Enforcements: Super Senior Facility Lenders*).

**"Credit Related Close-out"** means any Permitted Hedge Close-out which is not a Non-Credit Related Close-out.

**"Creditor Accession Undertaking"** means:

- (a) an undertaking substantially in the form set out in Schedule 2 (*Form of Creditor Accession Undertaking*); or
- (b) a Transfer Certificate, Assignment Agreement, Increase Confirmation or Incremental Facility Notice (provided that it contains an accession to this Agreement which is substantially in the form set out in Schedule 2 (*Form of Creditor Accession Undertaking*)) as the context may require, or
- (c) in the case of an acceding Debtor which is expressed to accede as an Intra-Group Lender in the relevant Debtor Accession Deed, that Debtor Accession Deed.

**"Creditors"** means the Agent, the Arranger, the Lenders, the Hedge Counterparties, the Intra-Group Lenders, the Parent and the Subordinated Creditors.

**"Debt Disposal"** means any disposal of any Liabilities or Debtors' Intra-Group Receivables pursuant to sub-paragraphs (d) or (e) of Clause 12.1 (*Facilitation of Distressed Disposals and Appropriation*).

**"Debt Document"** means each of this Agreement, the Hedging Agreements, the Finance Documents, the Security Documents, any agreement evidencing the terms of the Intra-Group Liabilities or the Subordinated Liabilities and any other document designated as such by the Security Agent and the Parent.

**"Debtor"** means each Original Debtor and any person which becomes a Party as a Debtor in accordance with the terms of Clause 19 (*Changes to the Parties*).

**"Debtor Accession Deed"** means:

- (a) a deed substantially in the form set out in Schedule 1 (*Form of Debtor Accession Deed*); or
- (b) (only in the case of a member of the Group which is acceding as a borrower or guarantor under the Facilities Agreement) an Accession Deed.

**"Debtor Resignation Request"** means a notice substantially in the form set out in Schedule 3 (*Form of Debtor Resignation Request*).

**"Debtors' Intra-Group Receivables"** means, in relation to a member of the Group, any liabilities and obligations owed to any Debtor (whether actual or contingent and whether incurred solely or jointly) by that member of the Group.

**"Delegate"** means any delegate, agent, attorney or co-trustee appointed by the Security Agent.

**"Distress Event"** means any of:

- (a) an Acceleration Event; or
- (b) the enforcement of any Transaction Security where such Security has become enforceable in accordance with its terms.

**"Distressed Disposal"** means a disposal of an asset of a member of the Group which is:

- (a) being effected at the request of the Instructing Group in circumstances where the Transaction Security has become enforceable in accordance with its terms;
- (b) being effected by enforcement of the Transaction Security in accordance with its terms (including the disposal of any Property of a member of the Group, the shares in which have been subject to an Appropriation; or
- (c) being effected, after the occurrence of a Distress Event, by a Debtor to a person or persons which is, or are, not a member, or members, of the Group.

**"Enforcement Action"** means:

- (a) in relation to any Liabilities:
  - (i) the acceleration of any Liabilities or the making of any declaration that any Liabilities are prematurely due and payable (other than as a result of it becoming unlawful for a Senior Facility Creditor to perform its obligations under, or of any voluntary or mandatory prepayment arising under, the Debt Documents);
  - (ii) the making of any declaration that any Liabilities are payable on demand;
  - (iii) the making of a demand in relation to a Liability that is payable on demand (other than a demand made by an Intra-Group Lender or a Subordinated Creditor in relation to any Intra-Group Liabilities or Subordinated Liabilities which are on-demand Liabilities to the extent (A) that the demand is made in the ordinary course of dealings between the relevant Debtor and Intra-Group Lender and (B) that any resulting Payment would be a Permitted Intra-Group Payment or a Permitted Subordinated Payment);
  - (iv) the making of any demand against any member of the Group in relation to any Guarantee Liabilities of that member of the Group;
  - (v) the exercise of any right to require any member of the Group to acquire any Liability (including exercising any put or call option against any member of the Group for the redemption or purchase of any Liability but excluding any such right which arises as a result of Clause 30.1 (*Permitted Debt Purchase Transactions*) of the Facilities Agreement;



- (vi) the exercise of any right of set-off, account combination or payment netting against any member of the Group in respect of any Liabilities other than the exercise of any such right:
  - (1) as Close-out Netting by a Hedge Counterparty or by a Hedging Ancillary Lender;
  - (2) as Payment Netting by a Hedge Counterparty or by a Hedging Ancillary Lender;
  - (3) as Inter-Hedging Agreement Netting by a Hedge Counterparty;
  - (4) as Inter-Hedging Ancillary Document Netting by a Hedging Ancillary Lender; or
  - (5) which is otherwise not prohibited under the Facilities Agreement to the extent that the exercise of that right gives effect to a Permitted Payment; and
- (vii) the suing for, commencing or joining of any legal or arbitration proceedings against any member of the Group to recover any Liabilities;
- (b) the premature termination or close-out of any hedging transaction under any Hedging Agreement;
- (c) the taking of any steps to enforce or require the enforcement of any Transaction Security (including the crystallisation of any floating charge forming part of the Transaction Security) in each case in accordance with its terms;
- (d) the entering into of any composition, compromise, assignment or similar arrangement (for reasons of actual or anticipated financial difficulty) with any member of the Group which owes any Liabilities, or has given any Security, guarantee or indemnity or other assurance against loss in respect of the Liabilities (other than any action permitted under Clause 19 (*Changes to the Parties*)); or
- (e) the petitioning, applying or voting for, or the taking of any steps (including the appointment of any liquidator, receiver, examiner, administrator or similar officer) in relation to, the winding up, dissolution, examinership, administration or reorganisation of any member of the Group which owes any Liabilities, or has given any Security, guarantee, indemnity or other assurance against loss in respect of any of the Liabilities, or any of such member of the Group's assets or any suspension of payments or moratorium of any indebtedness of any such member of the Group, or any analogous procedure or step in any jurisdiction,

except that the following shall not constitute Enforcement Action:

- (i) the taking of any action falling within paragraphs (a)(vii) or (e) above which is necessary (but only to the extent necessary) to preserve the validity, existence or priority of claims in respect of Liabilities, including the registration of such claims before any court or governmental authority and the bringing, supporting or joining of proceedings to prevent any loss of the right to bring, support or join proceedings by reason of applicable limitation periods; and

- (ii) an Ancillary Lender or Hedge Counterparty bringing legal proceedings against any person solely for the purpose of:
  - (1) obtaining injunctive relief (or any analogous remedy outside England and Wales) to restrain any actual or putative breach of any Debt Document to which it is party;
  - (2) obtaining specific performance (other than specific performance of an obligation to make a payment) with no claim for damages; or
  - (3) requesting judicial interpretation of any provision of any Debt Document to which it is party with no claim for damages; and
- (iii) the taking of any action by an Intra-Group Lender or Debtor which constitutes a Permitted Transaction.

**"Enforcement Realisation Period"** means, in relation to a Material Event of Default, a period of:

- (a) 180 days following the date of the Super Senior Enforcement Notice relating to that Material Event of Default; or
- (b) if the Security Agent is taking Material Enforcement Action on the date which is 180 days following the date of the Super Senior Enforcement Notice relating to that Material Event of Default, 225 days following the date of the Super Senior Enforcement Notice relating to that Material Event of Default.

**"Excess Hedging Liabilities"** means the Liabilities owed by any Debtor to the Hedge Counterparties under or in connection with the Hedging Agreements to the extent such Liabilities are in respect of Interest Rate Hedging and which are in excess of the Super Senior Hedging Liabilities.

**"Exchange Rate Hedge Excess"** means the amount by which the Total Exchange Rate Hedging exceeds the Term Outstandings.

**"Exchange Rate Hedging"** means, in relation to a Hedge Counterparty at any time, the aggregate of the notional amounts (denominated in a Hedged Currency) of any exchange rate hedging transactions which are, at that time in effect under a Hedging Agreement to which that Hedge Counterparty and a Debtor are party.

**"Exchange Rate Hedging Proportion"** means, in relation to a Hedge Counterparty and that Hedge Counterparty's Exchange Rate Hedging, the proportion (expressed as a percentage) borne by that Hedge Counterparty's Exchange Rate Hedging to the Total Exchange Rate Hedging.

**"Exposure"** has the meaning given to that term in Clause 17.1 (*Equalisation Definitions*).

**"Facilities Agreement"** means the facilities agreement made between, amongst others, the Parent, the Company, the Lenders, the Agent, the Security Agent and others dated on or around the date of this Agreement.

**"Fairness Opinion"** means, in respect of a Distressed Disposal or a Liabilities Sale, an opinion (including an enterprise valuation of the Obligor/assets being disposed of) that the proceeds received or recovered in connection with that Distressed Disposal or Liabilities

Sale are fair from a financial point of view taking into account all relevant circumstances, including, without limitation, the method of enforcement or disposal.

**"Financial Adviser"** means any:

- (a) independent internationally recognised investment bank which is not a Lender or an Affiliate of a Lender; or
- (b) independent internationally recognised accountancy firm which has not been appointed as an insolvency office holder in relation to any Enforcement Action; or
- (c) other independent internationally recognised professional services firm which is regularly engaged in providing valuations of businesses or financial assets or, where applicable, advising on competitive sales processes,

which, in each case is not advising the Super Senior Facility Lenders in any other capacity in relation to the Super Senior Liabilities and is not the firm appointed as the administrator or other insolvency officer of any member of the Group.

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

**"Guarantee Liabilities"** means, in relation to a member of the Group, the liabilities and obligations under the Debt Documents (present or future, actual or contingent and whether incurred solely or jointly) it may have to a Creditor (other than to the Agent or the Arranger) or Debtor as or as a result of its being a guarantor or surety (including, without limitation, liabilities and obligations arising by way of guarantee, indemnity, contribution or subrogation and in particular any guarantee or indemnity arising under or in respect of the Finance Documents and the Hedging Agreements).

**"Hedge Counterparty"** means any entity which becomes a Party as a Hedge Counterparty pursuant to Clause 19.9 (*Creditor Accession Undertaking*), which is or has become party to the Facilities Agreement as a Hedge Counterparty.

**"Hedge Counterparty Obligations"** means the liabilities and obligations owed by any Hedge Counterparty to the Debtors under or in connection with the Hedging Agreements.

**"Hedge Transfer"** means a transfer to the Pari Passu Lenders (or to their nominee or nominees) of:

- (a) in respect of a transfer of the Super Senior Hedging Liabilities only:
  - (i) each Hedging Agreement (other than to the extent any Excess Hedging Liabilities remain outstanding under a Hedging Agreement) and all the rights in respect of the Super Senior Hedging Liabilities owed by the Debtors to each Hedge Counterparty; and
  - (ii) all the related Hedge Counterparty Obligations (in respect of the Super Senior Hedging Liabilities only) owed by each Hedge Counterparty to the Debtors;

- (b) in respect of a transfer of both the Super Senior Hedging Liabilities and the Excess Hedging Liabilities:
  - (i) each Hedging Agreement and all the rights in respect of the Super Senior Hedging Liabilities and Excess Hedging Liabilities owed by the Debtors to each Hedge Counterparty; and
  - (ii) all the related Hedge Counterparty Obligations (in respect of the Super Senior Hedging Liabilities and the Excess Hedging Liabilities) owed by each Hedge Counterparty to the Debtors; and
- (c) in respect of a transfer of the Super Senior Lender Hedging Liabilities:
  - (i) each Hedging Agreement and all the rights in respect of the Super Senior Lender Hedging Liabilities owed by the Debtors to each relevant Hedge Counterparty; and
  - (ii) all the related Hedge Counterparty Obligations (in respect of the Super Senior Lender Hedging Liabilities) owed by each relevant Hedge Counterparty to the Debtors,

in each case, in accordance with Clause 19.4 (*Change of Hedge Counterparty*) and as described in, and subject to, Clause 3.10 (*Option to Purchase: Pari Passu Lenders*).

**"Hedged Currency"** means the currency in which any Term Outstandings are denominated, pursuant to the Facilities Agreement, and which is hedged in respect of exchange rate risk under a Hedging Agreement.

**"Hedging Ancillary Document"** means an Ancillary Document which relates to or evidences the terms of a Hedging Ancillary Facility.

**"Hedging Ancillary Facility"** means an Ancillary Facility which is made available by way of a hedging facility.

**"Hedging Ancillary Lender"** means an Ancillary Lender to the extent that that Ancillary Lender makes available a Hedging Ancillary Facility.

**"Hedging Force Majeure"** means:

- (a) in relation to a Hedging Agreement which is based on the 1992 ISDA Master Agreement:
  - (i) an Illegality or Tax Event or Tax Event Upon Merger (each as defined in the 1992 ISDA Master Agreement); or
  - (ii) an event similar in meaning and effect to a "Force Majeure Event" (as referred to in paragraph (b) below);
- (b) in relation to a Hedging Agreement which is based on the 2002 ISDA Master Agreement, an Illegality or Tax Event, Tax Event Upon Merger or a Force Majeure Event (each as defined in the 2002 ISDA Master Agreement); or
- (c) in relation to a Hedging Agreement which is not based on an ISDA Master Agreement, any event similar in meaning and effect to an event described in paragraphs (a) or (b) above.

**"Hedging Liabilities"** means the Super Senior Hedging Liabilities and the Excess Hedging Liabilities.

**"Hedging Purchase Amount"** means:

- (a) in respect of a hedging transaction under a Hedging Agreement that has, as of the relevant time, not been terminated or closed out, the amount that would be payable to (expressed as a positive number) or by (expressed as a negative number) the relevant Hedge Counterparty on the relevant date if:
  - (i) in the case of a Hedging Agreement which is based on an ISDA Master Agreement:
    - (1) that date was an Early Termination Date (as defined in the relevant ISDA Master Agreement); and
    - (2) the relevant Debtor was the Defaulting Party (under and as defined in the relevant ISDA Master Agreement); or
  - (ii) in the case of a Hedging Agreement which is not based on an ISDA Master Agreement:
    - (1) that date was the date on which an event similar in meaning and effect (under that Hedging Agreement) to an Early Termination Date (as defined in any ISDA Master Agreement) occurred under that Hedging Agreement; and
    - (2) the relevant Debtor was in a position which is similar in meaning and effect to that of a Defaulting Party (under and as defined in the same ISDA Master Agreement),

in each case as certified by the relevant Hedge Counterparty and as calculated in accordance with the relevant Hedging Agreement; and

- (b) in respect of a hedging transaction that has, as of the relevant time, been terminated or closed out in accordance with the terms of this Agreement, the amount that is payable to (expressed as a positive number) or by (expressed as a negative number) the relevant Hedge Counterparty under any Hedging Agreement in respect of that termination or close-out to the extent that amount is unpaid.

**"Insolvency Event"** means, in relation to any member of the Group:

- (a) any resolution is passed or order made for the winding up, dissolution, examinership, administration or reorganisation of that member of the Group, a moratorium is declared in relation to any indebtedness of that member of the Group or an administrator or an examiner is appointed to that member of the Group, in each case, other than to the extent the same constitutes a Permitted Transaction under paragraph (b) of the definition of "Permitted Transaction" (as defined in the Facilities Agreement);
- (b) any composition, compromise, assignment or arrangement is made with any of its creditors by reason of actual or anticipated financial difficulties (other than the Senior Creditors);

- (c) the appointment of any liquidator, receiver, administrator, examiner, administrative receiver, compulsory manager or other similar officer in respect of that member of the Group or any of its assets in each case, other than to the extent the same constitutes a Permitted Transaction under paragraph (b) of the definition of "Permitted Transaction" (as defined in the Facilities Agreement); or
- (d) any analogous procedure or step is taken in any jurisdiction,

unless such event would not constitute an Event of Default under Clause 27.6 (*Insolvency*) and Clause 27.7 (*Insolvency Proceedings*) of the Facilities Agreement.

**"Instructing Group"** means, at any time:

- (a) if the Majority Super Senior Lenders are permitted to commence Enforcement Action pursuant to paragraphs (a)(i), (b)(i) or (b)(ii) of Clause 3.9 (*Permitted Enforcement: Super Senior Facility Lenders*), during the Super Senior Instructions Period, the Majority Super Senior Lenders; and
- (b) otherwise, the Majority Pari Passu Lenders.

**"Intercreditor Amendment"** means any amendment or waiver which is subject to Clause 25 (*Consents, Amendments and Override*).

**"Interest Rate Hedge Excess"** means the amount by which the Total Interest Rate Hedging exceeds the Term Outstandings.

**"Interest Rate Hedging"** means, in relation to a Hedge Counterparty at any time, the aggregate of the notional amounts of any interest rate hedging transactions which are, at that time, in effect under a Hedging Agreement to which that Hedge Counterparty and a Debtor are party.

**"Interest Rate Hedging Proportion"** means, in relation to a Hedge Counterparty and that Hedge Counterparty's Interest Rate Hedging, the proportion (expressed as a percentage) borne by that Hedge Counterparty's Interest Rate Hedging to the Total Interest Rate Hedging.

**"Inter-Hedging Agreement Netting"** means the exercise of any right of set-off, account combination, close-out netting or payment netting (whether arising out of a cross agreement netting agreement or otherwise) by a Hedge Counterparty against liabilities owed to a Debtor by that Hedge Counterparty under a Hedging Agreement in respect of Hedging Liabilities owed to that Hedge Counterparty by that Debtor under another Hedging Agreement.

**"Inter-Hedging Ancillary Document Netting"** means the exercise of any right of set-off, account combination, close-out netting or payment netting (whether arising out of a cross agreement netting agreement or otherwise) by a Hedging Ancillary Lender against liabilities owed to a Debtor by that Hedging Ancillary Lender under a Hedging Ancillary Document in respect of Senior Facility Liabilities owed to that Hedging Ancillary Lender by that Debtor under another Hedging Ancillary Document.

**"Intra-Group Lenders"** means each member of the Group which has made a loan available to, granted credit to or made any other financial arrangement having similar effect with another member of the Group and which is named on the signing pages as an Intra-Group Lender or which becomes a Party as an Intra-Group Lender in accordance with the terms of Clause 19 (*Changes to the Parties*).

**"Intra-Group Lending"** means the loans, credit or other financial arrangements made available by any Intra-Group Lender to another member of the Group.

**"Intra-Group Liabilities"** means the Liabilities owed by any member of the Group to any of the Intra-Group Lenders.

**"ISDA Master Agreement"** means a 1992 ISDA Master Agreement or a 2002 ISDA Master Agreement.

**"Legal Reservations"** has the meaning given to that term in the Facilities Agreement.

**"Lenders"** means each Lender (as defined in the Facilities Agreement) and Ancillary Lender.

**"Liabilities"** means all present and future liabilities and obligations at any time of any member of the Group to any Creditor (1) under the Debt Documents and (2) in respect of any Intra-Group Lending (to the extent not documented in a Debt Document for any reason), in each case both actual and contingent and whether incurred solely or jointly or as principal or surety or in any other capacity together with any of the following matters relating to or arising in respect of those liabilities and obligations:

- (a) any refinancing, novation, deferral or extension;
- (b) any claim for breach of representation, warranty or undertaking or on an event of default or under any indemnity given under or in connection with any document or agreement evidencing or constituting any other liability or obligation falling within this definition;
- (c) any claim for damages or restitution; and
- (d) any claim as a result of any recovery by any Debtor of a Payment on the grounds of preference or otherwise,

and any amounts which would be included in any of the above but for any discharge, non-provability, unenforceability or non-allowance of those amounts in any insolvency or other proceedings.

**"Liabilities Acquisition"** means, in relation to a person and to any Liabilities, a transaction where that person:

- (a) purchases by way of assignment or transfer;
- (b) enters into any sub-participation in respect of; or
- (c) enters into any other agreement or arrangement having an economic effect substantially similar to a sub-participation in respect of,

the rights in respect of those Liabilities.

**"Liabilities Sale"** means a Debt Disposal pursuant to paragraph (e) of Clause 12.1 (*Facilitation of Distressed Disposals and Appropriation*).

**"Majority Lenders"** means the "Majority Lenders" under and as defined in the Facilities Agreement after the application of:

- (a) Clause 41.9 (*Excluded Commitments*);

- (b) paragraph (a) of Clause 30.3 (*Disenfranchisement of Sponsor Affiliates*); and
  - (c) Clause 40.11 (*Disenfranchisement of Defaulting Lenders*),
- of the Facilities Agreement.

**"Majority Pari Passu Lenders"** means a Pari Passu Lender or Pari Passu Lenders whose Pari Passu Facilities Commitments aggregate 66 $\frac{2}{3}$  per cent. or more of the Pari Passu Facilities Commitments (or, if the Pari Passu Facilities Commitments have been reduced to zero, aggregated 66 $\frac{2}{3}$  per cent. or more of Pari Passu Facilities Commitments prior to that reduction).

**"Majority Senior Creditors"** means, at any time, those Senior Creditors whose Senior Credit Participations at that time aggregate 66 $\frac{2}{3}$  per cent. or more of the total Senior Credit Participations at that time.

**"Majority Super Senior Lenders"** has the meaning given to the term "Majority Super Senior Revolving Facility Lenders" in the Facilities Agreement.

**"Mandatory Prepayment"** means a mandatory prepayment of any of the Senior Facility Liabilities pursuant to Clause 11.2 (*Disposal, Insurance, Listing and Acquisition Proceeds*) of the Facilities Agreement.

**"Material Enforcement Action"** means:

- (a) the enforcement or disposal of any Transaction Security, the requesting of a Distressed Disposal and/or the release or disposal of claims and/or Transaction Security on a Distressed Disposal under Clause 12 (*Distressed Disposals and Appropriation*);
- (b) the giving of instructions under Clause 7.7 (*Security Agent instructions*) as to actions with respect to the Transaction Security and/or the Charged Property following an Insolvency Event;
- (c) the giving of instructions to the Agent to declare that all of the Utilisations, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, in accordance with paragraph (a)(ii) of Clause 28.18 (*Acceleration*) of the Facilities Agreement;
- (d) the taking of any preparatory steps that a prudent lender might reasonably be expected to take, or instruct the Security Agent to take, in relation to the matters referred to in paragraphs (a) or (b) above with a view to maximising the value of any realisation in a timely manner, taking into account all the relevant circumstances; or
- (e) the taking of any other actions consequential on (or necessary to effect) any of the actions mentioned in paragraphs (a), (b) or (c) above.

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

**"Multi-account Overdraft Liabilities"** means the Liabilities arising under any Multi-account Overdraft.

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



**"Non-Cash Consideration"** means consideration in a form other than cash.

**"Non-Cash Recoveries"** means:

- (a) any proceeds of a Distressed Disposal or a Debt Disposal; or
- (b) any amount distributed to the Security Agent pursuant to Clause 8.2 (*Turnover by the Creditors*),

which are, or is, in the form of Non-Cash Consideration;

**"Non-Credit Related Close-out"** means a Permitted Hedge Close-out described in any of sub-paragraphs (a)(i) to (a)(v) of Clause 4.9 (*Permitted Enforcement: Hedge Counterparties*).

**"Non-Distressed Disposal"** has the meaning given to that term in Clause 11 (*Non-Distressed Disposals*).

**"Non-Priority Senior Creditor"** has the meaning given to that term in Clause 17.1 (*Equalisation definitions*).

**"Option Exercise Notice"** means an irrevocable and legally binding notice from a Pari Passu Lender of its intention to exercise its rights under Clause 3.10 (*Option to purchase: Pari Passu Lenders*).

**"Other Liabilities"** means, in relation to a member of the Group, any trading and other liabilities and obligations (not being Borrowing Liabilities or Guarantee Liabilities) it may have to a Subordinated Creditor, Intra-Group Lender or Debtor.

**"Pari Passu Facilities Commitments"** means the Senior Term Facility Commitments, the Acquisition/Capex Facility Commitments, the Facility C Commitments, the Senior Revolving Facility Commitments, the Incremental Term Facility Commitments and any Incremental Senior Revolving Facility Commitments.

**"Pari Passu Lender"** means each Lender which has a Commitment under the Senior Term Facility, the Acquisition/Capex Facility, Facility C, the Senior Revolving Facility, an Incremental Term Facility and/or an Incremental Senior Revolving Facility.

**"Pari Passu Liabilities"** means the Liabilities owed by the Debtors to the Pari Passu Lenders (in that capacity) under the Finance Documents.

**"Party"** means a party to this Agreement.

**"Payment"** means, in respect of any Liabilities (or any other liabilities or obligations), a payment, prepayment, repayment, redemption, defeasance or discharge of those Liabilities (or other liabilities or obligations).

**"Payment Netting"** means:

- (a) in respect of a Hedging Agreement or a Hedging Ancillary Document based on an ISDA Master Agreement, netting under section 2(c) of the relevant ISDA Master Agreement; and
- (b) in respect of a Hedging Agreement or a Hedging Ancillary Document not based on an ISDA Master Agreement, netting pursuant to any provision of that Hedging

Agreement or a Hedging Ancillary Document which has a similar effect to the provision referenced in paragraph (a) above.

**"Permitted Hedge Close-out"** means, in relation to a hedging transaction under a Hedging Agreement, a termination or close-out of that hedging transaction which is permitted pursuant to Clause 4.9 (*Permitted Enforcement: Hedge Counterparties*).

**"Permitted Hedge Payments"** means the Payments permitted by Clause 4.3 (*Restriction on Payment: Hedging Liabilities*).

**"Permitted Intra-Group Payments"** means the Payments permitted by Clause 5.2 (*Permitted Payments: Intra-Group Liabilities*).

**"Permitted Payment"** means a Payment of Senior Facility Liabilities made at any time in accordance with the Finance Documents, a Permitted Hedge Payment, Permitted Intra-Group Payment or a Permitted Subordinated Payment.

**"Permitted Subordinated Payments"** means the Payments permitted by Clause 6.2 (*Permitted Payments: Subordinated Liabilities*).

**"Property"** of a member of the Group or of a Debtor means:

- (a) any asset of that member of the Group or of that Debtor;
- (b) any Subsidiary of that member of the Group or of that Debtor; and
- (c) any asset of any such Subsidiary.

**"Receiver"** means a receiver or receiver and manager or administrative receiver of the whole or any part of the Charged Property.

**"Recoveries"** has the meaning given to that term in Clause 16.1 (*Order of application*).

**"Relevant Ancillary Lender"** means, in respect of any SFA Cash Cover, the Ancillary Lender (if any) for which that SFA Cash Cover is provided.

**"Relevant Liabilities"** means:

- (a) in the case of a Creditor:
  - (i) the Liabilities owed to Creditors ranking (in accordance with the terms of this Agreement) *pari passu* with or in priority to that Creditor (as the case may be); and
  - (ii) all present and future liabilities and obligations, actual and contingent, of the Debtors to the Security Agent; and
- (b) in the case of a Debtor, the Liabilities owed to the Creditors together with all present and future liabilities and obligations, actual and contingent, of the Debtors to the Security Agent.

**"Report"** means any "Report" under and as defined in the Facilities Agreement and any other due diligence report relating to a Permitted Acquisition which falls within paragraph (f) of the definition of "Permitted Acquisition" in the Facilities Agreement, in each case addressed to or capable of being relied upon by the Reliance Parties.

**"Secured Obligations"** means all the Liabilities and all other present and future liabilities and obligations at any time due, owing or incurred by any member of the Group and by each Debtor to any Secured Party under the Debt Documents, both actual and contingent and whether incurred solely or jointly and as principal or surety or in any other capacity.

**"Secured Parties"** means the Security Agent, any Receiver or Delegate and each of the Senior Creditors from time to time but, in the case of each Senior Creditor, only if it is a Party or has acceded to this Agreement, in the appropriate capacity, pursuant to Clause 19.9 (*Creditor Accession Undertaking*).

**"Security"** means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

**"Security Agent's Spot Rate of Exchange"** means, in respect of the conversion of one currency (the **"First Currency"**) into another currency (the **"Second Currency"**):

- (a) the Security Agent's spot rate of exchange; or
- (b) (if the Security Agent does not have an available spot rate of exchange) any other publicly available spot rate of exchange selected by the Security Agent (acting reasonably),

for the purchase of the Second Currency with the First Currency in the London foreign exchange market at or about 11:00 a.m. (London time) on a particular day, which shall, in either case, be notified by the Security Agent in accordance with paragraph (e) of Clause 18.3 (*Duties of the Security Agent*).

**"Security Documents"** means:

- (a) each of the Transaction Security Documents;
- (b) any other document entered into at any time by any of the Debtors creating any guarantee, indemnity, Security or other assurance against financial loss in favour of any of the Secured Parties as security for any of the Secured Obligations; and
- (c) any Security granted under any covenant for further assurance in any of the documents referred to in paragraphs (a) and (b) above.

**"Security Property"** means:

- (a) the Transaction Security expressed to be granted in favour of the Security Agent as trustee for the Secured Parties and all proceeds of that Transaction Security;
- (b) all obligations expressed to be undertaken by a Debtor to pay amounts in respect of the Liabilities to the Security Agent as trustee for the Secured Parties and secured by the Transaction Security together with all representations and warranties expressed to be given by a Debtor in favour of the Security Agent as trustee for the Secured Parties;
- (c) the Security Agent's interest in any trust fund created pursuant to Clause 8 (*Turnover of Receipts*); and
- (d) any other amounts or property, whether rights, entitlements, choses in action or otherwise, actual or contingent, which the Security Agent is required by the terms of the Debt Documents to hold as trustee on trust for the Secured Parties.

**"Senior Credit Participation"** means, in relation to a Lender or a Hedge Counterparty, the aggregate of:

- (a) its aggregate Commitments, if any;
- (b) in respect of any hedging transaction of that Hedge Counterparty under any Hedging Agreement that has, as of the date the calculation is made, been terminated or closed out in accordance with the terms of this Agreement, the amount, if any, payable to it under any Hedging Agreement in respect of that termination or close-out as of the date of termination or close-out (and before taking into account any interest accrued on that amount since the date of termination or close-out) to the extent that amount is unpaid (that amount to be certified by the relevant Hedge Counterparty (acting reasonably) and as calculated in accordance with the relevant Hedging Agreement); and
- (c) after the Senior Facilities Discharge Date only, in respect of any hedging transaction of that Hedge Counterparty under any Hedging Agreement that has, as of the date the calculation is made, not been terminated or closed out:
  - (i) if the relevant Hedging Agreement is based on an ISDA Master Agreement the amount, if any, which would be payable to it under that Hedging Agreement in respect of that hedging transaction, if the date on which the calculation is made was deemed to be an Early Termination Date (as defined in the relevant ISDA Master Agreement) for which the relevant Debtor is the Defaulting Party (as defined in the relevant ISDA Master Agreement); or
  - (ii) if the relevant Hedging Agreement is not based on an ISDA Master Agreement, the amount, if any, which would be payable to it under that Hedging Agreement in respect of that hedging transaction, if the date on which the calculation is made was deemed to be the date on which an event similar in meaning and effect (under that Hedging Agreement) to an Early Termination Date (as defined in any ISDA Master Agreement) occurred under that Hedging Agreement for which the relevant Debtor is in a position similar in meaning and effect (under that Hedging Agreement) to that of a Defaulting Party (under and as defined in the same ISDA Master Agreement),

that amount, in each case, to be certified by the relevant Hedge Counterparty (acting reasonably) and as calculated in accordance with the relevant Hedging Agreement.

**"Senior Creditors"** means the Senior Facility Creditors and the Hedge Counterparties.

**"Senior Discharge Date"** means the first date on which:

- (a) all Senior Liabilities have been fully and finally discharged to the satisfaction of the Agent (in the case of the Senior Facility Liabilities) and each Hedge Counterparty (in the case of its Hedging Liabilities), whether or not as the result of an enforcement; and
- (b) the Senior Creditors are under no further obligation to provide financial accommodation to any of the Debtors under the Debt Documents.

**"Senior Facility Creditors"** means each Agent, Arranger, Lender and Ancillary Lender.

**"Senior Facilities Discharge Date"** means the first date on which:

- (a) all Senior Facility Liabilities have been fully and finally discharged to the satisfaction of the Agent, whether or not as the result of an enforcement; and
- (b) the Senior Facility Creditors are under no further obligation to provide financial accommodation to any of the Debtors under any of the Debt Documents.

**"Senior Facility Liabilities"** means the Liabilities owed by the Debtors to the Senior Facility Creditors under the Finance Documents.

**"Senior Liabilities"** means the Senior Facility Liabilities, the Super Senior Hedging Liabilities and the Excess Hedging Liabilities.

**"SFA Cash Cover"** means "cash cover" under and as defined in the Facilities Agreement.

**"SFA Cash Cover Document"** means, in relation to any SFA Cash Cover, any Finance Document which creates or evidences, or is expressed to create or evidence, the Security required to be provided over that SFA Cash Cover by the Facilities Agreement.

**"Subordinated Creditors"** means Holdco and any other person who accedes to this Agreement as a Subordinated Creditor.

**"Subordinated Debt Document"** means any document or agreement evidencing the Liabilities owed by the Parent to the Subordinated Creditors and any other loan agreement, loan note document or other debt instrument evidencing such Liabilities.

**"Subordinated Liabilities"** means the Liabilities owed to the Subordinated Creditors by the Parent (including under the Subordinated Debt Documents).

**"Super Senior Creditors"** means the Super Senior Facility Lenders (to the extent of their Super Senior Facility Liabilities) and the Hedge Counterparties (to the extent of their Super Senior Hedging Liabilities).

**"Super Senior Discharge Date"** means the date on which all Super Senior Liabilities have been fully and finally discharged to the satisfaction of the Agent and the Hedge Counterparties, whether or not as the result of an enforcement, and the Super Senior Creditors are under no further obligation to provide financial accommodation to any of the Debtors or any other member of the Group under the Debt Documents (apart from with respect to any Excess Hedging Liabilities).

**"Super Senior Enforcement Notice"** means a notice delivered by the Agent (acting on the instructions of the Majority Super Senior Lenders) to the Security Agent stating that a Material Event of Default has occurred and is continuing.

**"Super Senior Facility"** has the meaning given to the term "Super Senior Revolving Facility" in the Facilities Agreement.

**"Super Senior Facility Lender"** means each Super Senior Revolving Facility Lender (as defined in the Facilities Agreement) and each Ancillary Lender which provides part of its Super Senior Revolving Commitments as an Ancillary Facility.

**"Super Senior Facility Liabilities"** means the Liabilities owed by the Debtors to the Lenders with respect to each Super Senior Facility (including any Ancillary Facility Liabilities under that Super Senior Facility).

**"Super Senior Hedge Counterparty"** means each Hedge Counterparty to the extent it is owed Super Senior Hedging Liabilities.

**"Super Senior Hedging Amount"** means an amount (after the application of any payment netting to the extent permitted pursuant to the terms of such Hedging Agreements and this Agreement) equal to £10,000,000.

**"Super Senior Hedging Liabilities"** means collectively the Liabilities owed by any Debtor to each Hedge Counterparty under or in connection with the Hedging Agreements in a Common Currency Amount not exceeding in the case of any Hedge Counterparty that Hedge Counterparty's Allocated Super Senior Hedging Amount.

**"Super Senior Instructions Period"** means the period, if any, commencing on the date the Majority Super Senior Lenders instruct the Security Agent to commence Enforcement Action pursuant to paragraph (a)(i), (b)(i) or (b)(ii) of Clause 3.9 (*Permitted Enforcement: Super Senior Facility Lenders*) and ending on the earlier of: (a) the date on which one or more Pari Passu Lenders enter into an irrevocable and legally binding commitment to acquire all the Super Senior Facility Liabilities within 20 days of the date of such irrevocable and legally binding commitment in accordance with Clause 3.10 (*Option to purchase: Pari Passu Lenders*); and (b) the Super Senior Discharge Date.

**"Super Senior Lender Hedging Liabilities"** means all Super Senior Hedging Liabilities and Excess Hedging Liabilities owed to a Hedge Counterparty which is at the relevant time also a Super Senior Facility Lender (or an Affiliate of a Super Senior Facility Lender).

**"Super Senior Liabilities"** means the Super Senior Facility Liabilities and the Super Senior Hedging Liabilities. For the avoidance of doubt, any action taken by an Ancillary Lender to net or set-off in relation to a Multi-account Overdraft in accordance with Clause 3.8 (*Permitted Enforcement: Ancillary Lenders*) shall not have the effect of reducing the extent to which Super Senior Facility Liabilities constitute Super Senior Liabilities.

**"Super Senior Standstill Period"** has the meaning given to that term in Clause 3.9 (*Permitted Enforcement: Super Senior Facility Lenders*).

**"Super Senior Transfer"** has the meaning given to that term in Clause 3.10 (*Option to purchase: Pari Passu Lenders*).

**"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).

**"Term Outstandings"** means, at any time, the aggregate of the amounts of principal (not including any capitalised or deferred interest) then outstanding under each Term Facility.

**"Total Exchange Rate Hedging"** means, at any time, the aggregate of each Hedge Counterparty's Exchange Rate Hedging at that time.

**"Total Interest Rate Hedging"** means, at any time, the aggregate of each Hedge Counterparty's Interest Rate Hedging at that time.

**"Transaction Security"** means the Security created or evidenced or expressed to be created or evidenced under or pursuant to the Security Documents.

"VAT" means:

- (a) any value added tax imposed by the Value Added Tax Act 1994;
- (b) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and
- (c) any other tax of a similar nature, whether imposed in the United Kingdom or in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in paragraphs (a) or (b) above, or imposed elsewhere.

## 1.2 Construction

- (a) Unless a contrary indication appears, a reference in this Agreement to:
  - (i) any "**Agent**", "**Ancillary Lender**", "**Arranger**", "**Company**", "**Creditor**", "**Debtor**", "**Hedge Counterparty**", "**Intra-Group Lender**", "**Parent**", "**Pari Passu Lender**", "**Party**", "**Senior Creditor**", "**Security Agent**", "**Borrower**", "**Senior Creditor**", "**Guarantor**", "**Lender**", "**Subordinated Creditor**", "**Super Senior Creditor**" or "**Super Senior Facility Lender**" shall be construed to be a reference to it in its capacity as such and not in any other capacity;
  - (ii) any "**Agent**", "**Ancillary Lender**", "**Arranger**", "**Creditor**", "**Debtor**", "**Hedge Counterparty**", "**Pari Passu Lender**", any "**Party**", the "**Security Agent**", "**Subordinated Creditor**", "**Super Senior Creditor**" or "**Super Senior Facility Lender**" or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Debt Documents and, in the case of the Security Agent, any person for the time being appointed as Security Agent or Security Agents in accordance with this Agreement;
  - (iii) an "**amount**" includes an amount of cash and an amount of Non-Cash Consideration;
  - (iv) "**assets**" includes present and future properties, revenues and rights of every description;
  - (v) a "**Debt Document**" or any other agreement or instrument is (other than a reference to a "**Debt Document**" or any other agreement or instrument in "**original form**") a reference to that Debt Document, or other agreement or instrument, as amended, novated, supplemented, extended or restated as permitted by this Agreement;
  - (vi) a "**distribution**" of or out of the assets of a member of the Group, includes a distribution of cash and a distribution of Non-Cash Consideration;
  - (vii) "**enforcing**" (or any derivation) the Transaction Security includes the appointment of an administrator (or any analogous officer in any jurisdiction) of a Debtor by the Security Agent;
  - (viii) a "**group of Creditors**" includes all the Creditors in that group and a "**group of Senior Creditors**" includes all the Senior Creditors in that group;

- (ix) "**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;
  - (x) the "**original form**" of a "**Debt Document**" or any other agreement or instrument is a reference to that Debt Document, agreement or instrument as originally entered into;
  - (xi) a "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
  - (xii) "**proceeds**" of a Distressed Disposal or of a Debt Disposal includes proceeds in cash and in Non-Cash Consideration;
  - (xiii) a Super Senior Facility Lender being provided "**cash cover**" in respect of Ancillary Facilities means an amount being paid in the currency of that Ancillary Facility to an interest-bearing account in the name of that Super Senior Facility Lender and the following conditions being met:
    - (1) the account is with that Super Senior Facility Lender;
    - (2) until no amount is or may be outstanding under that Ancillary Facility withdrawals from the account may only be made to pay that Super Senior Facility Lender the amounts due and payable to it under the Facilities Agreement in respect of that Ancillary Facility; and
    - (3) the person who is providing such cash cover has executed a security document over the account, in form and substance satisfactory to the Super Senior Facility Lender with which the account is held, creating first ranking security interest over that account;
  - (xiv) a "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but, if not having the force of law, compliance with which is customary for entities or persons such as the relevant entity or person) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self regulatory or other authority or organisation; and
  - (xv) a provision of law is a reference to that provision as amended or re-enacted.
- (b) Section, Clause and Schedule headings are for ease of reference only.
- (c) A Default, an Event of Default or a Material Event of Default is "**continuing**" if it has not been remedied or waived with the consent of those Lenders whose consent is required under the Facilities Agreement.

### 1.3 Third party rights

- (a) Unless expressly provided to the contrary in this Agreement, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the "**Third Parties Act**") to enforce or to enjoy the benefit of any term of this Agreement.



- (b) Notwithstanding any term of this Agreement, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.
- (c) Any Receiver, Delegate or any other person described in paragraph (b) of Clause 18.10 (*Exclusion of Liability*) may, subject to this Clause 1.3 and the Third Parties Act, rely on any Clause of this Agreement which expressly confers rights on it.

#### 1.4 **Group Agent**

- (a) Each Party (other than the Parent) which is a member of the Group, by its execution of this Agreement or on becoming a Party by way of accession, irrevocably appoints the Parent to act on its behalf as its agent in relation to the Debt Documents and irrevocably authorises the Parent on its behalf to make agreements, to enter into deeds and to effect any amendments, supplements and variations (in each case, however fundamental) capable of being given, made or effected by that member of the Group (notwithstanding that they may increase that member of the Group's obligations or otherwise affect that member of the Group) and to give confirmation as to continuation of surety obligations, without further reference to or the consent of that member of the Group and in each case the member of the Group shall be bound as though it had itself executed or made the agreements or deeds, or effected the amendments supplements or variations.
- (b) Every agreement or deed entered into or made under or in connection with any Debt Document by the Parent on behalf of a member of the Group (whether or not known to any other member of the Group and whether occurring before or after such other member of the Group became a member of the Group under any Debt Document) shall be binding for all purposes on that member of the Group as if that member of the Group had expressly made or entered into the same.

#### 1.5 **Acting on instructions**

Where there is any reference in this Agreement to the Security Agent acting reasonably or properly, or doing an act or coming to a determination, opinion or belief that is reasonable or proper, or any similar or analogous reference, the Security Agent shall, where it has sought such instructions from the Instructing Group, be deemed to be acting reasonably and properly or doing an act or coming to a determination, opinion or belief that is reasonable if, as applicable, the Security Agent acts on the instructions of the Instructing Group. Where there is in this Agreement a provision to the effect that the Security Agent is not to unreasonably withhold or delay its consent or approval, it shall be deemed not to have so withheld or delayed its consent or approval if the withholding or delay is caused by instructions being sought from the Instructing Group and it is not unreasonable for the Instructing Group to withhold or delay giving their consent or approval.

## SECTION 2

### RANKING AND SENIOR CREDITORS

#### 2. RANKING AND PRIORITY

##### 2.1 Senior Creditor Liabilities

Each of the Parties agrees that the Senior Facility Liabilities and the Hedging Liabilities shall rank in right and priority of payment:

- (a) (to the extent legally permissible) first before any other Liabilities; and
- (b) as amongst themselves, *pari passu* and without any preference between them.

##### 2.2 Transaction Security

Each of the Parties agrees that the Transaction Security shall subject only to Clause 16 (*Application of Proceeds*) rank and secure the Senior Facility Liabilities and the Hedging Liabilities *pari passu* and without any preference between them.

##### 2.3 Subordinated and Intra-Group Liabilities

- (a) Each of the Parties agrees that the Intra-Group Liabilities and the Subordinated Liabilities are postponed and subordinated to the Liabilities owed by the Debtors to the Senior Creditors.
- (b) This Agreement does not purport to rank any of the Subordinated Liabilities or the Intra-Group Liabilities as between themselves.

##### 2.4 Anti-layering

Notwithstanding any provision in any Debt Document to the contrary, prior to the Senior Discharge Date and unless otherwise agreed by all of the *Pari Passu* Lenders, no Debtor shall incur or permit any other member of the Group to incur any Liabilities that:

- (a) are expressed to be secured by the Transaction Security on a subordinated basis to any of the Super Senior Liabilities and on a senior basis to the *Pari Passu* Liabilities; or
- (b) are expressed to rank or rank so that those Liabilities are subordinated to any of the Super Senior Liabilities but are senior to the *Pari Passu* Liabilities; or
- (c) are contractually subordinated in right of payment to any of the Super Senior Liabilities and senior in right of payment to the *Pari Passu* Liabilities,

in each case unless such ranking or subordination arise as a matter of law or the other terms of this Agreement.

#### 3. SENIOR FACILITY CREDITORS AND SENIOR FACILITY LIABILITIES

##### 3.1 Payment of Senior Facility Liabilities

The Debtors may make Payments of the Senior Facility Liabilities at any time in accordance with the Finance Documents.

### 3.2 **Amendments and Waivers: Senior Facility Creditors**

Subject to Clause 3.3 (*Restriction on amendments and waivers: SFA guarantee*), the Senior Facility Creditors may amend or waive the terms of the Finance Documents in accordance with their terms (and subject to any consent required under them) at any time.

### 3.3 **Restriction on amendments and waivers: SFA guarantee**

Without prejudice to Clause 12 (*Distressed Disposals and Appropriation*), the Senior Facility Creditors may not:

- (a) amend or waive the terms of the Finance Documents if the amendment or waiver:
  - (i) would have the effect of changing, or relates to, the nature or scope of the guarantee and indemnity granted under Clause 23 (*Guarantee and Indemnity*) of the Facilities Agreement unless expressly envisaged by, or permitted in accordance with, the original form of a Finance Document; or
  - (ii) relates to the release of any guarantee and indemnity granted under Clause 23 (*Guarantee and Indemnity*) of the Facilities Agreement unless expressly envisaged by the original form of a Finance Document or relating to a sale or disposal of an asset which is a Non-Distressed Disposal,

unless the prior consent of the Hedge Counterparties is obtained (such consent not to be unreasonably withheld or delayed); or

- (b) consent to the resignation of a member of the Group which has granted a guarantee and indemnity under Clause 23 (*Guarantee and Indemnity*) of the Facilities Agreement (other than by approving the disposal of such member of the Group under the paragraph (a)(i) of Clause 31.3 (*Resignation of a Guarantor*) of the Facilities Agreement) unless each Hedge Counterparty has:
  - (i) notified the Security Agent that no payment is due to it from that member of the Group under that Clause (such notification not to be unreasonably withheld or delayed by each Hedge Counterparty); or
  - (ii) agreed to that consent being given (such consent not to be unreasonably withheld or delayed).

### 3.4 **Designation of Finance Documents**

If the terms of a document effect a change which would, if that change was effected by way of amendment to, or waiver of, the terms of a Finance Document, require a notification by or the consent of the Hedge Counterparties under Clause 3.3 (*Restriction on amendments and waivers: SFA guarantee*), that document shall not constitute a Finance Document for the purposes of this Agreement or a "Finance Document" for the purposes of the Facilities Agreement, without such a notification by or the prior consent of the Hedge Counterparties (such consent not to be unreasonably withheld or delayed).

### 3.5 **Security: Senior Facility Creditors**

Other than as set out in Clause 3.6 (*Security: Ancillary Lenders*), the Senior Facility Creditors may take, accept or receive the benefit of:

- (a) any Security in respect of the Senior Facility Liabilities from any member of the Group in addition to the Common Transaction Security which (except for any

Security permitted under Clause 3.6 (*Security: Ancillary Lenders*) to the extent legally possible and subject to the Agreed Security Principles, at the same time, is also offered either:

- (i) to the Security Agent as trustee for the other Secured Parties in respect of their Liabilities; or
- (ii) in the case of any jurisdiction in which effective Security cannot be granted in favour of the Security Agent as trustee for the Secured Parties:
  - (1) to the other Secured Parties in respect of their Liabilities; or
  - (2) to the Security Agent under a parallel debt structure for the benefit of the other Secured Parties

and ranks in the same order of priority as that contemplated in Clause 2 (*Transaction Security*);

- (b) any guarantee, indemnity or other assurance against loss in respect of the Senior Facility Liabilities from any member of the Group in addition to those in:
  - (i) the original form of Facilities Agreement;
  - (ii) this Agreement; or
  - (iii) any Common Assurance,

if (except for any guarantee, indemnity or other assurance against loss permitted under Clause 3.6 (*Security: Ancillary Lenders*)) and to the extent legally possible and subject to the Agreed Security Principles, at the same time it is also offered to the other Secured Parties in respect of their Liabilities and ranks in the same order of priority as that contemplated in Clause 2 (*Ranking and Priority*); and

- (c) any Security, guarantee, indemnity or other assurance against loss in respect of the Senior Facility Liabilities from any member of the Group which is described in Clause 3.11 (*Facilitation of establishment of Incremental Facilities*).

### 3.6 **Security: Ancillary Lenders**

No Ancillary Lender will, unless the prior consent of the Majority Senior Creditors (excluding for these purposes the relevant Ancillary Lender) is obtained, take, accept or receive from any member of the Group the benefit of any Security, guarantee, indemnity or other assurance against loss in respect of any of the Liabilities owed to it other than:

- (a) the Common Transaction Security;
- (b) each guarantee, indemnity or other assurance against loss contained in:
  - (i) the original form of Facilities Agreement;
  - (ii) this Agreement; or
  - (iii) any Common Assurance;
- (c) indemnities and assurances against loss contained in the Ancillary Documents no greater in extent than any of those referred to in paragraph (b) above;

- (d) any SFA Cash Cover permitted under the Facilities Agreement relating to any Ancillary Facility;
- (e) the indemnities contained in an ISDA Master Agreement (in the case of a Hedging Ancillary Document which is based on an ISDA Master Agreement) or any indemnities which are similar in meaning and effect to those indemnities (in the case of a Hedging Ancillary Document which is not based on an ISDA Master Agreement); or
- (f) any Security, guarantee, indemnity or other assurance against loss giving effect to, or arising as a result of the effect of, any netting or set-off arrangement relating to the Ancillary Facilities for the purpose of netting debit and credit balances arising under the Ancillary Facilities.

### 3.7 **Restriction on Enforcement: Super Senior Facility Lenders**

Subject to Clause 3.8 (*Permitted Enforcement: Ancillary Lenders*) and Clause 3.9 (*Permitted Enforcement: Super Senior Facility Lenders*), prior to the Senior Discharge Date, none of the Super Senior Facility Lenders shall be entitled to take any Enforcement Action in respect of any of the Super Senior Liabilities owed to it in that capacity (unless at the time for any reason the only outstanding Senior Liabilities are Super Senior Liabilities).

### 3.8 **Permitted Enforcement: Ancillary Lenders**

- (a) Each Ancillary Lender may take Enforcement Action which would be available to it but for Clause 3.7 (*Restriction on Enforcement: Super Senior Facility Lenders*) if:
  - (i) at the same time as, or prior to, that action, Enforcement Action has been taken in respect of the Senior Facility Liabilities (excluding the Liabilities owing to Ancillary Lenders), in which case the Ancillary Lenders may take the same Enforcement Action as has been taken in respect of those Senior Facility Liabilities;
  - (ii) that action is contemplated by the Facilities Agreement or Clause 3.5 (*Security: Ancillary Lenders*);
  - (iii) that Enforcement Action is taken in respect of SFA Cash Cover which has been provided in accordance with the Facilities Agreement and that action is not prohibited by Clause 7.4 (*Repayment of Ancillary Facility*) of the Facilities Agreement;
  - (iv) at the same time as or prior to, that action, the consent of the Majority Senior Creditors (excluding for these purposes the relevant Ancillary Lender) to that Enforcement Action is obtained; or
  - (v) an Insolvency Event has occurred in relation to any Debtor, in which case after the occurrence of that Insolvency Event, each Ancillary Lender shall be entitled (if it has not already done so) to exercise any right it may otherwise have in respect of that member of the Group to:
    - (1) accelerate any of that member of the Group's Senior Facility Liabilities or declare them prematurely due and payable on demand;

- (2) make a demand under any guarantee, indemnity or other assurance against loss given by that member of the Group in respect of any Senior Facility Liabilities;
  - (3) exercise any right of set-off or take or receive any Payment in respect of any Senior Facility Liabilities of that member of the Group; or
  - (4) claim and prove in any insolvency process of that member of the Group for the Senior Facility Liabilities owing to it.
- (b) Clause 3.7 (*Restriction on Enforcement: Super Senior Facility Lenders*) shall not restrict any right of an Ancillary Lender:
- (i) to demand repayment or prepayment of any of the Liabilities owed to it prior to the expiry date of the relevant Ancillary Facility; or
  - (ii) to net or set off in relation to a Multi-account Overdraft,

in accordance with the terms of the Facilities Agreement and to the extent that the demand is required to reduce, or the netting or set-off represents a reduction from, the Gross Outstandings of that Multi-account Overdraft to or towards its Net Outstandings.

### 3.9 Permitted Enforcement: Super Senior Facility Lenders

- (a) The Majority Super Senior Lenders may take Enforcement Action (in relation to the Super Senior Facility Liabilities) if:
- (i) subject to paragraphs (b) and (c) below, while a Material Event of Default is continuing, the Agent (acting on the instructions of the Majority Super Senior Lenders) has delivered a Super Senior Enforcement Notice to the Security Agent, and
    - (1) a period (a "**Super Senior Standstill Period**") of not less than:
      - (A) 90 days in the case of a Material Event of Default specified in sub-paragraph (a) of the definition thereof;
      - (B) 120 days in the case of a Material Event of Default specified in sub-paragraph (b)(i) of the definition thereof, or
      - (C) 150 days in the case of any other Material Event of Default,
 has elapsed from the date on which that Super Senior Enforcement Notice becomes effective in accordance with Clause 23.4 (*Delivery*);
    - (2) no Enforcement Action has been taken by the Majority Lenders or the Majority Senior Creditors (or any person acting on their behalf);
    - (3) no Pari Passu Lender has given an irrevocable and legally binding commitment to acquire all of the Super Senior Facility Liabilities within 20 days of the date of such irrevocable and legally binding commitment in accordance with Clause 3.10 (*Option to purchase: Pari Passu Lenders*); and

- (4) the Material Event of Default giving rise to that Super Senior Enforcement Notice is continuing at the end of the Super Senior Standstill Period and at the time of the relevant Enforcement Action;  
or
  - (ii) the Majority Senior Creditors have given their prior written consent;
  - (iii) an Insolvency Event has occurred in relation to any member of the Group, in which case after the occurrence of that Insolvency Event (unless the Security Agent has taken, or has given notice that it intends to take, action on behalf of the Super Senior Facility Lenders in accordance with Clause 7.5 (*Filing of Claims*)) each Super Senior Facility Lender shall be entitled (if it has not already done so) to exercise any right it may have in respect of that member of the Group to:
    - (1) accelerate any of that member of the Group's Super Senior Facility Liabilities owing to it or declare them prematurely due and payable on demand;
    - (2) make a demand under any guarantee, indemnity or other assurance against loss given by that member of the Group in respect of any Super Senior Facility Liabilities owing to it;
    - (3) exercise any right of set-off or take or receive any Payment in respect of any Super Senior Facility Liabilities owing to it by that member of the Group;
    - (4) claim and prove in any insolvency process of that member of the Group for Super Senior Facility Liabilities owing to it; or
    - (5) at the same time as, or prior to, that action, Enforcement Action has been taken in respect of the Pari Passu Liabilities (excluding the Liabilities owing to Super Senior Lenders), in which case the Majority Super Senior Lenders may take the same Enforcement Action as has been taken in respect of those Pari Passu Liabilities.
- (b) If the Agent and/or the Security Agent (or any Receiver appointed under any of the Transaction Security Documents) has given notice to the Super Senior Facility Lenders that it has taken any Enforcement Action during a Super Senior Standstill Period, then no Super Senior Facility Lender may take any Enforcement Action unless:
- (i) the Agent or the Security Agent (or any such Receiver) notifies the Super Senior Facility Lenders (which it shall do promptly) that it has ceased to pursue such Enforcement Action and the requirements of sub-paragraph (a)(i) above (other than sub-paragraph (a)(i)(2)) have been met;  
or
  - (ii) on the date on which the applicable Enforcement Realisation Period elapses in respect of that Super Senior Standstill Period:
    - (1) the Material Event of Default in respect of which the relevant Super Senior Enforcement Notice was given remains continuing;

- (2) no Pari Passu Lender has given an irrevocable and legally binding commitment to acquire all of the Super Senior Facility Liabilities within 20 days of the date of such irrevocable and legally binding commitment in accordance with Clause 3.10 (*Option to purchase: Pari Passu Lenders*); and
- (3) the Super Senior Discharge Date has not occurred by that date, provided, in each case that, if:
  - (A) a Distressed Disposal has been requested by the Security Agent on the instructions of the Majority Senior Creditors and completion of that Distressed Disposal is subject only to regulatory or competition review, consent or clearance by the relevant regulatory authorities (including the expiry of relevant time periods implying relevant consents or clearances) at the end of the relevant Enforcement Realisation Period, the Majority Super Senior Lenders shall not be entitled to instruct the Security Agent to take any enforcement action until the earlier of: (A) the date falling 10 Business Days after the date such review, consent or clearance process has been completed and any required consent or clearance has been obtained; and (B) the date on which such clearance process has been terminated or clearance has been refused with no right of appeal, and Clause 10.7 (*Relevant Instructing Group*) shall apply in respect of such on-going Enforcement Action; or
  - (B) any Material Enforcement Action taken by the Security Agent on the instructions of Majority Senior Creditors is ongoing at the time when the Majority Super Senior Lenders become entitled to take Enforcement Action in accordance with this sub-paragraph (ii), the Majority Super Senior Lenders shall not be entitled to instruct the Security Agent to cease that Material Enforcement Action but may pursue alternative Enforcement Action.
- (c) The Majority Senior Creditors and Majority Super Senior Lenders will, with respect to any proposed action to enforce the Transaction Security or with respect to any proposed Distressed Disposal referred to in paragraph (c) of the definition thereof required by the Majority Senior Creditors or the Majority Super Senior Lenders (or any group of them (as the case may be)), which action is taken upon the instructions of the Majority Super Senior Lenders (or any group of them):
  - (i) consult with the other Senior Facility Creditors in good faith for a period of not less than 20 Business Days (the "**Consultation Period**" in relation to the timing and manner of that Enforcement Action or Distressed Disposal (as applicable)); and
  - (ii) provide such information as to the steps they propose to take in connection with that Enforcement Action or Distressed Disposal (as applicable) as the other Senior Facility Creditors (or any of them) may reasonably request during such 20 Business Day period,



provided that the obligation to so consult and provide information shall not apply or shall cease to apply if:

- (1) the Security Agent determines in good faith that delaying the proposed Enforcement Action or Distressed Disposal (as applicable) would have a material adverse effect on the amount of proceeds likely to be realised upon such Enforcement Action or Distressed Disposal (as applicable); or
  - (2) any Insolvency Event occurs in relation to any Debtor.
- (d) In the case of any proposed action to enforce the Transaction Security or any proposed Distressed Disposal, in each case required by the Majority Super Senior Lenders, a Consultation Period may run concurrently with a Super Senior Standstill Period but cannot expire before the last day of that Super Senior Standstill Period.

### 3.10 Option to purchase: **Pari Passu Lenders**

- (a) One or more of the Pari Passu Lenders (the "**Purchasing Pari Passu Lenders**") may, at any time whilst a Material Event of Default is continuing, require:
- (i) the transfer to it or them (or to a nominee or nominees), in accordance with Clause 29 (*Changes to the Lenders*) of the Facilities Agreement, of all, but not part, of the rights and obligations of the Super Senior Facility Lenders in respect of the Super Senior Facility Liabilities not already owned by a Pari Passu Lender (for the purposes of this Clause only, any such transfer, the "**Super Senior Transfer**"); and
  - (ii) (only if a Super Senior Transfer is required) a Hedge Transfer in respect of (at the relevant Pari Passu Lender's option): (A) all Hedging Liabilities; (B) all Super Senior Hedging Liabilities; or (C) all Super Senior Lender Hedging Liabilities.

For the avoidance of doubt, no Pari Passu Lender is obliged to effect a Hedge Transfer if it elects to effect a Super Senior Transfer, but if a Pari Passu Lender does elect to effect a Super Senior Transfer it has the right to also effect a Hedge Transfer.

- (b) (i) if more than one Purchasing Pari Passu Lender wishes to exercise the option to effect the Super Senior Transfer and any Hedge Transfer in accordance with paragraph (a) above, each such Purchasing Pari Passu Lender shall carry out the Super Senior Transfer and the Hedge Transfer pro rata, in the proportion that its Commitment bears to the aggregate Commitments of all the Purchasing Pari Passu Lenders. For the avoidance of doubt, Purchasing Pari Passu Lenders wishing to exercise the option to carry out the Super Senior Transfer and any Hedge Transfer shall inform the Agent, who will calculate in accordance with this sub-paragraph (b)(i) (consulting with each other Pari Passu Lenders as required) the appropriate share of the Super Senior Transfer and any Hedge Transfer to be carried out by each such Purchasing Pari Passu Lenders and who shall inform each such Purchasing Pari Passu Lenders accordingly. Furthermore, the Agent shall promptly inform the Super Senior Facility Lenders and the Parent of the Purchasing Pari Passu Lenders' intention to exercise the option to carry out the Super Senior Transfer and the Security Agent shall promptly inform

the Hedge Counterparties and the Parent of the Purchasing Pari Passu Lenders' intention to exercise the option to carry out that Hedge Transfer.

- (ii) for a period of 10 days following a Super Senior Transfer and any Hedge Transfer, any Pari Passu Lender which was not a Purchasing Pari Passu Lender may elect to become a Purchasing Pari Passu Lender and require the transfer to it (or to a nominee or nominees) of such part of the original Purchasing Pari Passu Lenders' rights and obligations as are necessary to ensure that its position following the Super Senior Transfer and any Hedge Transfer is pro rata, in the proportion that its Commitment bears to the aggregate Commitments of all the Purchasing Pari Passu Lenders and the original Purchasing Pari Passu Lenders agree to take any such actions and to make any such transfer required to achieve this.
- (c) Any Super Senior Transfer shall be on the following terms:
  - (i) the Purchasing Pari Passu Lender(s) shall give:
    - (1) the Agent an Option Exercise Notice giving not less than 10 days' notice of the exercise of their right to require a Super Senior Transfer under Clause 3.10(a) (whether or not such 10 day notice period may expire after the end of the Super Senior Standstill Period); and
    - (2) the Security Agent notice of any Hedge Transfer required by Clause 3.10(a);
  - (ii) that transfer is lawful and subject to paragraph (iii) below, otherwise permitted by the terms of the Facilities Agreement;
  - (iii) any conditions relating to such a transfer contained in the Facilities Agreement are complied with, other than any requirement to obtain the consent of, or consult with, any Debtor or other member of the Group relating to such transfer, which consent or consultation shall not be required;
  - (iv) the Agent, on behalf of the Super Senior Facility Lenders, is paid in cash an amount equal to the aggregate of:
    - (1) all of the Super Senior Facility Liabilities at that time (whether or not due), including all amounts that would have been payable under the Facilities Agreement if the Facilities were being prepaid by the relevant Debtors on the date of that payment (including, in the case of contingent liabilities of the Super Senior Facility Lenders owed to third parties arising under each Super Senior Facility, full cash collateral has been provided for such liabilities); and
    - (2) all costs and expenses (including legal fees) incurred by the Agent and/or the Super Senior Facility Lenders as a consequence of giving effect to that transfer;
  - (v) as a result of that transfer the Super Senior Facility Lenders have no further actual or contingent liability to any Debtor under the relevant Debt Documents;
  - (vi) an indemnity is provided from each Purchasing Pari Passu Lender (or from another third party acceptable to all the Super Senior Facility Lenders) in a

form satisfactory to each Super Senior Facility Lender in respect of all losses which may be sustained or incurred by any Super Senior Facility Lender in consequence of any sum received or recovered by any Super Senior Facility Lender from any person being required (or it being alleged that it is required) to be paid back by or clawed back from any Super Senior Facility Lender for any reason;

- (vii) the transfer is made without recourse to, or representation or warranty from, the Super Senior Facility Lenders, except that each Super Senior Facility Lender shall be deemed to have represented and warranted on the date of that transfer that it has the corporate power to effect that transfer and that it has taken all necessary action to authorise the making by it of that transfer; and
  - (viii) any undrawn Commitments in respect of a Super Senior Facility shall (unless the relevant Lenders under the relevant Super Senior Facility otherwise agree) be cancelled with effect from the date on which the Purchasing Pari Passu Lender(s) give notice to the Agent of a Super Senior Transfer in accordance with paragraph (c)(i) above.
- (d) The Agent shall, at the request of Purchasing Pari Passu Lenders notify the Purchasing Pari Passu Lenders of the sum of the amounts described in paragraphs (c)(iv)(1) and (2) above.
- (e) Any Hedge Transfer shall be on the following terms:
- (i) that transfer is lawful and otherwise permitted by the terms of the Hedging Agreements in which case no Debtor or other member of the Group shall be entitled to withhold its consent to that transfer;
  - (ii) any conditions (other than the consent of, or any consultation with, any Debtor or other member of the Group) relating to that transfer contained in the Hedging Agreements are complied with;
  - (iii) each Hedge Counterparty is paid (in the case of a positive number) or pays (in the case of a negative number) an amount equal to the aggregate of (i) the Hedging Purchase Amount in respect of the hedging transactions under the relevant Hedging Agreement at that time and (ii) all costs and expenses (including legal fees) incurred as a consequence of giving effect to that transfer;
  - (iv) as a result of that transfer:
    - (1) in respect of a transfer of the Super Senior Hedging Liabilities only, the Hedge Counterparties have no further actual or contingent liability to any Debtor under the Hedging Agreements (other than in respect of any Excess Hedging Liabilities);
    - (2) in respect of a transfer of both the Super Senior Hedging Liabilities and the Excess Hedging Liabilities, the Hedge Counterparties have no further actual or contingent liability to any Debtor under the Hedging Agreements; and
    - (3) in respect of a transfer of the Super Senior Lender Hedging Liabilities only, the Hedge Counterparties have no further actual or

contingent liability to any Debtor under the Hedging Agreements in respect of any Super Senior Lender Hedging Liabilities.

- (v) an indemnity is provided from each Purchasing Pari Passu Lender which is receiving (or for which a nominee is receiving) that transfer (or from another person acceptable to the relevant Hedge Counterparty) in a form satisfactory to the relevant Hedge Counterparty in respect of all losses which may be sustained or incurred by that Hedge Counterparty in consequence of any sum received or recovered by that Hedge Counterparty being required (or it being alleged that it is required) to be paid back by or clawed back from the Hedge Counterparty for any reason; and
- (vi) that transfer is made without recourse to, or representation or warranty from, the relevant Hedge Counterparty, except that the relevant Hedge Counterparty shall be deemed to have represented and warranted on the date of that transfer that it has the corporate power to effect that transfer and it has taken all necessary action to authorise the making by it of that transfer.

### 3.11 Facilitation of establishment of Incremental Facilities

- (a) This Clause 3.11 applies if an Incremental Facility is to be established.
- (b) Subject to paragraph (c) below, each Secured Party shall, at the request (and cost) of the Parent, promptly:
  - (i) execute any additional Transaction Security Documents creating Security for the Lenders under that Incremental Facility;
  - (ii) do all such things or acts or execute all such documents; and
  - (iii) give such instructions to the Security Agent,

as are reasonably necessary:

- (1) as a result of the establishment of that Incremental Facility in order to maintain the effectiveness of the Security, guarantees, indemnities and other assurance against loss provided to the Senior Creditors pursuant to the Finance Documents; and
- (2) to provide the Lenders under that Incremental Facility with the benefit of Security, guarantees, indemnities and other assurance against loss equivalent to the Security, guarantees, indemnities and other assurance against loss provided to the Lenders under each other Term Facility pursuant to the Finance Documents (other than any lack of equivalence directly consequent to:
  - (A) being provided later in time; or
  - (B) (if the relevant Debtor's original obligation to grant the relevant Security, guarantee, indemnity or other assurance against loss in respect of the relevant Term Facility was expressly subject to the Agreed Security Principles), any difference in borrowers and resulting different application of those Agreed Security Principles; or

(C) any difference in Borrowers and resulting different application of any relevant guarantee limitation).

- (c) This Clause 3.11 shall not require any Secured Party to facilitate:
- (i) an amendment to any Security, guarantee, indemnity or other assurance against loss constituted pursuant to any Security Document; or
  - (ii) a release of the Transaction Security.

#### 4. HEDGE COUNTERPARTIES AND SUPER SENIOR HEDGING LIABILITIES AND EXCESS HEDGING LIABILITIES

##### 4.1 Identity of Hedge Counterparties

- (a) Subject to paragraph (b) below, no entity providing hedging arrangements to any Debtor shall be entitled to share in any of the Transaction Security or in the benefit of any guarantee or indemnity in respect of any of the liabilities and obligations arising in relation to those hedging arrangements nor shall those liabilities and obligations be treated as Hedging Liabilities unless that entity is or becomes:
- (i) a Party as a Hedge Counterparty; and
  - (ii) a Party to the Facilities Agreement as a Hedge Counterparty.
- (b) Paragraph (a) above shall not apply to a Hedging Ancillary Lender.

##### 4.2 Restriction on Payment: Hedging Liabilities

The Debtors shall not, and shall procure that no other member of the Group will, make any Payment of the Super Senior Hedging Liabilities or of the Excess Hedging Liabilities at any time unless:

- (a) that Payment is permitted under Clause 4.3 (*Permitted Payments: Hedging Liabilities*); or
- (b) the taking or receipt of that Payment is permitted under paragraph (c) of Clause 4.9 (*Permitted Enforcement: Hedge Counterparties*).

##### 4.3 Permitted Payments: Hedging Liabilities

- (a) Subject to paragraph (b) below, the Debtors may make Payments to any Hedge Counterparty in respect of the Hedging Liabilities then due to that Hedge Counterparty under any Hedging Agreement in accordance with the terms of that Hedging Agreement:
- (i) if the Payment is a scheduled Payment arising under the relevant Hedging Agreement;
  - (ii) to the extent that the relevant Debtor's obligation to make the Payment arises as a result of the operation of:
    - (1) any of sections 2(d) (*Deduction or Withholding for Tax*), 2(e) (*Default Interest; Other Amounts*), 8(a) (*Payment in the Contractual Currency*), 8(b) (*Judgments*) and 11 (*Expenses*) of the 1992 ISDA

- Master Agreement (if the Hedging Agreement is based on a 1992 ISDA Master Agreement);
- (2) any of sections 2(d) (*Deduction or Withholding for Tax*), 8(a) (*Payment in the Contractual Currency*), 8(b) (*Judgments*), 9(h)(i) (*Prior to Early Termination*) and 11 (*Expenses*) of the 2002 ISDA Master Agreement (if the Hedging Agreement is based on a 2002 ISDA Master Agreement); or
  - (3) any provision of a Hedging Agreement which is similar in meaning and effect to any provision listed in paragraphs (1) or (2) above (if the Hedging Agreement is not based on an ISDA Master Agreement);
- (iii) to the extent that the relevant Debtor's obligation to make the Payment arises from a Non-Credit Related Close-Out;
- (iv) to the extent that:
- (1) the relevant Debtor's obligation to make the Payment arises from a Credit Related Close-Out in relation to that Hedging Agreement; and
  - (2) no Event of Default is continuing at the time of that Payment or would result from that Payment; or
- (v) to the extent that no Default is continuing or would result from that Payment and the relevant Debtor's obligation to make the Payment arises as a result of a close-out or termination arising as a result of:
- (1) section 5(a)(vii) (*Bankruptcy*) of the 1992 ISDA Master Agreement (if the relevant Hedging Agreement is based on a 1992 ISDA Master Agreement) and the Event of Default (as defined in the relevant Hedging Agreement) has occurred with respect to the relevant Hedge Counterparty;
  - (2) section 5(a)(vii) (*Bankruptcy*) of the 2002 ISDA Master Agreement (if the relevant Hedging Agreement is based on a 2002 ISDA Master Agreement) and the Event of Default (as defined in the relevant Hedging Agreement) has occurred with respect to the relevant Hedge Counterparty;
  - (3) any provision of a Hedging Agreement which is similar in meaning and effect to any provision listed in paragraphs (1) or (2) above (if the Hedging Agreement is not based on an ISDA Master Agreement) and the equivalent event of default has occurred with respect to the relevant Hedge Counterparty; or
  - (4) the relevant Debtor terminating or closing-out the relevant Hedging Agreement as a result of a Hedging Force Majeure and the Termination Event (as defined in the relevant Hedging Agreement in the case of a Hedging Agreement based on an ISDA Master Agreement) or the equivalent termination event (in the case of a Hedging Agreement not based on an ISDA Master Agreement) has occurred with respect to the relevant Hedge Counterparty; or

- (vi) if the Majority Lenders give prior consent to the Payment being made.
- (b) Prior to the Senior Facilities Discharge Date, no Payment may be made to a Hedge Counterparty under paragraph (a) above if any scheduled Payment due from that Hedge Counterparty to a Debtor under a Hedging Agreement to which they are both party is due and unpaid unless the prior consent of the Majority Lenders is obtained.
- (c) Failure by a Debtor to make a Payment to a Hedge Counterparty which results solely from the operation of paragraph (b) above shall, without prejudice to Clause 4.4 (*Payment obligations continue*) and notwithstanding the terms and conditions of the relevant Hedging Agreement, not result in a default (however described) in respect of that Debtor under that Hedging Agreement.

#### 4.4 **Payment obligations continue**

No Debtor shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Debt Document by the operation of Clauses 4.2 (*Restriction on Payment: Hedging Liabilities*) and 4.3 (*Permitted Payments: Hedging Liabilities*) even if its obligation to make that Payment is restricted at any time by the terms of any of those clauses.

#### 4.5 **No acquisition of Hedging Liabilities**

The Debtors shall not, and shall procure that no other member of the Group will:

- (a) enter into any Liabilities Acquisition; or
- (b) beneficially own all or any part of the share capital of a company that is party to a Liabilities Acquisition,

in respect of any of the Hedging Liabilities unless the prior consent of the Majority Lenders is obtained.

#### 4.6 **Amendments and Waivers: Hedging Agreements**

- (a) Subject to paragraph (b) below, the Hedge Counterparties may not, at any time, amend or waive any term of the Hedging Agreements.
- (b) A Hedge Counterparty may amend or waive any term of a Hedging Agreement in accordance with the terms of that Hedging Agreement if:
  - (i) that amendment or waiver does not breach another term of this Agreement; and
  - (ii) that amendment or waiver would not result in a breach of the Facilities Agreement.

#### 4.7 **Security: Hedge Counterparties**

As between the Secured Parties, it is hereby agreed that the Hedge Counterparties may not take, accept or receive the benefit of any Security, guarantee, indemnity or other assurance against loss from any member of the Group in respect of any of the Hedging Liabilities other than:

- (a) the Common Transaction Security;

- (b) any guarantee, indemnity or other assurance against loss contained in:
  - (i) the original form of the Facilities Agreement;
  - (ii) this Agreement;
  - (iii) any Common Assurance; or
  - (iv) the relevant Hedging Agreement no greater in extent than any of those referred to in paragraphs (i) to (iii) above;
- (c) as otherwise contemplated by Clause 3.5 (*Security: Senior Facility Creditors*); and
- (d) the indemnities contained in the ISDA Master Agreements (in the case of a Hedging Agreement which is based on an ISDA Master Agreement) or any indemnities which are similar in meaning and effect to those indemnities (in the case of a Hedging Agreement which is not based on an ISDA Master Agreement).

#### 4.8 **Restriction on Enforcement: Hedge Counterparties**

Subject to Clause 4.9 (*Permitted Enforcement: Hedge Counterparties*) and Clause 4.10 (*Required Enforcement: Hedge Counterparties*) and without prejudice to each Hedge Counterparty's rights under Clauses 10.2 (*Enforcement Instructions*) and 10.3 (*Manner of enforcement*), the Hedge Counterparties shall not take any Enforcement Action in respect of any of the Hedging Liabilities or any of the hedging transactions under any of the Hedging Agreements at any time.

#### 4.9 **Permitted Enforcement: Hedge Counterparties**

- (a) To the extent it is able to do so under the relevant Hedging Agreement, a Hedge Counterparty may terminate or close-out in whole or in part any hedging transaction under that Hedging Agreement prior to its stated maturity:

##### ***Non-Credit Related Close-Outs***

- (i) if a Hedging Force Majeure has occurred in respect of that Hedging Agreement; or
- (ii) to the extent necessary to comply with paragraph (c) of Clause 4.13 (*Total Interest Rate Hedging and Total Exchange Rate Hedging*);
- (iii) if such Hedge Counterparty ceases to be a Senior Lender directly as a result of:
  - (1) a Super Senior Transfer; or
  - (2) clause 41.10 (*Replacement of Lender*) of the Facilities Agreement;
- (iv) if, prior to a Distress Event, in respect of Hedging Liabilities under Hedging Agreements which incorporate by reference the amendments set out in the attachment to the ISDA 2013 EMIR NFC Representation Protocol (the "**Protocol**") an Additional Termination Event (as defined in the relevant Hedging Agreement) occurs pursuant to section (iii)(2) of the attachment to the Protocol;



- (v) if, in the event that the 2006 ISDA Definitions Benchmark Annex of the Benchmarks Supplement published on 19 September 2018 by the International Swaps and Derivatives Association, Inc applies to the Hedging Liabilities under a Hedging Agreement, an Additional Termination Event (as defined in the relevant Hedging Agreement) has occurred pursuant to Section 1.5 (*No fault termination right*) of such supplement for which the Hedging Liabilities are Affected Transactions (as defined in the relevant Hedging Agreement);

**Credit Related Close-Outs**

- (vi) if a Distress Event has occurred;
  - (vii) if an Event of Default has occurred and is continuing under Clause 28.6 (*Insolvency*) or Clause 28.7 (*Insolvency proceedings*) of the Facilities Agreement in relation to a Debtor which is party to that Hedging Agreement;
  - (viii) if the Majority Lenders give prior consent to that termination or close-out being made provided that the Parent has consented in writing to such termination or close-out; or
  - (ix) on or immediately following a refinancing (or repayment) and cancellation in full of the Senior Facility Liabilities.
- (b) If a Debtor has defaulted on any Payment due under a Hedging Agreement (after allowing any applicable notice or grace periods) and the default has continued unremedied or unwaived for more than 30 days after notice of that default has been given to the Security Agent pursuant to paragraph (f) of Clause 22.3 (*Notification of prescribed events*), the relevant Hedge Counterparty:
- (i) may, to the extent it is able to do so under the relevant Hedging Agreement, terminate or close-out in whole or in part any hedging transaction under that Hedging Agreement; and
  - (ii) until such time as the Security Agent has given notice to that Hedge Counterparty that the Transaction Security is being enforced (or that any formal steps are being taken to enforce the Transaction Security), shall be entitled to exercise any right it might otherwise have to sue for, commence or join legal or arbitration proceedings against any Debtor to recover any Hedging Liabilities due under that Hedging Agreement.
- (c) After the occurrence of an Insolvency Event in relation to any member of the Group, each Hedge Counterparty shall be entitled to exercise any right it may otherwise have in respect of that member of the Group to:
- (i) prematurely close-out or terminate any Hedging Liabilities of that member of the Group;
  - (ii) make a demand under any guarantee, indemnity or other assurance against loss given by that member of the Group in respect of any Hedging Liabilities;
  - (iii) exercise any right of set-off or take or receive any Payment in respect of any Hedging Liabilities of that member of the Group; or

- (iv) claim and prove in any insolvency process of that member of the Group for the Hedging Liabilities owing to it.

#### 4.10 Required Enforcement: Hedge Counterparties

- (a) Subject to paragraph (b) below, a Hedge Counterparty shall promptly terminate or close-out in full any hedging transaction under all or any of the Hedging Agreements to which it is party prior to their stated maturity, following:
  - (i) the occurrence of an Acceleration Event and delivery to it of a notice from the Security Agent that that Acceleration Event has occurred; and
  - (ii) delivery to it of a subsequent notice from the Security Agent (acting on the instructions of the Instructing Group) instructing it to do so.
- (b) Paragraph (a) above shall not apply to the extent that that Acceleration Event occurred as a result of an arrangement made between any Debtor and any Senior Creditor with the purpose of bringing about that Acceleration Event.
- (c) If a Hedge Counterparty is entitled to terminate or close-out any hedging transaction under paragraph (b) of Clause 4.9 (*Permitted Enforcement: Hedge Counterparties*) (or would have been able to if that Hedge Counterparty had given the notice referred to in that paragraph) but has not terminated or closed out each such hedging transaction, that Hedge Counterparty shall promptly terminate or close-out in full each such hedging transaction following a request to do so by the Security Agent (acting on the instructions of the Instructing Group).

#### 4.11 Treatment of Payments due to Debtors on termination of hedging transactions

- (a) If, on termination of any hedging transaction under any Hedging Agreement occurring after a Distress Event, a settlement amount or other amount (following the application of any Close-Out Netting, Payment Netting or Inter-Hedging Agreement Netting in respect of that Hedging Agreement) falls due from a Hedge Counterparty to the relevant Debtor then that amount shall be paid by that Hedge Counterparty to the Security Agent, treated as the proceeds of enforcement of the Transaction Security and applied in accordance with the terms of this Agreement.
- (b) The payment of that amount by the Hedge Counterparty to the Security Agent in accordance with paragraph (a) above shall discharge the Hedge Counterparty's obligation to pay that amount to that Debtor.

#### 4.12 Terms of Hedging Agreements

The Hedge Counterparties (to the extent party to the Hedging Agreement in question) and the Debtors party to the Hedging Agreements shall ensure that, at all times (subject to paragraph (g) below):

- (a) each Hedging Agreement documents only hedging arrangements entered into for the purpose of hedging the types of liabilities described in the definition of "**Hedging Agreement**" and that no other hedging arrangements are carried out under or pursuant to a Hedging Agreement;
- (b) each Hedging Agreement is based either:
  - (i) on an ISDA Master Agreement; or

- (ii) on another framework agreement which is similar in effect to an ISDA Master Agreement;
- (c) in the event of a termination of the hedging transaction entered into under a Hedging Agreement, whether as a result of:
  - (i) a Termination Event or an Event of Default, each as defined in the relevant Hedging Agreement (in the case of a Hedging Agreement which is based on an ISDA Master Agreement); or
  - (ii) an event similar in meaning and effect to either of those described in paragraph (i) above (in the case of a Hedging Agreement which is not based on an ISDA Master Agreement),

that Hedging Agreement will:

- (1) if it is based on a 1992 ISDA Master Agreement, provide for payments under the "Second Method" and will make no material amendment to section 6(e) (*Payments on Early Termination*) of the ISDA Master Agreement;
  - (2) if it is based on a 2002 ISDA Master Agreement, make no material amendment to section 6(e) (*Payments on Early Termination*) of the ISDA Master Agreement; or
  - (3) if it is not based on an ISDA Master Agreement, provide for any other method the effect of which is that the party to which that event is referable will be entitled to receive payment under the relevant termination provisions if the net replacement value of all terminated transactions entered into under that Hedging Agreement is in its favour;
- (d) no Hedging Agreement will provide for Automatic Early Termination;
  - (e) each Hedging Agreement will provide that the relevant Hedge Counterparty will be entitled to designate an Early Termination Date or otherwise be able to terminate each transaction under such Hedging Agreement if so required pursuant to Clause 4.10 (*Required Enforcement: Hedge Counterparties*);
  - (f) each Hedging Agreement will permit the relevant Hedge Counterparty and each relevant Debtor to take such action as may be necessary to comply with Clause 4.13 (*Total Interest Rate Hedging and Total Exchange Rate Hedging*);
  - (g) each Hedging Agreement will provide for the relevant Debtor to have a right of voluntary early termination in respect of any hedging transaction (whether in whole or in part); and
  - (h) each Hedging Agreement shall be documented on a basis which does not conflict with or duplicate the terms and conditions of this Agreement or the Facilities Agreement (and the relevant Termination Events and/or Events of Default, each as defined in the relevant Hedging Agreement, shall be amended or dis-applied accordingly).

**4.13 Total Interest Rate Hedging and Total Exchange Rate Hedging**

- (a) The Parent shall procure that, at all times:
- (i) the Total Interest Rate Hedging does not exceed the Term Outstandings; and
  - (ii) the Total Exchange Rate Hedging does not exceed the Term Outstandings
- (b) Subject to paragraph (a) above, if:
- (i) the Total Interest Rate Hedging is less than the Term Outstandings, a Debtor may (but, subject to compliance with the Facilities Agreement, shall be under no obligation to) enter into additional hedging arrangements to increase the Total Interest Rate Hedging; and
  - (ii) the Total Exchange Rate Hedging is less than the Term Outstandings, a Debtor may (but, subject to compliance with the Facilities Agreement, shall be under no obligation to) enter into additional hedging arrangements to increase the Total Exchange Rate Hedging.
- (c) If any reduction in the Term Outstandings results in:
- (i) an Interest Rate Hedge Excess then, promptly (and in any event, within 5 Business Days) following such reduction becoming effective in accordance with the terms of the Facilities Agreement, the relevant Debtor(s) shall, and the Parent shall procure that the relevant Debtor(s) shall, and as permitted by Clause 4.9(a)(ii) (*Permitted Enforcement: Hedge Counterparties*) the Hedge Counterparty may, reduce each Hedge Counterparty's Interest Rate Hedging by that Hedge Counterparty's Interest Rate Hedging Proportion of that Interest Rate Hedge Excess by terminating or closing out any relevant hedging transaction(s) in full or in part, as may be necessary, and so that no Interest Rate Hedge Excess remains; or
  - (ii) an Exchange Rate Hedge Excess then, promptly (and in any event, within 5 Business Days) following such reduction becoming effective in accordance with the terms of the Facilities Agreement, the relevant Debtor(s) shall, and the Parent shall procure that the relevant Debtor(s) shall, and as permitted by Clause 4.9(a)(ii) (*Permitted Enforcement: Hedge Counterparties*) the Hedge Counterparty may, reduce each Hedge Counterparty's Exchange Rate Hedging by that Hedge Counterparty's Exchange Rate Hedging Proportion of that Exchange Rate Hedge Excess by terminating or closing out any relevant hedging transaction(s) in full or in part, as may be necessary, and so that no Exchange Rate Hedge Excess remains.
- (d) The relevant Debtor(s) shall, and the Parent shall procure that the relevant Debtor(s) will, pay to that Hedge Counterparty (in accordance with the relevant Hedging Agreement) an amount equal to the sum of all payments (if any) that become due from each relevant Debtor to a Hedge Counterparty under the relevant Hedging Agreement(s) as a result of any action described in paragraph (c) above.
- (e) Each Hedge Counterparty shall co-operate in any process described in paragraph (d) above and shall pay (in accordance with the relevant Hedging Agreement(s)) any amount that becomes due from it under the relevant Hedging

Agreement(s) to a Debtor as a result of any action described in paragraph (c) above.

#### 4.14 Allocation of Super Senior Hedging Liabilities

- (a) The Parent may from time to time allocate (or reallocate or effect the release of any previous allocation of) the Super Senior Hedging Amount in whole or in part to one or more Hedge Counterparties subject to this Clause 4.14.
- (b) Any allocation or reallocation or release of any previous allocation of the Super Senior Hedging Amount (whether in whole or in part) by the Parent shall only take effect on receipt by the Security Agent (which receipt shall be acknowledged promptly) of a Super Senior Hedging Certificate which complies with the conditions set out in this Clause 4.14.
- (c) The Security Agent shall only be required to recognise and give effect to any allocation, reallocation or release of the Super Senior Hedging Amount requested by the Parent pursuant to any Super Senior Hedging Certificate to the extent such Super Senior Hedging Certificate:
  - (i) complies in form and substance with the form of Super Senior Hedging Certificate set out in Schedule 4 (*Form of Super Senior Hedging Certificate*);
  - (ii) has been duly executed by: (A) the Parent; (B) the Hedge Counterparty to whom any portion of the available Super Senior Hedging Amount is to be allocated and (C) if applicable, any Hedge Counterparty who is to release any portion of any Super Senior Hedging Amount previously allocated to it in accordance with this Clause 4.14;
  - (iii) identifies the portion of the Super Senior Hedging Amount (by reference to an amount in the Common Currency) that is to be allocated to the proposed new Super Senior Hedge Counterparty and/or released by an existing Super Senior Hedge Counterparty;
  - (iv) identifies the relevant Hedging Agreement pursuant to which the relevant Hedging Liabilities arise; and
  - (v) complies with paragraph (d) below and does not otherwise purport to allocate any part of the Super Senior Hedging Amount which is not available for allocation or which has previously been allocated and not released to any other Hedge Counterparty pursuant to this Clause 4.14.
- (d) No Allocated Super Senior Hedging Amount may, whether on an individual basis or when aggregated with all previously Allocated Super Senior Hedging Amounts (to the extent not released pursuant to this Clause 4.14), exceed the Super Senior Hedging Amount.
- (e) The Security Agent shall not accept or give effect to any Super Senior Hedging Certificate to the extent it allocates or purports to allocate any part of the Super Senior Hedging Amount in breach of paragraph (d) above.
- (f) An Allocated Super Senior Hedging Amount may not be:
  - (i) changed without the prior written consent of the relevant Hedge Counterparty (not to be unreasonably withheld or delayed) to whom such

Allocated Super Senior Hedging Amount has been allocated pursuant to this Clause 4.14; or

- (ii) allocated to another Hedge Counterparty or to any other Hedging Liabilities or Hedging Agreement other than through delivery of a Super Senior Hedging Certificate duly executed by the Parent and each Hedge Counterparty who agrees (acting reasonably) to release or reallocate any part of the Allocated Super Senior Hedging Amount.
- (g) The Security Agent shall maintain a register for the recording of the names of the Hedge Counterparties and the Allocated Super Senior Hedging Amounts of each such Hedge Counterparty (the "**Register**"). The entries in the Register shall be conclusive absent manifest error, and the Parent, the Security Agent and the Hedge Counterparties shall treat each person whose name is recorded in the Register as a Super Senior Hedge Counterparty for the purposes of this Agreement to the extent of its Super Senior Hedging Liabilities. A copy of the Register shall be provided by the Security Agent to the Parent and any Hedge Counterparty which has an Allocated Super Senior Hedging Amount upon request and on reasonable notice to the Security Agent.
- (h) The Parties authorise the Security Agent to disclose by written notice to the Parent and/or (if the Parent instructs the Security Agent in writing to do so) to any third party contemplating accession as a Hedge Counterparty with respect to any Hedging Liabilities, upon request, the unutilised amount of the Super Senior Hedging Amount (being an amount equal to the Super Senior Hedging Amount less the aggregate of the Allocated Super Senior Hedging Amounts of each Hedge Counterparty) at the date of such notice.
- (i) Other than in the case of gross negligence or wilful misconduct by the Security Agent, the Security Agent shall not be responsible or liable in any circumstance pertaining to its role and responsibilities as set out in this Clause 4.14.

#### 4.15 **Cap Agreements**

If a Debtor enters into a Fully Paid Cap, the terms of Clauses 4.16 to 4.20 below shall apply and the preceding Clauses 4.13 to 4.14 shall not apply to the relevant Cap Agreements.

#### 4.16 **Permitted Payment: Cap Agreements**

The relevant Debtor is permitted to make payment of the upfront premium required to implement a Fully Paid Cap.

#### 4.17 **No Security: Cap Provider**

- (a) The Debtors shall not, and shall procure that no other member of the Group will, grant the benefit of any Security, guarantee, indemnity or other assurance against loss of any kind in respect of any Cap Agreement except as permitted by paragraph (b) below.
- (b) The Cap Provider may benefit from the indemnities contained in the 2002 ISDA Master Agreement (in the case of a Cap Agreement which is based on the 2002 ISDA Master Agreement) or any indemnities which are similar in meaning and effect to those indemnities (in the case of a Cap Agreement which is not based on the 2002 ISDA Master Agreement).

#### 4.18 **Terms of Cap Agreements**

The Debtor(s) party to a Cap Agreement shall ensure that, at all times:

- (a) the Cap Agreement documents only a hedging arrangement entered into for the purpose of hedging the types of liabilities described in the definition of "Fully Paid Cap"; and
- (b) each Cap Agreement is based on, or incorporates by reference, the 2002 ISDA Master Agreement or a framework agreement which is similar in effect to the 2002 ISDA Master Agreement.

#### 4.19 **Cap Providers: rights as Hedge Counterparty**

The following Clauses of this Agreement do not apply to a Hedge Counterparty that is only a Hedge Counterparty as a result of being a Cap Provider:

- (a) Paragraph (g) of Clause 22.3 (*Notification of prescribed events*); and
- (b) Clause 25.2 (*Amendments and Waivers: Transaction Security Documents*)

#### 4.20 **Notification of Events: Cap Agreement**

If the Cap Provider terminates (or purports to terminate) a Cap Agreement, the relevant Debtor shall promptly notify the Agent.

**SECTION 3****OTHER CREDITORS****5. INTRA-GROUP LENDERS AND INTRA-GROUP LIABILITIES****5.1 Restriction on Payment: Intra-Group Liabilities**

Prior to the Senior Discharge Date, the Debtors shall not, and shall procure that no other member of the Group will, make any Payments of the Intra-Group Liabilities at any time unless:

- (a) that Payment is permitted under Clause 5.2 (*Permitted Payments: Intra-Group Liabilities*); or
- (b) the taking or receipt of that Payment is permitted under paragraph (c) of Clause 5.7 (*Permitted Enforcement: Intra-Group Lenders*).

**5.2 Permitted Payments: Intra-Group Liabilities**

- (a) Subject to paragraph (b) below, the Debtors (and any other member of the Group) may make Payments in respect of the Intra-Group Liabilities (whether of principal, interest or otherwise) from time to time when due.
- (b) Prior to the Senior Discharge Date, Payments in respect of the Intra-Group Liabilities may not be made pursuant to paragraph (a) above if, at the time of the Payment, an Acceleration Event has occurred or would occur under any of the Debt Documents unless:
  - (i) the Majority Senior Creditors consent to that Payment being made; or
  - (ii) that Payment is made to facilitate Payment of the Senior Liabilities.

**5.3 Payment obligations continue**

No Debtor shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Debt Document by the operation of Clauses 5.1 (*Restriction on Payment: Intra-Group Liabilities*) and 6.2 (*Permitted Payments: Intra-Group Liabilities*) even if its ability to comply with its obligation to make that Payment is restricted at any time by the terms of any of those Clauses.

**5.4 Acquisition of Intra-Group Liabilities**

- (a) Subject to paragraphs (b) below, each Debtor may, and may permit any other member of the Group to:
  - (i) enter into any Liabilities Acquisition; or
  - (ii) beneficially own all or any part of the share capital of a company that is party to a Liabilities Acquisition,

in respect of any Intra-Group Liabilities at any time.



- (b) Prior to the Senior Discharge Date, subject to paragraph (c) below, no action described in paragraph (a) above may take place in respect of any Intra-Group Liabilities if:
  - (i) that action would result in a breach of the Facilities Agreement; or
  - (ii) at the time of that action, an Acceleration Event has occurred.
- (c) The restrictions in paragraph (b) above shall not apply if:
  - (i) the Majority Senior Creditors consent to that action; or
  - (ii) that action is taken to facilitate Payment of the Senior Liabilities.

#### 5.5 **Security: Intra-Group Lenders**

Prior to the Senior Discharge Date, the Intra-Group Lenders may not take, accept or receive the benefit of any Security, guarantee, indemnity or other assurance against loss in respect of the Intra-Group Liabilities unless:

- (a) that Security, guarantee, indemnity or other assurance against loss is expressly permitted by the Facilities Agreement; or
- (b) the prior consent of the Majority Senior Creditors is obtained.

#### 5.6 **Restriction on enforcement: Intra-Group Lenders**

Subject to Clause 5.7 (*Permitted Enforcement: Intra-Group Lenders*), none of the Intra-Group Lenders shall be entitled to take any Enforcement Action in respect of any of the Intra-Group Liabilities at any time prior to the Senior Discharge Date.

#### 5.7 **Permitted Enforcement: Intra-Group Lenders**

After the occurrence of an Insolvency Event in relation to any member of the Group, each Intra-Group Lender may (unless otherwise directed by the Security Agent or unless the Security Agent has taken, or has given notice that it intends to take, action on behalf of that Intra-Group Lender in accordance with Clause 7.5 (*Filing of claims*)), exercise any right it may otherwise have against that member of the Group to:

- (a) accelerate any of that member of the Group's Intra-Group Liabilities or declare them prematurely due and payable or payable on demand;
- (b) make a demand under any guarantee, indemnity or other assurance against loss given by that member of the Group in respect of any Intra-Group Liabilities;
- (c) exercise any right of set-off or take or receive any Payment in respect of any Intra-Group Liabilities of that member of the Group; or
- (d) claim and prove in any insolvency process of that member of the Group for the Intra-Group Liabilities owing to it.

## 5.8 Representations: Intra-Group Lenders

Each Intra-Group Lender which is not a Debtor represents and warrants to the Senior Creditors and the Security Agent that on the date of this Agreement (or, if it becomes a Party after such date, the date of the Creditor Accession Undertaking):

- (a) it is a limited liability corporation, duly incorporated and validly existing under the laws of its jurisdiction of incorporation or formation;
- (b) subject to the Legal Reservations and the Perfection Requirements, the obligations expressed to be assumed by it in this Agreement are legal, valid, binding and enforceable obligations; and
- (c) the entry into and performance by it of this Agreement does not and will not:
  - (i) conflict with any law or regulation applicable to it, its constitutional documents or any agreement or instrument binding upon it or any of its assets; or
  - (ii) constitute a default or termination event (however described) under any agreement or instrument binding on it or any of its assets, in each case, save to the extent that it does not, or is not reasonably likely to have, a Material Adverse Effect.

## 6. SUBORDINATED LIABILITIES

### 6.1 Restriction on Payment: Subordinated Liabilities

Prior to the Senior Discharge Date, neither the Parent nor any other Debtor shall, and the Parent shall procure that no other member of the Group will, make any Payment of the Subordinated Liabilities (including, for the avoidance of doubt, a discharge of Subordinated Liabilities by way of set off against any Liabilities owed to a Debtor) at any time unless:

- (a) that Payment is permitted under Clause 6.2 (*Permitted Payments: Subordinated Liabilities*); or
- (b) the taking or receipt of that Payment is permitted under Clause 6.8 (*Permitted Enforcement: Subordinated Creditors*).

### 6.2 Permitted Payments: Subordinated Liabilities

The Parent may make, and the relevant Subordinated Creditor may receive, Payments in respect of the Subordinated Liabilities then due if:

- (a) the Payment is expressly permitted by the Facilities Agreement; or
- (b) prior to the Senior Discharge Date, the Majority Senior Creditors consent to that Payment being made.

### 6.3 Payment obligations continue

Neither the Parent nor any other Debtor shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Debt Document by the operation of Clauses 6.1 (*Restriction on Payment: Subordinated Liabilities*) and 6.2 (*Permitted Payments: Subordinated Liabilities*) even if its obligation to make that Payment is restricted at any time by the terms of any of those clauses.

#### 6.4 **Subordinated Liabilities**

Prior to the Senior Discharge Date, the Debtors shall not, and shall procure that no other member of the Group will:

- (a) enter into any Liabilities Acquisition; or
- (b) beneficially own all or any part of the share capital of a company that is party to a Liabilities Acquisition,

in respect of any of the Subordinated Liabilities, unless the prior consent of the Majority Senior Creditors is obtained.

#### 6.5 **Amendments and Waivers: Subordinated Creditors**

Prior to the Senior Discharge Date, the Subordinated Creditors may not amend, waive or agree the terms of any of the documents or instruments pursuant to which the Subordinated Liabilities are constituted unless:

- (a) the prior consent of the Majority Senior Creditors is obtained;
- (b) the amendment or waiver could not reasonably be expected to materially and adversely affect the interests of the Senior Creditors under the Debt Documents; or
- (c) that amendment, waiver or agreement is of a minor and administrative nature and is not prejudicial to the Senior Creditors.

#### 6.6 **Security: Subordinated Creditors**

The Subordinated Creditors may not take, accept or receive the benefit of any Security, guarantee, indemnity or other assurance against loss from any member of the Group in respect of any of the Subordinated Liabilities prior to the Senior Discharge Date.

#### 6.7 **Restriction on Enforcement: Subordinated Creditors**

Subject to Clause 6.8 (*Permitted Enforcement: Subordinated Creditors*), no Subordinated Creditor shall be entitled to take any Enforcement Action in respect of any of the Subordinated Liabilities at any time prior to the Senior Discharge Date.

#### 6.8 **Permitted Enforcement: Subordinated Creditors**

After the occurrence of an Insolvency Event in relation to any member of the Group, each Subordinated Creditor may (unless otherwise directed by the Security Agent or unless the Security Agent has taken, or has given notice that it intends to take, action on behalf of that Subordinated Creditor in accordance with Clause 7.5 (*Filing of claims*)) exercise any right it may otherwise have in respect of that member of the Group to:

- (a) accelerate any of that member of the Group's Subordinated Liabilities or declare them prematurely due and payable or payable on demand;
- (b) make a demand under any guarantee, indemnity or other assurance against loss given by that member of the Group in respect of any Subordinated Liabilities;
- (c) exercise any right of set-off or take or receive any Payment in respect of any Subordinated Liabilities of that member of the Group; or

- (d) claim and prove in any insolvency process of that member of the Group for the Subordinated Liabilities owing to it.

#### 6.9 **Representations: Subordinated Creditors**

Each Subordinated Creditor represents and warrants to the Senior Creditors and the Security Agent that on the date of this Agreement (or, if it becomes a Party after such date, the date of the Creditor Accession Undertaking):

- (a) it is a limited liability corporation, duly incorporated and validly existing under the laws of its jurisdiction of incorporation or formation;
- (b) subject to the Legal Reservations and the Perfection Requirements, the obligations expressed to be assumed by it in this Agreement are, subject to any general principles of law limiting its obligations which are applicable to creditors generally, legal, valid, binding and enforceable obligations; and
- (c) the entry into and performance by it of this Agreement does not and will not:
  - (i) conflict with any law or regulation applicable to it, its constitutional documents or any agreement or instrument binding upon it or any of its assets; or
  - (ii) constitute a default or termination event (however described) under any agreement or instrument binding on it or any of its assets, in each case, save to the extent that it does not, or is not reasonably likely to have, a Material Adverse Effect.

**SECTION 4****INSOLVENCY, TURNOVER AND ENFORCEMENT****7. EFFECT OF INSOLVENCY EVENT****7.1 SFA Cash Cover**

This Clause 7 is subject to Clause 16.3 (*Treatment of SFA Cash Cover*).

**7.2 Distributions**

- (a) After the occurrence of an Insolvency Event in relation to any member of the Group, any Party entitled to receive a distribution out of the assets of that member of the Group in respect of Liabilities owed to that Party shall, to the extent it is able to do so, direct the person responsible for the distribution of the assets of that member of the Group to make that distribution to the Security Agent (or to such other person as the Security Agent shall direct) until the Liabilities owing to the Secured Parties have been paid in full.
- (b) The Security Agent shall apply distributions made to it under paragraph (a) above in accordance with Clause 16 (*Application of Proceeds*).

**7.3 Set-Off**

- (a) Subject to paragraph (b) below, to the extent that any member of the Group's Liabilities are discharged by way of set-off (mandatory or otherwise) after the occurrence of an Insolvency Event in relation to that member of the Group, any Creditor which benefited from that set-off shall pay an amount equal to the amount of the Liabilities owed to it which are discharged by that set-off to the Security Agent for application in accordance with Clause 16 (*Application of Proceeds*).
- (b) Paragraph (a) above shall not apply to:
  - (i) any such discharge of the Multi-account Overdraft Liabilities to the extent that the relevant discharge represents a reduction of the Gross Outstandings of that Multi-account Overdraft to or towards an amount equal to its Net Outstandings;
  - (ii) any Close-out Netting by a Hedge Counterparty or a Hedging Ancillary Lender;
  - (iii) any Payment Netting by a Hedge Counterparty or a Hedging Ancillary Lender;
  - (iv) any Inter-Hedging Agreement Netting by a Hedge Counterparty; and
  - (v) any Inter-Hedging Ancillary Document Netting by a Hedging Ancillary Lender.

**7.4 Non-cash distributions**

If the Security Agent or any other Secured Party receives a distribution in the form of Non-Cash Consideration in respect of any of the Liabilities (other than any distribution of Non-Cash Recoveries), the Liabilities will not be reduced by that distribution until and except to the extent that the realisation proceeds are actually applied towards the Liabilities.

## 7.5 Filing of claims

Without prejudice to any Ancillary Lender's right of netting or set-off relating to a Multi-account Overdraft (to the extent that the netting or set-off represents a reduction of the Gross Outstandings of that Multi-account Overdraft, after the occurrence of an Insolvency Event in relation to any member of the Group, each Creditor irrevocably authorises the Security Agent on its behalf, to:

- (a) take any Enforcement Action (in accordance with the terms of this Agreement) against that member of the Group;
- (b) demand, sue, prove and give receipt for any or all of that member of the Group's Liabilities;
- (c) collect and receive all distributions on, or on account of, any or all of that member of the Group's Liabilities; and
- (d) file claims, take proceedings and do all other things the Security Agent considers reasonably necessary to recover that member of the Group's Liabilities.

## 7.6 Further Assurance - Insolvency Event

Each Creditor will:

- (a) do all things that the Security Agent requests in order to give effect to this Clause 7; and
- (b) if the Security Agent is not entitled to take any of the actions contemplated by this Clause 7 or if the Security Agent requests that a Creditor take that action, undertake that action itself in accordance with the instructions of the Security Agent or grant a power of attorney to the Security Agent (on such terms as the Security Agent may reasonably require) to enable the Security Agent to take such action.

## 7.7 Security Agent instructions

For the purposes of Clause 7.2 (*Distributions*) and Clause 7.6 (*Further Assurance - Insolvency Event*) the Security Agent shall act:

- (a) on the instructions of the group of Senior Creditors entitled, at that time, to give instructions under Clause 10.2 (*Enforcement Instructions*) or Clause 10.3 (*Manner of enforcement*); or
- (b) in the absence of any such instructions, as the Security Agent sees fit.

## 8. TURNOVER OF RECEIPTS

### 8.1 SFA Cash Cover

This Clause 8 is subject to Clause 16.3 (*Treatment of SFA Cash Cover*).

## 8.2 Turnover by the Creditors

Subject to Clause 8.3 (*Exclusions*) and to Clause 8.4 (*Permitted assurance and receipts*), if at any time prior to the Senior Discharge Date, any Creditor receives or recovers:

- (a) any Payment or distribution of, or on account of or in relation to, any of the Liabilities which is neither:
  - (i) a Permitted Payment; nor
  - (ii) made in accordance with Clause 16 (*Application of Proceeds*);
- (b) other than where paragraph (a) of Clause 7.3 (*Set-off*) applies, any amount by way of set-off in respect of any of the Liabilities owed to it which does not give effect to a Permitted Payment;
- (c) notwithstanding paragraphs (a) and (b) above, and other than where paragraph (a) of Clause 7.3 (*Set-Off*) applies, any amount:
  - (i) on account of, or in relation to, any of the Liabilities:
    - (1) after the occurrence of a Distress Event; or
    - (2) as a result of any other litigation or proceedings against a member of the Group (other than after the occurrence of an Insolvency Event in respect of that member of the Group); or
  - (ii) by way of set-off in respect of any of the Liabilities owed to it after the occurrence of a Distress Event;other than, in each case, any amount received or recovered in accordance with Clause 16 (*Application of Proceeds*);
- (d) the proceeds of any enforcement of any Transaction Security except in accordance with Clause 16 (*Application of Proceeds*); or
- (e) other than where paragraph (a) of Clause 7.3 (*Set-Off*) applies, any distribution or Payment of, or on account of or in relation to, any of the Liabilities owed by any member of the Group which is not in accordance with Clause 16 (*Application of Proceeds*) and which is made as a result of, or after, the occurrence of an Insolvency Event in respect of that member of the Group,

that Creditor will:

- (i) in relation to receipts and recoveries not received or recovered by way of set-off:
  - (1) hold an amount of that receipt or recovery equal to the Relevant Liabilities (or if less, the amount received or recovered) on trust for the Security Agent and promptly pay or distribute that amount to the Security Agent for application in accordance with the terms of this Agreement; and
  - (2) promptly pay or distribute an amount equal to the amount (if any) by which the receipt or recovery exceeds the Relevant Liabilities to the

Security Agent for application in accordance with the terms of this Agreement; and

- (ii) in relation to receipts and recoveries received or recovered by way of set-off, promptly pay an amount equal to that recovery to the Security Agent for application in accordance with the terms of this Agreement.

### 8.3 Exclusions

Clause 8.2 (*Turnover by the Creditors*) shall not apply to any receipt or recovery:

- (a) by way of:
  - (i) Close-Out Netting by a Hedge Counterparty or a Hedging Ancillary Lender;
  - (ii) Payment Netting by a Hedge Counterparty or a Hedging Ancillary Lender;
  - (iii) Inter-Hedging Agreement Netting by a Hedge Counterparty; or
  - (iv) Inter-Hedging Ancillary Document Netting by a Hedging Ancillary Lender;
- (b) by an Ancillary Lender by way of that Ancillary Lender's right of netting or set-off relating to a Multi-account Overdraft (to the extent that that netting or set-off represents a reduction of the Gross Outstandings of that Multi-account Overdraft to or towards its Net Outstandings); or
- (c) made in accordance with Clause 17 (*Equalisation*).

### 8.4 Permitted assurance and receipts

Nothing in this Agreement shall restrict the ability of any Senior Creditor or Subordinated Creditor to:

- (a) arrange with any person which is not a member of the Group any assurance against loss in respect of, or reduction of its credit exposure to, a Debtor (including assurance by way of credit based derivative or sub-participation); or
- (b) make any assignment or transfer permitted by Clause 19 (*Changes to the Parties*),

which:

- (i) is permitted by the Facilities Agreement; and
- (ii) is not in breach of:
  - (1) Clause 4.5 (*No acquisition of Hedging Liabilities*); or
  - (2) Clause 6.4 (*No acquisition of Subordinated Liabilities*),

and that Senior Creditor or Subordinated Creditor shall not be obliged to account to any other Party for any sum received by it as a result of that action.



## 8.5 Amounts received by Debtors

If any of the Debtors receives or recovers any amount which, under the terms of any of the Debt Documents, should have been paid to the Security Agent, that Debtor will:

- (a) hold an amount of that receipt or recovery equal to the Relevant Liabilities (or if less, the amount received or recovered) on trust for the Security Agent and promptly pay that amount to the Security Agent for application in accordance with the terms of this Agreement; and
- (b) promptly pay an amount equal to the amount (if any) by which the receipt or recovery exceeds the Relevant Liabilities to the Security Agent for application in accordance with the terms of this Agreement.

## 8.6 Saving provision

If, for any reason, any of the trusts expressed to be created in this Clause 8 should fail or be unenforceable, the affected Creditor or Debtor will promptly pay or distribute an amount equal to that receipt or recovery to the Security Agent to be held on trust by the Security Agent for application in accordance with the terms of this Agreement.

## 8.7 Turnover of Non-Cash Consideration

For the purposes of this Clause 8, if any Creditor receives or recovers any amount or distribution in the form of Non-Cash Consideration which is subject to Clause 8.2 (*Turnover by the Creditors*) the cash value of that Non-Cash Consideration shall be determined in accordance with Clause 13.2 (*Cash value of Non-Cash Recoveries*).

## 9. REDISTRIBUTION

### 9.1 Recovering Creditor's rights

- (a) Any amount paid or distributed by a Creditor (a "**Recovering Creditor**") to the Security Agent under Clause 7 (*Effect of Insolvency Event*) or Clause 8 (*Turnover of Receipts*) shall be treated as having been paid or distributed by the relevant Debtor and shall be applied by the Security Agent in accordance with Clause 16 (*Application of Proceeds*).
- (b) On an application by the Security Agent pursuant to Clause 16 (*Application of Proceeds*) of a Payment or distribution received by a Recovering Creditor from a Debtor, as between the relevant Debtor and the Recovering Creditor an amount equal to the amount received or recovered by the Recovering Creditor and paid or distributed to the Security Agent by the Recovering Creditor (the "**Shared Amount**") will be treated as not having been paid or distributed by that Debtor.

### 9.2 Reversal of redistribution

- (a) If any part of the Shared Amount received or recovered by a Recovering Creditor becomes repayable or returnable to a Debtor and is repaid or returned by that Recovering Creditor to that Debtor, then:
  - (i) each Party that received any part of that Shared Amount pursuant to an application by the Security Agent of that Shared Amount under Clause 9.1 (*Recovering Creditor's rights*) (a "**Sharing Party**") shall, upon request of the Security Agent, pay or distribute to the Security Agent for the account of that

Recovering Creditor an amount equal to the appropriate part of its share of the Shared Amount (together with an amount as is necessary to reimburse that Recovering Creditor for its proportion of any interest on the Shared Amount which that Recovering Creditor is required to pay) (the "**Redistributed Amount**"); and

- (ii) as between the relevant Debtor and each relevant Sharing Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid or distributed by that Debtor.
- (b) The Security Agent shall not be obliged to pay or distribute any Redistributed Amount to a Recovering Creditor under paragraph (a)(i) above until it has been able to establish to its satisfaction that it has actually received that Redistributed Amount from the relevant Sharing Party.

### 9.3 **Deferral of Subrogation**

- (a) No Creditor (other than a Subordinated Creditor) or Debtor will exercise any rights which it may have by reason of the performance by it of its obligations under the Debt Documents to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights under the Debt Documents of any Creditor (other than a Subordinated Creditor) which ranks ahead of it in accordance with the priorities set out in Clause 2 (*Ranking and Priority*) until such time as all of the Liabilities owing to each prior ranking Creditor (or, in the case of any Debtor, owing to each Creditor (other than a Subordinated Creditor)) have been irrevocably discharged in full.
- (b) No Subordinated Creditor will exercise any rights which it may have to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights under the Debt Documents of any Creditor until such time as all of the Liabilities owing to each Creditor (other than a Subordinated Creditor) have been irrevocably discharged in full.

## 10. **ENFORCEMENT OF TRANSACTION SECURITY**

### 10.1 **SFA Cash Cover**

This Clause 10 is subject to Clause 16.3 (*Treatment of SFA Cash Cover*).

### 10.2 **Enforcement Instructions**

- (a) The Security Agent may refrain from enforcing the Transaction Security unless instructed otherwise by the Instructing Group.
- (b) Subject to the Transaction Security having become enforceable in accordance with its terms the Instructing Group may give or refrain from giving instructions to the Security Agent to enforce or refrain from enforcing the Transaction Security or the taking of other Enforcement Action as they see fit.
- (c) The Security Agent is entitled to rely on and comply with instructions given in accordance with this Clause 10.2 (*Enforcement Instructions*).

### 10.3 Manner of enforcement

If the Transaction Security is being enforced pursuant to Clause 10.2 (*Enforcement Instructions*), the Security Agent shall enforce the Transaction Security in such manner (including, without limitation, the selection of any administrator (or any analogous officer in any jurisdiction) of any Debtor to be appointed by the Security Agent) as the Instructing Group shall instruct or, in the absence of any such instructions, as the Security Agent considers in its discretion to be appropriate.

### 10.4 Exercise of voting rights

- (a) Each Subordinated Creditor and each Intra-Group Lender will cast its vote in any proposal put to the vote by or under the supervision of any judicial or supervisory authority in respect of any insolvency, pre insolvency or rehabilitation or similar proceedings relating to any member of the Group as instructed by the Security Agent.
- (b) The Security Agent shall give instructions for the purposes of paragraph (a) above in accordance with any instructions given to it by the Instructing Group.

### 10.5 Waiver of rights

To the extent permitted under applicable law and subject to Clause 10.2 (*Enforcement Instructions*), Clause 10.3 (*Manner of enforcement*), Clause 12.4 (*Fair Value*) and Clause 16 (*Application of Proceeds*) each of the Secured Parties and the Debtors waives all rights it may otherwise have to require that the Transaction Security be enforced in any particular order or manner or at any particular time or that any amount received or recovered from any person, or by virtue of the enforcement of any of the Transaction Security or of any other security interest, which is capable of being applied in or towards discharge of any of the Secured Obligations is so applied.

### 10.6 Enforcement through Security Agent only

The Secured Parties shall not have any independent power to enforce, or have recourse to, any of the Transaction Security or to exercise any right, power, authority or discretion arising under the Security Documents (other than the Facilities Agreement) except through the Security Agent.

### 10.7 Relevant Instructing Group

After the Security Agent has commenced an enforcement of the Transaction Security, it shall not accept any subsequent instructions as to that enforcement from anyone other than the Instructing Group that instructed it to take such enforcement (the "**Relevant Instructing Group**") regarding any other enforcement over or relating to the Transaction Security directly or indirectly the subject of the enforcement which has been commenced, without the consent of the Relevant Instructing Group, unless:

- (a) the subsequent instructions are from the Majority Super Senior Lenders in accordance with paragraphs (b)(i) of Clause 3.9 (*Permitted Enforcement: Super Senior Facility Lenders*); or
- (b) the subsequent instructions are from the Majority Senior Creditors given any time after the Super Senior Discharge Date.

## 10.8 **Duties Owed**

Each of the Secured Parties and the Debtors acknowledge that, in the event that the Security Agent enforces or is instructed to enforce the Transaction Security prior to the Senior Discharge Date, the duties of the Security Agent and of any Receiver or Delegate in respect of the method, type and timing of that enforcement or of the exploitation, management or realisation of any of that Transaction Security shall, subject to Clause 12.4 (*Fair Value*), be no different to or greater than the duty that is owed by the Security Agent, Receiver or Delegate to the Debtors under general law.

## SECTION 5

### NON-DISTRESSED DISPOSALS, DISTRESSED DISPOSALS AND CLAIMS

#### 11. NON-DISTRESSED DISPOSALS

##### 11.1 Definitions

In this Clause 11:

(a) "**Disposal Proceeds**" means the proceeds of a Non-Distressed Disposal; and

(b) "**Non-Distressed Disposal**" means a disposal of:

- (i) an asset of a member of the Group; or
- (ii) an asset which is subject to the Transaction Security,

to a person or persons outside the Group where:

- (1) the Agent notifies the Security Agent that that disposal is permitted under the Finance Documents (whether expressly or with the consent of the requisite Lenders) and the Agent agrees to give such notification if the disposal is so permitted; and
- (2) that disposal is not a Distressed Disposal.

##### 11.2 Facilitation of Non-Distressed Disposals

(a) If a disposal of an asset is a Non-Distressed Disposal, the Security Agent is irrevocably authorised and shall (at the request and reasonable cost of the Parent and without any consent, sanction, authority or further confirmation from any Creditor, other Secured Party or Debtor) but subject to paragraph (b) below:

- (i) release the Transaction Security or any other claim (relating to a Debt Document) over that asset;
- (ii) where that asset consists of shares in the capital of a member of the Group, release the Transaction Security or any other claim (relating to a Debt Document) over that member of the Group's Property (including the assets of any Subsidiary of that member of the Group); and
- (iii) execute and deliver or enter into any release of the Transaction Security or any claim described in paragraphs (i) and (ii) above and issue any certificates of non-crystallisation of any floating charge or any consent to dealing that may, in the discretion of the Security Agent, be considered necessary.

(b) Each release of Transaction Security or any claim described in paragraph (a) above shall become effective only on the making of the relevant Non-Distressed Disposal.

##### 11.3 Disposal Proceeds

If any Disposal Proceeds are required to be applied in mandatory prepayment of the Senior Facility Liabilities in accordance with the terms of the Facilities Agreement then, subject to Clause 14.4 (*Adjustment of Mandatory Prepayments*), those Disposal Proceeds shall be

applied in or towards Payment of the Senior Facility Liabilities in accordance with the terms of the Facilities Agreement and the consent of any other Party shall not be required for that application.

## 12. DISTRESSED DISPOSALS AND APPROPRIATION

### 12.1 Facilitation of Distressed Disposals and Appropriation

Subject to compliance with Clause 12.4 (*Fair Value*), if a Distressed Disposal or an Appropriation is being effected, the Security Agent is irrevocably authorised (at the cost of the Parent and without any consent, sanction, authority or further confirmation from any Creditor, other Secured Party or Debtor):

- (a) **release of Transaction Security/non-crystallisation certificates:** to release the Transaction Security and/or any other claim over the asset subject to the Distressed Disposal or Appropriation and/or execute and deliver or enter into any release of that Transaction Security or claim and issue any letters of non-crystallisation of any floating charge or any consent to dealing that may, in the discretion of the Security Agent, be considered necessary or desirable;
- (b) **release of liabilities and Transaction Security on a share sale/Appropriation (Debtor):** if the asset subject to the Distressed Disposal or Appropriation consists of shares in the capital of a Debtor, to release:
  - (i) that Debtor and any Subsidiary of that Debtor from all or any part of:
    - (1) its Borrowing Liabilities;
    - (2) its Guarantee Liabilities; and
    - (3) its Other Liabilities;
  - (ii) any Transaction Security granted by that Debtor or any Subsidiary of that Debtor over any of its assets; and
  - (iii) any other claim of a Subordinated Creditor, an Intra-Group Lender, or another Debtor over that Debtor's assets or over the assets of any Subsidiary of that Debtor,

on behalf of the relevant Creditors and Debtors;

- (c) **release of liabilities and Transaction Security on a share sale/Appropriation (Holding Company):** if the asset subject to the Distressed Disposal or Appropriation consists of shares in the capital of any Holding Company of a Debtor, to release:
  - (i) that Holding Company and any Subsidiary of that Holding Company from all or any part of:
    - (1) its Borrowing Liabilities;
    - (2) its Guarantee Liabilities; and
    - (3) its Other Liabilities;

- (ii) any Transaction Security granted by any Subsidiary of that Holding Company over any of its assets; and
- (iii) any other claim of a Subordinated Creditor, an Intra-Group Lender or another Debtor over the assets of any Subsidiary of that Holding Company,

on behalf of the relevant Creditors and Debtors;

- (d) **facilitative disposal of liabilities on a share sale/Appropriation:** if the asset subject to the Distressed Disposal or Appropriation consists of shares in the capital of a Debtor or the Holding Company of a Debtor and the Security Agent decides to dispose of all or any part of:

- (i) the Liabilities (other than Liabilities due to the Agent or the Arranger); or
- (ii) the Debtors' Intra-Group Receivables,

owed by that Debtor or Holding Company or any Subsidiary of that Debtor or Holding Company on the basis that any transferee of those Liabilities or Debtors' Intra-Group Receivables (the "**Transferee**") will not be treated as a Senior Creditor or a Secured Party for the purposes of this Agreement), to execute and deliver or enter into any agreement to dispose of all or part of those Liabilities or Debtors' Intra-Group Receivables on behalf of the relevant Creditors and Debtors **provided that** notwithstanding any other provision of any Debt Document the Transferee shall not be treated as a Senior Creditor or a Secured Party for the purposes of this Agreement;

- (e) **sale of liabilities on a share sale/Appropriation:** if the asset subject to the Distressed Disposal or Appropriation consists of shares in the capital of a Debtor or the Holding Company of a Debtor and the Security Agent decides to dispose of all or any part of:

- (i) the Liabilities (other than Liabilities due to the Agent or the Arranger); or
- (ii) the Debtors' Intra-Group Receivables,

owed by that Debtor or Holding Company or any Subsidiary of that Debtor or Holding Company on the basis that any transferee of those Liabilities or Debtors' Intra-Group Receivables will be treated as a Senior Creditor or a Secured Party for the purposes of this Agreement, to execute and deliver or enter into any agreement to dispose of:

- (1) all (and not part only) of the Liabilities owed to the Senior Creditors (other than to the Agent or the Arranger); and
- (2) all or part of any other Liabilities (other than Liabilities owed to the Agent or the Arranger) and the Debtors' Intra-Group Receivables,

on behalf of, in each case, the relevant Creditors and Debtors;

- (f) **transfer of obligations in respect of liabilities on a share sale/Appropriation:** if the asset subject to the Distressed Disposal or Appropriation consists of shares in the capital of a Debtor or the Holding Company of a Debtor (the "**Disposed Entity**") and the Security Agent decides to transfer to another Debtor (the

"**Receiving Entity**") all or any part of the Disposed Entity's obligations or any obligations of any Subsidiary of that Disposed Entity in respect of:

- (i) the Intra-Group Liabilities; or
- (ii) the Debtors' Intra-Group Receivables,

to execute and deliver or enter into any agreement to:

- (1) agree to the transfer of all or part of the obligations in respect of those Intra-Group Liabilities or Debtors' Intra-Group Receivables on behalf of the relevant Intra-Group Lenders and Debtors to which those obligations are owed and on behalf of the Debtors which owe those obligations; and
- (2) to accept the transfer of all or part of the obligations in respect of those Intra-Group Liabilities or Debtors' Intra-Group Receivables on behalf of the Receiving Entity or Receiving Entities to which the obligations in respect of those Intra-Group Liabilities or Debtors' Intra-Group Receivables are to be transferred.

## 12.2 **Form of consideration for Distressed Disposals and Debt Disposals**

Subject to Clause 12.4 (*Fair Value*) and Clause 13.5 (*Security Agent protection*), a Distressed Disposal or a Debt Disposal may be made in whole or in part for consideration in the form of cash or, if not for cash, for Non-Cash Consideration which is acceptable to the Security Agent.

## 12.3 **Proceeds of Distressed Disposals and Debt Disposals**

The net proceeds of each Distressed Disposal and each Debt Disposal shall be paid, or distributed, to the Security Agent for application in accordance with Clause 16 (*Application of Proceeds*) and, to the extent that:

- (a) any Liabilities Sale has occurred; or
- (b) any Appropriation has occurred,

as if that Liabilities Sale, or any reduction in the Secured Obligations resulting from that Appropriation, had not occurred.

## 12.4 **Fair Value**

- (a) In the case of:
  - (i) a Distressed Disposal or;
  - (ii) a Liabilities Sale,

effected by, or at the request of, the Security Agent (where the Instructing Group is the Majority Super Senior Lenders), the Security Agent shall take reasonable care to obtain a fair market value taking into account all relevant circumstances (though the Security Agent shall have no obligation to postpone (or request the postponement of) any Distressed Disposal or Liabilities Sale in order to achieve a higher price).



- (b) The requirement in paragraph (a) above shall only be satisfied (and as between the Creditors and the Debtors shall be conclusively presumed to be satisfied) and the Security Agent will be taken to have discharged all its obligations in this respect under this Agreement, the other Debt Documents and generally at law, provided that the Distressed Disposal or Liabilities Sale is made for cash and if:
- (i) that Distressed Disposal or Liabilities Sale is made pursuant to a Competitive Sales Process; or
  - (ii) a Financial Adviser appointed by the Security Agent pursuant to Clause 12.5 (*Appointment of Financial Adviser*) has delivered a Fairness Opinion to the Security Agent in respect of that Distressed Disposal or Liabilities Sale; or
  - (iii) that Distressed Disposal or Liabilities Sale is made with the consent of the Majority Pari Passu Lenders; or
  - (iv) the Senior Discharge Date has occurred or will occur upon completion of that Distressed Disposal or Liabilities Sale and application of the proceeds of the same in accordance with this Agreement.
- (c) Any Liabilities, Transaction Security or other claims in respect of the Super Senior Liabilities may only be released by the Security Agent if the Super Senior Liabilities have been repaid in full in cash at that time.

## 12.5 Appointment of Financial Adviser

- (a) Without prejudice to Clause 18.7 (*Rights and discretions*), the Security Agent may engage, or approve the engagement of, (in each case on such terms as it may consider appropriate (including, without limitation, restrictions on that Financial Adviser's liability and the extent to which any advice, valuation or opinion may be relied on or disclosed)), pay for and rely on the services of a Financial Adviser to provide advice, a valuation or an opinion in connection with:
- (i) a Distressed Disposal or a Debt Disposal;
  - (ii) the application or distribution of any proceeds of a Distressed Disposal or a Debt Disposal;
  - (iii) any amount of Non-Cash Consideration which is subject to Clause 8.2 (*Turnover by the Creditors*); or
  - (iv) the cash value of any Non-Cash Recoveries.
- (b) For the purposes of paragraph (a) above, the Security Agent shall act:
- (i) on the instructions of the Instructing Group if the Financial Adviser is providing (1) a Fairness Opinion for the purposes of Clause 12.4(b)(ii) (*Fair Value*); or (2) a valuation for the purposes of Clause 13.2 (*Cash value of Non-Cash Recoveries*); or
  - (ii) otherwise in accordance with Clause 12.6 (*Security Agent's actions*).

## 12.6 Security Agent's actions

For the purposes of Clause 12.1 (*Facilitation of Distressed Disposals and Appropriation*), Clause 12.2 (*Form of consideration for Distressed Disposals and Debt Disposals*) and Clause 12.4 (*Fair Value*) the Security Agent shall act:

- (a) in the case of an Appropriation or if the relevant Distressed Disposal is being effected by way of enforcement of the Transaction Security, in accordance with Clause 10.3 (*Manner of enforcement*); and
- (b) in any other case:
  - (i) on the instructions of the Instructing Group; or
  - (ii) in the absence of any such instructions, as the Security Agent sees fit.

## 13. NON-CASH RECOVERIES

### 13.1 Security Agent and Non-Cash Recoveries

Subject to Clause 12.4 (*Fair Value*), to the extent the Security Agent receives or recovers any Non-Cash Recoveries, it may (acting on the instructions of the Instructing Group) but without prejudice to its ability to exercise discretion under Clause 16.2 (*Prospective liabilities*):

- (a) distribute those Non-Cash Recoveries pursuant to Clause 16 (*Application of proceeds*) as if they were Cash Proceeds;
- (b) hold, manage, exploit, collect, realise and dispose of those Non-Cash Recoveries; and
- (c) hold, manage, exploit, collect, realise and distribute any resulting Cash Proceeds.

### 13.2 Cash value of Non-Cash Recoveries

- (a) The cash value of any Non-Cash Recoveries shall be determined by reference to a valuation obtained by the Security Agent from a Financial Adviser appointed by the Security Agent pursuant to Clause 12.5 (*Appointment of Financial Adviser*) taking into account any notional conversion made pursuant to Clause 16.5 (*Currency conversion*).
- (b) If any Non-Cash Recoveries are distributed pursuant to Clause 16 (*Application of proceeds*), the extent to which such distribution is treated as discharging the Liabilities shall be determined by reference to the cash value of those Non-Cash Recoveries determined pursuant to paragraph (a) above.

### 13.3 The Agent and Non-Cash Recoveries

- (a) Subject to Clause 12.4 (*Fair Value*), paragraph (b) below and to Clause 13.4 (*Alternative to Non-Cash Consideration*), if, pursuant to Clause 16.1 (*Order of application*), the Agent receives Non-Cash Recoveries for application towards the discharge of any Liabilities, the Agent shall apply those Non-Cash Recoveries in accordance with the Facilities Agreement as if they were Cash Proceeds.

- (b) The Agent may:
  - (i) use any reasonably suitable method of distribution, as it may determine in its discretion, to distribute those Non-Cash Recoveries in the order of priority that would apply under the Facilities Agreement if those Non-Cash Recoveries were Cash Proceeds;
  - (ii) hold any Non-Cash Recoveries through another person; and
  - (iii) hold any amount of Non-Cash Recoveries for so long as the Agent shall think fit for later application pursuant to paragraph (a) above.

#### 13.4 **Alternative to Non-Cash Consideration**

- (a) If any Non-Cash Recoveries are to be distributed pursuant to Clause 16 (*Application of proceeds*), the Security Agent shall (prior to that distribution and taking into account the Liabilities then outstanding and the cash value of those Non-Cash Recoveries) notify the Senior Creditors entitled to receive those Non-Cash Recoveries pursuant to that distribution (the "**Entitled Creditors**").
- (b) If:
  - (i) it would be unlawful for an Entitled Creditor to receive such Non-Cash Recoveries (or it would otherwise conflict with that Entitled Creditor's constitutional documents for it to do so); and
  - (ii) that Entitled Creditor promptly so notifies the Security Agent and supplies such supporting evidence as the Security Agent may reasonably require,that Senior Creditor shall be a "**Cash Only Creditor**" and the Non-Cash Recoveries to which it is entitled shall be "**Retained Non-Cash**".
- (c) To the extent that, in relation to any distribution of Non-Cash Recoveries, there is a Cash Only Creditor:
  - (i) the Security Agent shall not distribute any Retained Non-Cash to that Cash Only Creditor (or to the Agent on behalf of that Cash Only Creditor) but shall otherwise treat the Non-Cash Recoveries in accordance with this Agreement;
  - (ii) the Security Agent shall notify the Agent of that Cash Only Creditor's identity and its status as a Cash Only Creditor; and
  - (iii) to the extent notified pursuant to paragraph (ii) above, the Agent shall not distribute any of those Non-Cash Recoveries to that Cash Only Creditor.
- (d) Subject to Clause 13.5 (*Security Agent protection*), the Security Agent shall hold any Retained Non-Cash and shall, acting on the instructions of the Cash Only Creditor entitled to it, manage, exploit, collect, realise and dispose of that Retained Non-Cash for cash consideration and shall distribute any Cash Proceeds of that Retained Non-Cash to that Cash Only Creditor in accordance with Clause 16 (*Application of proceeds*).
- (e) On any such distribution of Cash Proceeds which are attributable to a disposal of any Retained Non-Cash, the extent to which such distribution is treated as

discharging the Liabilities due to the relevant Cash Only Creditor shall be determined by reference to:

- (i) the valuation which determined the extent to which the distribution of the Non-Cash Recoveries to the other Entitled Creditors discharged the Liabilities due to those Entitled Creditors; and
  - (ii) the Retained Non-Cash to which those Cash Proceeds are attributable.
- (f) Each Senior Creditor shall, following a request by the Security Agent (acting in accordance with Clause 12.6 (*Security Agent's actions*)), notify the Security Agent of the extent to which paragraph (b)(i) above would apply to it in relation to any distribution or proposed distribution of Non-Cash Recoveries.

### 13.5 Security Agent protection

- (a) No Distressed Disposal or Debt Disposal may be made in whole or part for Non-Cash Consideration if the Security Agent has reasonable grounds for believing that its receiving, distributing, holding, managing, exploiting, collecting, realising or disposing of that Non-Cash Consideration would have an adverse effect on it.
- (b) If Non-Cash Consideration is distributed to the Security Agent pursuant to Clause 8.2 (*Turnover by the Creditors*) the Security Agent may, at any time after notifying the Creditors entitled to that Non-Cash Consideration and notwithstanding any instruction from a Creditor or group of Creditors pursuant to the terms of any Debt Document, immediately realise and dispose of that Non-Cash Consideration for cash consideration (and distribute any Cash Proceeds of that Non-Cash Consideration to the relevant Creditors in accordance with Clause 16 (*Application of Proceeds*)) if the Security Agent has reasonable grounds for believing that holding, managing, exploiting or collecting that Non-Cash Consideration would have an adverse effect on it.
- (c) If the Security Agent holds Retained Non-Cash for a Cash Only Creditor (each as defined in Clause 13.4 (*Alternative to Non-Cash Consideration*)) the Security Agent may at any time, after notifying that Cash Only Creditor and notwithstanding any instruction from a Creditor or group of Creditors pursuant to the terms of any Debt Document, immediately realise and dispose of that Retained Non-Cash for cash consideration (and distribute any Cash Proceeds of that Retained Non-Cash to that Cash Only Creditor in accordance with Clause 16 (*Application of proceeds*)) if the Security Agent has reasonable grounds for believing that holding, managing, exploiting or collecting that Retained Non-Cash would have an adverse effect on it.

## 14. ACQUISITION AND INSURANCE CLAIMS

### 14.1 Facilitation of claims

- (a) So long as the requirements of Clause 14.2 (*Mandatory prepayment of Proceeds*) and, in the case of a claim against the provider of any Report, the requirements of Clause 14.3 (*Recoveries from Report Providers*) are met, if any claim relating to the Acquisition or insurance claim is to be made, or is made, by a Debtor prior to a Distress Event and that claim or that insurance claim (or any proceeds of that claim or that insurance claim (the "**Proceeds**")) is or are expressed to be subject to the Transaction Security, the Security Agent is irrevocably authorised (at the cost of the

relevant Debtor or the Parent and without any consent, sanction, authority or further confirmation from any Creditor, other Secured Party or Debtor) to:

- (b) give a consent under or release the Transaction Security, or any other claim, over the relevant document or insurance policy solely to the extent necessary to allow that Debtor to make that claim or that insurance claim and to comply with that Debtor's obligations in respect of that claim or that insurance claim and any Proceeds under the Facilities Agreement; and
- (c) execute and deliver or enter into any such consent under or release of that Transaction Security, or claim, that may, in the discretion of the Security Agent, be considered necessary.

#### 14.2 **Mandatory prepayment of Proceeds**

If any Proceeds are required to be applied in mandatory prepayment of the Senior Facility Liabilities then, subject to Clause 14.4 (*Adjustment of Mandatory Prepayments*), those Proceeds shall be applied in or towards Payment of the Senior Facility Liabilities in accordance with the terms of the Facilities Agreement and the consent of any other Party shall not be required for that application.

#### 14.3 **Recoveries from Report Providers**

- (a) In this Clause 14.3:

**"Award Proceeds"** means, in relation to a Net Award, an amount equal to that Net Award;

**"Net Award"** means any amount received or recovered by any Party in relation to any Proceedings less reasonable legal costs and expenses incurred by that Party in pursuing such Proceedings and any tax payable (or which, in accordance with the Accounting Principles is reserved) by that Party directly as a result of that receipt or recovery;

**"Proceedings"** means any litigation, arbitration, proceedings or claim against a Report Provider with a view to obtaining a recovery from that Report Provider; and

**"Report Provider"** means any professional adviser or other person who has provided a Report.

- (b) If any Party decides to commence Proceedings in relation to, or resulting from, any of the transactions contemplated by the Debt Documents, it will:
  - (i) give the other Parties reasonable prior notice (through the Security Agent) of its intention to do so;
  - (ii) give each other Party and any insolvency representative appointed under, or pursuant to the terms of, any Finance Document or Hedging Agreement a reasonable opportunity to be joined into such Proceedings or initiate similar proceedings; and
  - (iii) co-operate with any such persons who are joined in as regards the efficient and effective conduct of such Proceedings,

and, in any event, no Party shall at any time waive any right or claim against any Report Provider without the prior written consent of the Security Agent.

- (c) If no Distress Event has occurred at the time of receipt of a Net Award, and the Facilities Agreement requires Award Proceeds obtained by the Parent to be applied in mandatory prepayment of the Senior Facility Liabilities, the recipient of that Net Award (if not the Parent) shall pay the Award Proceeds to the Parent for application in accordance, subject to Clause 14.4 (*Adjustment of Mandatory Prepayments*), with the Facilities Agreement.
- (d) If a Distress Event has occurred at the time of receipt of a Net Award, the recipient of that Net Award shall pay the Award Proceeds to the Security Agent and the Security Agent shall apply those Award Proceeds in accordance with Clause 16 (*Application of Proceeds*).
- (e) This Clause 14.3 shall apply until the Senior Discharge Date.

#### 14.4 **Adjustment of Mandatory Prepayments**

If the making of any Mandatory Prepayment (an "**Original Mandatory Prepayment**") would result in a payment (a "**Hedge Reduction Payment**") becoming due to any Hedge Counterparty pursuant to paragraph (d) of Clause 4.13 (*Total Interest Rate Hedging and Total Exchange Rate Hedging*), the amount of that Mandatory Prepayment will be reduced so that the aggregate of:

- (a) the reduced Mandatory Prepayment; and
- (b) each Hedge Reduction Payment which would result from that reduced Mandatory Prepayment,

is equal to the amount of the Original Mandatory Prepayment.

#### 15. **FURTHER ASSURANCE – DISPOSALS AND RELEASES**

Each Creditor and Debtor will:

- (a) do all things that the Security Agent requests in order to give effect to Clause 11 (*Non-Distressed Disposals*), Clause 12 (*Distressed Disposals and Appropriation*) and Clause 14 (*Acquisition and insurance claims*) (which shall include, without limitation, the execution of any assignments, transfers, releases or other documents that the Security Agent may consider to be necessary to give effect to the releases or disposals contemplated by those Clauses); and
- (b) if the Security Agent is not entitled to take any of the actions contemplated by those Clauses or if the Security Agent requests that any Creditor or Debtor take any such action, take that action itself in accordance with the instructions of the Security Agent,

**provided that** the proceeds of those disposals are applied in accordance with Clause 11 (*Non-Distressed Disposals*) or Clause 12 (*Distressed Disposals and Appropriation*) as the case may be.

**SECTION 6****PROCEEDS****16. APPLICATION OF PROCEEDS****16.1 Order of application**

Subject to Clause 16.2 (*Prospective liabilities*) and Clause 16.3 (*Treatment of SFA Cash Cover*), all amounts from time to time received or recovered by the Security Agent pursuant to the terms of any Debt Document or in connection with the realisation or enforcement of all or any part of the Transaction Security (for the purposes of this Clause 16, the "**Recoveries**") shall be held by the Security Agent on trust to apply them at any time as the Security Agent (in its discretion) sees fit, to the extent permitted by applicable law (and subject to the provisions of this Clause 16), in the following order of priority:

- (a) in discharging any sums owing to the Security Agent, any Receiver or any Delegate;
- (b) in discharging all costs and expenses incurred by any Senior Creditor in connection with any realisation or enforcement of the Transaction Security taken in accordance with the terms of this Agreement or any action taken at the request of the Security Agent under Clause 7.6 (*Further Assurance – Insolvency Event*);

- (c) in payment or distribution to:

- (i) the Agent on its own behalf and on behalf of the Super Senior Facility Lenders; and
- (ii) the relevant Hedge Counterparties,

for application towards the discharge of:

- (1) (i) the Senior Facility Liabilities owed by any Debtor to the Agent (in its capacity as Agent); and (ii) the Super Senior Facility Liabilities, (in each case, in accordance with the terms of the Finance Documents and on a pro rata basis between them); and
- (2) the Super Senior Hedging Liabilities (on a pro rata basis between the Super Senior Hedging Liabilities of each Hedge Counterparty);

on a pro rata basis between paragraph (1) above and paragraph (2) above;

- (d) in payment or distribution to:

- (i) the Agent on behalf of the Arranger and the Pari Passu Lenders; and
- (ii) the Hedge Counterparties,

for application towards the discharge of:

- (1) the Pari Passu Liabilities; and
- (2) the Senior Facility Liabilities owed by any Debtor to the Arranger of the Term Facilities,

(in each case, in accordance with the terms of the Facilities Agreement and on a pro rata basis between them); and

(3) the Excess Hedging Liabilities (on a pro rata basis between the Excess Hedging Liabilities of each Hedge Counterparty),

on a pro rata basis between paragraphs (1), (2) and (3) above;

- (e) if none of the Debtors is under any further actual or contingent liability under any Finance Document or Hedging Agreement, in payment or distribution to any person to whom the Security Agent is obliged to pay or distribute in priority to any Debtor; and
- (f) the balance, if any, in payment or distribution to the relevant Debtor.

## 16.2 Prospective liabilities

Following a Distress Event the Security Agent may, in its discretion:

- (a) hold any amount of the Recoveries which is in the form of cash, and any cash which is generated by holding, managing, exploiting, collecting, realising or disposing of any Non-Cash Consideration, in one or more interest bearing suspense or impersonal account in the name of the Security Agent with such financial institution (including itself) as the Security Agent shall think fit (the interest being credited to the relevant account); and
- (b) hold, manage, exploit, collect and realise any amount of the Recoveries which is in the form of Non-Cash Consideration

in each case for as long as the Security Agent shall think fit for later application under Clause 16.1 (*Order of application*) in respect of:

- (i) any sum to any Security Agent, any Receiver or any Delegate; and
- (ii) any part of the Liabilities,

that the Security Agent reasonably considers, in each case, might become due or owing at any time in the future.

## 16.3 Treatment of SFA Cash Cover

- (a) Nothing in this Agreement shall prevent an Ancillary Lender taking any Enforcement Action in respect of any SFA Cash Cover which has been provided for it in accordance with the Facilities Agreement.
- (b) To the extent that any SFA Cash Cover is not held with the Relevant Ancillary Lender, all amounts from time to time received or recovered in connection with the realisation or enforcement of that SFA Cash Cover shall be paid to the Security Agent and shall be held by the Security Agent on trust to apply them at any time as the Security Agent (in its discretion) sees fit, to the extent permitted by applicable law, in the following order of priority:
  - (i) to the Relevant Ancillary Lender towards the discharge of the Senior Facility Liabilities for which that SFA Cash Cover was provided; and
  - (ii) the balance, if any, in accordance with Clause 16.1 (*Order of application*).



- (c) To the extent that any SFA Cash Cover is held with the Relevant Ancillary Lender, nothing in this Agreement shall prevent that Relevant Ancillary Lender receiving and retaining any amount in respect of that SFA Cash Cover.

#### 16.4 Investment of Cash Proceeds

Prior to the application of the proceeds of the Security Property in accordance with Clause 16.1 (*Order of application*) the Security Agent may, in its discretion, hold all or part of any Cash Proceeds in one or more interest bearing suspense or impersonal accounts in the name of the Security Agent with such financial institution (including itself) and for so long as the Security Agent shall think fit (the interest being credited to the relevant account) pending the application from time to time of those monies in the Security Agent's discretion in accordance with the provisions of this Clause 16.

#### 16.5 Currency conversion

- (a) For the purpose of, or pending the discharge of, any of the Secured Obligations the Security Agent may:
  - (i) convert any moneys received or recovered by the Security Agent (including, without limitation, any Cash Proceeds) from one currency to another, at the Security Agent's Spot Rate of Exchange; and
  - (ii) notionally convert the valuation provided in any opinion or valuation from one currency to another, at the Security Agent's Spot Rate of Exchange.
- (b) The obligations of any Debtor to pay in the due currency shall only be satisfied:
  - (i) in the case of paragraph (a)(i) above, to the extent of the amount of the due currency purchased after deducting the costs of conversion; and
  - (ii) in the case of paragraph (a)(ii) above, to the extent of the amount of the due currency which results from the notional conversion referred to in that paragraph.

#### 16.6 Permitted Deductions

The Security Agent shall be entitled, in its discretion, (a) to set aside by way of reserve amounts required to meet and (b) to make and pay, any deductions and withholdings (on account of Taxes or otherwise) which it is or is reasonably likely to be required by any law or regulation to make from any distribution or payment made by it under this Agreement, and to pay all Taxes which may be assessed against it in respect of any of the Charged Property, or as a consequence of performing its duties or exercising its rights, powers, authorities and discretions, or by virtue of its capacity as Security Agent under any of the Debt Documents or otherwise (other than in connection with its remuneration for performing its duties under this Agreement).

#### 16.7 Good Discharge

- (a) Any distribution or payment to be made in respect of the Secured Obligations by the Security Agent:
  - (i) may be made to the Agent on behalf of the Senior Creditors;
  - (ii) may be made to the Relevant Ancillary Lender in accordance with paragraph (b)(i) of Clause 16.3 (*Treatment of SFA Cash Cover*); or

- (iii) shall be made directly to the Hedge Counterparties.
- (b) Any distribution or payment made as described in paragraph (a) above shall be a good discharge, to the extent of that payment or distribution, by the Security Agent:
  - (i) in the case of a payment made in cash, to the extent of that payment; and
  - (ii) in the case of a distribution of Non-Cash Recoveries, as determined by Clause 13.2 (*Cash value of Non-Cash Recoveries*).
- (c) The Security Agent is under no obligation to make the payments to the Agent or the Hedge Counterparties under paragraph (a) above in the same currency as that in which the Liabilities owing to the relevant Creditor are denominated pursuant to the relevant Debt Document.

## 16.8 Calculation of Amounts

For the purpose of calculating any person's share of any amount payable to or by it, the Security Agent shall be entitled to:

- (a) notionally convert the Liabilities owed to any person into a common base currency (decided in its discretion by the Security Agent), that notional conversion to be made at the spot rate at which the Security Agent is able to purchase the notional base currency with the actual currency of the Liabilities owed to that person at the time at which that calculation is to be made; and
- (b) assume that all amounts received or recovered as a result of the enforcement or realisation of the Security Property are applied in discharge of the Liabilities in accordance with the terms of the Debt Documents under which those Liabilities have arisen.

## 17. EQUALISATION

### 17.1 Equalisation Definitions

For the purposes of this Clause 17:

**"Enforcement Date"** means the first date (if any) on which a Senior Creditor takes enforcement action of the type described in paragraphs (a)(i), (a)(iii), (a)(iv) or (c) of the definition of **"Enforcement Action"** in accordance with the terms of this Agreement.

**"Exposure"** means:

- (a) in relation to a Super Senior Facility Lender, the aggregate amount of its participation (if any, and without double counting) in all Utilisations outstanding under the Facilities Agreement in relation to any Super Senior Facility at the Enforcement Date (assuming all contingent liabilities which have become actual liabilities since the Enforcement Date to have been actual liabilities at the Enforcement Date (but not including, for these purposes only, any interest that would have accrued from the Enforcement Date to the date of actual maturity in respect of those liabilities) and assuming any transfer of claims between Super Senior Facility Lenders pursuant to any loss-sharing arrangement in the Facilities Agreement which has taken place since the Enforcement Date to have taken place at the Enforcement Date) together with the aggregate amount of all accrued interest, fees and commission owed to it under the Facilities Agreement and

amounts owed to it by a Debtor in respect of any Ancillary Facility but excluding any amount owed to it by a Debtor in respect of any Ancillary Facility to the extent (and in the amount) that SFA Cash Cover has been provided by a Debtor in respect of that amount and is available to that Lender pursuant to the relevant SFA Cash Cover Document;

- (b) in relation to a Hedge Counterparty:
- (i) if that Hedge Counterparty has terminated or closed out any hedging transaction under any Hedging Agreement in accordance with the terms of this Agreement on or prior to the Enforcement Date, the amount, if any, payable to it under that Hedging Agreement in respect of that termination or close-out as of the date of termination or close-out (taking into account any interest accrued on that amount) to the extent that amount is unpaid at the Enforcement Date (that amount to be certified by the relevant Hedge Counterparty and as calculated in accordance with the relevant Hedging Agreement); and
  - (ii) if that Hedge Counterparty has not terminated or closed out any hedging transaction under any Hedging Agreement on or prior to the Enforcement Date:
    - (1) if the relevant Hedging Agreement is based on an ISDA Master Agreement the amount, if any, which would be payable to it under that Hedging Agreement in respect of that hedging transaction if the Enforcement Date was deemed to be an Early Termination Date (as defined in the relevant ISDA Master Agreement) for which the relevant Debtor is the Defaulting Party (as defined in the relevant ISDA Master Agreement); or
    - (2) if the relevant Hedging Agreement is not based on an ISDA Master Agreement, the amount, if any, which would be payable to it under that Hedging Agreement in respect of that hedging transaction if the Enforcement Date was deemed to be the date on which an event similar in meaning and effect (under that Hedging Agreement) to an Early Termination Date (as defined in any ISDA Master Agreement) occurred under that Hedging Agreement for which the relevant Debtor is in a position similar in meaning and effect (under that Hedging Agreement) to that of a Defaulting Party (under and as defined in the same ISDA Master Agreement),
- that amount, in each case, to be certified by the relevant Hedge Counterparty and as calculated in accordance with the relevant Hedging Agreement; and
- (c) in relation to a Pari Passu Lender, the aggregate amount of its participation (if any, and without double counting) in all Utilisations in relation to each Facility (other than in respect of any Super Senior Facility) outstanding under the Facilities Agreement at the Enforcement Date (assuming all contingent liabilities which have become actual liabilities since the Enforcement Date to have been actual liabilities at the Enforcement Date (but not including, for these purposes only, any interest that would have accrued from the Enforcement Date to the date of actual maturity in respect of those liabilities) and assuming any transfer of claims between Pari Passu Lenders pursuant to any loss-sharing arrangement in the Facilities Agreement which has taken place since the Enforcement Date to have taken place at the

Enforcement Date) together with the aggregate amount of all accrued interest, fees and commission owed to it under the Facilities Agreement.

**"Non-Priority Senior Creditor"** means each Pari Passu Lender and each Hedge Counterparty (to the extent of its Excess Hedging Liabilities only).

**"Priority Senior Creditor"** means each Lender in respect of each Super Senior Facility, each Ancillary Lender and each Hedge Counterparty (in each case to the extent of its Super Senior Liabilities).

#### 17.2 Implementation of equalisation

- (a) The provisions of this Clause 17 shall be applied at such time or times after the Enforcement Date as the Security Agent shall consider appropriate.
- (b) Without prejudice to the generality of paragraph (a) above, if the provisions of this Clause 17 have been applied before all the Liabilities have matured and/or been finally quantified, the Security Agent may elect to re-apply those provisions on the basis of revised Exposures and the Senior Creditors shall make appropriate adjustment payments amongst themselves.

#### 17.3 Equalisation

- (a) If, for any reason, any Super Senior Liabilities remain unpaid after the Enforcement Date and the resulting losses are not borne by the Super Senior Creditors in the proportions which their respective Exposures in respect of the Super Senior Liabilities at the Enforcement Date bore to the aggregate Exposures of the Super Senior Creditors at the Enforcement Date in respect of the Super Senior Liabilities, the Super Senior Creditors will make such payments amongst themselves as the Security Agent shall require to put the Super Senior Creditors in such a position that (after taking into account such payments) those losses are borne in those proportions.
- (b) If, for any reason, any Pari Passu Liabilities or Excess Hedging Liabilities remain unpaid after the Enforcement Date and the resulting losses are not borne by the Non-Priority Senior Creditors in the proportions which their respective Exposures in respect of the Pari Passu Liabilities and the Excess Hedging Liabilities at the Enforcement Date bore to the aggregate Exposures of all Non-Priority Senior Creditors in respect of the Pari Passu Liabilities and Excess Hedging Liabilities (as applicable) at the Enforcement Date, the Non-Priority Senior Creditors will make such payments amongst themselves as the Security Agent shall require to put the Non-Priority Senior Creditors in such a position that (after taking into account such payments) those losses are borne in those proportions.

#### 17.4 Turnover of enforcement proceeds

If:

- (a) the Security Agent or the Agent is not entitled, for reasons of applicable law, to pay or distribute amounts received pursuant to the making of a demand under any guarantee, indemnity or other assurance against loss or the enforcement of the Transaction Security to the Priority Senior Creditors but is entitled to pay or distribute those amounts to Non-Priority Senior Creditors (such Non-Priority Senior Creditors the **"Receiving Creditors"**) who, in accordance with the terms of this

Agreement are subordinated in right and priority of payment to the Priority Senior Creditors; and

- (b) the Super Senior Discharge Date has not yet occurred (nor would occur after taking into account such payments),

then the Receiving Creditors shall make such payments or distributions to the Priority Senior Creditors as the Security Agent shall require to place the Priority Senior Creditors in the position they would have been in had such amounts been available for application against the Super Senior Liabilities.

#### **17.5 Notification of Exposure**

Before each occasion on which it intends to implement the provisions of this Clause 17, the Security Agent shall send notice to each Hedge Counterparty and the Agent (on behalf of the Lenders) requesting that it notify it of, respectively, its Exposure and that of each Lender (if any).

#### **17.6 Default in payment**

If a Creditor fails to make a payment due from it under this Clause 17, the Security Agent shall be entitled (but not obliged) to take action on behalf of the Senior Creditor(s) to whom such payment was to be redistributed (subject to being indemnified to its satisfaction by such Senior Creditor(s) in respect of costs) but shall have no liability or obligation towards such Senior Creditor(s), any other Senior Creditor or Creditor as regards such default in payment and any loss suffered as a result of such default shall lie where it falls.

## SECTION 7

### THE PARTIES

#### 18. THE SECURITY AGENT

##### 18.1 Security Agent as trustee and agent

- (a) The Security Agent declares that it holds the Security Property on trust for, and as agent for and on behalf of, the Secured Parties on the terms contained in this Agreement.
- (b) Each of the Senior Creditors authorises the Security Agent to perform the duties, obligations and responsibilities, to hold the Security Property on its behalf, and to exercise the rights, powers, authorities and discretions specifically given to the Security Agent under or in connection with the Debt Documents together with any other incidental rights, powers, authorities and discretions.

##### 18.2 Instructions

- (a) The Security Agent shall:
  - (i) subject to paragraphs (d) and (e) below, exercise or refrain from exercising any right, power, authority or discretion vested in it as Security Agent in accordance with any instructions given to it by the Instructing Group.
  - (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with paragraph (i) above (or, if this Agreement stipulates the matter is a decision for any other Creditor or group of Creditors, in accordance with instructions given to it by that Creditor or group of Creditors).
- (b) The Security Agent shall be entitled to request instructions, or clarification of any instruction, from the Instructing Group (or, if this Agreement stipulates the matter is a decision for any other Creditor or group of Creditors, from that Creditor or group of Creditors) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Security Agent may refrain from acting unless and until it receives those instructions or that clarification.
- (c) Save in the case of decisions stipulated to be a matter for any other Creditor or group of Creditors under this Agreement and unless a contrary intention appears in this Agreement, any instructions given to the Security Agent by the Instructing Group shall override any conflicting instructions given by any other Parties and will be binding on all Secured Parties.
- (d) Paragraph (a) above shall not apply:
  - (i) where a contrary indication appears in this Agreement;
  - (ii) where this Agreement requires the Security Agent to act in a specified manner or to take a specified action;
  - (iii) in respect of any provision which protects the Security Agent's own position in its personal capacity as opposed to its role of Security Agent for the Secured Parties including, without limitation, Clause 18.5 (*No duty to*

account) to Clause 18.10 (*Exclusion of liability*), Clause 18.13 (*Confidentiality*) to Clause 18.20 (*Custodians and nominees*) and Clause 18.23 (*Acceptance of title*) to Clause 18.26 (*Disapplication of Trustee Acts*);

(iv) in respect of the exercise of the Security Agent's discretion to exercise a right, power or authority under any of:

- (1) Clause 11 (*Non-Distressed Disposals*);
- (2) Clause 16.1 (*Order of application*);
- (3) Clause 16.2 (*Prospective liabilities*);
- (4) Clause 16.3 (*Treatment of SFA Cash Cover*); and
- (5) Clause 16.6 (*Permitted Deductions*).

(e) If giving effect to instructions given by the Instructing Group would (in the Security Agent's opinion) have an effect equivalent to an Intercreditor Amendment, the Security Agent shall not act in accordance with those instructions unless consent to it so acting is obtained from each Party (other than the Security Agent) whose consent would have been required in respect of that Intercreditor Amendment.

(f) In exercising any discretion to exercise a right, power or authority under the Debt Documents where either:

- (i) it has not received any instructions as to the exercise of that discretion; or
- (ii) the exercise of that discretion is subject to paragraph (d)(iv) above,

the Security Agent shall do so having regard to the interests of all the Secured Parties.

(g) The Security Agent may refrain from acting in accordance with any instructions of any Creditor or group of Creditors until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Debt Documents and which may include payment in advance) for any cost, loss or liability (together with any applicable VAT) which it may incur in complying with those instructions.

(h) Without prejudice to the provisions of Clause 10 (*Enforcement of Transaction Security*) and the remainder of this Clause 18.2, in the absence of instructions, the Security Agent may act (or refrain from acting) as it considers in its discretion to be appropriate.

### 18.3 Duties of the Security Agent

(a) The Security Agent's duties under the Debt Documents are solely mechanical and administrative in nature.

(b) The Security Agent shall promptly:

- (i) forward to the Agent and to each Hedge Counterparty a copy of any document received by the Security Agent from any Debtor under any Debt Document; and

- (ii) forward to a Party the original or a copy of any document which is delivered to the Security Agent for that Party by any other Party.
- (c) The Security Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (d) Without prejudice to Clause 22.3 (*Notification of prescribed events*), if the Security Agent receives notice from a Party referring to any Debt Document, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the Senior Creditors.
- (e) To the extent that a Party (other than the Security Agent) is required to calculate a Common Currency Amount, the Security Agent shall upon a request by that Party, promptly notify that Party of the relevant Security Agent's Spot Rate of Exchange.
- (f) The Security Agent shall have only those duties, obligations and responsibilities expressly specified in the Debt Documents to which it is expressed to be a party (and no others shall be implied).

#### 18.4 **No fiduciary duties to Debtors or Subordinated Creditors**

Nothing in this Agreement constitutes the Security Agent as an agent, trustee or fiduciary of any Debtor or any Subordinated Creditor.

#### 18.5 **No duty to account**

The Security Agent shall not be bound to account to any other Secured Party for any sum or the profit element of any sum received by it for its own account.

#### 18.6 **Business with the Group**

The Security Agent may accept deposits from, lend money to and generally engage in any kind of banking or other business with any member of the Group.

#### 18.7 **Rights and discretions**

- (a) The Security Agent may:
  - (i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
  - (ii) assume that:
    - (1) any instructions received by it from the Instructing Group, any Creditors or any group of Creditors are duly given in accordance with the terms of the Debt Documents;
    - (2) unless it has received notice of revocation, that those instructions have not been revoked; and
    - (3) if it receives any instructions to act in relation to the Transaction Security, that all applicable conditions under the Debt Documents for so acting have been satisfied; and



- (iii) rely on a certificate from any person:
  - (1) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
  - (2) to the effect that such person approves of any particular dealing, transaction, step, action or thing,  
  
as sufficient evidence that that is the case and, in the case of paragraph (1) above, may assume the truth and accuracy of that certificate.
- (b) The Security Agent may assume (unless it has received notice to the contrary in its capacity as security trustee for the Secured Parties) that:
  - (i) no Default has occurred;
  - (ii) any right, power, authority or discretion vested in any Party or any group of Creditors has not been exercised; and
  - (iii) any notice made by the Parent is made on behalf of and with the consent and knowledge of all the Debtors.
- (c) The Security Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
- (d) Without prejudice to the generality of paragraph (c) above or paragraph (e) below, the Security Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Security Agent (and so separate from any lawyers instructed by any Senior Creditor) if the Security Agent in its reasonable opinion deems this to be desirable.
- (e) The Security Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Security Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
- (f) The Security Agent, any Receiver and any Delegate may act in relation to the Debt Documents and the Security Property through its officers, employees and agents and shall not:
  - (i) be liable for any error of judgment made by any such person; or
  - (ii) be bound to supervise, or be in any way responsible for any loss incurred by reason of misconduct, omission or default on the part of any such person,unless such error or such loss was directly caused by the Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct.
- (g) Unless this Agreement expressly specifies otherwise, the Security Agent may disclose to any other Party any information it reasonably believes it has received as security trustee under this Agreement.
- (h) Notwithstanding any other provision of any Debt Document to the contrary, the Security Agent is not obliged to do or omit to do anything if it would, or might in its

reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.

- (i) Notwithstanding any provision of any Debt Document to the contrary, the Security Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

#### **18.8 Responsibility for documentation**

None of the Security Agent, any Receiver nor any Delegate is responsible or liable for:

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Security Agent, a Debtor or any other person in or in connection with any Debt Document or the transactions contemplated in the Debt Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Debt Document;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Debt Document, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Debt Document or the Security Property; or
- (c) any determination as to whether any information provided or to be provided to any Secured Party is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.

#### **18.9 No duty to monitor**

The Security Agent shall not be bound to enquire:

- (a) whether or not any Default has occurred;
- (b) as to the performance, default or any breach by any Party of its obligations under any Debt Document; or
- (c) whether any other event specified in any Debt Document has occurred.

#### **18.10 Exclusion of liability**

- (a) Without limiting paragraph (b) below (and without prejudice to any other provision of any Debt Document excluding or limiting the liability of the Security Agent, any Receiver or Delegate), none of the Security Agent, any Receiver nor any Delegate will be liable for:
  - (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Debt Document or the Security Property unless directly caused by its gross negligence or wilful misconduct;
  - (ii) exercising or not exercising any right, power, authority or discretion given to it by, or in connection with, any Debt Document, the Security Property or any other agreement, arrangement or document entered into, made or

executed in anticipation of, under or in connection with, any Debt Document or the Security Property;

- (iii) any shortfall which arises on the enforcement or realisation of the Security Property; or
- (iv) without prejudice to the generality of paragraphs (i) to (iii) above, any damages, costs, losses, any diminution in value or any liability whatsoever arising as a result of:
  - (1) any act, event or circumstance not reasonably within its control; or
  - (2) the general risks of investment in, or the holding of assets in, any jurisdiction,

including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets; breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.

- (b) No Party (other than the Security Agent, that Receiver or that Delegate (as applicable)) may take any proceedings against any officer, employee or agent of the Security Agent, a Receiver or a Delegate in respect of any claim it might have against the Security Agent, a Receiver or a Delegate or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Debt Document or any Security Property and any officer, employee or agent of the Security Agent, a Receiver or a Delegate may rely on this Clause subject to Clause 1.3 (*Third party rights*) and the provisions of the Third Parties Act.
- (c) Nothing in this Agreement shall oblige the Security Agent to carry out:
  - (i) any "know your customer" or other checks in relation to any person; or
  - (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Senior Creditor,

on behalf of any Senior Creditor and each Senior Creditor confirms to the Security Agent that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Security Agent.

- (d) Without prejudice to any provision of any Debt Document excluding or limiting the liability of the Security Agent, any Receiver or Delegate, any liability of the Security Agent, any Receiver or Delegate arising under or in connection with any Debt Document or the Security Property shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered (as determined by reference to the date of default of the Security Agent, Receiver or Delegate (as the case may be) or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Security Agent, Receiver or Delegate (as the case may be) at any time which increase the amount of that loss. In no event shall the Security Agent, any Receiver

or Delegate be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Security Agent, Receiver or Delegate (as the case may be) has been advised of the possibility of such loss or damages.

#### 18.11 Senior Creditors' indemnity to the Security Agent

- (a) Each Senior Creditor (other than the Agent) shall (in the proportion that the Liabilities due to it bear to the aggregate of the Liabilities due to all the Senior Creditors for the time being (or, if the Liabilities due to the Senior Creditors are zero, immediately prior to their being reduced to zero)), indemnify the Security Agent and every Receiver and every Delegate, within three Business Days of demand, against any cost, loss or liability incurred by any of them (otherwise than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct) in acting as Security Agent, Receiver or Delegate under, or exercising any authority conferred under, the Debt Documents (unless the relevant Security Agent, Receiver or Delegate has been reimbursed by a Debtor pursuant to a Debt Document).
- (b) For the purposes only of paragraph (a) above, to the extent that any hedging transaction under a Hedging Agreement has not been terminated or closed-out, the Super Senior Hedging Liabilities or Excess Hedging Liabilities (as applicable) due to any Hedge Counterparty in respect of that hedging transaction will be deemed to be:
  - (i) if the relevant Hedging Agreement is based on an ISDA Master Agreement, the amount, if any, which would be payable to it under that Hedging Agreement in respect of those hedging transactions, if the date on which the calculation is made was deemed to be an Early Termination Date (as defined in the relevant ISDA Master Agreement) for which the relevant Debtor is the Defaulting Party (as defined in the relevant ISDA Master Agreement); or
  - (ii) if the relevant Hedging Agreement is not based on an ISDA Master Agreement, the amount, if any, which would be payable to it under that Hedging Agreement in respect of that hedging transaction, if the date on which the calculation is made was deemed to be the date on which an event similar in meaning and effect (under that Hedging Agreement) to an Early Termination Date (as defined in any ISDA Master Agreement) occurred under that Hedging Agreement for which the relevant Debtor is in a position similar in meaning and effect (under that Hedging Agreement) to that of a Defaulting Party (under and as defined in the same ISDA Master Agreement),

that amount, in each case as calculated in accordance with the relevant Hedging Agreement.

- (c) Subject to paragraph (d) below, the Parent shall immediately on demand reimburse any Senior Creditor for any payment that Senior Creditor makes to the Security Agent pursuant to paragraph (a) above.
- (d) Paragraph (c) above shall not apply to the extent that the indemnity payment in respect of which the Senior Creditor claims reimbursement relates to a liability of the Security Agent to a Debtor.

### 18.12 Resignation of the Security Agent

- (a) The Security Agent may resign and appoint one of its Affiliates acting through an office in the United Kingdom as successor by giving notice to the Senior Creditors and the Parent.
- (b) Alternatively the Security Agent may resign by giving 30 days' notice to the Senior Creditors and the Parent, in which case the Instructing Group (after consultation with the Parent) may appoint a successor Security Agent (acting through an office in the United Kingdom).
- (c) If the Instructing Group has not appointed a successor Security Agent in accordance with paragraph (b) above within 20 days after notice of resignation was given, the retiring Security Agent (after consultation with the Agent, the Hedge Counterparties and the Parent) may appoint a successor Security Agent (acting through an office in the United Kingdom).
- (d) The retiring Security Agent shall, at its own cost, make available to the successor Security Agent such documents and records and provide such assistance as the successor Security Agent may reasonably request for the purposes of performing its functions as Security Agent under the Debt Documents.
- (e) The Security Agent's resignation notice shall only take effect upon:
  - (i) the appointment of a successor; and
  - (ii) the transfer of all the Security Property to that successor.
- (f) Upon the appointment of a successor, the retiring Security Agent shall be discharged from any further obligation in respect of the Debt Documents (other than its obligations under paragraph (b) of Clause 18.24 (Winding up of trust) and paragraph (d) above) but shall remain entitled to the benefit of this Clause 18 and Clause 21.1 (*Indemnity to the Security Agent*) (and any Security Agent fees for the account of the retiring Security Agent shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if that successor had been an original Party.
- (g) The Instructing Group may, by notice to the Security Agent, require it to resign in accordance with paragraph (b) above. In this event, the Security Agent shall resign in accordance with paragraph (b) above but the cost referred to in paragraph (d) above shall be for the account of the Parent.

### 18.13 Confidentiality

- (a) In acting as trustee for the Secured Parties, the Security Agent shall be regarded as acting through its trustee division which shall be treated as a separate entity from any other of its divisions or departments.
- (b) If information is received by another division or department of the Security Agent, it may be treated as confidential to that division or department and the Security Agent shall not be deemed to have notice of it.
- (c) Notwithstanding any other provision of any Debt Document to the contrary, the Security Agent is not obliged to disclose to any other person (i) any confidential

information or (ii) any other information if the disclosure would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty.

#### 18.14 Information from the Creditors

Each Creditor shall supply the Security Agent with any information that the Security Agent may reasonably specify as being necessary or desirable to enable the Security Agent to perform its functions as Security Agent.

#### 18.15 Credit appraisal by the Secured Parties

Without affecting the responsibility of any Debtor for information supplied by it or on its behalf in connection with any Debt Document, each Secured Party confirms to the Security Agent that it has been, and will continue to be, solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with any Debt Document including but not limited to:

- (a) the financial condition, status and nature of each member of the Group;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Debt Document, the Security Property and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Debt Document or the Security Property;
- (c) whether that Secured Party has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Debt Document, the Security Property, the transactions contemplated by the Debt Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Debt Document or the Security Property;
- (d) the adequacy, accuracy or completeness of any information provided by the Security Agent, any Party or by any other person under or in connection with any Debt Document, the transactions contemplated by any Debt Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Debt Document; and
- (e) the right or title of any person in or to, or the value or sufficiency of any part of the Charged Property, the priority of any of the Transaction Security or the existence of any Security affecting the Charged Property.

#### 18.16 Security Agent's additional remuneration

In the event of:

- (a) a Default which is continuing; or
- (b) the Security Agent being requested by a Debtor or the Instructing Group to undertake duties which the Security Agent and the Parent agree to be of an exceptional nature or outside the scope of the normal duties of the Security Agent under the Debt Documents; or
- (c) the Security Agent and the Parent agreeing that it is otherwise appropriate in the circumstances,

the Parent shall pay to the Security Agent any additional remuneration (together with any applicable VAT) that may be agreed between them.

If the Security Agent and the Parent fail to agree upon the nature of the duties or upon the additional remuneration referred to in paragraph (b) above or whether additional remuneration is appropriate in the circumstances, any dispute shall be determined by an investment bank (acting as an expert and not as an arbitrator) selected by the Security Agent and approved by the Parent or, failing approval, nominated (on the application of the Security Agent) by the President for the time being of the Law Society of England and Wales (the costs of the nomination and of the investment bank being payable by the Parent) and the determination of any investment bank shall be final and binding upon the Parties.

#### **18.17 Reliance and engagement letters**

The Security Agent may obtain and rely on any certificate or report from any Debtor's auditor and may enter into any reliance letter or engagement letter relating to that certificate or report on such terms as it may consider appropriate (including, without limitation, restrictions on the auditor's liability and the extent to which that certificate or report may be relied on or disclosed).

#### **18.18 No responsibility to perfect Transaction Security**

The Security Agent shall not be liable for any failure to:

- (a) require the deposit with it of any deed or document certifying, representing or constituting the title of any Debtor to any of the Charged Property;
- (b) obtain any licence, consent or other authority for the execution, delivery, legality, validity, enforceability or admissibility in evidence of any Debt Document or the Transaction Security;
- (c) register, file or record or otherwise protect any of the Transaction Security (or the priority of any of the Transaction Security) under any law or regulation or to give notice to any person of the execution of any Debt Document or of the Transaction Security;
- (d) take, or to require any Debtor to take, any step to protect, perfect its interest or title to any of the Charged Property or to render the Transaction Security effective or to secure the creation of any ancillary Security under any law or regulation; or
- (e) require any further assurance in relation to any Security Document.

#### **18.19 Insurance by Security Agent**

- (a) The Security Agent shall not be obliged:
  - (i) to insure any of the Charged Property;
  - (ii) to require any other person to maintain any insurance; or
  - (iii) to verify any obligation to arrange or maintain insurance contained in any Debt Document,

and the Security Agent shall not be liable for any damages, costs or losses to any person as a result of the lack of, or inadequacy of, any such insurance.

- (b) Where the Security Agent is named on any insurance policy as an insured party, it shall not be liable for any damages, costs or losses to any person as a result of its failure to notify the insurers of any material fact relating to the risk assumed by such insurers or any other information of any kind, unless the Instructing Group requests it to do so in writing and the Security Agent fails to do so within fourteen days after receipt of that request.

#### 18.20 Custodians and nominees

The Security Agent may appoint and pay any person to act as a custodian or nominee on any terms in relation to any asset of the trust as the Security Agent may determine, including for the purpose of depositing with a custodian this Agreement or any document relating to the trust created under this Agreement and the Security Agent shall not be responsible for any loss, liability, expense, demand, cost, claim or proceedings incurred by reason of the misconduct, omission or default on the part of any person appointed by it under this Agreement or be bound to supervise the proceedings or acts of any person.

#### 18.21 Delegation by the Security Agent

- (a) Each of the Security Agent, any Receiver and any Delegate may, at any time, delegate by power of attorney or otherwise to any person for any period, all or any right, power, authority or discretion vested in it in its capacity as such.
- (b) That delegation may be made upon any terms and conditions (including the power to sub-delegate) and subject to any restrictions that the Security Agent, that Receiver or that Delegate (as the case may be) may, in its discretion, think fit in the interests of the Secured Parties.
- (c) No Security Agent, Receiver or Delegate shall be bound to supervise, or be in any way responsible for any damages, costs or losses incurred by reason of any misconduct, omission or default on the part of, any such delegate or sub-delegate.

#### 18.22 Additional Security Agents

- (a) The Security Agent may at any time appoint (and subsequently remove) any person to act as a separate trustee or as a co-trustee jointly with it:
  - (i) if it considers that appointment to be in the interests of the Secured Parties;
  - (ii) for the purposes of conforming to any legal requirement, restriction or condition which the Security Agent deems to be relevant; or
  - (iii) for obtaining or enforcing any judgment in any jurisdiction,and the Security Agent shall give prior notice to the Parent and the Senior Creditors of that appointment.
- (b) Any person so appointed shall have the rights, powers, authorities and discretions (not exceeding those given to the Security Agent under or in connection with the Debt Documents) and the duties, obligations and responsibilities that are given or imposed by the instrument of appointment.
- (c) The remuneration that the Security Agent may pay to that person, and any costs and expenses (together with any applicable VAT) incurred by that person in



performing its functions pursuant to that appointment shall, for the purposes of this Agreement, be treated as costs and expenses incurred by the Security Agent.

#### 18.23 **Acceptance of title**

The Security Agent shall be entitled to accept without enquiry, and shall not be obliged to investigate, any right and title that any Debtor may have to any of the Charged Property and shall not be liable for, or bound to require any Debtor to remedy, any defect in its right or title.

#### 18.24 **Winding up of trust**

If the Security Agent, with the approval of the Agent and each Hedge Counterparty, determines that:

- (a) all of the Secured Obligations and all other obligations secured by the Security Documents have been fully and finally discharged; and
- (b) no Secured Party is under any commitment, obligation or liability (actual or contingent) to make advances or provide other financial accommodation to any Debtor pursuant to the Debt Documents,

then:

- (i) the trusts set out in this Agreement shall be wound up and the Security Agent shall release, without recourse or warranty, all of the Transaction Security and the rights of the Security Agent under each of the Security Documents; and
- (ii) any Security Agent which has resigned pursuant to Clause 18.12 (*Resignation of the Security Agent*) shall release, without recourse or warranty, all of its rights under each Security Document.

#### 18.25 **Powers supplemental to Trustee Acts**

The rights, powers, authorities and discretions given to the Security Agent under or in connection with the Debt Documents shall be supplemental to the Trustee Act 1925 and the Trustee Act 2000 and in addition to any which may be vested in the Security Agent by law or regulation or otherwise.

#### 18.26 **Disapplication of Trustee Acts**

Section 1 of the Trustee Act 2000 shall not apply to the duties of the Security Agent in relation to the trusts constituted by this Agreement. Where there are any inconsistencies between the Trustee Act 1925 or the Trustee Act 2000 and the provisions of this Agreement, the provisions of this Agreement shall, to the extent permitted by law and regulation, prevail and, in the case of any inconsistency with the Trustee Act 2000, the provisions of this Agreement shall constitute a restriction or exclusion for the purposes of that Act.

#### 18.27 **Intra-Group Lenders and Debtors: Power of Attorney**

Each Intra-Group Lender and Debtor by way of security for its obligations under this Agreement irrevocably appoints the Security Agent to be its attorney, upon either:

- (a) the occurrence of an Event of Default which is continuing; or

- (b) such Intra-Group Lender or Debtor failing to comply with an obligation under this Agreement within 10 Business Days of being notified of that failure by the Security Agent (with a copy of the notice being sent to the Parent) and being requested to comply,

to do anything which that Intra-Group Lender or Debtor has authorised the Security Agent or any other Party to do under this Agreement or is itself required to do under this Agreement but has failed to do (and the Security Agent may delegate that power on such terms as it sees fit).

## 19. CHANGES TO THE PARTIES

### 19.1 Assignments and transfers

No Party may:

- (a) assign any of its rights; or
- (b) transfer any of its rights and obligations,

in respect of any Debt Documents or the Liabilities except as permitted by this Clause 19.

### 19.2 Change of Subordinated Creditor

No Subordinated Creditor may:

- (a) assign any of its rights; or
- (b) transfer any of its rights and obligations,

in respect of the Subordinated Liabilities owed to it until after the Senior Discharge Date other than as envisaged by Clause 6.4 (*Subordinated Liabilities*) and only to the extent that any assignee or transferee has (if not already party to this Agreement as a Subordinated Creditor) acceded to this Agreement, as a Subordinated Creditor, pursuant to Clause 19.9 (*Creditor Accession Undertaking*).

### 19.3 Change of Lender

(a) A Lender may:

- (i) assign any of its rights; or
- (ii) transfer by novation any of its rights and obligations,

in respect of any Debt Documents or the Liabilities if:

- (1) that assignment or transfer is in accordance with the terms of the Facilities Agreement; and
- (2) subject to paragraph (b) below, any assignee or transferee has (if not already a Party as a Lender acceded to this Agreement, as a Lender), pursuant to Clause 19.9 (*Creditor Accession Undertaking*).

- (b) Paragraph (a)(ii)(2) above shall not apply in respect of any Debt Purchase Transaction permitted by Clause 29.1 (*Permitted Debt Purchase Transactions*) of the Facilities Agreement entered into by a Borrower and effected in accordance with the terms of the Debt Documents.

#### 19.4 **Change of Hedge Counterparty**

A Hedge Counterparty may (in accordance with the terms of the relevant Hedging Agreement and subject to any consent required under that Hedging Agreement) transfer any of its rights or obligations in respect of the Hedging Agreements to which it is a party if any transferee has (if not already a Party as a Hedge Counterparty and a party to the Facilities Agreement as a Hedge Counterparty) acceded to:

- (a) this Agreement, pursuant to Clause 19.9 (*Creditor Accession Undertaking*); and
  - (b) the Facilities Agreement,
- as a Hedge Counterparty.

#### 19.5 **Change of the Agent**

No person shall become the Agent unless at the same time, it accedes to this Agreement as the Agent, pursuant to Clause 19.9 (*Creditor Accession Undertaking*).

#### 19.6 **Change of Intra-Group Lender**

Subject to Clause 5.4 (*Acquisition of Intra-Group Liabilities*) and to the terms of the other Debt Documents, any Intra-Group Lender may:

- (a) assign any of its rights; or
- (b) transfer any of its rights and obligations,

in respect of the Intra-Group Liabilities to another member of the Group if that member of the Group has (if not already a Party as an Intra-Group Lender) acceded to this Agreement as an Intra-Group Lender, pursuant to Clause 19.9 (*Creditor Accession Undertaking*).

#### 19.7 **New Intra-Group Lender**

If any Intra-Group Lender or any member of the Group (other than the Parent) makes any loan to or grants any credit to or makes any other financial arrangement having similar effect with any Debtor, in an aggregate amount of £1,000,000 or more, the Parent will procure that the person giving that loan, granting that credit or making that other financial arrangement (if not already a Party as an Intra-Group Lender) accedes to this Agreement as an Intra-Group Lender, pursuant to Clause 19.9 (*Creditor Accession Undertaking*).

#### 19.8 **New Ancillary Lender**

If any Affiliate of a Senior Facility Creditor becomes an Ancillary Lender in accordance with the Facilities Agreement, it shall not be entitled to share in any of the Transaction Security or in the benefit of any guarantee or indemnity in respect of any of the liabilities arising in relation to its Ancillary Facilities unless it has (if not already a Party as a Senior Facility Creditor) acceded to this Agreement as a Senior Facility Creditor pursuant to Clause 19.9 (*Creditor Accession Undertaking*) and, to the extent required by the Facilities Agreement, to the Facilities Agreement as an Ancillary Lender.

#### 19.9 **Creditor Accession Undertaking**

With effect from the date of acceptance by the Security Agent and (in the case of a Hedge Counterparty or any Affiliate of a Senior Facility Creditor) by the Agent, of a Creditor

Accession Undertaking duly executed and delivered to the Security Agent by the relevant acceding party or, if later, the date specified in that Creditor Accession Undertaking:

- (a) any Party ceasing entirely to be a Creditor shall be discharged from further obligations towards the Security Agent and other Parties under this Agreement and their respective rights against one another shall be cancelled (except in each case for those rights which arose prior to that date);
- (b) as from that date, the replacement or new Creditor shall assume the same obligations and become entitled to the same rights, as if it had been an original Party in the capacity specified in the Creditor Accession Undertaking; and
- (c) to the extent envisaged by the Facilities Agreement, any new Ancillary Lender (which is an Affiliate of a Senior Facility Creditor) or any party acceding to this Agreement as a Hedge Counterparty shall also become party to the Facilities Agreement as an "Ancillary Lender" or "Hedge Counterparty" (as the case may be) and shall assume the same obligations and become entitled to the same rights as if it had been an original party to the Facilities Agreement as an Ancillary Lender or Hedge Counterparty (as the case may be).

#### 19.10 **New Debtor**

- (a) If any member of the Group:
  - (i) incurs any Liabilities in an aggregate amount exceeding £1,000,000;
  - (ii) gives any Security, guarantee, indemnity or other assurance against loss in respect of any of the Liabilities,

the Debtors will procure that the person incurring those Liabilities or giving that assurance (if not already a Party as a Debtor) accedes to this Agreement as a Debtor, in accordance with paragraph (c) below, no later than contemporaneously with the incurrance of those Liabilities or the giving of that assurance (or, in the case of a member of the Group which is the subject of a Permitted Acquisition under paragraph (f) of that definition, not later than the date on which such member of the Group is required by the Facilities Agreement to become an Obligor).

- (b) If any Affiliate of a Borrower becomes a borrower of an Ancillary Facility in accordance with the Facilities Agreement, the relevant Borrower shall procure that such Affiliate accedes to this Agreement as a Debtor no later than contemporaneously with the date on which it becomes a borrower.
- (c) With effect from the date of acceptance by the Security Agent of a Debtor Accession Deed duly executed and delivered to the Security Agent by the new Debtor or, if later, the date specified in the Debtor Accession Deed, the new Debtor shall assume the same obligations and become entitled to the same rights as if it had been an original Party as a Debtor.

#### 19.11 **Additional parties**

- (a) Each of the Parties appoints the Security Agent to receive on its behalf each Debtor Accession Deed and Creditor Accession Undertaking delivered to the Security Agent and the Security Agent shall, as soon as reasonably practicable after receipt by it, sign and accept the same if it appears on its face to have been completed,

executed and, where applicable, delivered in the form contemplated by this Agreement or, where applicable, by the Facilities Agreement.

- (b) In the case of a Creditor Accession Undertaking delivered to the Security Agent by any new Ancillary Lender (which is an Affiliate of a Senior Facility Creditor) or any party acceding to this Agreement as a Hedge Counterparty:
  - (i) the Security Agent shall, as soon as practicable after signing and accepting that Creditor Accession Undertaking in accordance with paragraph (a) above, deliver that Creditor Accession Undertaking to the Agent; and
  - (ii) the Agent shall, as soon as practicable after receipt by it, sign and accept that Creditor Accession Undertaking if it appears on its face to have been completed, executed and delivered in the form contemplated by this Agreement.

#### 19.12 Resignation of a Debtor

- (a) No Guarantor may cease to be party to the Facilities Agreement as a Guarantor in accordance with that agreement unless each Hedge Counterparty has notified the Security Agent:
  - (i) that no payment is due from that Guarantor to that Hedge Counterparty under the Facilities Agreement or any Hedging Agreement; or
  - (ii) that it otherwise consents to that Guarantor ceasing to be a Guarantor under the Facilities Agreement.

The Security Agent shall, upon receiving that notification, notify the Agent.

- (b) The Parent may request that a Debtor ceases to be a Debtor by delivering to the Security Agent a Debtor Resignation Request.
- (c) The Security Agent shall accept a Debtor Resignation Request and notify the Parent and each other Party of its acceptance if:
  - (i) the Parent has confirmed that no Default is continuing or would result from the acceptance of the Debtor Resignation Request;
  - (ii) to the extent that the Senior Discharge Date has not occurred, the Agent notifies the Security Agent that that Debtor is not, or has ceased to be, a Borrower or a Guarantor;
  - (iii) each Hedge Counterparty notifies the Security Agent that that Debtor is under no actual or contingent obligations to that Hedge Counterparty in respect of the Super Senior Hedging Liabilities or Excess Hedging Liabilities; and
  - (iv) the Parent confirms that that Debtor is under no actual or contingent obligations (or will contemporaneously with such resignation cease to be) in respect of the Intra-Group Liabilities.
- (d) Upon notification by the Security Agent to the Parent of its acceptance of the resignation of a Debtor, that member of the Group shall cease to be a Debtor and shall have no further rights or obligations under this Agreement as a Debtor.



**SECTION 8****ADDITIONAL PAYMENT OBLIGATIONS****20. COSTS AND EXPENSES****20.1 Transaction expenses**

- (a) The Parent shall (or shall procure that another Obligor will), promptly on demand, pay the Security Agent the amount of all reasonable costs and expenses (including, subject to any agreed caps, legal fees) (together with any applicable VAT) reasonably incurred by any of them (and, in the case of the Security Agent, by any Receiver or Delegate) in connection with the negotiation, preparation, printing, execution and perfection of:
- (i) this Agreement and any other documents referred to in this Agreement and the Transaction Security; and
  - (ii) any other Finance Documents executed after the date of this Agreement.
- (b) No costs or expenses shall be payable under this Agreement, other than agreed legal fees, until the Closing Date.
- (c) The Agent, Security Agent and each Arranger shall consult with the Parent (to the extent reasonably practicable) before incurring material legal fees, costs and expenses relating to the granting and perfecting of any security, taking into account the requirements of the Agreed Security Principles.

**20.2 Amendment costs**

If a Debtor requests an amendment, waiver or consent, the Parent shall (or shall procure that another Obligor will), within three Business Days of demand, reimburse the Security Agent for the amount of all costs and expenses (including, subject to any agreed cap, legal fees) (together with any applicable VAT) reasonably incurred by the Security Agent (and by any Receiver or Delegate) in responding to, evaluating, negotiating or complying with that request or requirement.

**20.3 Enforcement and preservation costs**

The Parent shall (or shall procure that another Obligor will), within three Business Days of demand, pay to the Security Agent the amount of all costs and expenses (including legal fees and together with any applicable VAT) incurred by it in connection with the enforcement of or the preservation of any rights under any Finance Document and the Transaction Security and any proceedings instituted by or against the Security Agent as a consequence of taking or holding the Transaction Security or enforcing these rights.

**20.4 Stamp taxes**

The Parent shall pay and, within three Business Days of demand, indemnify each Secured Party against any cost, loss or liability that Secured Party incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Debt Document (save for any Taxes payable in respect of an assignment or transfer of a Lender's interests in respect of any Finance Document).

## 20.5 Interest on demand

If any Creditor or Debtor fails to pay any amount payable by it under this Agreement on its due date, interest shall accrue on the overdue amount (and be compounded with it) from the due date up to the date of actual payment (both before and after judgment and to the extent interest at a default rate is not otherwise being paid on that sum) at the rate which is one per cent. per annum over the rate at which the Security Agent would be able to obtain by placing on deposit with a leading bank an amount comparable to the unpaid amounts in the currencies of those amounts for any period(s) that the Security Agent may from time to time select provided that if any such rate is below zero, that rate will be deemed to be zero.

## 21. OTHER INDEMNITIES

### 21.1 Indemnity to the Security Agent

- (a) Each Debtor jointly and severally shall promptly indemnify the Security Agent and every Receiver and Delegate against any cost, loss or liability (together with any applicable VAT) incurred by any of them as a result of:
- (i) any failure by the Parent to comply with its obligations under Clause 20 (*Costs and expenses*);
  - (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
  - (iii) the taking, holding, protection or the enforcement of the Transaction Security;
  - (iv) the exercise of any of the rights, powers, discretions, authorities and remedies vested in the Security Agent, each Receiver and each Delegate by the Debt Documents or by law;
  - (v) any default by any Debtor in the performance of any of the obligations expressed to be assumed by it in the Debt Documents;
  - (vi) instructing lawyers, accountants, tax advisers, surveyors, a Financial Adviser or other professional advisers or experts as permitted under this Agreement; or
  - (vii) acting as Security Agent, Receiver or Delegate under the Debt Documents or which otherwise relates to any of the Security Property (otherwise, in each case, than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct).
- (b) Each Debtor expressly acknowledges and agrees that the continuation of its indemnity obligations under this Clause 21.1 will not be prejudiced by any release or disposal under Clause 12 (*Distressed Disposals and Appropriation*) taking into account the operation of that Clause 12.
- (c) The Security Agent and every Receiver and Delegate may, in priority to any payment to the Secured Parties, indemnify itself out of the Charged Property in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this Clause 21.1 and shall have a lien on the Transaction Security and the proceeds of the enforcement of the Transaction Security for all moneys payable to it.



### 21.2 **Parent's indemnity to Senior Creditors**

The Parent shall promptly and as principal obligor indemnify each Senior Creditor against any cost, loss or liability (together with any applicable VAT), whether or not reasonably foreseeable, incurred by any of them in relation to or arising out of the operation of Clause 12 (*Distressed Disposals and Appropriation*).

### 21.3 **Continuing Indemnity**

Each indemnity given by a Party under or in connection with a Debt Document is a continuing obligation, independent of the Party's other obligations under or connection with that or any other Debt Document and survives after that Debt Document is terminated. It is not necessary for a person to pay any amount or incur any expense before enforcing an indemnity under or in connection with a Debt Document.

**SECTION 9****ADMINISTRATION****22. INFORMATION****22.1 Dealings with Security Agent and the Agent**

- (a) Subject to Clause 36.5 (*Communication when Agent is Impaired Agent*) of the Facilities Agreement, each Senior Facility Creditor shall deal with the Security Agent exclusively through the Agent and the Hedge Counterparties shall deal directly with the Security Agent and shall not deal through the Agent.
- (b) The Agent shall not be under any obligation to act as agent or otherwise on behalf of any Hedge Counterparty except as expressly provided for in, and for the purposes of, this Agreement.

**22.2 Disclosure between Senior Creditors and Security Agent**

Notwithstanding any agreement to the contrary, each of the Debtors and the Subordinated Creditors consents, until the Senior Discharge Date, to the disclosure by any Senior Creditor and the Security Agent to each other (whether or not through the Agent or the Security Agent) of such information concerning the Debtors and the Subordinated Creditors as any Senior Creditor or the Security Agent shall see fit.

**22.3 Notification of prescribed events**

- (a) If an Event of Default, Material Event of Default or Default either occurs or ceases to be continuing the Agent shall, upon becoming aware of that occurrence or cessation, notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each Hedge Counterparty.
- (b) If an Acceleration Event occurs the Agent shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each other Party.
- (c) If the Security Agent receives a Super Senior Enforcement Notice under Clause 3.8 (*Permitted Enforcement: Super Senior Facility Lenders*), it shall upon receiving that notice notify and send a copy of that notice to each Hedge Counterparty and each Senior Facility Creditor (other than a Super Senior Facility Lender).
- (d) If the Security Agent enforces, or takes formal steps to enforce, any of the Transaction Security it shall notify each Party of that action.
- (e) If any Senior Creditor exercises any right it may have to enforce, or to take formal steps to enforce, any of the Transaction Security it shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each Party of that action.
- (f) If a Debtor defaults on any Payment due under a Hedging Agreement, the Hedge Counterparty which is party to that Hedging Agreement shall, upon becoming aware of that default, notify the Security Agent and the Security Agent shall, upon receiving that notification, notify the Agent and each other Hedge Counterparty.
- (g) If a Hedge Counterparty terminates or closes-out, in whole or in part, any hedging transaction under any Hedging Agreement under Clause 4.9 (*Permitted*

*Enforcement: Hedge Counterparties*) it shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify the Agent and each other Hedge Counterparty.

- (h) If a Mandatory Prepayment is waived the Agent shall notify the Security Agent of the amount of the Mandatory Prepayment waived and the Security Agent shall, upon receiving that notification, notify each Hedge Counterparty.
- (i) If any of the Term Outstandings are to be reduced (whether by way of repayment, prepayment, cancellation or otherwise) and such reduction is reasonably likely to result in an Interest Rate Hedge Excess which would give rise to a payment under Clause 4.3 (*Permitted Payments: Hedging Liabilities*) the Parent shall notify each Hedge Counterparty of:
  - (i) the date and amount of that proposed reduction;
  - (ii) any Interest Rate Hedge Excess that would result from that proposed reduction and that Hedge Counterparty's Interest Rate Hedging Proportion (if any) of that Interest Rate Hedge Excess; and
  - (iii) any Exchange Rate Hedge Excess that would result from that proposed reduction and that Hedge Counterparty's Exchange Rate Hedging Proportion (if any) of that Exchange Rate Hedge Excess.
- (j) If the Security Agent receives a notice under Clause 3.10 (*Option to purchase: Pari Passu Lenders*) it shall upon receiving that notice, notify, and send a copy of that notice to, the Agent and each Hedge Counterparty.

## 23. NOTICES

### 23.1 Communications in writing

Any communication to be made under or in connection with this Agreement shall be made in writing and, unless otherwise stated, may be made by email or letter.

### 23.2 Security Agent's communications with Senior Creditors

The Security Agent shall be entitled to carry out all dealings:

- (a) with the Senior Facility Creditors through the Agent and may give to the Agent, any notice, document or other communication required to be given by the Security Agent to a Senior Facility Creditor; and
- (b) with each Hedge Counterparty directly with that Hedge Counterparty.

### 23.3 Addresses

The address (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Agreement is:

- (a) in the case of the Subordinated Creditor, that identified with its name below;
- (b) in the case of each Original Debtor, that identified with its name below;
- (c) in the case of the Security Agent, that identified with its name below; and

- (d) in the case of each other Party, that notified in writing to the Security Agent on or prior to the date on which it becomes a Party,

or any substitute address or department or officer which that Party may notify to the Security Agent (or the Security Agent may notify to the other Parties, if a change is made by the Security Agent) by not less than five Business Days' notice.

#### 23.4 **Delivery**

- (a) Any communication or document made or delivered by one person to another under or in connection with this Agreement will only be effective 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 23.3 (*Addresses*), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to the Security Agent will be effective only when actually received by the Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Security Agent's signature below (or any substitute department or officer as the Security Agent shall specify for this purpose).
- (c) Any communication or document made or delivered to the Parent in accordance with this Clause 23.4 will be deemed to have been made or delivered to each of the Debtors.
- (d) Any communication or document which becomes effective, in accordance with paragraphs (a) to (c) above, after 5:00 pm in the place of receipt shall be deemed only to become effective on the following day.

#### 23.5 **Notification of address**

Promptly upon receipt of notification of an address or change of address pursuant to Clause 23.3 (*Addresses*) or changing its own address, the Security Agent shall notify the other Parties.

#### 23.6 **Electronic communication**

- (a) Any communication or document to be made between any two Parties under or in connection with this Agreement may be made by electronic mail or other electronic means (including, without limitation, by way of posting to a secure website) if those two Parties:
- (i) notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means; and
  - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.
- (b) Any such electronic communication or document as specified in paragraph (a) above to be made between a Subordinated Creditor, a Debtor or an Intra-Group Lender and the Security Agent or a Creditor may only be made in that way to the

extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication.

- (c) Any such electronic communication or document as specified in paragraph (a) above made between any two Parties will be effective only when actually received (or made available) in readable form and in the case of any electronic communication or document made by a Party to the Security Agent only if it is addressed in such a manner as the Security Agent shall specify for this purpose.
- (d) Any electronic communication or document which becomes effective, in accordance with paragraph (c) above, after 5:00 p.m. in the place in which the Party to whom the relevant communication or document is sent or made available has its address for the purpose of this Agreement shall be deemed only to become effective on the following day.
- (e) Any reference in this Agreement to a communication being sent or received or a document being delivered shall be construed to include that communication being made available in accordance with this Clause 23.6.

### 23.7 **English language**

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

## 24. **PRESERVATION**

### 24.1 **Partial invalidity**

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

### 24.2 **No impairment**

If, at any time after its date, any provision of a Debt Document (including this Agreement) is not binding on or enforceable in accordance with its terms against a person expressed to be a party to that Debt Document, neither the binding nature nor the enforceability of that provision or any other provision of that Debt Document will be impaired as against the other party(ies) to that Debt Document.

### 24.3 **Remedies and waivers**

No failure to exercise, nor any delay in exercising, on the part of any Party, any right or remedy under a Debt Document shall operate as a waiver of any such right or remedy or constitute an election to affirm any Debt Document. No election to affirm any Debt Document on the part of a Secured Party shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the

exercise of any other right or remedy. The rights and remedies provided in each Debt Document are cumulative and not exclusive of any rights or remedies provided by law.

#### 24.4 **Waiver of defences**

The provisions of this Agreement or any Transaction Security will not be affected by an act, omission, matter or thing which, but for this Clause 24.4, would reduce, release or prejudice the subordination and priorities expressed to be created by this Agreement including (without limitation and whether or not known to any Party):

- (a) any time, waiver or consent granted to, or composition with, any Debtor or other person;
- (b) the release of any Debtor or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Debtor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any Debtor or other person;
- (e) any amendment, novation, supplement, extension (whether of maturity or otherwise) or restatement (in each case, however fundamental and of whatsoever nature, and whether or not more onerous) or replacement of a Debt Document or any other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Debt Document or any other document or security;
- (g) any intermediate Payment of any of the Liabilities owing to the Senior Creditors in whole or in part; or
- (h) any insolvency or similar proceedings.

#### 24.5 **Priorities not affected**

Except as otherwise provided in this Agreement the priorities referred to in Clause 2 (*Ranking and Priority*) will:

- (a) not be affected by any reduction or increase in the principal amount secured by the Transaction Security in respect of the Liabilities owing to the Senior Creditors or by any intermediate reduction or increase in, amendment or variation to any of the Debt Documents, or by any variation or satisfaction of, any of the Liabilities or any other circumstances;
- (b) apply regardless of the order in which or dates upon which this Agreement and the other Debt Documents are executed or registered or notice of them is given to any person; and
- (c) secure the Liabilities owing to the Senior Creditors in the order specified, regardless of the date upon which any of the Liabilities arise or of any fluctuations in the amount of any of the Liabilities outstanding.

## 25. CONSENTS, AMENDMENTS AND OVERRIDE

### 25.1 Required consents

- (a) Subject to paragraphs (b) and (c) below, to Clause 25.4 (*Exceptions*), and to Clause 25.8 (*Disenfranchisement of Sponsor Affiliates*) and Clause 25.8 (*Disenfranchisement of Relevant Pari Passu Lenders*), this Agreement may be amended or waived with the consent of the Agent, the Majority Lenders and the Security Agent.
- (b) Subject to paragraph (c) below:
- (i) Clause 17.1 (*Equalisation Definitions*) to Clause 17.3(a) (*Equalisation*) may be amended or waived with the consent of the Agent, the Majority Super Senior Lenders and the Security Agent to the extent that such amendment or waiver does not affect the Pari Passu Lenders;
  - (ii) Clause 17.1 (*Equalisation Definitions*) to Clause 17.3(b) (but not Clause 17.3(a)) may be amended or waived with the consent of the Agent, the Majority Pari Passu Lenders and the Security Agent to the extent that such amendment or waiver does not affect the Super Senior Facility Lenders.
  - (iii) an amendment or waiver which has the effect of changing or which relates to Clause 3.6 *Security: Ancillary Lenders*), Clause 3.7 (*Restriction on Enforcement: Super Senior Facility Lenders*), Clause 3.8 (*Permitted Enforcement: Ancillary Lenders*), Clause 3.9 (*Permitted Enforcement: Super Senior Facility Lenders*) and Clause 25.8 (*Disenfranchisement of Relevant Pari Passu Lenders*) shall not be made without the consent of both the Majority Pari Passu Lenders and the Majority Super Senior Lenders; and
  - (iv) An amendment or waiver which has the effect of changing or which relates to Clause 4 (*Hedge Counterparties, Super Senior Hedging Liabilities and Excess Hedging Liabilities*) shall not be made without the consent of the Majority Lenders and each Hedge Counterparty.
- (c) An amendment or waiver which has the effect of changing or which relates to:
- (i) Clause 2 (*Ranking and Priority*), Clause 3.10 (*Option to purchase: Pari Passu Lenders*), Clause 7 (*Effect of Insolvency Event*), Clause 8 (*Turnover of receipts*), Clause 9 (*Redistribution*), Clause 10 (*Enforcement of Transaction Security*), Clause 12 (*Distressed Disposals and Appropriation*), Clause 16 (*Application of Proceeds*), Clause 19 (*Changes to the Parties*), Clause 22 (*Information*) or this Clause 25 (*Consents, amendments and override*);
  - (ii) paragraphs (d)(iii), (e) and (f) of Clause 18.2 (*Instructions*);
  - (iii) the order of priority or subordination under this Agreement,
  - (iv) the definitions of "Instructing Group", "Majority Senior Creditors", "Majority Lenders", "Majority Super Senior Lenders", "Material Enforcement Action", "Senior Creditors", "Super Senior Creditors", "Super Senior Facility Lender", "Super Senior Facility Liabilities", "Super Senior Hedging Amount", "Super

Senior Hedge Counterparty", "Super Senior Hedging Liabilities", "Super Senior Lender Hedging Liabilities", "Super Senior Instructions Period", "Super Senior Liabilities" and "Super Senior Standstill Period",

shall not be made without the consent of:

- (1) the Agent;
- (2) all of the Lenders;
- (3) each Hedge Counterparty (to the extent that the amendment or waiver would adversely affect the Hedge Counterparty); and
- (4) the Security Agent.

## 25.2 Amendments and Waivers: Transaction Security Documents

- (a) Subject to paragraph (b) below and to Clause 25.4 (*Exceptions*) and unless the provisions of any Debt Document expressly provide otherwise, the Security Agent may, if authorised by the Majority Senior Creditors, and if the Parent consents, amend the terms of, waive any of the requirements of or grant consents under, any of the Transaction Security Documents which shall be binding on each Party.
- (b) Subject to paragraph (c) of Clause 25.4 (*Exceptions*), any amendment or waiver of, or consent under, any Transaction Security Document which has the effect of changing or which relates to:
  - (i) the nature or scope of the Charged Property;
  - (ii) the manner in which the proceeds of enforcement of the Transaction Security are distributed; or
  - (iii) the release of any Transaction Security,

shall not be made without the prior consent of the Senior Facility Creditors whose consent to that amendment, waiver or consent is required under the Facilities Agreement, and the Hedge Counterparties.

## 25.3 Effectiveness

- (a) Any amendment, waiver or consent given in accordance with this Clause 25 will be binding on all Parties and the Security Agent may effect, on behalf of any Senior Creditor, any amendment, waiver or consent permitted by this Clause 25.
- (b) Without prejudice to the generality of Clause 18.7 (*Rights and discretions*) the Security Agent may engage, pay for and rely on the services of lawyers in determining the consent level required for and effecting any amendment, waiver or consent under this Agreement.



## 25.4 Exceptions

- (a) Subject to paragraphs (c) and (d) below, if the amendment, waiver or consent may impose new or additional obligations on or withdraw or reduce the rights of any Party other than:
- (i) in the case of a Super Senior Creditor (other than the Agent or the Arranger), in a way which affects or would affect Super Senior Creditors of that Party's class generally;
  - (ii) in the case of a Non-Priority Senior Creditor, in a way which affects or would affect Non-Priority Senior Creditors of that Party's class generally; or
  - (iii) in the case of a Debtor, to the extent consented to by the Parent under paragraph (a) of Clause 25.2 (*Amendments and Waivers: Transaction Security Documents*),  
the consent of that Party is required.
- (b) Subject to paragraphs (c) and (d) below, an amendment, waiver or consent which relates to the rights or obligations of the Agent, the Arranger, the Security Agent (including, without limitation, any ability of the Security Agent to act in its discretion under this Agreement) or a Hedge Counterparty may not be effected without the consent of the Agent or, as the case may be, the Arranger, the Security Agent or that Hedge Counterparty.
- (c) Neither paragraph (a) nor (b) above, nor paragraph (b) of Clause 25.2 (*Amendments and Waivers: Transaction Security Documents*) shall apply:
- (i) to any release of Transaction Security, claim or Liabilities; or
  - (ii) to any consent
- which, in each case, the Security Agent gives in accordance with Clause 12 (*Non-Distressed Disposals*), Clause 12 (*Distressed Disposals and Appropriation*), Clause 14 (*Acquisition and insurance claims*), or Clause 25.5 (*Senior Structural Adjustment*).
- (d) Paragraphs (a) and (b) above shall apply to the Arranger only to the extent that Liabilities are then owed to the Arranger.

## 25.5 Senior Structural Adjustment

The Security Agent is irrevocably authorised (at the cost of the Parent and without any consent, sanction, authority or further confirmation from any Creditor, other Secured Party or Debtor) to:

- (a) release all or any part of the Transaction Security; and
- (b) grant any Consent under the Transaction Security Documents,

to the extent that such action forms part of a Structural Adjustment which has been approved by the Parent and the requisite Senior Facility Creditors pursuant to the original form of the Facilities Agreement.

## 25.6 Disenfranchisement of Sponsor Affiliates

- (a) For so long as a Sponsor Affiliate (i) beneficially owns a Commitment or (ii) has entered into a sub-participation agreement relating to a Commitment or other agreement or arrangement having a substantially similar economic effect and such agreement or arrangement has not been terminated:
- (i) in ascertaining:
- (1) the Majority Senior Creditors, Majority Super Senior Lenders or Majority Pari Passu Lenders; or
- (2) whether:
- (A) any relevant percentage (including, for the avoidance of doubt, unanimity) of Senior Credit Participations; or
- (B) the agreement of any specified group of Senior Creditors,
- has been obtained to approve any request for a Consent or to carry any other vote or approve any action under this Agreement,
- that Commitment shall be deemed to be zero and, subject to paragraph (ii) below, that Sponsor Affiliate (or the person with whom it has entered into that sub-participation, other agreement or arrangement (a "**Counterparty**")) shall be deemed not to be a Lender.
- (ii) Sub-paragraph (i) above shall not apply to the extent that a Counterparty is a Lender by virtue otherwise than by beneficially owning the relevant Commitment.
- (b) Each Sponsor Affiliate that is a Lender agrees that:
- (i) in relation to any meeting or conference call to which all Super Senior Facility Lenders or Pari Passu Lenders or any combination of the Senior Creditors, are invited to attend or participate, it shall not attend or participate in the same if so requested by the Security Agent or, unless the Security Agent otherwise agrees, be entitled to receive the agenda or any minutes of the same; and
- (ii) it shall not, unless the Security Agent otherwise agrees, be entitled to receive any report or other document prepared at the behest of, or on the instructions of, the Security Agent or one or more of the Senior Creditors.

## 25.7 Disenfranchisement of Defaulting Lenders

- (a) For so long as a Defaulting Lender has any Available Commitment:
- (i) in ascertaining:
- (1) the Majority Senior Creditors, Majority Super Senior Lenders or Majority Pari Passu Lenders; or

- (2) whether:
- (A) any relevant percentage (including, for the avoidance of doubt, unanimity) of Senior Credit Participations; or
- (B) the agreement of any specified group of Senior Creditors,
- has been obtained to approve any request for a Consent or to carry any other vote or approve any action under this Agreement,

that Defaulting Lender's Commitments will be reduced by the amount of its Available Commitments and, to the extent that that reduction results in that Defaulting Lender's Commitments being zero, that Defaulting Lender shall be deemed not to be a Lender.

- (b) For the purposes of this Clause 25.7, the Security Agent may assume that the following Senior Creditors are Defaulting Lenders:
- (i) any Lender which has notified the Security Agent that it has become a Defaulting Lender;
- (ii) any Lender to the extent that the Agent has notified the Security Agent that that Lender is a Defaulting Lender; and
- (iii) any Lender in relation to which it is aware that any of the events or circumstances referred to in paragraphs (a), (b) or (c) of the definition of "**Defaulting Lender**" in the Facilities Agreement has occurred,

unless it has received notice to the contrary from the Lender concerned (together with any supporting evidence reasonably requested by the Security Agent) or the Security Agent is otherwise aware that the Lender has ceased to be a Defaulting Lender.

## 25.8 Disenfranchisement of Relevant Pari Passu Lenders

- (a) For so long as any Pari Passu Lender and/or any of its Affiliates or Related Funds is a Super Senior Facility Lender (each a "**Relevant Pari Passu Lender**"), in ascertaining:
- (i) the Majority Super Senior Lenders; or
- (ii) whether:
- (1) any relevant percentage (including, for the avoidance of doubt, unanimity) of the aggregate Commitments under the relevant Super Senior Facility; or
- (2) the agreement of the Super Senior Facility Lenders,
- has been obtained to approve any request for a Consent, waiver or other vote or approve any action under this Agreement, the aggregate of all Relevant Pari Passu Lender's Commitments under the Super Senior Facility/ies shall be deemed to be zero.
- (b) Notwithstanding paragraph (a) above, if:

- (i) the Relevant Pari Passu Lender(s) are exercising their right to effect a Super Senior Transfer under Clause 3.10 (*Option to purchase: Pari Passu Lenders*) in respect of all outstanding Super Senior Facility Liabilities or any Relevant Pari Passu Lender otherwise holds 100 per cent. of the Commitments under the Super Senior Facilities; or
- (ii) any vote in respect of a consent, waiver, amendment or other vote of Lenders or Creditors under the Finance Documents which would result in the Super Senior Revolving Facility Commitments of any Relevant Pari Passu Lender:
  - (1) being treated in a manner less favourable to it (in its capacity as Super Senior Facility Lender) than the treatment to be applied to any Super Senior Revolving Commitments of another Super Senior Facility Lender; or
  - (2) being treated in any manner which is inconsistent with the treatment proposed to be applied to any other Commitment under such Facility,

paragraph (a) of this Clause 25.8 shall not apply.

#### 25.9 Pro rata interest settlement in Facilities Agreement

Paragraph (c) of Clause 28.14 (*Pro rata interest settlement*) of the Facilities Agreement shall apply to any request for a Consent, to carry any other vote or approve any action under this Agreement.

#### 25.10 Calculation of Senior Credit Participations

For the purpose of ascertaining whether any relevant percentage of Senior Credit Participations has been obtained under this Agreement, the Security Agent may notionally convert the Senior Credit Participations into their Common Currency Amounts.

#### 25.11 Deemed consent

If, at any time prior to the Senior Discharge Date, the Senior Facility Creditors give a Consent in respect of the Finance Documents then, if that action was permitted by the terms of this Agreement, the Intra-Group Lenders, the Parent and the Subordinated Creditors will (or will be deemed to):

- (a) give a corresponding Consent in equivalent terms in relation to each of the Debt Documents to which they are a party; and
- (b) do anything (including executing any document) that the Senior Facility Creditors may reasonably require to give effect to this Clause 25.11.

#### 25.12 Excluded consents

Clause 25.11 (*Deemed consent*) does not apply to any Consent which has the effect of:

- (a) increasing or decreasing the Liabilities;
- (b) changing the basis upon which any Permitted Payments are calculated (including the timing, currency or amount of such Payments); or

- (c) changing the terms of this Agreement or of any Security Document.

#### 25.13 **No liability**

None of the Senior Facility Creditors will be liable to any other Creditor, or Debtor for any Consent given or deemed to be given under this Clause 25.

#### 25.14 **Agreement to override**

- (a) Unless expressly stated otherwise in this Agreement, this Agreement overrides anything in the Debt Documents to the contrary.
- (b) For the avoidance of doubt, Clause 28.19 (*Super Senior Acceleration*) of the Facilities Agreement sets out the only circumstances in which the Majority Super Senior Lenders alone can instruct the Agent to take the actions set out in Clause 28.19 (*Super Senior Acceleration*) of the Facilities Agreement without the consent of the Majority Pari Passu Lenders.

### 26. **CONTRACTUAL RECOGNITION OF BAIL-IN**

26.1 Notwithstanding any other term of this Agreement or any other agreement, arrangement or understanding between the Parties, each Party acknowledges and accepts that any liability of any Party to any other Party under or in connection with this Agreement may be subject to Bail-In Action by the relevant Resolution Authority and acknowledges and accepts to be bound by the effect of:

- (a) any Bail-In Action in relation to any such liability, including (without limitation):
- (i) a reduction, in full or in part, in the principal amount, or outstanding amount due (including any accrued but unpaid interest) in respect of any such liability;
  - (ii) a conversion of all, or part of, any such liability into shares or other instruments of ownership that may be issued to, or conferred on, it; and
  - (iii) a cancellation of any such liability; and
- (b) a variation of any term of this Agreement to the extent necessary to give effect to any Bail-In Action in relation to any such liability.

26.2 For the purposes of this clause:

**"Article 55 BRRD"** means Article 55 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms.

**"Bail-In Action"** means the exercise of any Write-down and Conversion Powers.

**"Bail-In Legislation"** means:

- (a) in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 BRRD, the relevant implementing law or regulation as described in the EU Bail-In Legislation Schedule from time to time;
- (b) in relation to any state other than such an EEA Member Country or the United Kingdom, any analogous law or regulation from time to time which requires

contractual recognition of any Write-down and Conversion Powers contained in that law or regulation; and

- (c) in relation to the United Kingdom, the UK Bail-In Legislation.

**"EEA Member Country"** means any member state of the European Union, Iceland, Liechtenstein and Norway.

**"EU Bail-In Legislation Schedule"** means the document described as such and published by the Loan Market Association (or any successor person) from time to time.

**"Resolution Authority"** means any body which has authority to exercise any Write-down and Conversion Powers.

**"UK Bail-In Legislation"** means Part I of the United Kingdom Banking Act 2009 and any other law or regulation applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (otherwise than through liquidation, administration or other insolvency proceedings).

**"Write-down and Conversion Powers"** means:

- (a) in relation to any Bail-In Legislation described in the EU Bail-In Legislation Schedule from time to time, the powers described as such in relation to that Bail-In Legislation in the EU Bail-In Legislation Schedule;
- (b) in relation to any other applicable Bail-In Legislation other than the UK Bail-In Legislation:
- (i) any powers under that Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers; and
- (ii) any similar or analogous powers under that Bail-In Legislation; and
- (c) in relation to the UK Bail-In Legislation any powers under that UK Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that UK Bail-In Legislation that are related to or ancillary to any of those powers.

27. **COUNTERPARTS**

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

28. **ELECTRONIC EXECUTION**

Each Party expressly consents to the electronic execution of this Agreement, to the provision of any information in connection with this document by electronic means, and to the retention and use of the executed Agreement as an electronic original.

## SECTION 10

### GOVERNING LAW AND ENFORCEMENT

#### 29. GOVERNING LAW

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

#### 30. ENFORCEMENT

##### 30.1 Jurisdiction

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligations arising out of or in connection with this Agreement) (a "**Dispute**").
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) Notwithstanding paragraph (a) above, no Secured Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Secured Parties may take concurrent proceedings in any number of jurisdictions.

##### 30.2 Service of process

- (a) Without prejudice to any other mode of service allowed under any relevant law, each Debtor and each Subordinated Creditor (unless that Debtor or Subordinated Creditor is incorporated in England and Wales):
  - (i) irrevocably appoints the Parent as its agent for service of process in relation to any proceedings before the English courts in connection with this Agreement and the Parent, by its execution of this Agreement (or, in the case of the New Parent, by its execution of a Debtor Accession Deed), accepts that appointment; and
  - (ii) agrees that failure by a process agent to notify the relevant Debtor or the relevant Subordinated Creditor (as the case may be) of the process will not invalidate the proceedings concerned;
- (b) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Parent (in the case of an agent for service of process for a Debtor) or the relevant Subordinated Creditor, must immediately (and in any event within five days of such event taking place) appoint another agent on terms acceptable to the Agent. Failing this, the Agent may appoint another agent for this purpose.
- (c) Each Debtor and each Subordinated Creditor expressly agrees and consents to the provisions of this Clause 30 and Clause 29 (*Governing law*).

**This Agreement has been entered into on the date stated at the beginning of this Agreement and executed as a deed by the Intra-Group Lenders, the Debtors and the Subordinated**



**Creditor and is intended to be and is delivered by them as a deed on the date specified above.**

## SCHEDULE 1

## Form of Debtor Accession Deed

THIS DEED is made on

20[ \*\*\* ]

**BETWEEN:**

- (1) [ \*\*\* *Insert Full Name of New Debtor* \*\*\* ] (the "**Acceding Debtor**"); and
- (2) [\*\*\**Insert Full Name of Security Agent*\*\*\*] (the "**Security Agent**"), for itself and each of the other parties to the intercreditor agreement referred to below.

This Deed is made on [ \*\*\* date \*\*\* ] by the Acceding Debtor in relation to an intercreditor agreement (the "**Intercreditor Agreement**") dated [ \*\*\* ] between, amongst others, [ \*\*\* ] as parent, [ \*\*\* ] as company, [ \*\*\* ] as security agent, [ \*\*\* ] as agent, the other Creditors and the other Debtors (each as defined in the Intercreditor Agreement).

The Acceding Debtor intends to [ \*\*\* incur Liabilities under the following documents \*\*\* ]/[ \*\*\* give a guarantee, indemnity or other assurance against loss in respect of Liabilities under the following documents \*\*\* ]:

[ \*\*\* *Insert details (date, parties and description) of relevant documents* \*\*\* ]

the "**Relevant Documents**".

**IT IS AGREED** as follows:

1. Terms defined in the Intercreditor Agreement shall, unless otherwise defined in this Deed, bear the same meaning when used in this Deed.
2. The Acceding Debtor and the Security Agent agree that the Security Agent shall hold:
  - (a) [ \*\*\* any Security in respect of Liabilities created or expressed to be created pursuant to the Relevant Documents;
  - (b) all proceeds of that Security; and \*\*\* ]<sup>1\*</sup>
  - (c) all obligations expressed to be undertaken by the Acceding Debtor to pay amounts in respect of the Liabilities to the Security Agent as trustee for the Secured Parties (in the Relevant Documents or otherwise) and secured by the Transaction Security together with all representations and warranties expressed to be given by the Acceding Debtor (in the Relevant Documents or otherwise) in favour of the Security Agent as trustee for the Secured Parties,

on trust for the Secured Parties on the terms and conditions contained in the Intercreditor Agreement.

3. The Acceding Debtor confirms that it intends to be party to the Intercreditor Agreement as a Debtor, undertakes to perform all the obligations expressed to be assumed by a Debtor under the Intercreditor Agreement and agrees that it shall be bound by all the provisions of the Intercreditor Agreement as if it had been an original party to the Intercreditor Agreement.

---

<sup>1\*</sup> Include to the extent that the Security created in the Relevant Documents is expressed to be granted to the Security Agent as trustee for the Secured Parties.

- 4. [ \*\*\* In consideration of the Acceding Debtor being accepted as an Intra-Group Lender for the purposes of the Intercreditor Agreement, the Acceding Debtor also confirms that it intends to be party to the Intercreditor Agreement as an Intra-Group Lender, and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by an Intra-Group Lender and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement. \*\*\* ]<sup>2\*\*</sup>
- 5. This Deed and any non-contractual obligations arising out of or in connection with it are governed by, English law.

**THIS DEED** has been signed on behalf of the Security Agent and executed as a deed by the Acceding Debtor and is delivered on the date stated above.

**THE ACCEDING DEBTOR**

[Executed as a Deed )

By: [Full Name of Acceding Debtor] )

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director/Secretary

**OR**

[Executed as a Deed )

By: [Full name of Acceding Debtor] )

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Name of Director

in the presence of

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
Address of witness

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Occupation of witness]

Address for notices:

Address:

Email address:

<sup>2\*\*</sup> Include this paragraph in the relevant Debtor Accession Deed if the Acceding Debtor is also to accede as an Inter-Group Lender to the Intercreditor Agreement.

**THE SECURITY AGENT**

[ \*\*\* ]

By:

Date:

## SCHEDULE 2

### Form of Creditor Accession Undertaking

To: [ \*\*\* ] for itself and each of the other parties to the Intercreditor Agreement referred to below.

[ \*\*\* To: [ \*\*\* ] as Agent<sup>3\*</sup> \*\*\* ]

From: [ \*\*\* *Acceding Creditor/Agent* \*\*\* ]

**THIS UNDERTAKING** is made on [ \*\*\* *date* \*\*\* ] by [ \*\*\* *insert full name of new Lender//Hedge Counterparty/Agent/t/Intra-Group Lender/[ \*\*\* Subordinated Creditor \*\*\* ]* \*\*\* ] (the "**Acceding [ \*\*\* Lender/Hedge Counterparty/Agent/Intra-Group Lender/Arranger[ \*\*\* Subordinated Creditor \*\*\* ] \*\*\* ]**") in relation to the intercreditor agreement (the "**Intercreditor Agreement**") dated [ \*\*\* ] between, among others, [ \*\*\* *insert name of Parent*\*\*\*] as parent, [\*\*\**insert name of Company*\*\*\*] as company, [\*\*\**insert name of Security Agent* \*\*\* ] as security agent, [ \*\*\* *insert name of Agent* \*\*\* ] as agent, the other Creditors and the other Debtors (each as defined in the Intercreditor Agreement). Terms defined in the Intercreditor Agreement shall, unless otherwise defined in this Undertaking, bear the same meanings when used in this Undertaking.

In consideration of the Acceding [ \*\*\* Lender/Hedge Counterparty/ Agent/Arranger/Intra-Group Lender/Subordinated Creditor \*\*\* ] being accepted as a [ \*\*\* Lender/Hedge Counterparty/Intra-Group Lender/Agent/Subordinated Creditor \*\*\* ] for the purposes of the Intercreditor Agreement, the Acceding [ \*\*\* Lender/Hedge Counterparty/Agent/Intra-Group Lender/Subordinated Creditor \*\*\* ] confirms that, as from [ \*\*\* *date* \*\*\* ], it intends to be party to the Intercreditor Agreement as a [ \*\*\* Lender/Hedge Counterparty/ Agent/Intra-Group Lender/Subordinated Creditor\*\*\* ] and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a [ \*\*\* Lender/Hedge Counterparty/Agent/Intra-Group Lender/Subordinated Creditor\*\*\* ] and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement.

[ \*\*\* The Acceding Lender is an Affiliate of a Senior Facility Creditor and has become a provider of an Ancillary Facility. In consideration of the Acceding Lender being accepted as an Ancillary Lender for the purposes of the Facilities Agreement, the Acceding Lender confirms, for the benefit of the parties to the Facilities Agreement, that, as from [ \*\*\* *date* \*\*\* ], it intends to be party to the Facilities Agreement as an Ancillary Lender, and undertakes to perform all the obligations expressed in the Facilities Agreement to be assumed by a Finance Party (as defined in the Facilities Agreement) and agrees that it shall be bound by all the provisions of the Facilities Agreement, as if it had been an original party to the Facilities Agreement as an Ancillary Lender. \*\*\* ]

[ \*\*\* The Acceding Hedge Counterparty has become a provider of hedging arrangements to the [ \*\*\* Company \*\*\* ]. In consideration of the Acceding Hedge Counterparty being accepted as a Hedge Counterparty for the purposes of the Facilities Agreement, the Acceding Hedge Counterparty confirms, for the benefit of the parties to the Facilities Agreement, that, as from [ \*\*\* *date* \*\*\* ], it intends to be party to the Facilities Agreement as a Hedge Counterparty, and undertakes to perform all the obligations expressed in the Facilities Agreement to be assumed by a Hedge Counterparty and agrees that it shall be bound by all the provisions of the Facilities Agreement, as if it had been an original party to the Facilities Agreement as a Hedge Counterparty. \*\*\* ]

---

<sup>3\*</sup> Include only in the case of (i) a Hedge Counterparty or (ii) an Ancillary Lender which is an Affiliate of a Lender which is using this undertaking to accede to the Facilities Agreement in accordance with paragraph (c) of Clause 19.9 (*Creditor Accession Undertaking*).

This Undertaking and any non-contractual obligations arising out of or in connection with it are governed by English law.

**THIS UNDERTAKING** has been entered into on the date stated above [and is executed as a deed by the Acceding Creditor, if it is acceding as an Intra-Group Lender or a Subordinated Creditor and is delivered on the date stated above].

**ACCEDING CREDITOR \*\*\* ]**

[ \*\*\* EXECUTED as a DEED \*\*\* ]

[ \*\*\* *Insert full name of Acceding Creditor* \*\*\* ]

By:

Address:

Email address:

Accepted by the Security Agent

[ \*\*\* Accepted by the Agent \*\*\* ]

\_\_\_\_\_  
for and on behalf of

[ \*\*\* ]

Date:

\_\_\_\_\_  
for and on behalf of

[ \*\*\* ]

Date:<sup>4\*\*</sup>

---

<sup>4\*\*</sup> Include only in the case of (i) a Hedge Counterparty or (ii) an Ancillary Lender which is an Affiliate of a Lender which is using this undertaking to accede to the Facilities Agreement.

**SCHEDULE 3**

**Form of Debtor Resignation Request**

To: [ \*\*\* ] as Security Agent

From: [ \*\*\* *resigning Debtor* \*\*\* ] and [ \*\*\* *Company* \*\*\*]

Dated:

Dear Sirs

**INTERCREDITOR AGREEMENT DATED [ \*\*\* ] (THE "INTERCREDITOR AGREEMENT")**

1. We refer to the Intercreditor Agreement. This is a Debtor Resignation Request. Terms defined in the Intercreditor Agreement have the same meaning in this Debtor Resignation Request unless given a different meaning in this Debtor Resignation Request.
2. Pursuant to Clause 20.12 (*Resignation of a Debtor*) of the Intercreditor Agreement we request that [ \*\*\* *resigning Debtor* \*\*\* ] be released from its obligations as a Debtor under the Intercreditor Agreement.
3. We confirm that:
  - (a) no Default is continuing or would result from the acceptance of this request; and
  - (b) [ \*\*\* *resigning Debtor* \*\*\* ] is under no actual or contingent obligations in respect of the Intra-Group Liabilities.
4. This letter and any non-contractual obligations arising out of or in connection with it are governed by English law.

[ \*\*\* *Company* \*\*\* ]

[ \*\*\* *resigning Debtor* \*\*\* ]

By:

By:

**SCHEDULE 4**

**Form of Super Senior Hedging Certificate**

To: [ \*\*\* ] as Security Agent  
From: [new Super Senior Hedge Counterparty]/[existing Super Senior Hedge Counterparty]  
and [Parent]  
Dated:

Dear Sirs

**INTERCREDITOR AGREEMENT DATED [ \*\*\* ] (THE "INTERCREDITOR AGREEMENT")**

1. We refer to the Intercreditor Agreement. This is a Super Senior Hedging Certificate. Terms defined in the Intercreditor Agreement have the same meaning in this Super Senior Hedging Certificate.
2. Pursuant to Clause 4.14 (*Allocation of Super Senior Hedging Liabilities*) of the Intercreditor Agreement we request that with effect from the date of your acknowledgement of this Super Senior Hedging Certificate:
  - (a) [the Hedging Liabilities owed to [name of new Super Senior Hedge Counterparty] under [details of Hedging Agreement and/or trade confirmation or other equivalent documentation to be inserted] shall be designated and treated as Super Senior Hedging Liabilities with an Allocated Super Senior Hedging Amount equal to €[insert amount in Common Currency][.]; and/or
  - (b) the Hedging Liabilities owed to [name of existing Super Senior Hedge Counterparty] under [details of Hedging Agreement and/or trade confirmation or other equivalent documentation to be inserted] shall no longer be designated as Super Senior Hedging Liabilities and the corresponding Allocated Super Senior Hedging Amount of €[insert amount in Common Currency] shall be released and be available for designation towards other Hedging Liabilities as Super Senior Hedging Liabilities under the Intercreditor Agreement.]
3. This letter and any non-contractual obligations arising out of or in connection with it are governed by English law.

[ \*\*\* Parent \*\*\*]

By:

[existing Super Senior Hedge Counterparty]

By:

[new Super Senior Hedge Counterparty]

By:

Acknowledged and accepted on [insert date]:

[Security Agent] By:



Signatures

**THE PARENT**

Executed as a Deed by **AQUILA MIDCO 2** )  
**LIMITED** )  
acting by: )  
 )



Director

in the presence of:



Signature of witness:



Name of witness:





Address of witness:



Address: 47 Queen Anne Street, London, W1G 9JG

Email: 

Attention: 

Copy to: Inflexion Private Equity Partners LLP, 47 Queen Anne Street, London, W1G 9JG, for the attention of  and 

**THE ORIGINAL DEBTORS**

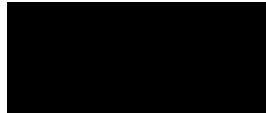
Executed as a )  
Deed by **AQUILA MIDCO 2 LIMITED** )  
acting by: )  
)



Director

in the presence of:

Signature of witness:



Name of witness:





Address of witness:



Address: 47 Queen Anne Street, London, W1G 9JG

Email: 

Attention: 

Copy to: Inflexion Private Equity Partners LLP, 47 Queen Anne Street, London, W1G 9JG, for the attention of  and 

Executed as a )  
Deed by **AQUILA BIDCO LIMITED** acting by: )  
in the presence of: )



Partner

Signature of witness:



Name of witness:



Address of witness:



Address: 47 Queen Anne Street, London, W1G 9JG

Email:



Attention:



Copy to: Inflexion Private Equity Partners LLP, 47 Queen Anne Street, London, W1G 9JG, for the attention of [redacted] and [redacted]

**THE SECURITY AGENT**

**GLAS TRUST CORPORATION LIMITED**

By:

[REDACTED]

[REDACTED]

Address: 55 Ludgate Hill, Level 1, West, London EC4M 7JW

Fax:

[REDACTED]

Attention:

[REDACTED]

Email:

[REDACTED]

**THE AGENT**

**GLOBAL LOAN AGENCY SERVICES LIMITED**

By:

[REDACTED]

[REDACTED]

Address: 55 Ludgate Hill, Level 1, West, London EC4M 7JW

Fax:

[REDACTED]

Attention:

[REDACTED]

Email:

[REDACTED]

**THE LENDERS**

**ICG SENIOR DEBT PARTNERS SV 1 ACTING IN RESPECT OF ITS COMPARTMENT COMPARTMENT FOUR**

..... [Redacted] .....

Name: [Redacted]

Title: Authorised Signatory

Notice Details

Address: 60 avenue J.F. Kennedy L-1855,  
Grand Duchy of Luxembourg

Attention: [Redacted]  
[Redacted]  
[Redacted]

Email: [Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

**ICG SENIOR DEBT PARTNERS SV 1 ACTING IN RESPECT OF COMPARTMENT FIVE**

..... [Redacted] .....

Name: [Redacted]

Title: Authorised Signatory

Notice Details

Address: 60 avenue J.F. Kennedy L-1855,  
Grand Duchy of Luxembourg

Attention: [Redacted]  
[Redacted]  
[Redacted]

Email: [Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

**ICG SENIOR DEBT PARTNERS SV 1 ACTING IN RESPECT OF THE ICG HEUREKA SENIOR LENDING CREDIT COMPARTMENT**

..... [Redacted] .....

Name: [Redacted]

Title: Authorised Signatory

Notice Details

Address: 60 avenue J.F. Kennedy L-1855,  
Grand Duchy of Luxembourg

Attention: [Redacted]  
[Redacted]  
[Redacted]

Email: [Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

**ICG SENIOR DEBT PARTNERS SV 1 ACTING IN RESPECT OF COMPARTMENT FOURTEEN**

..... [Redacted] .....

Name: [Redacted]

Title: Authorised Signatory

Notice Details

Address: 60 avenue J.F. Kennedy L-1855,  
Grand Duchy of Luxembourg

Attention: [Redacted]  
[Redacted]  
[Redacted]

Email: [Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]



**EUROPEAN CREDIT 2019 SARL - ICG CREDIT STRATEGIES I COMPARTMENT**

..... [Redacted] .....

Name: [Redacted]

Title: Authorised Signatory

Notice Details

Address: 60 avenue J.F. Kennedy L-1855,  
Grand Duchy of Luxembourg

Attention: [Redacted]  
[Redacted]  
[Redacted]

Email: [Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

**EUROPEAN CREDIT 2019 SARL - EUROPEAN DIRECT LENDING III COMPARTMENT**

..... [Redacted] .....

Name: [Redacted]

Title: Authorised Signatory

Notice Details

Address: 60 avenue J.F. Kennedy L-1855,  
Grand Duchy of Luxembourg

Attention: [Redacted]  
[Redacted]  
[Redacted]

Email: [Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

**EUROPEAN CREDIT 2019 SARL - EUROPEAN DIRECT LENDING IX COMPARTMENT**

..... [Redacted] .....

Name: [Redacted]

Title: Authorised Signatory

Notice Details

Address: 60 avenue J.F. Kennedy L-1855,  
Grand Duchy of Luxembourg

Attention: [Redacted]  
[Redacted]  
[Redacted]

Email: [Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

**EUROPEAN CREDIT 2019 SARL - EUROPEAN DIRECT LENDING IV COMPARTMENT**

..... [Redacted] .....

Name: [Redacted]

Title: Authorised Signatory

Notice Details

Address: 60 avenue J.F. Kennedy L-1855,  
Grand Duchy of Luxembourg

Attention: [Redacted]  
[Redacted]  
[Redacted]

Email: [Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

**EUROPEAN CREDIT 2019 SARL - EUROPEAN DIRECT LENDING V COMPARTMENT**

..... [Redacted] .....

Name: [Redacted]

Title: Authorised Signatory

Notice Details

Address: 60 avenue J.F. Kennedy L-1855,  
Grand Duchy of Luxembourg

Attention: [Redacted]  
[Redacted]  
[Redacted]

Email: [Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

**EUROPEAN DIRECT LENDING I SARL**

..... [Redacted] .....

Name: [Redacted]

Title: Authorised Signatory

Notice Details

Address: 60 avenue J.F. Kennedy L-1855,  
Grand Duchy of Luxembourg

Attention: [Redacted]  
[Redacted]  
[Redacted]

Email: [Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

**EUROPEAN CREDIT 2019 SARL - EUROPEAN DIRECT LENDING XVI COMPARTMENT**

..... [Redacted] .....

Name: [Redacted]

Title: Authorised Signatory

Notice Details

Address: 60 avenue J.F. Kennedy L-1855,  
Grand Duchy of Luxembourg

Attention: [Redacted]  
[Redacted]  
[Redacted]

Email: [Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

**EUROPEAN CREDIT 2022 ONE SARL - ICG SDP 5-A (EUR)**

..... [Redacted] .....

Name: [Redacted]

Title: Authorised Signatory

Notice Details

Address: 2-4 rue Eugène Ruppert, L-2453 Luxembourg,  
Grand Duchy of Luxembourg

Attention: [Redacted]  
[Redacted]  
[Redacted]

Email: [Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]



**EUROPEAN CREDIT 2022 ONE SARL - ICG SDP 5-B (GBP)**

..... [Redacted] .....

Name: [Redacted]

Title: Authorised Signatory

Notice Details

Address: 2-4 rue Eugène Ruppert, L-2453 Luxembourg,  
Grand Duchy of Luxembourg

Attention: [Redacted]  
[Redacted]  
[Redacted]

Email: [Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

**EUROPEAN CREDIT 2022 Two SARL - ICG SDP 5-C (USD)**

..... [Redacted] .....

Name: [Redacted]

Title: Authorised Signatory

Notice Details

Address: 2-4 rue Eugène Ruppert, L-2453 Luxembourg,  
Grand Duchy of Luxembourg

Attention: [Redacted]  
[Redacted]  
[Redacted]

Email: [Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

**THE ARRANGER**

**ICG ALTERNATIVE INVESTMENT LIMITED**

..... [Redacted] .....

Name: [Redacted]

Title: Authorised Signatory

Notice Details

Address: Procession House, 55 Ludgate Hill, London EC4M 7JW,  
United Kingdom

Attention: [Redacted]  
[Redacted]  
[Redacted]

Email: [Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

**THE INTRA-GROUP LENDERS**

Executed as a )  
Deed by **AQUILA MIDCO 2 LIMITED** )  
acting by: )  
)

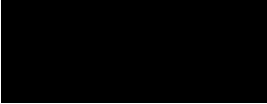


Director

in the presence of:



Signature of witness:



Name of witness:





Address of witness:



Address: 47 Queen Anne Street, London, W1G 9JG

Email: 

Attention: 

Copy to: Inflexion Private Equity Partners LLP, 47 Queen Anne Street, London, W1G 9JG, for the attention of  and 

Executed as a )  
Deed by **AQUILA BIDCO LIMITED** acting by: )  
in the presence of: )



Partner



Signature of witness: 

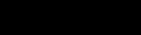
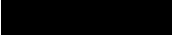
Name of witness: 

Address of witness: 

Address: 47 Queen Anne Street, London, W1G 9JG

Email: 

Attention: 

Copy to: Inflexion Private Equity Partners LLP, 47 Queen Anne Street, London, W1G 9JG, for the attention of  and 

**THE SUBORDINATED CREDITOR**

Executed as a )  
Deed by **AQUILA MIDCO 1 LIMITED** acting by: )  
in the presence of: ) Director



Signature of witness: 


Name of witness: 

Address of witness: 

Address: 47 Queen Anne Street, London, W1G 9JG

Email: 

Attention: 

Copy to: Inflexion Private Equity Partners LLP, 47 Queen Anne Street, London, W1G 9JG, for the attention of  and 