

INTERCREDITOR AGREEMENT

5 MAY 2023

HERON UK FINCO LIMITED
as the Parent

with

GLOBAL LOAN AGENCY SERVICES LIMITED
acting as the Agent

GLAS TRUST CORPORATION LIMITED
acting as the Security Agent

and others

ALLEN & OVERY

Allen & Overy LLP

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THIS AGREEMENT is dated 5 May 2023 and made between:

- (1) **GLOBAL LOAN AGENCY SERVICES LIMITED** as agent of the Finance Parties (as defined in the Senior Facilities Agreement (as defined below)) (the **Agent**);
- (2) **THE FINANCIAL INSTITUTIONS** named on the signing pages as Pari passu Lenders;
- (3) **UPON ACCESSION**, the Super Priority Lenders;
- (4) **THE FINANCIAL INSTITUTIONS** named on the signing pages as Mandated Lead Arranger (together the **Mandated Lead Arrangers**);
- (5) **HERON UK FINCO LIMITED** a company incorporated in England and Wales with registered number 14715580 and having its registered office at 72 Welbeck Street, London, United Kingdom, UW1G 0AY (the **Parent**);
- (6) **HERON UK MIDCO LIMITED** a company incorporated in England and Wales with registered number 14715566 and having its registered office at 72 Welbeck Street, London, United Kingdom, UW1G 0AY (**TopCo**) as Subordinated Creditor;
- (7) **THE ENTITIES** named on the signing pages as Original Debtors;
- (8) **THE ENTITIES** named on the signing pages as Intra-Group Lenders; and
- (9) **GLAS TRUST CORPORATION LIMITED** as security trustee for the Secured Parties (the **Security Agent**).

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

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 the Agent exercising any of its rights under paragraphs (b), (d) or (f) of clause 28.13 (Acceleration) of the Senior Facilities Agreement.

Agent Liabilities means all present and future liabilities and obligations, actual and contingent, of any Debtor to the Agent and/or the Security Agent under or in connection with the Debt Documents.

Agent's Spot Rate of Exchange means, in respect of the conversion of one currency (the **First Currency**) into another currency (the **Second Currency**) the Agent's spot rate of exchange for the purchase of the Second Currency with the First Currency in the London foreign exchange market at or about 11:00 am (London time) on a particular day, which shall be notified by the Security Agent in accordance with Clause 19.9 (Agent's Spot Rate of Exchange).

Agreed Security Principles has the meaning given to that term in the Senior Facilities Agreement.

Ancillary Lender means each Senior Lender (or Affiliate of a Senior Lender) which makes an Ancillary Facility available pursuant to the terms of the Senior Facilities Agreement.

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 Transaction Security Document and applicable law) by enforcement of the Transaction Security;

Arranger Liabilities means all present and future liabilities and obligations, actual and contingent, of any Debtor to the Mandated Lead Arrangers under the Debt Documents.

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 and 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.

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, Subordinated Creditor or 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 and as defined in 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.

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; 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 paragraph (a) and paragraph (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 the Agreed Security Principles, given to all the Secured Parties in respect of their Liabilities.

Common Currency means USD.

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 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 the Agreed Security Principles:

- (a) is created in favour of the Security Agent as trustee or security agent 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 or security agent 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 2.2 (Transaction Security).

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

Credit Related Close-Out means any Permitted Hedge Close-Out which is not a Non-Credit Related Close-Out.

Creditor/Agent Accession Undertaking means:

- (a) an undertaking substantially in the form set out in Schedule 2 (Form of Creditor/Agent Accession Undertaking);
- (b) a Transfer Certificate or an Assignment Agreement;
- (c) an Increase Confirmation; or
- (d) an Additional Facility Accession Deed;

as the context may require; or

- (e) 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 Senior Lenders, the Agent, the Security Agent, the Mandated Lead Arrangers, the Hedge Counterparties and the Intra-Group Lenders.

Debt Document means each of this Agreement, the Hedging Agreements, the Finance Documents, the Transaction Security Documents, any agreement (whether or not evidenced in writing) or account record evidencing the terms of the Intra-Group Liabilities (including, without limitation, any intercompany loan or funding agreement) or the Subordinated Liabilities and any other document or record 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 21 (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 Senior Facilities Agreement) an Accession Deed (as defined in the Senior Facilities Agreement).

Debtor Liabilities 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.

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

Declared Default means:

- (a) an Acceleration Event; or
- (b) a Material Event of Default in respect of which action has been taken by the Agent under paragraphs (c), (e) or (g) of clause 28.14 (Revolving Facility Acceleration) of the Senior Facilities Agreement.

Default has the meaning given to that term in the Senior Facilities Agreement.

Defaulting Lender means a Senior Lender which is a Defaulting Lender under, and as defined in, the Senior Facilities Agreement.

Delegate means any delegate, custodian, nominee, agent, attorney, co-trustee or co-security agent appointed by the Security Agent.

Designated Gross Amount means, in relation to a Multi-account Overdraft, that Multi-account Overdraft's **Designated Gross Amount** under and as defined in the Senior Facilities Agreement.

Designated Net Amount means, in relation to a Multi-account Overdraft, that Multi-account Overdraft's **Designated Net Amount** under and as defined in the Senior Facilities Agreement.

Disposal Proceeds has the meaning given to that term in Clause 12 (Proceeds of Disposals and Appropriation).

Distress Event means any of:

- (a) a Declared Default; or
- (b) the enforcement of any Transaction Security where such Transaction 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;
- (b) being effected by enforcement of the Transaction Security (including the disposal of any Property of a member of the Group, the shares in which have been subject to an Appropriation); or
- (c) being effected, after the occurrence of a Distress Event, by a Debtor to a person or persons which is not a member of the Group.

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

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 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 to the extent (A) such Liability the subject of the demand is an Intra-Group Liability and (B) the payment of the Liability is a Permitted 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 Senior 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:
 - (A) as Close-Out Netting by a Hedge Counterparty or by a Hedging Ancillary Lender;
 - (B) as Payment Netting by a Hedge Counterparty or by a Hedging Ancillary Lender;
 - (C) as Inter-Hedging Agreement Netting by a Hedge Counterparty;
 - (D) as Inter-Hedging Ancillary Document Netting by a Hedging Ancillary Lender;

- (E) in respect of any Intra-Group Liabilities prior to the occurrence of a Distress Event, provided that the exercise of that right results in a payment or discharge of Intra-Group Liabilities that would otherwise be a Permitted Payment; and
 - (F) which is otherwise expressly permitted under the Senior Facilities Agreement or this 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 save to the extent expressly permitted under this Agreement;
 - (c) the taking of any steps to enforce or require the enforcement of any Transaction Security (including the crystallisation of any floating charge (or any equivalent or analogous Security) forming part of the Transaction Security);
 - (d) the entering into of any composition, compromise, assignment or arrangement with any member of the Group which owes any Liabilities, or has given any Security, guarantee or indemnity or other assurance against loss in respect of the Liabilities (other than any action permitted under Clause 21 (Changes to the Parties)); or
 - (e) the petitioning, applying or voting for, or the taking of any formal steps (including the appointment of any liquidator, receiver, administrator or similar officer) in relation to, the winding up, dissolution, administration or reorganisation of any member of the Group which owes any Liabilities, or has given any Security, guarantee, indemnity or other assurance against loss in respect of any of the Liabilities, or any of such member of the Group's assets or any suspension of payments or moratorium of any indebtedness of any such member of the Group, or any analogous procedure or step in any jurisdiction,

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; or
- (ii) an Ancillary Lender, Hedge Counterparty or Issuing Bank bringing legal proceedings against any person solely for the purpose of:
 - (A) obtaining injunctive relief (or any analogous remedy outside England and Wales) to restrain any actual or putative breach of any Debt Document to which it is party;
 - (B) obtaining specific performance (other than specific performance of an obligation to make a payment) with no claim for damages; or
 - (C) requesting judicial interpretation of any provision of any Debt Document to which it is party with no claim for damages; or

- (iii) a demand made by a Subordinated Creditor or an Intra-Group Lender in relation to the Subordinated Liabilities or Intra-Group Liabilities to the extent:
 - (A) any resulting Payment would constitute a Permitted Subordinated Creditor Payment or a Permitted Intra-Group Payment or a Permitted Reorganisation or Permitted Transaction; or
 - (B) any Subordinated Liability or Intra-Group Liability of a member of the Group being released or discharged in consideration for the issue of shares or contribution to share capital in that member of the Group provided that in the event that the shares of such member of the Group are subject to Transaction Security prior to such issue, then the percentage of shares in such Subsidiary subject to Transaction Security is not diluted; or
- (iv) the taking of any action pursuant to a Permitted Reorganisation or Permitted Transaction.

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.

Event of Default means any event or circumstance specified as such in the Senior Facilities Agreement.

Excluded Swap Obligation has the meaning given to that term in clause 23.11 (Guarantee Limitations generally) of the Senior Facilities Agreement.

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

Fairness Opinion means, in respect of a Distressed Disposal, an opinion confirming that the sale or disposal price is fair from a financial point of view taking into account all relevant circumstances.

Financial Adviser means any:

- (a) an independent internationally recognised investment bank which is not a Super Priority Creditor or an Affiliate of a Super Priority Creditor; or
- (b) any one of FTI Consulting, PricewaterhouseCoopers, Ernst & Young, KPMG or Deloitte & Touche (or any amalgamation of the same or their successors provided that any such amalgamation of the same or any such successors continue to be internationally recognised accounting firms).

Group has the meaning given to the term in the Senior Facilities Agreement.

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

Hedge Counterparty means any person which becomes Party as a Hedge Counterparty pursuant to Clause 21.8 (Creditor/Agent Accession Undertaking), which is or has become party to the Senior Facilities Agreement as a Hedge Counterparty.

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

Hedge Transfer means a transfer to one or more of the Pari passu Lenders (or to their nominee or nominees) of:

- (a) each Hedging Agreement giving rise to Super Priority Hedging Liabilities owed by the Debtors to each Hedge Counterparty; and
- (b) all the related Hedge Counterparty Obligations (in respect of the Super Priority Hedging Liabilities only) owed by each Hedge Counterparty to the Debtors,

in each case, in accordance with Clause 21.4 (Change of Hedge Counterparty) as described in, and subject to, Clause 5 (Option to Purchase: Pari Passu Lenders).

Hedging Agreement means any agreement entered into by a Debtor which is an Obligor and a Hedge Counterparty:

- (a) in relation to any interest rate hedging contract or other derivative transaction designed to protect against actual or potential interest rate fluctuation exposures;
- (b) in relation to any forward delivery foreign exchange contract or other derivative transaction designed to protect against actual or potential foreign exchange currency fluctuation exposures; and/or
- (c) subject to paragraph (b) of the definition of Super Priority Hedging Liabilities, in relation to any other Permitted Treasury Transactions,

in each case provided that the entering into of that Hedging Agreement (or the transactions contemplated thereunder) would not constitute a breach of clause 27.28 (Treasury Transactions) of the Senior Facilities 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 Liabilities means the Super Priority Hedging Liabilities and the Pari passu Hedging Liabilities.

Hedging Purchase Amount means, in respect of a hedging transaction under a Hedging Agreement, 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:

- (a) in the case of a Hedging Agreement which is based on an ISDA Master Agreement:
 - (i) that date was an Early Termination Date (as defined in the relevant ISDA Master Agreement); and
 - (ii) the relevant Debtor was the Defaulting Party (under and as defined in the relevant ISDA Master Agreement); or

- (b) in the case of a Hedging Agreement which is not based on an ISDA Master Agreement:
 - (i) that date was the date on which an event similar in meaning and effect (under that Hedging Agreement) to an event described in paragraph (a)(i) above occurred under that Hedging Agreement; and
 - (ii) the relevant Debtor was in a position which is similar in meaning and effect to that of the relevant Debtor described in paragraph (a)(ii) above,

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

Insolvency Event means, in relation to any member of the Group (and in each case where such circumstance constitutes an Event of Default under the Senior Facility Agreement (and excluding, for the avoidance of doubt, any Permitted Reorganisation or Permitted Transaction)):

- (a) any resolution is passed or order made for the winding up, dissolution, administration or reorganisation of that member of the Group, a moratorium is declared in relation to any indebtedness of that member of the Group or an administrator is appointed to that member of the Group (other than in connection with a Permitted Reorganisation);
- (b) any composition, compromise, assignment or arrangement is made with any of its creditors by reason of actual or anticipated financial difficulties of that member of the Group;
- (c) attachment, distress execution, sequestration or other process against any asset owned by any Group Company;
- (d) the appointment of any liquidator (other than in respect of a solvent liquidation entered into to effect a Permitted Reorganisation), receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of that member of the Group or any of its assets; or
- (e) in respect of any member of the Group, any analogous procedure or step is taken in any Relevant Jurisdiction applicable to that member of the Group.

Instructing Group means, at any time:

- (a) subject to paragraph (b) below, the Majority Pari passu Creditors; or
- (b) if the Majority Super Priority Creditors are permitted to commence Enforcement Action pursuant to Clause 3.9 (Permitted Enforcement: Super Priority Creditors), the Majority Super Priority Creditors until the Super Priority Discharge Date.

Intercreditor Amendment means any amendment or waiver which is subject to Clause 27 (Consents, Amendments and Override).

Interest Rate Hedging means, in relation to a Hedge Counterparty, the aggregate of the notional amounts hedged by the relevant Debtors under each Interest Rate Hedging Agreement and to which that Hedge Counterparty is party.

Interest Rate Hedging Agreements means any Hedging Agreement entered into by a Debtor with a Hedge Counterparty for the purpose of hedging interest rate risks in relation to the Pari Passu Facility.

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 Super Priority Hedging Liabilities and/or Pari passu 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 Lender Liabilities owed to that Hedging Ancillary Lender by that Debtor under another Hedging Ancillary Document.

Intra-Group Lenders means the Parent and each other member of the Group which has made a loan, credit or other Financial Indebtedness available to or made any other financial arrangement having similar effect with a Debtor and which is named on the signing pages of this Agreement as an Intra-Group Lender or which becomes a Party as an Intra-Group Lender in accordance with the terms of Clause 21 (Changes to the Parties).

Intra-Group Liabilities means the Liabilities owed by any Debtor to any of the Intra-Group Lenders.

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

Liabilities means all present and future liabilities and obligations at any time of any member of the Group to any Creditor or any Subordinated Creditor under or in connection with the Debt Documents, both actual and contingent and whether incurred solely or jointly 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, assumption of contract, 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 and benefits in respect of those Liabilities.

Majority Pari passu Creditors means, at any time, those Pari passu Creditors whose Senior Credit Participations at that time aggregate 66 $\frac{2}{3}$ per cent or more (by value) of the total Senior Credit Participations of all Pari passu Creditors at that time, to the extent any such Senior Credit Participations

are not deemed to be zero or otherwise reduced pursuant to any relevant provisions of the Finance Documents.

Majority Senior Creditors means, at any time, those Senior Creditors whose Senior Credit Participations at that time aggregate 66 $\frac{2}{3}$ % or more (by value) of the total Senior Credit Participations at that time, to the extent any such Senior Credit Participations are not deemed to be zero or otherwise reduced pursuant to any relevant provisions of the Finance Documents.

Majority Senior Lenders has the meaning given to the term **Majority Lenders** in the Senior Facilities Agreement, to the extent any such relevant commitments are not deemed to be zero or otherwise reduced pursuant to any relevant provisions of the Finance Documents.

Majority Super Priority Creditors means, at any time, those Super Priority Creditors whose Senior Credit Participations at that time aggregate 66 $\frac{2}{3}$ per cent or more (by value) of the total Senior Credit Participations of all Super Priority Creditors at that time and provided that, for the purpose of calculating the Majority Super Priority Creditors, the aggregate of the Senior Credit Participations of the Hedge Counterparties in respect of the Hedging Agreements shall not exceed an amount equal to the Super Priority Hedging Liabilities (and to the extent it would do so, the Senior Credit Participations of the Hedge Counterparties relating to Hedging Liabilities described in paragraph (b) of the definition of Super Priority Hedging Liabilities (and not falling within paragraph (a) thereof) shall be reduced pro rata), to the extent any such Senior Credit Participations are not deemed to be zero or otherwise reduced pursuant to any relevant provisions of the Finance Documents.

Majority Super Priority Lenders has the meaning given to the term **Majority Revolving Facility Lenders** in the Senior Facilities Agreement, to the extent any such relevant commitments are not deemed to be zero or otherwise reduced pursuant to any relevant provisions of the Finance Documents.

Mandatory Prepayment means a mandatory prepayment of any of the Senior Lender Liabilities pursuant to clause 12.1(a) (Exit) or 12.2 (Disposal, Insurance, Acquisition and IPO Proceeds) of the Senior Facilities Agreement.

Material Enforcement Action means:

- (a) the taking of any action pursuant to paragraph (c) of the definition of Enforcement Action by the Security Agent (acting on the instructions of the Majority Pari passu Creditors);
- (b) a Distressed Disposal being effected at the request of the Majority Pari passu Creditors;
- (c) the release or disposal of liabilities or claims or transfer of obligations and/or Transaction Security in connection with a Distressed Disposal being effected at the request of the Majority Pari passu Creditors pursuant to Clause 12.2 (Distressed Disposals and Appropriation); or
- (d) the giving of any instructions as to actions to be taken by the Security Agent (acting on the instructions of the Majority Pari passu Creditors) with respect to the Transaction Security and/or Charged Property following an Insolvency Event under Clause 3.9(a)(iii).

Material Event of Default has the meaning given to that term in the Senior Facilities Agreement.

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.

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

Non-Cash Recoveries means:

- (a) any proceeds of a Distressed Disposal; or
- (b) any shares in the capital of a member of the Group which have been subject to an Appropriation; or
- (c) any amount distributed to the Security Agent pursuant to Clause 9.2 (Turnover by the Creditors and the Subordinated Creditors),

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

Non-Credit Related Close-Out means:

- (a) a Permitted Hedge Close-Out described in any of paragraphs (a)(i), (a)(iii), (a)(v) or (a)(vi) of Clause 4.9 (Permitted Enforcement: Hedge Counterparties); or
- (b) a close-out or termination by a Debtor in circumstances where the relevant Debtor is closing out or terminating hedging arrangements in relation to interest rate hedging and/or exchange rate hedging provided that the Debtor continues to comply with clause 27.28 (Treasury Transactions) of the Senior Facilities Agreement.

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

Parallel Debt has the meaning given to that term in Clause 19.3 (Parallel Debt (Covenant to Pay the Security Agent)).

Pari passu Creditors means the Pari passu Lenders and the Hedge Counterparties (to the extent of their Pari passu Hedging Liabilities).

Pari passu Facility means a Term Facility (as that term is defined in the Senior Facilities Agreement).

Pari passu Facility Liabilities means the Liabilities owed by the Debtors to the Pari passu Lenders in respect of the Pari passu Facilities.

Pari passu Hedging Liabilities means the Liabilities owed by the Debtors to the Hedge Counterparties under or in connection with the Hedging Agreements other than the Super Priority Hedging Liabilities.

Pari passu Lender means each Senior Lender other than a Revolving Facility Lender (in its capacity as such).

Pari passu Liabilities means the Pari passu Facility Liabilities and the Pari passu Hedging Liabilities.

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 Gross Outstandings means, in relation to a Multi-account Overdraft, any amount, not exceeding its Designated Gross Amount, which is the aggregate amount of the gross debit balance of overdrafts comprised in that Multi-account Overdraft.

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 (Permitted Payments: Hedging Liabilities).

Permitted Intra-Group Payments means the Payments permitted by Clause 6.2 (Permitted Payments: Intra-Group Liabilities).

Permitted Payment means a Permitted Hedge Payment, a Permitted Intra-Group Payment, a Permitted Senior Lender Payment or a Permitted Subordinated Creditor Payment.

Permitted Senior Lender Payments means the Payments permitted by Clause 3.1 (Payment of Senior Lender Liabilities).

Permitted Subordinated Creditor Payments means the Payments permitted by Clause 7.2 (Permitted Payments: Subordinated Liabilities).

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 Issuing Bank means, in respect of any SFA Cash Cover, the Issuing Bank (if any) for which that SFA Cash Cover is provided.

Relevant Liabilities means:

- (a) in the case of a Creditor or a Subordinated Creditor:
 - (i) the Arranger Liabilities owed to the Mandated Lead Arrangers ranking (in accordance with the terms of this Agreement) pari passu with or in priority to that Creditor or Subordinated Creditor (as the case may be);
 - (ii) the Liabilities owed to Creditors and Subordinated Creditors ranking (in accordance with the terms of this Agreement) pari passu with or in priority to that Creditor or

Subordinated Creditor (as the case may be) together with all Agent Liabilities owed to the Agent of those Creditors; and

- (iii) 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 and Subordinated Creditors together with the Agent Liabilities owed to the Agent of those Creditors, the Arranger Liabilities and all present and future liabilities and obligations, actual and contingent, of the Debtors to the Security Agent.

Reports has the meaning given to that term in the Senior Facilities Agreement.

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

Retiring Security Agent has the meaning given to that term in Clause 20.1(d) (Change of Security Agent and Delegation).

Revolving Facility Lender has the meaning given to that term in the Senior Facilities Agreement.

Sanctioned Finance Party means, at any time, a creditor or other provider of financial accommodation to the Group under any Debt Documents (whether secured or unsecured and including, without limitation, Hedging Agreements or Ancillary Documents) which:

- (a) is a Restricted Person;
- (b) has been excluded from any international payment or clearing system (including, without limitation, SWIFT);
- (c) is located, incorporated or organised in, acting through a Facility Office located, resident or situated in, or is a branch of a person located, resident or situated in, a country or territory which falls within sub-paragraph (a)(ii) of clause 24.24 (Sanctions) of the Senior Facilities Agreement;
- (d) is any person owned or controlled by any person falling within any of the other paragraphs of this definition; and/or
- (e) has (directly or indirectly) entered into a sub-participation or other similar arrangement with another person, and/or is (directly or indirectly) acting on behalf of another person (pursuant to a fronting arrangement or otherwise) falling within any of the paragraphs above.

Secured Obligations means all the Liabilities and all other present and future obligations at any time due, owing or incurred by any member of the Group and by each Debtor to any Secured Party under the Finance Documents (including, without limitation, pursuant to the operation of clause 2.2 (Increase) and/or clause 2.3 (Additional Facilities) of the Senior Facilities Agreement) and the Hedging Agreements, including to the Security Agent under the Parallel Debt pursuant to Clause 19.3 (Parallel Debt (Covenant to Pay the Security Agent)), both actual and contingent and whether incurred solely or jointly and as principal or surety or in any other capacity and including any claim based on unjust enrichment or tort, provided that Secured Obligations of any Debtor shall not include any Excluded Swap Obligations solely of such Debtor.

Secured Parties means the Security Agent, any Receiver or Delegate and the Agent, the Mandated Lead Arrangers and the Senior Creditors from time to time but, in the case of the Agent, each Mandated Lead Arranger or Senior Creditor, only if it is a party to this Agreement or (in the case of the Agent or

a Senior Creditor) has acceded to this Agreement, in the appropriate capacity, pursuant to Clause 21.8 (Creditor/Agent Accession Undertaking).

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

Security Enforcement Objective means maximising, to the extent consistent with a prompt and expeditious enforcement of the Transaction Security, the recovery of the Super Priority Creditors and (without prejudice to Clause 16 (Application of Proceeds)), the Pari passu Creditors.

Security Property means:

- (a) the Transaction Security expressed to be granted in favour of the Security Agent as trustee or security agent for the Secured Parties and, 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 the Secured Parties in respect of their Liabilities or the Security Agent under the Parallel Debt pursuant to Clause 19.3 (Parallel Debt (Covenant to Pay the Security Agent)) for the benefit of 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 a Secured Party or to the Security Agent as trustee or security agent (under the Parallel Debt pursuant to Clause 19.3 (Parallel Debt (Covenant to Pay the Security Agent)) or otherwise) 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 or security agent for the Secured Parties (or directly in favour of a Secured Party);
- (c) the Security Agent's interest in any trust fund created pursuant to Clause 9 (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 or as security agent for, or otherwise for the benefit of, the Secured Parties (or which otherwise benefit the Secured Parties).

Senior Credit Participation means, in relation to a Senior Creditor, the aggregate of:

- (a) its aggregate Commitments, if any; and
- (b) in respect of any hedging transaction of that Senior Creditor 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 Senior Creditor (acting reasonably) and as calculated in accordance with the relevant Hedging Agreement); and
- (c) after the Senior Lender Discharge Date only, in respect of any hedging transaction of that Senior Creditor 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 Senior Creditor (acting reasonably) and as calculated in accordance with the relevant Hedging Agreement.

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

Senior Debt Purchase Transaction has the meaning given to the term **Debt Purchase Transaction** in the Senior Facilities Agreement.

Senior Discharge Date means the first date on which all Senior Liabilities have been fully and finally discharged to the satisfaction of the Agent acting reasonably (in the case of the Senior Lender Liabilities) and each Hedge Counterparty acting reasonably (in the case of its Hedging Liabilities), whether or not as the result of an enforcement, and the Senior Creditors are under no further obligation to provide financial accommodation to any of the Debtors under the Debt Documents, provided that any Loans and Commitments purchased by a member of the Group in accordance with clause 30.1 (Permitted Debt Purchase Transactions) of the Senior Facilities Agreement shall be deemed to have been fully and finally discharged for purposes of determination of the occurrence of the Senior Discharge Date.

Senior Facilities Agreement means the senior facilities agreement made between the Parent, the Senior Lenders, the Agent, the Security Agent and others dated on or about the date of this Agreement.

Senior Facility Creditors means each Senior Lender, the Agent, each Mandated Lead Arranger and the Security Agent.

Senior Lender Cash Collateral means any cash collateral provided by a Senior Lender to an Issuing Bank pursuant to clause 7.4 (Cash Collateral by Non-Acceptable L/C Lender) of the Senior Facilities Agreement.

Senior Lender Discharge Date means the first date on which all Senior Lender Liabilities have been fully and finally discharged to the satisfaction of the Agent acting reasonably, whether or not as a result of an enforcement, and the Senior Lenders are under no further obligation to provide financial accommodation to any of the Debtors under any of the Debt Documents, provided that any Loans and Commitments purchased by a member of the Group in accordance with clause 7.4 (Permitted Debt Purchase Transactions) of the Senior Facilities Agreement shall be deemed to have been fully and finally discharged for purposes of determination of the occurrence of the Senior Lender Discharge Date.

Senior Lender Liabilities means the Liabilities owed by the Debtors to the Senior Lenders under the Finance Documents (including, for the avoidance of doubt, with respect to any Additional Facility and any increase of a Facility made pursuant to clause 2.2 (Increase) of the Senior Facilities Agreement).

Senior Lender Refinancing means a refinancing (or repayment) and cancellation in full of the Senior Lender Liabilities.

Senior Lenders means each Lender (as defined in the Senior Facilities Agreement), any Issuing Bank and each Ancillary Lender, in each case in their respective capacities as such.

Senior Liabilities means the Senior Lender Liabilities and the Hedging Liabilities.

Senior Payment Default means an Event of Default under clause 28.1 (Non-payment) of the Senior Facilities Agreement.

SFA Cash Cover has the meaning given to the term **cash cover** in the Senior 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 paragraph (iii) of the term **cash cover** as used in the Senior Facilities Agreement.

Sponsor Affiliate has the meaning given to that term in the Senior Facilities Agreement.

Structural Adjustment has the meaning given to such term in clause 41.2 (Exceptions) of the Senior Facilities Agreement.

Subordinated Creditors means TopCo and any person which becomes a Party as a Subordinated Creditor in accordance with the terms of Clause 21 (Changes to the Parties).

Subordinated Liabilities means all Liabilities owed to (and claims arising in favour of) the Subordinated Creditors by the Parent from time to time.

Super Priority Creditors means the Super Priority Lenders and the Hedge Counterparties (to the extent of their Super Priority Hedging Liabilities only).

Super Priority Discharge Date means the first date on which:

- (a) all Super Priority Liabilities have been fully and finally discharged to the satisfaction of the Agent (acting reasonably), whether or not as the result of an enforcement; and
- (b) the Agent, the Mandated Lead Arrangers and the Super Priority Creditors are under no further obligation to provide financial accommodation to any of the Debtors under the Debt Documents (save with respect to any Hedging Liabilities which are not Super Priority Hedging Liabilities).

Super Priority Enforcement Notice has the meaning given to that term in Clause 3.9 (Permitted Enforcement: Super Priority Creditors).

Super Priority Facility Liabilities means the Liabilities owed by the Debtors to the Super Priority Lenders in respect of the Revolving Facilities and any Ancillary Facility.

Super Priority Hedging Liabilities means the Liabilities owed by the Debtors to the Hedge Counterparties under or in connection with the Hedging Agreements in respect of:

- (a) interest rate hedging and/or foreign exchange hedging entered into by the Debtors in respect of the Pari passu Facilities; and

- (b) any other Permitted Treasury Transactions up to an aggregate unpaid amount payable to the Hedge Counterparties upon termination or close out thereof in respect of all Permitted Treasury Transactions not falling within paragraph (a) above of the greater of US\$4,000,000 (or its equivalent in other currencies) and 7.5% of Consolidated EBITDA.

Super Priority Lender means each Senior Lender with a Revolving Facility Commitment (as defined in the Senior Facilities Agreement) and each Ancillary Lender.

Super Priority Liabilities means the Super Priority Facility Liabilities and the Super Priority Hedging Liabilities.

Super Priority Standstill Period has the meaning given to that term in Clause 3.9 (Permitted Enforcement: Super Priority Creditors).

Term Outstandings means, at any time, the aggregate of the amounts of principal (not including any capitalised or deferred interest) then outstanding under the Pari passu Facilities.

Transaction Security has the meaning given to that term in the Senior Facilities Agreement.

Transaction Security Documents shall mean the **Transaction Security Documents** as defined in the Senior Facilities Agreement.

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.

1.2 Construction

- (a) Words defined in the Senior Facilities Agreement have the same meaning in this Agreement unless expressly defined in this Agreement or the context otherwise dictates.
- (b) Unless a contrary indication appears, a reference in this Agreement to:
- (i) any **Additional Facility Lender, Agent, Ancillary Lender, Mandated Lead Arrangers, Borrower, Creditor, Debtor, Guarantor, Hedge Counterparty, Intra-Group Lender, Issuing Bank, Parent, Pari passu Lender, Pari passu Creditor, Party, Security Agent, Senior Creditor, Senior Lender, Super Priority Creditor, Super Priority Hedge Counterparty, Super Priority Lender, Sponsor Affiliate or Subordinated Creditor** shall be construed to be a reference to it in its capacity as such and not in any other capacity;
 - (ii) any **Additional Facility Lender, Agent, Ancillary Lender, Mandated Lead Arrangers, Creditor, Debtor, Hedge Counterparty, Intra-Group Lender, Issuing Bank, Pari passu Creditor, Pari passu Lender, Party, the Security Agent, any Senior Lender or Subordinated Creditor, Super Priority Creditor, Super Priority Hedge Counterparty, Super Priority Lender** or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees 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) any reference in this Agreement to this **Agreement, the Senior Facilities Agreement, a Senior Finance Document** or any other agreement or instrument includes all amendments, supplements, novations, restatements or re-enactments (without prejudice to any prohibition thereto) however fundamental and of whatsoever nature thereunder and includes (i) any increase or reduction in any amount available under the Senior Facilities Agreement or any other Senior Finance Document (as amended, supplemented, novated, restated or re-enacted) or any alteration of or addition to the purpose for which any such amount, or increased or reduced amount may be used, (ii) any facility provided in substitution of or in addition to the facilities originally made available thereunder, (iii) any rescheduling of the indebtedness incurred thereunder whether in isolation or in connection with any of the foregoing and (iv) any combination of the foregoing, and the Secured Obligations shall include all of the foregoing;
 - (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, or assigned or otherwise transferred to a third party, or supplemented, extended or restated as permitted by this Agreement;
 - (vi) **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 shall include the appointment of an administrator (or any equivalent or analogous officer) of a Debtor by the Security Agent (or any analogous procedure in any jurisdiction);

- (viii) **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;
 - (ix) **including** means including without limitation and **includes** and **included** shall be construed accordingly;
 - (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 or partnership (whether or not having separate legal personality);
 - (xii) **proceeds** of a Distressed Disposal includes proceeds in cash and in Non-Cash Consideration;
 - (xiii) 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;
 - (xiv) **shares** or **share capital** includes equivalent ownership interests (and **shareholder** and similar expressions shall be construed accordingly);
 - (xv) **incorporated** or **incorporation** include **established** or **establishment**;
 - (xvi) a matter being **permitted** under this Agreement or any other Debt Document or other agreement shall include references to such matter not being prohibited under this Agreement or such other Debt Document or other agreement; and
 - (xvii) a provision of law is a reference to that provision as amended or re-enacted.
- (c) Section, Clause and Schedule headings are for ease of reference only.
 - (d) A Default, Event of Default or a Material Event of Default is **continuing** if it has not been remedied or waived.
 - (e) A Declared Default or an Acceleration Event is **continuing** if the relevant notice, demand, declaration or other step or action under or pursuant to clause 28.13 (Acceleration) or clause 28.14 (Revolving Facility Acceleration) of the Senior Facilities Agreement has not been expressly revoked by the Agent.
 - (f) An Insolvency Event is **continuing** if it has not been remedied or waived.
 - (g) In determining whether any Debt has been irrevocably paid or discharged, all contingent liabilities (such as the risk of clawback from a preference claim) will be disregarded except to the extent that the Security Agent reasonably considers (acting on the advice of outside reputable counsel) that there is a reasonable likelihood that those contingent liabilities will become actual liabilities.

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 Rights 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 Clause 19.13 (No proceedings) may, subject to this Clause 1.3 (Third Party Rights) and the Third Parties Rights 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 and empowers (including the power of self-contracting, multiple representation and sub-empowering, even in case of conflict of interest) the Parent on its behalf to execute and/or notarise on its behalf any agreements, deeds or any other document as may be required under this Agreement 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, all the foregoing executing any public or private document and carry out any related action as may be require.
- (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 Sanctions

Notwithstanding anything to the contrary in this Agreement or any other Debt Document, no amount of principal shall be payable or repayable to, and no fees, interest or other amounts shall be required to be paid (and/or, if such accrual would cause a breach of sanctions, accrue) in respect of, any Commitment, participation or other form of financial accommodation of, or provided by, a Sanctioned Finance Party (in each case for so long as that person is a Sanctioned Finance Party), and all relevant provisions under the Debt Documents shall be interpreted accordingly (including, without limitation, Clause 19.22 (Winding up of trust) which shall be construed so as to allow the Security Agent to take all actions under that Clause notwithstanding that the conditions referred to in paragraphs (i) and/or (ii) (as applicable) of that Clause may not have been met in respect of a Sanctioned Finance Party. If elected by the Company, Commitments, participations and/or portions of financial accommodation of a Sanctioned Finance Party under the Debt Documents may be treated separately, and segregated from, all other Commitments, participations and remaining portions of financial accommodation under the Debt Documents. Furthermore, no breach of any representation, warranty or undertaking, Default or an Event of Default shall occur as a result of the foregoing in respect of a Sanctioned Finance Party and/or the Group not taking any of the foregoing actions with respect to a Sanctioned Finance Party and, in each case, such matters are hereby expressly permitted under the terms of the Debt Documents.

2. RANKING AND PRIORITY

2.1 Senior Creditor Liabilities

Each of the Parties agrees that the Senior Lender Liabilities, the Agent Liabilities, the Arranger Liabilities and the Hedging Liabilities shall rank *pari passu* and without any preference between them.

2.2 Transaction Security

Each of the Parties agrees that the Transaction Security shall rank and secure the Senior Lender Liabilities, the Agent Liabilities, the Arranger Liabilities and the Hedging Liabilities pari passu and without any preference between them (but only to the extent that such Transaction Security is expressed to secure those Liabilities).

2.3 Subordinated and Intra-Group Liabilities

- (a) Each of the Parties agrees that the Subordinated Liabilities and the Intra-Group Liabilities are postponed and subordinated to the Senior Liabilities, the Agent Liabilities and the Arranger Liabilities.
- (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 anything in any Debt Document to the contrary, prior to the Senior Discharge Date and unless otherwise agreed by all of the Pari passu Creditors, 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 Priority 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 Priority Liabilities but are senior to the Pari passu Liabilities; or
- (c) are contractually subordinated in right of payment to any of the Super Priority Liabilities and senior in right of payment to the Pari passu Liabilities,

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

3. SENIOR LENDERS AND SENIOR LENDER LIABILITIES

3.1 Payment of Senior Lender Liabilities

The Debtors may make Payments of the Senior Lender Liabilities, the Agent Liabilities and the Arranger Liabilities at any time in accordance with the Finance Documents.

3.2 Amendments and Waivers: Senior Lenders

The Senior Lenders and the Debtors 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 Security: Senior Facility Creditors

Other than as set out in Clause 3.5 (Security: Ancillary Lenders and Issuing Banks), the Senior Facility Creditors may take, accept or receive the benefit of:

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

Clause 3.5 (Security: Ancillary Lenders and Issuing Banks)) to the extent legally possible and subject to the Agreed Security Principles is, at the same time, 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:
 - (A) to the other Secured Parties in respect of their Liabilities; or
 - (B) 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 2.2 (Transaction Security); and

- (b) any guarantee, indemnity or other assurance against loss from any member of the Group in respect of the Senior Lender Liabilities in addition to those in:
 - (i) the original form of Senior Facilities Agreement;
 - (ii) this Agreement;
 - (iii) to the extent customary for such letters, any commitment, mandate or engagement letter entered into in connection with any Debt Document; or
 - (iv) any Common Assurance,

if (except for any guarantee, indemnity or other assurance against loss permitted under Clause 3.5 (Security: Ancillary Lenders and Issuing Banks)) 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 permitted by Clause 3.5 (Security: Ancillary Lenders and Issuing Banks).

3.4 Facilitation of establishment of Additional Facilities

- (a) This Clause 3.4 applies if an Additional 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 Additional 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:

- (A) as a result of the establishment of that Additional 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
- (B) to provide the Lenders under that Additional 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:
 - I. being provided later in time;
 - II. (if the relevant Debtor's original obligation to grant the relevant Security, guarantee, indemnity or other assurance against loss in respect of the relevant Facility was expressly subject to the Agreed Security Principles), any difference in borrowers and resulting different application of those Agreed Security Principles; or
 - III. any difference in Borrowers and resulting different application of any relevant guarantee limitation).
- (c) This Clause 3.4 shall not require any Secured Party to facilitate:
 - (i) an amendment to the nature or scope of any Security, guarantee, indemnity or other assurance against loss constituted pursuant to any Security Document; or
 - (ii) a release of the Transaction Security.

3.5 Security: Ancillary Lenders and Issuing Banks

No Ancillary Lender or Issuing Bank will, unless the prior consent of the Majority Senior Creditors 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 Transaction Security;
- (b) each guarantee, indemnity or other assurance against loss contained in:
 - (i) the original form of Senior Facilities Agreement;
 - (ii) this Agreement;
 - (iii) to the extent customary for such letters, any commitment, mandate or engagement letter entered into in connection with any Debt Document; or
 - (iv) 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 Senior Facilities Agreement relating to any Ancillary Facility or for any Letter of Credit issued by the Issuing Bank;
- (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);

- (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; or
- (g) any Security, guarantee, indemnity or other assurance against loss permitted by Clause 3.3 (Security: Senior Facility Creditors).

3.6 Restriction on Enforcement: Super Priority Creditors

Subject to Clause 3.7 (Permitted Enforcement: Ancillary Lenders and Issuing Banks), Clause 3.8 (Required Enforcement: Ancillary Lenders), Clause 3.9 (Permitted Enforcement: Super Priority Creditors) and without prejudice to each Super Priority Lender's rights under Clauses 11.2 (Enforcement Instructions) and 11.3 (Manner of enforcement), so long as any of the Pari passu Liabilities are or may be outstanding, none of the Super Priority Lenders (including the Ancillary Lenders and the Issuing Banks) shall be entitled to take any Enforcement Action in respect of any of the Super Priority Liabilities owed to it in that capacity (unless at the time for any reason the only outstanding Senior Liabilities are Super Priority Liabilities).

3.7 Permitted Enforcement: Ancillary Lenders and Issuing Banks

- (a) The Ancillary Lenders and Issuing Banks may take Enforcement Action if:
 - (i) at the same time as, or prior to, that action, Enforcement Action has been taken in respect of the Senior Lender Liabilities (excluding the Liabilities owing to Ancillary Lenders and the Issuing Banks), in which case the Ancillary Lenders and the Issuing Banks may take the same Enforcement Action as has been taken in respect of those Senior Lender Liabilities;
 - (ii) that action is expressly permitted by the Senior Facilities Agreement or Clause 3.5 (Security: Ancillary Lenders and Issuing Banks);
 - (iii) that Enforcement Action is taken in respect of SFA Cash Cover which has been provided in accordance with the Senior Facilities Agreement;
 - (iv) at the same time as or prior to, that action, the consent of the Majority Senior Creditors to that Enforcement Action is obtained; or
 - (v) an Insolvency Event has occurred in relation to any Debtor (which is continuing), in which case after the occurrence of that Insolvency Event (which is continuing), each Ancillary Lender and each Issuing Bank shall be entitled (if it has not already done so) to exercise any right it may otherwise have in respect of that Debtor to:
 - (A) accelerate any of that Debtor's Super Priority Liabilities or declare them prematurely due and payable on demand;
 - (B) make a demand under any guarantee, indemnity or other assurance against loss given by that Debtor in respect of any Super Priority Liabilities;
 - (C) exercise any right of set-off or take or receive any Payment in respect of any Super Priority Liabilities of that Debtor; or
 - (D) claim and prove in the liquidation of that Debtor for the Super Priority Liabilities owing to it.

(b) Clause 3.6 (Restriction on Enforcement: Super Priority Creditors) 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 Senior Facilities Agreement and to the extent that the demand is required to reduce, or the netting or set-off represents a reduction from, the Permitted Gross Outstandings of that Multi-account Overdraft to or towards an amount equal to its Designated Net Amount.

3.8 Required Enforcement: Ancillary Lenders

An Ancillary Lender shall promptly take such Enforcement Action as directed by the Security Agent following:

- (a) the occurrence of a Declared Default and delivery to it of a notice from the Security Agent that that Declared Default has occurred; and
- (b) delivery to it of a subsequent notice from the Security Agent (acting on the instructions of the Instructing Group) instructing it to do so.

3.9 Permitted Enforcement: Super Priority Creditors

(a) The Majority Super Priority Creditors may take Enforcement Action (in relation to the Super Priority Liabilities) if:

- (i) subject to paragraphs (b) and (c) below, the Agent (acting on the instructions of the Majority Super Priority Lenders) has given notice (a **Super Priority Enforcement Notice**) to the Security Agent (which is promptly copied to the Parent) specifying that a Material Event of Default has occurred and is continuing and:

(A) a period (a Super Priority Standstill Period) of not less than:

- I. 90 days in the case of a Material Event of Default arising under paragraph (a) of the definition thereof;
- II. 120 days in the case of an Event of Default under clause 26.2 (Financial condition) of the Senior Facilities Agreement as a result of the Leverage Ratio exceeding the Maximum SSRCF Ratio; or
- III. 150 days in the case of any other Material Event of Default;

has elapsed from the date on which that Super Priority Enforcement Notice becomes effective in accordance with Clause 25.4 (Delivery);

- (B) no Material Enforcement Action has been taken by the Majority Pari passu Creditors (or any person acting on their behalf);
- (C) no Pari passu Lender has given a legally binding commitment to acquire all of the Super Priority Liabilities within 21 days of the date of such legally binding commitment in accordance with Clause 5 (Option to Purchase: Pari Passu Lenders); and

- (D) the relevant Material Event of Default in respect of which the Super Priority Enforcement Notice was delivered is continuing at the end of the relevant Super Priority Standstill Period and at the time of the relevant Material Enforcement Action;
- (ii) at any time when the Super Priority Lenders are entitled to take Enforcement Action in accordance with the terms of the Senior Facilities Agreement and the Majority Senior Creditors have given their prior written consent; or
- (iii) an Insolvency Event has occurred in relation to any Debtor (which is continuing), in which case after the occurrence of that Insolvency Event and for as long as it is continuing (unless the Security Agent has taken, or has given notice that it intends to take, action on behalf of that Super Priority Creditor in accordance with Clause 8.5 (Filing of claims)) each Super Priority Creditor shall be entitled (if it has not already done so) to exercise any right it may have in respect of that Debtor to:
 - (A) accelerate any of that Debtor's Super Priority Liabilities owing to it or declare them prematurely due and payable on demand;
 - (B) make a demand under any guarantee, indemnity or other assurance against loss given by that Debtor in respect of any Super Priority Liabilities owing to it;
 - (C) exercise any right of set-off or take or receive any Payment in respect of any Super Priority Liabilities owing to it by that Debtor; or
 - (D) claim and prove in the liquidation of that Debtor for Super Priority Liabilities owing to it.
- (b) Subject to paragraph (c) below, if the Security Agent (or any Receiver or Delegate appointed under any of the Transaction Security Documents) has taken any Material Enforcement Action then no Super Priority Creditor may take any Enforcement Action (or instruct the Security Agent to enforce the Transaction Security) unless:
 - (i) subject to the applicable Super Priority Standstill Period having expired, the Security Agent (or any such Receiver or Delegate) notifies the Super Priority Creditors (which it shall do promptly) that it has ceased to pursue such Material Enforcement Action and the requirements of paragraph (a)(i) above (other than paragraph (a)(i)(B) above) have been met); or
 - (ii) on the earlier of the date falling six months from the date of the relevant Super Priority Enforcement Notice and the date falling six months after the date on which the Security Agent (or any such Receiver or Delegate) commences any Material Enforcement Action (on instruction of the Majority Pari passu Creditors):
 - (A) the Material Event of Default in respect of which the relevant Super Priority Enforcement Notice was given is continuing;
 - (B) no Pari passu Lender has given a legally binding commitment to acquire all of the Super Priority Liabilities within 21 days of such legally binding commitment in accordance with Clause 5 (Option to Purchase: Pari Passu Lenders); and
 - (C) the Super Priority Discharge Date has not occurred,

in which event, the Security Agent shall take Enforcement Action and/or enforce the Transaction Security in such manner (including as to the selection of a liquidator, receiver administrator or similar officer of any Debtor) as the Majority Super Priority Creditors shall instruct, provided that, to the extent any Material Enforcement Action taken by the Security

Agent on the instructions of the Majority Pari passu Creditors is both ongoing and likely to be concluded within 30 days of the date on which the Majority Super Priority Creditors would otherwise become entitled to take Enforcement Action in accordance with this paragraph (b) (the **Step-in Date**), the Majority Super Priority Creditors shall not be entitled to instruct the Security Agent until a further 30 days have elapsed from the Step-in Date and in any case shall not be entitled to instruct the Security Agent to cease that Material Enforcement Action, save that the Majority Super Priority Creditors may take control of any enforcement process where their rights to instruct the Security Agent under this paragraph (b) have been triggered.

- (c) The Majority Pari passu Creditors and the Majority Super Priority Creditors will, with respect to any proposed action to enforce the Transaction Security or with respect to any other proposed Distressed Disposal required by the Majority Pari passu Creditors and the Majority Super Priority Creditors (or any group of them):
- (i) consult with the other class of Senior Creditors in good faith for a period of not less than ten Business Days 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 class of Senior Creditors (or any of them) may reasonably request during such 10 Business Day period, provided that any such request shall not cause any delay in the taking of the proposed steps in connection with that Enforcement Action or Distressed Disposal (as applicable),

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

- (A) 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
 - (B) any Insolvency Event occurs in relation to any Debtor.
- (d) The consultation period referred to in paragraph (c)(i) above may commence prior to the expiry of a Super Priority Standstill Period, provided that it may not commence earlier than 15 Business Days prior to the last day of that Super Priority Standstill Period.

4. HEDGE COUNTERPARTIES AND HEDGING LIABILITIES

4.1 Identity of Hedge Counterparties

- (a) Subject to paragraph (b) below, no person 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 arising in relation to those hedging arrangements nor shall those liabilities be treated as Hedging Liabilities unless that person is or becomes a party to:
- (i) this Agreement as a Hedge Counterparty; and
 - (ii) the Senior 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 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 and any other member of the Group 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 or required Payment arising under the relevant Hedging Agreement (or other ordinary course payments arising thereunder, including any payment of fees, costs and expenses);
 - (ii) to the extent that the relevant Debtor's (or other member of the Group's) obligation to make the Payment arises as a result of the operation of:
 - (A) any of sections 2(d) (Deduction or Withholding for Tax) (and any provision requiring the payment of any tax credit related to section 2(d)), 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);
 - (B) 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
 - (C) any provision of a Hedging Agreement which is similar in meaning and effect to any provision listed in paragraphs (A) or (B) above (if the Hedging Agreement is not based on an ISDA Master Agreement);
 - (iii) to the extent that the relevant Debtor's (or other member of the Group's) obligation to make the Payment arises from a Non-Credit Related Close-Out;
 - (iv) to the extent that:
 - (A) the relevant Debtor's (or other member of the Group's) obligation to make the Payment arises from a Credit Related Close-Out in relation to that Hedging Agreement; and
 - (B) no Event of Default is continuing at the time of or would arise from that Payment; or
 - (v) if the Majority Senior Creditors give prior consent to the Payment being made.
- (b) No Payment may be made to a Hedge Counterparty under paragraph (a) above (other than Payment Netting) 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.

- (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), not result in a default (however described) in respect of that Debtor under that Hedging Agreement or any other Finance Document.

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, provided however that if and for as long as any payment is restricted to be made pursuant to this Agreement, the relevant creditor shall not and will not demand such payment to be made.

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 (i) the relevant Liabilities Acquisition relates to Liabilities in respect of which a Permitted Hedge Payment could have been made or (ii) the prior consent of the Majority Senior Creditors 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 prior to the Senior Lender Discharge Date without the consent of the Majority Senior Lenders.
- (b) A Hedge Counterparty may amend or waive any term of a Hedging Agreement in accordance with the terms of that Hedging Agreement if that amendment or waiver is minor, technical or administrative, or if it corrects a manifest error or if that amendment or waiver does not breach another term of this Agreement.
- (c) To the extent it is able to do so under the relevant Hedging Agreement or with the agreement of the relevant Hedge Counterparty, an Obligor may terminate or close-out in whole or in part any hedging transaction under any Hedging Agreement prior to its stated maturity provided no Distress Event has occurred.

4.7 Security: Hedge Counterparties

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 the Hedging Liabilities other than:

- (a) the Transaction Security;
- (b) any guarantee, indemnity or other assurance against loss contained in:
 - (i) the original form of Senior 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) (inclusive) above;
- (c) as otherwise contemplated by Clause 3.3 (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 11.2 (Enforcement Instructions) and 11.3 (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, reduce or close-out in whole or in part any hedging transaction under that Hedging Agreement prior to its stated maturity:
- (i) if, prior to a Distress Event, the Parent has certified to that Hedge Counterparty that that termination, reduction or close-out is required under Clause 14.3 (Adjustment of Mandatory Prepayments);
 - (ii) if a Distress Event has occurred;
 - (iii) if:
 - (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 defined in paragraph (B) below),
 has occurred in respect of that Hedging Agreement;
 - (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) has occurred in respect of that Hedging 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 has occurred under and in respect of that Hedging Agreement;

- (iv) if an Event of Default has occurred under either clause 28.6 (Insolvency) or clause 28.7 (Insolvency proceedings) of the Senior Facilities Agreement in relation to a Debtor which is party to that Hedging Agreement;
 - (v) if the Majority Senior Creditors give prior consent to that termination or close-out being made;
 - (vi) in circumstances where the Hedge Counterparty in respect of the applicable Hedging Agreement is also a Senior Lender or an Affiliate of a Senior Lender, if the Parent has exercised its rights pursuant to clause 41.3 (Replacement of Lender) of the Senior Facilities Agreement to replace or prepay such Senior Lender in accordance with such clause; or
 - (vii) following a Senior Lender Refinancing.
- (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 ten Business Days after notice of that default has been given to the Security Agent pursuant to paragraph (f) of Clause 24.3 (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 Debtor which is continuing, each Hedge Counterparty shall be entitled to exercise any right it may otherwise have in respect of that Debtor to:
- (i) prematurely close-out or terminate any Hedging Liabilities of that Debtor in accordance with the terms of the relevant Hedging Agreement;
 - (ii) make a demand under any guarantee, indemnity or other assurance against loss given by that Debtor 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 Debtor; or
 - (iv) claim and prove in the liquidation of that Debtor 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 a Declared Default and delivery to it of a notice from the Security Agent that that Declared Default 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 Declared Default occurred as a result of an arrangement made between any Debtor and any Senior Creditor with the purpose of the arrangement being the bringing about of that Declared Default.
- (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 Majority Senior Creditors).

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 relevant Hedging Agreements shall ensure that, at all times (unless otherwise agreed directly with the Parent and the Agent):

- (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 on:
 - (i) an ISDA Master Agreement; or
 - (ii) 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:

- (A) 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 that ISDA Master Agreement;
 - (B) if it is based on a 2002 ISDA Master Agreement, make no material amendment to the provisions of section 6(e) (Payments on Early Termination) of that ISDA Master Agreement; or
 - (C) 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) the terms of each Hedging Agreement (including with respect to representations and warranties, undertakings, events of default and termination events) will be consistent with and no more onerous than any equivalent provisions set out in the Senior Facilities Agreement;
 - (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); and
 - (f) each Hedging Agreement may provide that, at the option of the Parent (or the relevant other members of the Group), it will remain in place on any Senior Lender Refinancing (and, for the avoidance of doubt, in such circumstance paragraph (a)(vii) of Clause 4.9 (Permitted Enforcement: Hedge Counterparties) shall not apply).

5. OPTION TO PURCHASE: PARI PASSU LENDERS

- (a) One or more of the Pari passu Lenders (the **Purchasing Pari passu Lenders**) may, at any time while an Event of Default is continuing and by giving not less than ten Business Days’ notice to the Agent and, in respect of (ii) below, the Security Agent, 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 Senior Facilities Agreement, of all, but not part, of the rights and obligations of the Super Priority Lenders in respect of the Super Priority Facility Liabilities; and
 - (ii) a Hedge Transfer in respect of all, but not part, of the Super Priority Hedging Liabilities,together the **Super Priority Transfer**.
- (b) (i) If more than one Purchasing Pari passu Lender wishes to exercise the option to effect the Super Priority Transfer in accordance with paragraph (a) above, each such Purchasing Pari passu Lender shall carry out the Super Priority Transfer pro rata, in the proportion that its Term Facility Commitment bears to the aggregate Term Facility Commitments of all the Purchasing Pari passu Lenders. For the avoidance of doubt, the Purchasing Pari passu Lenders wishing to exercise the option to carry out the Super Priority Transfer shall inform the Agent, who will determine (consulting with each other Pari passu Lender as required) the appropriate share of the Super Priority Transfer to be carried out by each such Purchasing Pari passu Lender and who shall inform each such Purchasing Pari passu Lender accordingly. Furthermore, the Agent and/or Security Agent shall promptly inform the Super Priority Lenders, Hedge Counterparties

and the Parent (as applicable) of the Purchasing Pari passu Lenders' intention to exercise the option to carry out the Super Priority Transfer.

- (ii) For a period of ten Business Days following a Super Priority 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 Priority Transfer is pro rata, in the proportion that its Term Facility Commitment bears to the aggregate Term Facility 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 Priority Transfer shall be on the following terms:
- (i) that transfer is lawful and, subject to paragraph (ii) below, otherwise permitted by the terms of the Senior Facilities Agreement or the terms of the Hedging Agreements (as applicable);
 - (ii) any conditions relating to such a transfer contained in the Senior Facilities Agreement or the Hedging Agreements (as applicable) are complied with;
 - (iii) the Agent, on behalf of the Super Priority Lenders, is paid an amount in cash equal to the aggregate of:
 - (A) all of the Super Priority Facility Liabilities at that time (whether or not due), including all amounts that would have been payable to the Super Priority Lenders under the Senior Facilities Agreement if the Senior Facilities were being prepaid by the relevant Debtors on the date of that payment; and
 - (B) all costs and expenses (including legal fees) incurred by the Agent and the Super Priority Lenders as a consequence of giving effect to that transfer;
 - (iv) 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;
 - (v) as a result of that transfer the Super Priority Lenders and the Hedge Counterparties (as applicable) have no further actual or contingent liability to any Debtor under the relevant Debt Documents in respect of the Super Priority Liabilities;
 - (vi) an indemnity is provided from each Purchasing Pari passu Lender (or from another third party acceptable to all the Super Priority Lenders) in a form satisfactory to each Super Priority Lender in respect of all losses which may be sustained or incurred by any Super Priority Lender in consequence of any sum received or recovered by any Super Priority 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 Priority Lender for any reason;
 - (vii) 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 third party 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

(viii) the transfer is made without recourse to, or representation or warranty from, the Super Priority Lenders and the relevant Hedge Counterparty, except that each Super Priority Lender and 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.

(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)(iii)(A) and (B) above.

6. INTRA GROUP LENDERS AND INTRA GROUP LIABILITIES

6.1 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 6.2 (Permitted Payments: Intra-Group Liabilities);
- (b) the taking or receipt of that Payment is permitted under paragraph (c) of Clause 6.7 (Permitted Enforcement: Intra-Group Lenders); or
- (c) that Payment is required to be made to avoid personal or criminal liability of any director of any member of the Group for reason of breach of mandatory provisions of the applicable laws,

provided that this Clause 6.1 shall not prevent the capitalisation of interest on any Intra-Group Liabilities or any other Payment or other return made by way of a roll-up or capitalisation of any amount, an issue of shares, an incurrence of indebtedness constituting Intra-Group Liabilities (including the issue of payment-in-kind instruments) or any other similar or equivalent step, action or arrangement.

6.2 Permitted Payments: Intra-Group Liabilities

- (a) Subject to paragraph (b) below, the Debtors and any other member of the Group may make Payments (including by way of set-off) in respect of the Intra-Group Liabilities (whether of principal, interest or otherwise) from time to time when due.
- (b) Payments in respect of the Intra-Group Liabilities may not be made pursuant to paragraph (a) above if, at the time of the Payment, a Declared Default has occurred unless:
 - (i) prior to the Senior Discharge Date the Majority Senior Creditors consent to that Payment being made; or
 - (ii) that Payment is made to facilitate Payment of the Senior Liabilities.

6.3 Payment obligations continue

No Debtor nor any other member of the Group 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: Intra-Group Liabilities) and 6.2 (Permitted Payments: Intra-Group Liabilities) even if its obligation to make that Payment is restricted at any time by the terms of any of those Clauses, provided however that if and for as long as any payment is restricted to be made pursuant to this Agreement, the relevant creditor shall not and will not demand such payment to be made.

6.4 Acquisition of Intra-Group Liabilities

- (a) Subject to paragraphs (b) and (c) 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 to the extent the relevant Liabilities Acquisition relates to Intra-Group Liabilities in respect of which a Permitted Intra-Group Payment could be made.
- (b) 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 Senior Facilities Agreement; or
 - (ii) at the time of that action, a Declared Default has occurred.
- (c) The restrictions in paragraph (b) above shall not apply if:
- (i) prior to the Senior Discharge Date the Majority Senior Creditors consent to that action; or
 - (ii) that action is taken to facilitate Payment of the Senior Liabilities.

6.5 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 over any asset of any member of the Group or any guarantee, indemnity or other assurance against loss from any member of the Group in respect of the Intra-Group Liabilities unless:

- (a) that Security, guarantee, indemnity or other assurance against loss is expressly permitted under the terms of the Senior Facilities Agreement;
- (b) prior to the Senior Discharge Date, the prior consent of the Majority Senior Creditors is obtained; or
- (c) the Senior Discharge Date has occurred.

6.6 Restriction on enforcement: Intra-Group Lenders

Subject to Clause 6.7 (Permitted Enforcement: Intra-Group Lenders), unless the relevant Enforcement Action is required to be taken to avoid personal or criminal liability of any director of any member of the Group for reason of breach of mandatory provisions of applicable laws, 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 (except for any Enforcement Action set out in sub-paragraphs (i), (ii), (iii) and (vi) of paragraph (a) of the definition of **Enforcement Action** in respect of any payment in respect of the Intra-Group Liabilities which at the time of such Enforcement Action would be permitted by Clause 6.2 (Permitted Payments: Intra-Group Liabilities) of this Agreement unless, at such time, the Senior Lenders are taking Enforcement Action or following a Declared Default).

6.7 Permitted Enforcement: Intra-Group Lenders

After the occurrence of an Insolvency Event in relation to any member of the Group which is continuing, 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 8.5 (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 the liquidation of that member of the Group for the Intra-Group Liabilities owing to it.

6.8 Representations: Intra-Group Lenders

On the date on which it becomes a party to this Agreement as an Intra-Group Lender, each Intra-Group Lender which is not a Debtor represents and warrants to the Senior Creditors, the Security Agent and the Agent that:

- (a) it is a limited liability company, joint stock company, corporation, limited partnership or other limited liability entity, duly incorporated, established or formed and validly existing under the laws of its jurisdiction of incorporation or formation;
- (b) the obligations expressed to be assumed by it in this Agreement are, subject to the Legal Reservations and Perfection Requirements, legal, valid, binding and enforceable obligations;
- (c) subject to the Legal Reservations and Perfection Requirements, the entry into and performance by it of, and the transactions contemplated by, this Agreement does not and will not constitute a default or termination event (howsoever defined) under any agreement or instrument binding on it or any of its assets to the extent which has or could reasonably be expected to have a Material Adverse Effect;
- (d) subject to the Legal Reservations and Perfection Requirements, the entry into and performance by it of, and the transactions contemplated by, this Agreement does not and will not conflict with:
 - (i) any law or any regulation applicable to it in any material respect;
 - (ii) its constitutional documents; or
 - (iii) any agreement or instrument binding upon it or any of its assets save to the extent that such a conflict has not or would not reasonably be expected to have a Material Adverse Effect; and
- (e) it has the power to enter into, perform and deliver, and has taken or will have taken prior to the date it becomes a Party as an Intra-Group Lender all necessary action to authorise its entry into, performance and delivery of, this Agreement and the transactions contemplated by this Agreement.

6.9 Debt Purchase Transactions

The provisions set out in this Clause 6 (Intra Group Lenders and Intra Group Liabilities) shall be subject to the provisions of clause 30.1(f) and (g) (Permitted Debt Purchase Transactions) of the Senior Facilities Agreement.

7. SUBORDINATED CREDITORS AND SUBORDINATED LIABILITIES

7.1 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 at any time unless:

- (a) that Payment is permitted under Clause 7.2 (Permitted Payments: Subordinated Liabilities); or
- (b) the taking or receipt of that Payment is permitted under Clause 7.8 (Permitted Enforcement: Subordinated Creditors),

provided that this Clause 7.1 shall not prevent the capitalisation of interest on any Subordinated Liabilities or any other Payment or other return made by way of a roll-up or capitalisation of any amount, an issue of shares, an incurrence of indebtedness constituting Subordinated Liabilities (including the issue of payment-in-kind instruments) or any other similar or equivalent step, action or arrangement.

7.2 Permitted Payments: Subordinated Liabilities

The Parent may make Payments in respect of the Subordinated Liabilities then due if:

- (a) the Payment is expressly permitted by the Senior Facilities Agreement (including, without limitation, as a Permitted Distribution or is permitted pursuant to clause 27.19(b) (Dividends and share redemption) or clause 27.20(b) (Intra-Group Loans/Shareholder Loans), in each case, of the Senior Facilities Agreement); or
- (b) the Majority Senior Creditors consent to that Payment being made.

7.3 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 7.1 (Restriction on Payment: Subordinated Liabilities) and 7.2 (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.

7.4 No acquisition of 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 (i) prior to the Senior Discharge Date, the prior consent of the Majority Senior Creditors is obtained; (ii) that action is expressly permitted by the Senior Facilities Agreement; (iii) the relevant Liabilities Acquisition relate to Subordinated Liabilities in respect of which a Permitted Subordinated Creditor Payment could be made; (iv) any payments which are made in connection with such acquisition would be Permitted Subordinated Creditor Payment; or (v) such acquisition is implemented by way of a share issue by the Parent that is permitted by the Senior Facilities Agreement.

7.5 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) prior to the Senior Discharge Date, the prior consent of the Majority Senior Creditors is obtained;
- (b) that amendment, waiver or agreement could not reasonably be expected to materially and adversely affect the interests of the Lenders;
- (c) that amendment, waiver or agreement is of a minor and administrative nature; or
- (d) following the amendment or waiver the Subordinated Creditors would continue not to have recourse to any member of the Group other than the Parent and the Subordinated Liabilities would otherwise meet the criteria for Shareholder Loan in the Senior Facilities Agreement.

7.6 Security: Subordinated Creditors

The Subordinated Creditors may not take, accept or receive the benefit of any Security over any asset of any member of the Group, 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.

7.7 Restriction on Enforcement: Subordinated Creditors

Subject to Clause 7.8 (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.

7.8 Permitted Enforcement: Subordinated Creditors

After the occurrence of an Insolvency Event in relation to any Debtor which is continuing, 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 8.5 (Filing of claims)) exercise any right it may otherwise have in respect of that Debtor to:

- (a) accelerate any of that Debtor'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 Debtor 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 Debtor; or

- (d) claim and prove in the liquidation of that Debtor for the Subordinated Liabilities owing to it.

7.9 Representations: Subordinated Creditors

Each Subordinated Creditor represents and warrants to the Senior Creditors, the Security Agent and the Agent on the date that it becomes a Party as a Subordinated Creditor that:

- (a) it is a limited liability company, joint stock company, corporation, limited partnership or other limited liability entity (or other entity notified to the Security Agent), duly incorporated or formed and validly existing under the laws of its jurisdiction of incorporation or formation;
- (b) the obligations expressed to be assumed by it in this Agreement are, subject to the Legal Reservations and Perfection Requirements, legal, valid, binding and enforceable obligations;
- (c) subject to the Legal Reservations and Perfection Requirements, the entry into and performance by it of, and the transactions contemplated by, this Agreement does not and will not constitute a default or termination event (howsoever defined) under any agreement or instrument binding on it or any of its assets to the extent which has or could reasonably be expected to have a Material Adverse Effect; and
- (d) subject to the Legal Reservations and Perfection Requirements, the entry into and performance by it of, and the transactions contemplated by, this Agreement does not and will not conflict with:
 - (i) any law or any regulation applicable to it in any material respect;
 - (ii) its constitutional documents; or
 - (iii) any agreement or instrument binding upon it or any of its assets save to the extent that such a conflict has not or would not reasonably be expected to have a Material Adverse Effect.

8. EFFECT OF INSOLVENCY EVENT

8.1 SFA Cash Cover

This Clause 8 is subject to Clause 16.3 (Treatment of SFA Cash Cover and Senior Lender Cash Collateral).

8.2 Payment of distributions

- (a) After the occurrence of an Insolvency Event in relation to any Debtor which is continuing, any Party entitled to receive a distribution out of the assets of that Debtor 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 Debtor to pay that distribution to the Security Agent until the Liabilities owing to the Secured Parties have been paid in full.
- (b) The Security Agent shall apply distributions paid to it under paragraph (a) above in accordance with Clause 16 (Application of Proceeds).

8.3 Set-off

- (a) Subject to paragraph (b) below, to the extent that any Debtor's Liabilities are discharged by way of set-off (mandatory or otherwise) after the occurrence of an Insolvency Event in relation to that Debtor which is continuing, any Creditor and any Subordinated 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 Permitted Gross Outstandings of a Multi-account Overdraft to or towards its Designated Net Amount;
 - (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.

8.4 Non-cash distributions

If the Security Agent or any other Secured Party receives a distribution in a 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.

8.5 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 Permitted Gross Outstandings of that Multi-account Overdraft to or towards an amount equal to its Designated Net Amount), after the occurrence of an Insolvency Event in relation to any Debtor which is continuing, each Creditor and each Subordinated Creditor irrevocably authorises the Security Agent (acting in accordance with Clause 8.7 (Security Agent instructions)), on its behalf, to:

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

until such time as the Liabilities owing to the Secured Parties have been irrevocably paid or discharged in full.

8.6 Creditors' and Subordinated Creditors' actions

Each Creditor and each Subordinated Creditor will:

- (a) do all things that the Security Agent (acting in accordance with Clause 8.7 (Security Agent instructions)) requests in order to give effect to this Clause 8; and

- (b) if the Security Agent is not entitled to take any of the actions contemplated by this Clause 8 or if the Security Agent (acting in accordance with Clause 8.7 (Security Agent instructions)) requests that a Creditor or Subordinated Creditor take that action, undertake that action itself in accordance with the instructions of the Security Agent (acting in accordance with Clause 8.7 (Security Agent instructions)) or grant a power of attorney to the Security Agent (on such terms as the Security Agent (acting in accordance with Clause 8.7 (Security Agent instructions)) may reasonably require) to enable the Security Agent to take such action.

8.7 Security Agent instructions

For the purposes of Clause 8.5 (Filing of claims) and Clause 8.6 (Creditors' and Subordinated Creditors' actions) the Security Agent shall act:

- (a) on the instructions of the group of Senior Creditors entitled, at that time, to give instructions under Clause 11.2 (Enforcement Instructions) or Clause 11.3 (Manner of enforcement); or
- (b) in the absence of any such instructions, as the Security Agent sees fit.

9. TURNOVER OF RECEIPTS

9.1 SFA Cash Cover

This Clause 9 is subject to Clause 16.3 (Treatment of SFA Cash Cover and Senior Lender Cash Collateral).

9.2 Turnover by the Creditors and the Subordinated Creditors

Subject to Clause 9.3 (Exclusions) and to Clause 9.4 (Permitted assurance and receipts), if at any time prior to the Senior Discharge Date any Creditor or any Subordinated Creditor receives or recovers the proceeds of any enforcement of any Transaction Security or of any Distressed Disposal or any other amounts which should otherwise be received, recovered or released by the Security Agent for application under Clause 16 (Application of Proceeds) (whether before or after an Insolvency Event) except in accordance with Clause 16 (Application of Proceeds), that Creditor or Subordinated Creditor will:

- (a) in relation to receipts and recoveries not received or recovered by way of set-off:
 - (i) 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
 - (ii) 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; and
- (b) 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.

9.3 Exclusions

Clause 9.2 (Turnover by the Creditors and the Subordinated 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; or
 - (v) 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 Permitted Gross Outstandings of that Multi-account Overdraft to or towards an amount equal to its Designated Net Amount); or
- (b) made in accordance with Clause 17 (Equalisation).

9.4 Permitted assurance and receipts

Nothing in this Agreement shall restrict the ability of any Senior 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 21 (Changes to the Parties),

which:

- (i) is permitted by the Senior Facilities Agreement; and
- (ii) is not in breach of:
 - (A) Clause 4.5 (No acquisition of Hedging Liabilities); or
 - (B) Clause 7.4 (No acquisition of Subordinated Liabilities),

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

9.5 Sums received by Debtors

If any of the Debtors receives or recovers any sum 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 (or for and on behalf of) 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.

9.6 Saving provision

If, for any reason, any of the trusts expressed to be created in this Clause 9 (Turnover of Receipts) should fail or be unenforceable, the affected Creditor, the affected Subordinated Creditor or the affected Debtor (as the case may be) will promptly pay 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.

9.7 Turnover of Non-Cash Consideration

For the purposes of this Clause 9, if any Creditor or any Subordinated Creditor receives or recovers any amount or distribution in the form of Non-Cash Consideration which is subject to Clause 9.2 (Turnover by the Creditors and the Subordinated Creditors) the cash value of that Non-Cash Consideration shall be determined in accordance with Clause 13.2 (Cash Value of Non-Cash Recoveries).

10. REDISTRIBUTION

10.1 Recovering Creditor's rights

- (a) Any amount paid by a Creditor or Subordinated Creditor (a **Recovering Creditor**) to the Security Agent under Clause 8 (Effect of Insolvency Event) or Clause 9 (Turnover of Receipts) shall be treated as having been paid by the relevant Debtor and distributed to the Security Agent, the Agent, the Mandated Lead Arrangers and the Senior Creditors (each a **Sharing Creditor**) in accordance with the terms of this Agreement.
- (b) On a distribution by the Security Agent under paragraph (a) above of a Payment 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 to the Security Agent (the **Shared Amount**) will be treated as not having been paid by that Debtor.

10.2 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 Sharing Creditor 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 Creditor, 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 Creditor.

10.3 Deferral of Subrogation

- (a) No 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 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) have been irrevocably paid in full save (subject to paragraph (b) below) for the right of the Creditor or the Debtor to file its claims, and otherwise protect its rights as a creditor in course of insolvency or bankruptcy proceedings or if the Creditor's or the Debtor's claim would otherwise become void due to prescription.
- (b) Until the Senior Discharge Date, 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.

11. ENFORCEMENT OF TRANSACTION SECURITY

11.1 SFA Cash Cover

This Clause 11 is subject to Clause 16.3 (Treatment of SFA Cash Cover and Senior Lender Cash Collateral).

11.2 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 taking other Enforcement Action as they see fit.
- (c) The Security Agent shall give effect to any instructions to enforce the Transaction Security which the Majority Super Priority Creditors are then entitled to give the Security Agent at any time when they are permitted to take Enforcement Action under Clause 3.9(b) (Permitted Enforcement: Super Priority Creditors).
- (d) Notwithstanding any provision of the Senior Facilities Agreement to the contrary, in circumstances where, in accordance with this Clause 11.2, the Security Agent must enforce the Transaction Security in accordance with the instructions of the Majority Super Priority Creditors and for so long as such circumstances continue, the Super Priority Creditors may instruct the Agent to exercise any of its rights pursuant to Clause 28.19 (Revolving Facility Acceleration) of the Senior Facilities Agreement.
- (e) The Security Agent is entitled to rely on and comply with instructions given in accordance with this Clause 11.2 (Enforcement Instructions).

11.3 Manner of enforcement

If the Transaction Security is being enforced pursuant to Clause 11.2 (Enforcement Instructions), the Security Agent shall enforce the Transaction Security in such manner (including, without limitation, the selection of any administrator 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 sees fit.

11.4 Exercise of voting rights

- (a) Following the occurrence of an Insolvency Event which is continuing in relation to a Debtor, or following a Declared Default, each Creditor and Subordinated Creditor agrees with the Security Agent that it 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 that Debtor as instructed by the Security Agent.
- (b) The Security Agent shall give instructions for the purposes of paragraph (a) above as directed by the Instructing Group.

11.5 Waiver of rights

To the extent permitted under applicable law and subject to Clause 11.2 (Enforcement Instructions), Clause 11.3 (Manner of enforcement), Clause 16 (Application of Proceeds) and paragraph (c) of Clause 12.2 (Distressed Disposals and Appropriation), 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 sum 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.

11.6 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, 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 the terms of this Agreement, 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.

11.7 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 Transaction Security Documents (other than the Senior Facilities Agreement) except through the Security Agent.

11.8 Relevant Instructing Group

After the Security Agent has commenced an enforcement of the Transaction Security, it shall not accept any subsequent instruction 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 the subsequent instructions are from the Majority Super Priority Creditors in accordance with paragraph (b) of Clause 3.9 (Permitted Enforcement: Super Priority Creditors).

11.9 Security Enforcement Objective

It shall be the aim of any enforcement of the Transaction Security to achieve the Security Enforcement Objective.

12. PROCEEDS OF DISPOSALS AND APPROPRIATION

12.1 Non-Distressed Disposals

(a) In this Clause 12.1:

Disposal Proceeds means the proceeds of a Non-Distressed Disposal (as defined in paragraph (b) below).

(b) If, in respect of a disposal of:

- (i) an asset by a Debtor; or
- (ii) an asset which is subject to the Transaction Security,

to a person or persons outside the Group or where permitted under the Finance Documents, to another member of the Group:

- (A) (prior to the Senior Lender Discharge Date) that disposal is expressly permitted under the Finance Documents (which shall be confirmed by the Parent to the Security Agent in writing); and
- (B) that disposal is not a Distressed Disposal,
(a **Non-Distressed Disposal**),

the Security Agent is irrevocably authorised to (and shall) (at the cost of the relevant Debtor or the Parent and without any consent, sanction, authority or further confirmation from any Creditor, Subordinated Creditor or Debtor) but subject to paragraph (c) below:

- (iii) release the Transaction Security or any other claim including, without limitation, any Guarantee Liabilities (relating to a Debt Document) over that asset;
 - (iv) where that asset consists of shares in the capital of a Debtor, release the Transaction Security or any other claim (relating to a Debt Document) over that Debtor's assets and/or the shares in and/or the assets of any Subsidiary of that Debtor; and
 - (v) execute and deliver or enter into any release of the Transaction Security or any claim described in paragraphs (iii) and (iv) 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 or desirable.
- (c) If that Non-Distressed Disposal is not made, each release of Transaction Security or any claim described in paragraph (b) above shall have no effect and the Transaction Security or claim subject to that release shall continue in such force and effect as if that release had not been effected.
- (d) If any Disposal Proceeds are required to be applied in mandatory prepayment of the Senior Lender Liabilities then, subject to Clause 14.3 (Adjustment of Mandatory Prepayments), the Disposal Proceeds shall be applied in or towards Payment of the Senior Lender Liabilities in accordance with the terms of the Senior Facilities Agreement and the consent of any other Party shall not be required for that application.

12.2 Distressed Disposals and Appropriation

- (a) Subject to paragraph (d) below, if a Distressed Disposal or an Appropriation is being effected 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, Subordinated Creditor or Debtor):
- (i) ***release of Transaction Security/non-crystallisation certificates:*** to release the Transaction Security or any other claim over that asset subject to the Distressed Disposal or Appropriation and execute and deliver or enter into any release of that Transaction Security or claim and issue any letters of non-crystallisation of any floating charge or any consent to dealing that may, in the discretion of the Security Agent, be considered necessary or desirable;
 - (ii) ***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:
 - (A) that Debtor and any Subsidiary of that Debtor from all or any part of:
 - I. its Borrowing Liabilities;
 - II. its Guarantee Liabilities; and
 - III. its Other Liabilities;
 - (B) any Transaction Security granted by that Debtor or any Subsidiary of that Debtor over any of its assets; and
 - (C) 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, Subordinated Creditors and Debtors;
 - (iii) ***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:
 - (A) that Holding Company and any Subsidiary of that Holding Company from all or any part of:
 - I. its Borrowing Liabilities;
 - II. its Guarantee Liabilities; and
 - III. its Other Liabilities;
 - (B) any Transaction Security granted by any Subsidiary of that Holding Company over any of its assets; and
 - (C) 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, Subordinated Creditors and Debtors;

(iv) **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 (acting in accordance with paragraph (e) below) decides to dispose of all or any part of:

(A) the Liabilities; or

(B) the Debtor Liabilities,

owed by that Debtor or Holding Company or any Subsidiary of that Debtor or Holding Company:

(C) (if the Security Agent (acting in accordance with paragraph (e) below) does not intend that any transferee of those Liabilities or Debtor Liabilities (the **Transferee**) 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 all or part of those Liabilities or Debtor Liabilities 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; and

(D) (if the Security Agent (acting in accordance with paragraph (e) below) does intend that any Transferee 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:

I. all (and not part only) of the Liabilities owed to the Senior Creditors (other than to the Facility Agent or the Mandated Lead Arrangers); and

II. all or part of any other Liabilities (other than to the Facility Agent or the Mandated Lead Arrangers) and the Debtor Liabilities,

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

(v) **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 (acting in accordance with paragraph (e) below) 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:

(A) the Intra-Group Liabilities; or

(B) the Debtor Liabilities,

to execute and deliver or enter into any agreement to:

I. agree to the transfer of all or part of the obligations in respect of those Intra-Group Liabilities or Debtor Liabilities 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

II. to accept the transfer of all or part of the obligations in respect of those Intra-Group Liabilities or Debtor Liabilities on behalf of the Receiving Entity or Receiving Entities to which the obligations in respect of those Intra-Group Liabilities or Debtor Liabilities are to be transferred.

- (b) The net proceeds of each Distressed Disposal (and the net proceeds of any disposal of Liabilities or Debtor Liabilities pursuant to paragraph (a)(iv) above) shall be paid to the Security Agent for application in accordance with Clause 16 (Application of Proceeds) as if those proceeds were the proceeds of an enforcement of the Transaction Security and, to the extent that:
- (i) any disposal of Liabilities or Debtor Liabilities has occurred pursuant to paragraph (a)(iv)(D) above; or
 - (ii) any Appropriation has occurred,
- as if that disposal of Liabilities or Debtor Liabilities or any reduction in the Secured Obligations resulting from that Appropriation, had not occurred.
- (c) In the case of a Distressed Disposal or Appropriation (or a disposal of Liabilities pursuant to paragraph (a)(iv)(D) above) effected by or at the request of the Security Agent (acting in accordance with paragraph (d) below), the Security Agent shall take reasonable care to obtain a fair market price in the prevailing market conditions (though the Security Agent shall have no obligation to postpone any such Distressed Disposal or disposal of Liabilities in order to achieve a higher price).
- (d) For the purposes of paragraphs (a) and (c) above and paragraph (j) below, the Security Agent shall act:
- (i) 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 11.3 (Manner of enforcement); and
 - (ii) in any other case:
 - (A) on the instructions of the Instructing Group; or
 - (B) in the absence of any such instructions, the Security Agent may act or refrain from acting as it sees fit.
- (e) The Security Agent is authorised by each other Senior Creditor to execute any document which is reasonably required to achieve a release allowed under this Clause.
- (f) Where Borrowing Liabilities in respect of any Secured Obligations would otherwise be released pursuant to paragraph (a) above, the Creditor concerned may elect to have those Borrowing Liabilities transferred to the Parent prior to the relevant disposal in which case the Security Agent is irrevocably authorised (at the cost of the relevant Debtor and without any consent, sanction, authority or further confirmation from any Creditor or Debtor) to execute such documents as are required to so transfer those Borrowing Liabilities.
- (g) If, prior to the Senior Discharge Date, a Distressed Disposal, Appropriation or a disposal of Liabilities pursuant to paragraph (a)(iv)(D) above, is instigated by or at the request of the Majority Super Priority Creditors or the Security Agent on their behalf, then the Security Agent (or any other relevant person) will only have authority to release any Guarantee Liabilities, Borrowing Liabilities or Other Liabilities owed to any Pari passu Creditor if any liability owed to any Super Priority Creditor is also simultaneously released and the following requirements are satisfied:
- (i) in the case of:
 - (A) an Appropriation, and if the value attributed to the shares in the capital of the relevant Debtor subject to the Appropriation, in accordance with paragraph (c) above or paragraph (i) below, exceeds the Super Priority Liabilities outstanding at the time of the Appropriation, such excess amount is paid in cash to the Agent for the account of

the Pari passu Creditors (for this purpose any contingent liability relating to an Ancillary Facility or a Letter of Credit shall be deemed to be outstanding at its full amount, but provided that this paragraph (A) shall apply again when the actual amount of that contingent liability is finally determined); or

(B) a Distressed Disposal or a disposal of Liabilities pursuant to paragraph (a)(iv)(D) above, it is made in whole for consideration in form of cash; and

(ii) one of the following requirements is satisfied:

(A) that Distressed Disposal is made pursuant to any process or proceedings approved or supervised by or on behalf of any court of law;

(B) that Distressed Disposal is made pursuant to any public auction or other competitive sales process conducted with the advice of a Financial Adviser appointed by, or approved by, the Security Agent pursuant to paragraph (i) below, which process is conducted with a view to obtaining a fair market price in the then prevailing market conditions and, for the avoidance of doubt, in which the Pari passu Creditors are entitled to participate as bidders or financiers to any potential purchaser;

(C) the Security Agent has:

I. consulted with a Financial Adviser appointed by the Security Agent pursuant to paragraph (i) below with respect to the recommended procedures to be used for obtaining a fair market consideration for such shares or assets in the prevailing market conditions;

II. considered such procedures in good faith; and

III. if considered by the Security Agent to be in the best interests of the Secured Parties, used its reasonable endeavours to implement the procedures recommended by such Financial Adviser in relation to such Distressed Disposal (in which procedures the Pari passu Creditors shall be entitled to participate as bidders);

(D) a Financial Adviser appointed by the Security Agent pursuant to paragraph (i) below has delivered a Fairness Opinion to the Security Agent in respect of that Distressed Disposal; or

(E) the Distressed Disposal is made at the direction or under the control of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer appointed in respect of a member of the Group or the assets of a member of the Group.

(h) If, prior to the Super Priority Discharge Date, a Distressed Disposal, Appropriation or a disposal of Liabilities pursuant to paragraph (a)(iv) above, is being effected at a time when the Majority Pari passu Creditors are entitled to give, and have given, instructions under Clause 11.3 (Manner of enforcement) on which the Security Agent is acting, the Security Agent is not authorised to release any Borrowing Liabilities, Guarantee Liabilities or Other Liabilities owed to any Super Priority Creditor without the consent of all the Super Priority Creditors unless all Super Priority Liabilities will be paid (or repaid) in cash in full (or, in the case of any contingent Liability relating to an Ancillary Facility or a Letter of Credit, made the subject of cash collateral arrangements acceptable to the relevant Super Priority Lender or Issuing Bank), simultaneously with that release.

- (i) Without prejudice to Clause 19.7 (Security Agent's 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 disposal of Liabilities pursuant to paragraph (a)(iv)(D) above);
 - (ii) the application or distribution of any proceeds of a Distressed Disposal (or a disposal of Liabilities pursuant to paragraph (a)(iv)(D) above);
 - (iii) the amount of Non-Cash Consideration which is subject to Clause 9.2 (Turnover by the Creditors and the Subordinated Creditors); or
 - (iv) the cash value of any Non Cash Recoveries.

For the purposes of this paragraph (i), the Security Agent shall act:

- (v) on the instructions of the Instructing Group if the Financial Adviser is providing (1) a Fairness Opinion for the purposes of paragraph (g)(ii)(D) above or (2) a valuation for the purposes of Clause 13.2 (Cash Value of Non-Cash Recoveries); or
 - (vi) otherwise in accordance with paragraph (d) above.
- (j) Subject to paragraph (c) above and Clause 13.5 (Security Agent Protection) and applicable law, a Distressed 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.

13. NON-CASH RECOVERIES

13.1 Security Agent and Non-Cash Recoveries

Subject to paragraphs 12.2(c), 12.2(g) and 12.2(h) of Clause 12.2 (Distressed Disposals and Appropriation), 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) To the extent permitted by applicable law, 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 to act as expert by the Security Agent pursuant to Clause 12.2(i) 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 Agent and Non-Cash Recoveries

- (a) Subject to paragraphs 12.2(c), 12.2(g) and 12.2(h) of Clause 12.2 (Distressed Disposals and Appropriation), paragraph (b) below and to Clause 13.4 (Alternative to Non-Cash Consideration), if, pursuant to Clause 16.1 (Application of Proceeds), 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 Senior 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 Senior 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 it 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) if that Cash Only Creditor is a Senior Facility Creditor 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 19.5 (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 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 9.2 (Turnover by the Creditors and the Subordinated 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, Subordinated Creditor, group of Creditors or group of Subordinated 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 PROCEEDS AND INSURANCE PROCEEDS

- (a) In this Clause 14:

Acquisition Proceeds has the meaning given to that term in the Senior Facilities Agreement.

Insurance Proceeds has the meaning given to that term in the Senior Facilities Agreement.

Recovery Claim has the meaning given to that term in the Senior Facilities Agreement.

- (b) So long as the requirements of paragraph (c) below and, in the case of a claim against the provider of any Report, the requirements of Clause 14.2 (Recoveries from Report Providers) are met, if any Recovery Claim or insurance claim is to be made, or is made, by a Debtor prior to a Distress Event and that Recovery Claim or that insurance claim (or the Acquisition Proceeds of that Recovery Claim

or the Insurance Proceeds of that insurance claim) 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 need of any letter of authority or further confirmation from any Creditor, Subordinated Creditor or Debtor) to:

- (i) give a consent under or release the Transaction Security, or any other claim, over the relevant Acquisition Document or insurance policy solely to the extent necessary to allow that Debtor to make that Recovery Claim or that insurance claim and to comply with that Debtor's obligations (or for that Debtor to exercise its rights) in respect of that Recovery Claim and those Acquisition Proceeds or that insurance claim and those Insurance Proceeds under clause 12.2 (Disposal, Insurance, Acquisition and IPO Proceeds) of the Senior Facilities Agreement; and
 - (ii) 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 or desirable.
- (c) If any Acquisition Proceeds or Insurance Proceeds are required to be applied in mandatory prepayment of the Senior Lender Liabilities then, subject to Clause 14.3 (Adjustment of Mandatory Prepayments), those Acquisition Proceeds or Insurance Proceeds shall be applied in or towards Payment of the Senior Lender Liabilities in accordance with the terms of the Senior Facilities Agreement and the consent of any other Party shall not be required for that application.

14.2 Recoveries from Report Providers

- (a) In this Clause 14.2 (Recoveries from Report Providers):

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 or recovering such amount and any tax payable by that Party directly as a result of that receipt or recovery;

Proceedings means any litigation, proceedings or other 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, the Net Award received by any member of the Group shall, subject to Clause 14.3 (Adjustment of Mandatory Prepayments), be applied in accordance with the terms of the Senior 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 the terms of Clause 16 (Application of Proceeds).
- (e) The provisions of this Clause 14.2 (Recoveries from Report Providers) shall apply until the Senior Discharge Date.

14.3 Adjustment of Mandatory Prepayments

If the making of any Mandatory Prepayment (an **Original Mandatory Prepayment**) would, but for this Clause 14.3, result in the Debtors being in breach of clause 27.28 (Treasury Transactions) of the Senior Facilities Agreement the Parent shall procure that the relevant Debtor or Debtors terminate or close out any relevant Treasury Transactions in full or in part, as may be necessary to ensure that no such breach occurs and if such termination or close out would result in a payment (a **Hedge Reduction Payment**) becoming due to any Hedge Counterparty, 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 Payment,

is equal to the amount of the Original Mandatory Prepayment.

15. CREDITORS', SUBORDINATED CREDITORS' AND DEBTORS' ACTIONS

Each Creditor, Subordinated Creditor and Debtor will:

- (a) do all things that the Security Agent requests in order to give effect to Clause 12 (Proceeds of Disposals and Appropriation) and Clause 14 (Acquisition Proceeds and Insurance Proceeds) (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, Subordinated 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 12.1 (Non-Distressed Disposals) or Clause 12.2 (Distressed Disposals and Appropriation) as the case may be or (as applicable) those Acquisition Proceeds or Insurance Proceeds are applied in accordance with Clause 14 (Acquisition Proceeds and Insurance 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 and Senior Lender Cash Collateral), all amounts from time to time received or recovered by the Security Agent pursuant to or in connection with the realisation or enforcement of all or any part of the Transaction Security or otherwise paid to the Security Agent for application pursuant to this Clause including all amounts received or recovered in connection with the Parallel Debt pursuant to

Clause 19.3 (Parallel Debt (Covenant to Pay the Security Agent)) for the purposes of this Clause 16 (the **Recoveries**), shall be held by the Security Agent on trust as trustee or as security agent 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 (Application of Proceeds)), in the following order of priority:

- (a) in discharging any sums owing to the Security Agent, any Receiver or any Delegate;
- (b) in payment of all costs and expenses incurred by the Agent or 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 8.6 (Creditors' and Subordinated Creditors' actions);
- (c) in payment to:
 - (i) the Agent on its own behalf and on behalf of the Super Priority Lenders; and
 - (ii) the relevant Hedge Counterparties,

for application towards the discharge of:

- (A) the Agent Liabilities and the Super Priority Facility Liabilities (in accordance with the terms of the Finance Documents and on a pro rata basis between them); and
- (B) the Super Priority Hedging Liabilities (on a pro rata basis between the Super Priority Hedging Liabilities of each Hedge Counterparty),

on a pro rata basis between paragraphs (A) and (B) above;

- (d) in payment to:
 - (i) the Agent on behalf of the Mandated Lead Arrangers and the Pari passu Lenders; and
 - (ii) the relevant Hedge Counterparties,

for application towards the discharge of:

- (A) the Arranger Liabilities and the Pari passu Facility Liabilities (in accordance with the terms of the Finance Documents and on a pro rata basis between them); and
- (B) the Pari passu Hedging Liabilities (on a pro rata basis between the Pari passu Hedging Liabilities of each Hedge Counterparty),

on a pro rata basis between paragraphs (A) and (B) above;

- (e) if none of the Debtors is under any further actual or contingent liability under any Finance Document or Hedging Agreement, in payment 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.

For the avoidance of doubt, references in this Clause 16.1 to sums owing and costs and expenses incurred shall be limited to such sums, costs and expenses as the relevant Secured Party is entitled to recover from the Obligors pursuant to the Finance Documents.

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 an interest bearing suspense or impersonal account(s) 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); and
- (b) hold, manage, exploit, collect and realise any amount of Recoveries which is in the form of Non-Cash Consideration,

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

- (c) any sum to any Security Agent, any Receiver or any Delegate; and
- (d) 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 and Senior Lender Cash Collateral

- (a) Notwithstanding any other term of this Agreement, nothing in this Agreement shall prevent any Issuing Bank or Ancillary Lender taking any Enforcement Action in respect of any SFA Cash Cover which has been provided for it in accordance with the Senior Facilities Agreement.
- (b) To the extent that any SFA Cash Cover is not held with the Relevant Issuing Bank or 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 as security trustee or as security agent 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 Issuing Bank or Relevant Ancillary Lender towards the discharge of the Senior Lender Liabilities for which that SFA Cash Cover was provided; and
 - (ii) the balance, if any:
 - (A) prior to the occurrence of a Distress Event, in payment to the relevant Debtor; or
 - (B) following the occurrence of a Distress Event in accordance with Clause 16.1 (Order of application).
- (c) To the extent that any SFA Cash Cover is held with the Relevant Issuing Bank or Relevant Ancillary Lender, nothing in this Agreement shall prevent that Relevant Issuing Bank or Relevant Ancillary Lender receiving and retaining any amount in respect of that SFA Cash Cover.

- (d) Nothing in this Agreement shall prevent any Issuing Bank receiving and retaining any amount in respect of any Senior Lender Cash Collateral provided for it in accordance with the terms of the Senior Facilities Agreement.

16.4 Investment of proceeds

Prior to the application of the proceeds of the Security Property in accordance with Clause 16.1 (Order of application) and unless or until such money or other assets are received or recovered by it in aggregate are sufficient to bring about the Senior Discharge Date, the Security Agent may, in its discretion, hold all or part of those proceeds in an interest bearing suspense or impersonal account(s) 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 convert any moneys received or recovered by the Security Agent from one currency to another, at the Agent's Spot Rate of Exchange.
- (b) The obligations of any Debtor to pay in the due currency shall only be satisfied to the extent of the amount of the due currency purchased after deducting the costs of conversion.

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 may be required by any applicable law 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 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 payment or distribution 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 Lenders;
 - (ii) may be made to the Relevant Issuing Bank or Relevant Ancillary Lender in accordance with paragraph (b)(i) of Clause 16.3 (Treatment of SFA Cash Cover and Senior Lender Cash Collateral); or
 - (iii) shall be made directly to the Hedge Counterparties,

and any payment or distribution made in that way shall be a good discharge, to the extent of that payment or distribution, by the Security Agent:

- (A) in the case of a payment made in cash, to the extent of that payment; and
- (B) in the case of a distribution of Non-Cash Recoveries, as determined by Clause 13.2 (Cash Value of Non-Cash Recoveries).

- (b) The Security Agent is under no obligation to make the payments or distribution to the Agent or the Hedge Counterparties under paragraph (a) of this Clause 16.7 in the same currency as that in which the Liabilities owing to the relevant Creditor are denominated.

16.8 Calculation of Amounts

For the purpose of calculating any person's share of any sum 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 into the notional base currency is to be made; and
- (b) assume that all moneys 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 relevant 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 or a Super Priority 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 Priority Lender, the aggregate amount of its participation (if any, and without double-counting) in all Utilisations outstanding under the Revolving Facilities 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 in respect of amounts outstanding under the Revolving Facilities and each Ancillary Facility in accordance with clause 9.6 (Adjustment for Ancillary Facilities upon acceleration) of the Senior 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 Senior Facilities Agreement and amounts owed to it by a Debtor in respect of any Ancillary Facility but excluding:
- (i) any amount owed to it by a Debtor in respect of any Ancillary Facility to the extent that that amount would not be outstanding but for a breach by that Senior Lender of any provision of clause 9 (Ancillary Facilities) of the Senior Facilities Agreement;
- (ii) 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 Senior Lender pursuant to the relevant SFA Cash Cover Document; and
- (iii) any amount outstanding in respect of a Letter of Credit 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 the relevant Finance Party pursuant to the relevant SFA Cash Cover Document; and

- (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 Hedging 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:
 - (A) 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
 - (B) 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 Hedging Counterparty and as calculated in accordance with the relevant Hedging Agreement.
- (c) in relation to a Pari passu Facility Lender, the aggregate amount of its participation (if any, and without double counting) in all Utilisations outstanding under a Pari passu 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) together with the aggregate amount of all accrued interest, fees and commission owed to it under the Senior Facilities Agreement in respect of a Pari passu Facility;

Utilisation has the meaning given to that term in the Senior Facilities Agreement.

17.2 Implementation of equalisation

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. Without prejudice to the generality of the preceding sentence, 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 Super Priority Lenders, the Hedge Counterparties and the Pari passu Facility Lenders shall make appropriate adjustment payments amongst themselves.

17.3 Equalisation

- (a) If, for any reason, any Super Priority Liabilities remain unpaid after the Enforcement Date and the resulting losses are not borne by the Super Priority Creditors in the proportions which their respective Exposures at the Enforcement Date bore to the aggregate Exposures of all the Super Priority Creditors at the Enforcement Date, the Super Priority Creditors will make such payments amongst themselves as the Security Agent shall require to put the Super Priority 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 remain unpaid after the Enforcement Date and the resulting losses are not borne by the Pari passu Creditors in the proportions which their respective Exposures at the Enforcement Date bore to the aggregate Exposures of all the Pari passu Creditors at the Enforcement Date, the Pari passu Creditors will make such payments amongst themselves as the Security Agent shall require to put the Pari passu 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 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 Super Priority Creditors but is entitled to distribute those amounts to Pari passu Creditors (such Creditors, the **Receiving Creditors**) who, in accordance with the terms of this Agreement, are subordinated in right and priority of payment to the Super Priority Creditors; and
- (b) the Super Priority Discharge Date has not yet occurred (nor would occur after taking into account such payments),

then the Receiving Creditors shall make such payments to the Super Priority Creditors as the Security Agent shall require to place the Super Priority Creditors in the position they would have been in had such amounts been available for application against the Super Priority 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 Senior Lenders) requesting that it notify it of, respectively, its Exposure and that of each Senior Lender (if any).

17.6 Default in payment

If a Creditor or Subordinated 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, Creditor or Subordinated Creditor as regards such default in payment and any loss suffered as a result of such default shall lie where it falls.

18. ADDITIONAL FACILITY

18.1 New Senior Liabilities

- (a) To the extent permitted by, and subject at all times to compliance with the requirements of, this Agreement and the other Debt Documents, a Debtor may incur Senior Liabilities and the Senior Lenders may increase the Facilities and make further loans and/or advances under such Facilities to members of the Group and each such advance or increased amount will be deemed to be made under the terms of the Senior Facilities Agreement and shall be treated as being part of the Senior Liabilities.
- (b) Subject to the Agreed Security Principles and to Clause 18.2 (Transaction Security: Additional Facilities), the Transaction Security Documents shall secure any Liabilities set out under subparagraph (a) above (the **New Senior Liabilities**) and such New Senior Liabilities shall rank and be secured under this Agreement as Senior Liabilities in the manner described in Clause 2.1 (Senior Creditor Liabilities) and Clause 2.2 (Transaction Security).

18.2 Transaction Security: Additional Facilities

Notwithstanding any other term, condition or restriction in any other Debt Document, the Parties agree that, in connection with any New Senior Liabilities, each of the Agent and the Security Agent are authorised and instructed by all of the Creditors (at the request and cost of the Parent) to promptly enter into any new Transaction Security Documents, promptly amend or waive any terms of any existing Transaction Security Documents and/or promptly release any asset from the Transaction Security (as the case may be) subject to the following conditions:

- (a) any new Transaction Security shall be:
 - (i) subject to the Agreed Security Principles and any applicable guarantee limitations, granted in favour of the Security Agent on behalf of the Secured Parties;
 - (ii) unless otherwise agreed, on terms substantially the same as the terms of the existing Transaction Security; and
 - (iii) for the purposes of this Agreement, be considered as having secured the relevant Liabilities *pari passu* with the then existing Transaction Security; and
- (b) any amendment or waiver of the Transaction Security or release of Transaction Security shall only be undertaken if required to give effect to the ranking described in Clause 2.2 (Transaction Security) in respect of the New Senior Liabilities and, subject to the Agreed Security Principles, any such release is substantially concurrent with the re-grant of Transaction Security on terms substantially the same as the terms of the existing Transaction Security.

18.3 Further assurance

- (a) Each Party agrees that it shall (and the cost and expense of the Parent) promptly execute all relevant documents reasonably required by the Parent to be executed in connection with any New Senior Liabilities and/or give such instructions to the Agent and the Security Agent as may reasonably be required in connection with the incurrence or borrowing of any New Senior Liabilities (including in respect of any guarantee or Security granted in relation thereto).
- (b) Each Creditor empowers and authorises the Agent and the Security Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions given to each of them under this Clause 18 (Additional Facilities) without the requirement for any further consent from such Creditors.

19. THE SECURITY AGENT

19.1 Security Agent as trustee and security agent

- (a) The Security Agent declares that it holds the Security Property on trust or as security agent for and/or for the benefit of the Secured Parties on the terms contained in this Agreement (to the extent applicable, on the basis of a parallel debt structure).
- (b) Each of the Senior Creditors authorises the Security Agent to perform the duties, obligations and responsibilities 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.

19.2 No independent power

Subject to Clause 16.3 (Treatment of SFA Cash Cover and Senior Lender Cash Collateral), the Secured Parties shall not have any independent power to enforce, or have recourse to, any of the Transaction Security or to exercise any rights or powers arising under the Transaction Security Documents (other than the Senior Facilities Agreement) except through the Security Agent.

19.3 Parallel Debt (Covenant to Pay the Security Agent)

- (a) In this Clause 19.3 **Corresponding Obligation** means any obligation, present or future, of each Debtor to pay an amount to the Secured Parties or any one or more of them, under the Finance Documents and the Hedging Agreements.
- (b) Each Debtor irrevocably and unconditionally undertakes to pay to the Security Agent as a separate and independent obligation an amount equal to the aggregate amount payable by that Debtor in respect of its Corresponding Obligations as they may exist from time to time. The payment undertaking of each Debtor to the Security Agent under this Clause is referred to as a **Parallel Debt**. Each Parallel Debt will be payable in the currency or currencies of the relevant Corresponding Obligations.
- (c) Each Parallel Debt of a Debtor:
 - (i) will become due and payable at the same time on which one or more of the Corresponding Obligations of that Debtor become due and payable;
 - (ii) constitutes an undertaking, obligation and liability of the relevant Debtor to the Security Agent which is separate and independent from, and without prejudice to, the Corresponding Obligations; and
 - (iii) represents the Security Agent's own separate and independent claim to receive payment of that Parallel Debt from the relevant Debtor.
- (d) To the extent that the Security Agent receives any amount in payment of the Parallel Debt of a Debtor, the Security Agent shall distribute that amount among the Secured Parties who are creditors of the Corresponding Obligations of that Debtor in accordance with Clause 16 (Application of Proceeds). Upon receipt by the Security Agent of any amount to be distributed to the Secured Parties pursuant to the preceding sentence (**Received Amount**), the Corresponding Obligations of the relevant Debtor to the relevant Secured Party shall be reduced by an amount equal to the Received Amount as if the Received Amount were received as a payment of the Corresponding Obligations.
- (e) The Transaction Security over the Charged Property granted under the Transaction Security Documents to the Security Agent to secure each Parallel Debt is granted to the Security Agent in its capacity as creditor of each Parallel Debt and shall not be held on trust.

19.4 Instructions

- (a) Subject to paragraphs (e) and (f) below, the Security Agent shall act in accordance with any instructions given to it by the Instructing Group or, if so instructed by the Instructing Group, refrain from exercising any right, power, authority or discretion vested in it as Security Agent and shall be entitled to assume that (i) any instructions received by it from the Agent, the Creditors or a group of Creditors are duly given in accordance with the terms of the Debt Documents and (ii) unless it has received actual notice of revocation, that those instructions or directions have not been revoked.
- (b) The Security Agent shall not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with paragraph (a) above.
- (c) The Security Agent shall be entitled to request instructions, or clarification of any direction, from the Instructing Group as to whether, and in what manner, it should exercise or refrain from exercising any rights, powers, authorities and discretions and the Security Agent may refrain from acting unless and until those instructions or clarification are received by it.
- (d) Save as provided in Clause 11 (Enforcement of Transaction Security), any instructions given to the Security Agent by the Instructing Group shall override any conflicting instructions given by any other Parties.
- (e) 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, the provisions set out in Clause 19.6 (Security Agent's rights) to Clause 19.25 (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:
 - (A) Clause 12.1 (Non-Distressed Disposals);
 - (B) Clause 16.1 (Order of application);
 - (C) Clause 16.2 (Prospective liabilities);
 - (D) Clause 16.3 (Treatment of SFA Cash Cover and Senior Lender Cash Collateral); and
 - (E) Clause 16.6 (Permitted Deductions).
- (f) 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.
- (g) In exercising any discretion to exercise a right, power or authority under the Debt Documents where either:

- (i) it has not received any instructions from the Majority Senior Creditors as to the exercise of that discretion; or
 - (ii) the exercise of that discretion is subject to paragraph (e)(iv) above,
- the Security Agent shall act as it considers in its discretion to be appropriate.

19.5 Security Agent's Actions

Without prejudice to the provisions of Clause 11 (Enforcement of Transaction Security) and Clause 19.4 (Instructions), in the absence of instructions the Security Agent may act (or refrain from acting) as it considers in its discretion to be appropriate.

19.6 Security Agent's rights

Notwithstanding any other 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.

19.7 Security Agent's discretions

The Security Agent may:

- (a) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
- (b) assume (unless it has received actual notice to the contrary from a Hedge Counterparty or from the Agent) that:
 - (i) no Default has occurred;
 - (ii) any right, power, authority or discretion vested in any Party or any group of Creditors or any Subordinated Creditor 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) assume that 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;
- (d) rely on a certificate from any person:
 - (i) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
 - (ii) 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 (i) above, may assume the truth and accuracy of that certificate;
- (e) engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts;

- (f) without prejudice to the generality of paragraph (e) above or paragraph (g) below, 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;
- (g) 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;
- (h) rely upon any communication or document believed by it to be genuine and, as to any matters of fact which might reasonably be expected to be within the knowledge of a Secured Party, any Creditor, Subordinated Creditor or a Debtor, upon a certificate signed by or on behalf of that person;
- (i) refrain from acting in accordance with the instructions of any Party (including bringing any legal action or proceeding arising out of or in connection with the Debt Documents) 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; and
- (j) unless this Agreement expressly specifies otherwise, disclose to any other Party any information it reasonably believes it has received as security trustee under this Agreement.

19.8 Security Agent's obligations

- (a) The Security Agent's duties under the Debt Documents are solely mechanical and administrative in nature.
- (b) The Security Agent shall promptly:
 - (i) copy to (i) the Agent and (ii) each Hedge Counterparty, the contents of any notice or document received by the Security Agent from any Debtor under any Debt Document;
 - (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;; and
 - (iii) inform (i) the Agent and (ii) each Hedge Counterparty, of the occurrence of any Default or any default by a Debtor in the due performance of or compliance with its obligations under any Debt Document of which the Security Agent has received notice from any other party to this Agreement.
- (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) The Security Agent shall have only those duties, obligations and responsibilities and responsibilities expressly specified in the Debt Documents to which it is expressed to be a party (and no others shall be implied).

19.9 Agent's Spot Rate of Exchange

The Agent shall promptly, to the extent that the Security Agent or the Parent is required to calculate a Common Currency Amount, and upon a request by the Security Agent or the Parent, as applicable, notify such person of the relevant Agent's Spot Rate of Exchange.

19.10 Excluded obligations

Notwithstanding anything to the contrary expressed or implied in the Debt Documents, the Security Agent shall not:

- (a) be bound to enquire as to (i) whether or not any Default has occurred or (ii) the performance, default or any breach by a Debtor of its obligations under any of the Debt Documents or (iii) whether any other event specified in any Debt Document has occurred;
- (b) be bound to account to any other Party for any sum or the profit element of any sum received by it for its own account;
- (c) be bound to disclose to any other person (including but not limited to any Secured Party) (i) any confidential information or (ii) any other information if disclosure would, or might in its reasonable opinion, constitute a breach of any law or regulation or be a breach of fiduciary duty;
- (d) have or be deemed to have any relationship of trust or agency with, any Debtor, any Intra-Group Lender or any Subordinated Creditor; or
- (e) be prohibited from accepting deposits from, lend money to, and generally engage in any kind of banking or other business with any of the Debtors.

19.11 Exclusion of liability

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;
- (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;
- (d) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or refraining from taking any action in relation to any of the Debt Documents, the Security Property or otherwise, whether in accordance with an instruction from the Agent or otherwise unless directly caused by its gross negligence or wilful misconduct;
- (e) exercising or not exercising any right, power, authority or discretion given to it by or in connection with any of the Debt Documents, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, the Debt Documents or the Security Property;
- (f) any shortfall which arises on the enforcement or realisation of the Security Property; or

(g) without prejudice to the generality of paragraphs (c) to (f) above, any damages, costs, losses, any diminution in value or any liability whatsoever arising as a result of:

(i) any act, event or circumstance not reasonably within its control; or

(ii) 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.

19.12 No liability for consequential loss

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.

19.13 No proceedings

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 Rights Act.

19.14 Own responsibility

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 and 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 and/or completeness of any information provided by the Security Agent 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,

and each Secured Party warrants to the Security Agent that it has not relied on and will not at any time rely on the Security Agent in respect of any of these matters.

19.15 Regulatory position

- (a) Notwithstanding anything in any Transaction Documents to the contrary, the Security Agent shall not do, or be authorised or required to do, anything which might be constituted a regulated activity for the purpose of the Financial Services and Markets Act 2000 (**FSMA**), unless it is authorised under FSMA to do so.
- (b) The Security Agent shall have the discretion at any time:
 - (i) to delegate any of the functions which fall to be performed by an authorised person under FSMA to any other agent or person which also has the necessary authorisations and licenses; and
 - (ii) to apply for authorisation under FSMA and perform any or all such functions itself if, in its absolute discretion, it considers it necessary, desirable or appropriate to do so.

19.16 Reliance 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 relating to that certificate or report on such terms as it may consider appropriate.

19.17 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 of the Debt Documents 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 of the Debt Documents or of the Transaction Security;

- (d) take, or to require any of the Debtors to take, any steps to protect or 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 of the Transaction Security Documents.

19.18 Insurance by Security Agent

- (a) The Security Agent shall not be under any obligation to insure any of the Charged Property, to require any other person to maintain any insurance or to verify any obligation to arrange or maintain insurance contained in the Debt Documents. The Security Agent shall not be liable for any damages, cost or loss which may be suffered by 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 Agent shall have requested it to do so in writing and the Security Agent shall have failed to do so within 14 days after receipt of that request.

19.19 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.

19.20 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 of the Debtors 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.

19.21 Refrain from illegality

Notwithstanding anything to the contrary expressed or implied in the Debt Documents, the Security Agent may refrain from doing anything which in its opinion will or may be contrary to any relevant law, directive or regulation of any jurisdiction or a breach of fiduciary duty or duty of confidentiality and the Security Agent may do anything which is, in its opinion, necessary to comply with any such law, directive, duty or regulation.

19.22 Winding up of trust

If (to the extent confirmed by the Agent and the Hedging Counterparties) (i) all of the Secured Obligations and all other obligations secured by the Transaction Security Documents have been fully and finally discharged and (ii) none of the Secured Parties 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:

- (a) 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 Transaction Security Documents; and

- (b) any Retiring Security Agent shall release, without recourse or warranty, all of its rights under each of the Transaction Security Documents.

Each Senior Creditor must execute any document which is reasonably required to achieve the releases described above and authorises the Security Agent to execute any such document.

19.23 Powers supplemental to Trustee Acts

The rights, powers and discretions conferred upon the Security Agent by this Agreement 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 general law or otherwise.

19.24 Trustee division separate

- (a) In acting as trustee or security agent for the Secured Parties, the Security Agent shall be regarded as acting through its trustee or security agency division which shall be treated as a separate entity from any of its other 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.

19.25 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 allowed 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.

19.26 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 to do anything which that Intra-Group Lender or Debtor has authorised the Security Agent or any other Party to do under this Agreement on its behalf or is itself required to do under this Agreement but has failed to do within ten Business Days of being requested to do so by the Security Agent (and the Security Agent may delegate that power on such terms as it sees fit).

19.27 Security Agent's actions

The Security Agent may carry out what in its discretion it considers to be administrative acts, or acts which are incidental to any instruction, without any instructions (though not contrary to any such instruction), but so that no such instruction shall have any effect in relation to any administrative or incidental act performed prior to actual receipt of such instruction by the Security Agent.

19.28 No fiduciary duties to debtors

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

19.29 Rights and discretions

The Security Agent may assume that any instructions received by it from the Majority Senior Creditors, Majority Senior Lenders, any Creditors or any group of Creditors are duly given in accordance with the terms of the Debt Documents and unless it has received notice of the revocation, that those instructions have not been revoked.

20. CHANGE OF SECURITY AGENT AND DELEGATION

20.1 Resignation of the Security Agent

- (a) The Security Agent may resign and appoint one of its affiliates as successor by giving notice to the Parent and the Senior Creditors.
- (b) Alternatively the Security Agent may resign by giving notice to the other Parties in which case the Majority Senior Creditors (after consultation with the Parent) may appoint a successor Security Agent.
- (c) If the Majority Senior Creditors have not appointed a successor Security Agent in accordance with paragraph (b) above within 30 days after the notice of resignation was given, the Security Agent (after consultation with the Agent and the Parent) may appoint a successor Security Agent.
- (d) The retiring Security Agent (the **Retiring Security Agent**) shall, at its own cost:
 - (i) 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; and
 - (ii) enter into and deliver to the successor Security Agent those documents and effect any registration as may be required for the transfer, assignment, or assignation of all of its rights and benefits under the Debt Documents to the successor Security Agent.
- (e) The Security Agent's resignation notice shall only take effect upon (i) the appointment of a successor and (ii) the transfer of all of the Security Property to that successor.
- (f) The Parent and/or the relevant Debtor must at its own cost when an Event of Default is continuing, or otherwise at the cost of the Secured Parties, take any action and enter into and deliver any document which is reasonably required by the Retiring Security Agent to ensure that a Transaction Security Document provides for effective and perfected Security (subject to the Legal Reservations and the Perfection Requirements) in favour of any successor Security Agent.
- (g) 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 19.22 (Winding up of trust) and under paragraph (d) above) but shall, in respect of any act or omission by it whilst it was the Security Agent, remain entitled to the benefit of Clauses 19 (The Security Agent), 23.1 (Senior Creditors' indemnity) and 23.2 (Debtors' indemnity to the Security Agent). Its 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.
- (h) The Majority Senior Creditors may after consultation with the Parent, 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 when an Event of Default is continuing, or otherwise, for the account of the Secured Parties.

20.2 Delegation

- (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 of the rights, powers, authority and discretions vested in it by any of the Debt Documents.
- (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) considers in its discretion to be appropriate and it shall not be bound to supervise, or be in any way responsible for any loss incurred by reason of any misconduct or default on the part of any such delegate or sub-delegate save to the extent caused by the Security Agent's own negligence or wilful misconduct in making that delegation.

20.3 Additional Security Agents

- (a) The Security Agent may at any time appoint (and subsequently remove) any person to act as a separate trustee or security agent or as a co-trustee or co-security agent jointly with it (i) if it considers that appointment to be appropriate or (ii) for the purposes of conforming to any legal requirements, restrictions or conditions 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, the Agent and the Hedge Counterparties of that appointment.
- (b) Any person so appointed shall have the rights, powers and discretions (not exceeding those conferred on the Security Agent under or in connection with the Debt Documents) and the duties, obligations and responsibilities that are conferred 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.

21. CHANGES TO THE PARTIES

21.1 Assignments and transfers

No Party may assign any of its rights and benefits or transfer any of its rights, benefits and obligations in respect of any Debt Documents or the Liabilities except as permitted by this Clause 21.

21.2 Change of Subordinated Creditor

- (a) Subject to Clause 7.4 (No acquisition of Subordinated Liabilities), a Subordinated Creditor may assign any of its rights and benefits or transfer any of its rights, benefits and obligations in respect of the Subordinated Liabilities owed to it if 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 21.8 (Creditor/Agent Accession Undertaking).
- (b) If any person makes available Additional Shareholder Funding or a Shareholder Loan to the Parent, the Parent will procure that the person providing that Additional Shareholder Funding or Shareholder Loan (if not already party to this Agreement as a Subordinated Creditor) accedes to this Agreement as a Subordinated Creditor pursuant to Clause 21.8 (Creditor/Agent Accession Undertaking) no later than contemporaneously with the making of such Additional Shareholder Funding or Shareholder Loan.
- (c) If at any time there are more than one Subordinated Creditor, any reference in this Agreement to the Subordinated Creditor shall be construed as each or any (as the context requires) of such Subordinated

Creditors and the obligations of each Subordinated Creditor shall be several and not joint or joint and several.

21.3 Change of Senior Lender

- (a) A Senior Lender may assign any of its rights and benefits or transfer by novation any of its rights, benefits and obligations in respect of any Debt Documents or the Liabilities if:
 - (i) that assignment or transfer is in accordance with the terms of the Senior Facilities Agreement; and
 - (ii) subject to paragraph (b) below, any assignee or transferee has (if not already party to this Agreement as a Senior Lender) acceded to this Agreement as a Senior Lender, pursuant to Clause 21.8 (Creditor/Agent Accession Undertaking).
- (b) Paragraph (a)(ii) above shall not apply in respect of any Senior Debt Purchase Transaction permitted by clause 30.1 (Permitted Debt Purchase Transactions) of the Senior Facilities Agreement entered into by a member of the Group and effected in accordance with the terms of the Debt Documents.

21.4 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 and benefits or obligations in respect of the Hedging Agreements to which it is a party if any transferee has (if not already party to this Agreement as a Hedge Counterparty and the Senior Facilities Agreement as a Hedge Counterparty) acceded to:

- (a) this Agreement; and
- (b) the Senior Facilities Agreement,

as a Hedge Counterparty pursuant to Clause 21.8 (Creditor/Agent Accession Undertaking).

21.5 Change of Agent

No person shall become an Agent unless at the same time, it accedes to this Agreement as an Agent pursuant to Clause 21.8 (Creditor/Agent Accession Undertaking).

21.6 Change of Intra-Group Lender

Subject to Clause 6.4 (Acquisition of Intra-Group Liabilities) and to the terms of the other Debt Documents, any Intra-Group Lender may assign any of its rights and benefits or transfer any of its rights, benefits 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 party to this Agreement as an Intra-Group Lender) acceded to this Agreement as an Intra-Group Lender, pursuant to Clause 21.8 (Creditor/Agent Accession Undertaking) (provided that such member of the Group will not be required to accede to this Agreement as an Intra-Group Lender under this Clause if it would otherwise not have been required to do so under the terms of Clause 21.7 (New Intra-Group Lender) if it had been the original creditor of such Intra-Group Liability).

21.7 New Intra-Group Lender

If any Obligor (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 which is a member of the Group (but excluding any loan or credit or other financial arrangement made pursuant to any cash pooling or cash

management arrangement permitted under the Finance Documents), in an aggregate amount of more than the greater of US\$4,000,000 (or its equivalent in other currencies) and 7.5% of Consolidated EBITDA which remains outstanding for more than 15 consecutive Business Days, the Parent will procure, subject to the Agreed Security Principles, that the Obligor giving that loan, granting that credit or making that other financial arrangement (if not already party to this Agreement as an Intra-Group Lender) accedes to this Agreement as an Intra-Group Lender pursuant to Clause 21.8 (Creditor/Agent Accession Undertaking) within ten Business Days of making that loan, granting that credit or making that other financial arrangement (or, in the case of any such loan, credit or other financial arrangement exceeding such amount to a member of the Target Group, within 120 days of the Closing Date (or, in the case of any entity incorporated or organised in a jurisdiction in which no existing Obligor is incorporated at the relevant time, 150 days of the Closing Date).

21.8 Creditor/Agent Accession Undertaking

With effect from the date of acceptance by the Security Agent and, in the case of a Hedge Counterparty, an Affiliate of a Senior Lender or an Additional Facility Lender, the Agent of a Creditor/Agent Accession Undertaking duly executed and delivered to the Security Agent by the relevant acceding party or, if later, the date specified in that Creditor/Agent Accession Undertaking:

- (a) any Party ceasing entirely to be a Creditor, Subordinated Creditor or Agent 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, Subordinated Creditor or Agent shall assume the same obligations and become entitled to the same rights, as if it had been an original Party to this Agreement in that capacity; and
- (c) any new Ancillary Lender (which is an Affiliate of a Senior Lender) or any party acceding to this Agreement as a Hedge Counterparty shall also become party to the Senior 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 Senior Facilities Agreement as an Ancillary Lender or Hedge Counterparty (as the case may be).

21.9 New Ancillary Lender

If any Affiliate of a Senior Lender becomes an Ancillary Lender in accordance with clause 9.8 (Affiliates of Lenders as Ancillary Lenders) of the Senior 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 party to this Agreement as a Senior Lender) acceded to this Agreement as a Senior Lender and to the Senior Facilities Agreement as an Ancillary Lender pursuant to Clause 21.8 (Creditor/Agent Accession Undertaking).

21.10 New Debtor

- (a) If any member of the Group:
 - (i) incurs any Senior Liabilities; or
 - (ii) gives any security, guarantee, indemnity or other assurance against loss in respect of any Senior Liabilities,

the Debtors will procure that the person incurring those Senior Liabilities or giving that assurance accedes to this Agreement as a Debtor, in accordance with paragraph (c) below, no later than contemporaneously with the incurrence of those Senior Liabilities or the giving of that assurance.

- (b) If any Affiliate of a Borrower (under and as defined in the Senior Facilities Agreement) becomes a borrower of an Ancillary Facility in accordance with the Senior Facilities Agreement, the relevant Borrower shall procure that, subject to the Agreed Security Principles, such Affiliate accedes to this Agreement as a Debtor no later than contemporaneously with the date on which it becomes a borrower (or, in the case of any such Affiliate of a Borrower which is a member of the Target Group, within 120 days of the Closing Date (or, in the case of any entity incorporated or organised in a jurisdiction in which no existing Debtor is incorporated at the relevant time, 150 days of the Closing Date)). Notwithstanding anything to the contrary in this Agreement, if any such Affiliate of a Borrower will become an Obligor in accordance with the terms of the Senior Facilities Agreement, the relevant Borrower shall procure that such Affiliate accedes to this Agreement as a Debtor no later than the date on which it becomes an Obligor under the Senior Facilities Agreement.
- (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 to this Agreement as a Debtor.

21.11 Additional parties

- (a) Each of the Parties appoints the Security Agent to receive on its behalf each Debtor Accession Deed and Creditor/Agent 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 Senior Facilities Agreement.
- (b) In the case of a Creditor/Agent Accession Undertaking delivered to the Security Agent by any new Ancillary Lender (which is an Affiliate of a Senior Lender) 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/Agent Accession Undertaking in accordance with paragraph (a) above, deliver that Creditor/Agent Accession Undertaking to the Agent; and
 - (ii) the Agent shall, as soon as practicable after receipt by it, sign and accept that Creditor/Agent Accession Undertaking if it appears on its face to have been completed, executed and delivered in the form contemplated by this Agreement.

21.12 Resignation of a Debtor

- (a) The Agent shall not accept a Resignation Letter (as defined in the Senior Facilities Agreement) from a Guarantor under clause 31.5 (Resignation of a Guarantor) of the Senior Facilities Agreement unless each Hedge Counterparty has notified the Security Agent that no payment is due from that Guarantor to that Hedge Counterparty under clause 23 (Guarantee and indemnity) of the Senior 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 Lender 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 Hedging Liabilities; and
 - (iv) the Parent confirms that that Debtor is under no actual or contingent obligations 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.

21.13 Discharge Date

Any matter expressed to require the consent or approval of the Pari Passu Creditors, the Super Priority Creditors or Senior Creditors (or any specified majority or sub-set thereof) shall only require such consent or approval prior to the Super Priority Discharge Date, Senior Lender Discharge Date or Senior Discharge Date (as the case may be) and shall be deemed not to require the consent of any Pari Passu Creditor, Super Priority Creditor or Senior Creditor which has been repaid, prepaid or replaced in accordance with the Debt Documents.

22. COSTS AND EXPENSES

22.1 Transaction expenses

The Parent shall, within three Business Days of demand, pay the Security Agent the amount of all costs and expenses (including legal fees) (together with any applicable VAT) reasonably incurred by the Security Agent and by any Receiver or Delegate in connection with the negotiation, preparation, printing, execution and perfection of:

- (a) this Agreement and any other documents referred to in this Agreement and the Transaction Security; and
- (b) any other Debt Documents executed after the date of this Agreement,

provided that the Security Agent shall not be entitled to recover in respect of the same amount under both this Clause and clause 22.1 (Transaction expenses) of the Senior Facilities Agreement.

22.2 Amendment costs

If a Debtor requests an amendment, waiver or consent, the Parent shall, within three Business Days of demand, reimburse the Security Agent for the amount of all costs and expenses (including reasonable 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, provided that the Security Agent shall not be entitled to recover in respect of the same amount under both this Clause and clause 22.2 (Amendment costs) of the Senior Facilities Agreement.

22.3 Stamp taxes

The Parent shall pay and, within five Business Days of demand, indemnify the Security Agent against any cost, loss or liability the Security Agent incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Debt Document except for any such Tax payable in connection with the entry into of a Transfer Certificate, Assignment Agreement, Increase Confirmation or Additional Facility Accession Deed or payable in connection with the voluntary entry by a Secured Party or the Mandated Lead Arrangers into any other transfer, assignment or sub-participation of any Finance Document.

22.4 Interest on demand

If any Creditor, Subordinated Creditor or Debtor fails to pay any amount payable by it under this Agreement on its due date, to the extent that default interest is not otherwise payable in respect of that amount under any other Finance Document, 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 was being offered, by leading banks in the London interbank market, deposits in 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.

22.5 Enforcement and preservation costs

The Parent shall, 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 (following an Event of Default) of or the preservation (at any time) of any rights under any Debt 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, provided that the Security Agent shall not be entitled to recover in respect of the same amount under both this Clause and clause 22.3 (Enforcement and preservation costs) of the Senior Facilities Agreement.

22.6 Security Agent's Ongoing Costs

(a) In the event of:

- (i) an Acceleration Event (other than in relation to a Debt Document evidencing Intra-Group Liabilities or Subordinated Liabilities);
- (ii) the Security Agent being requested by a Debtor or the Instructing Group (as applicable) to undertake duties which that Security Agent and the Company agree to be of an exceptional nature and/or outside the scope of the normal duties of that Security Agent any Receiver or Delegate under the Debt Documents; or
- (iii) the Security Agent and Company agreeing it is otherwise appropriate in the circumstances,

the Company shall (or another Debtor so elected shall) pay to the Security Agent any additional remuneration (together with any applicable VAT) that may be agreed between them or determined pursuant to paragraph (b) below.

- (b) If the Security Agent and the Company fail to agree upon the nature of those duties or upon any additional remuneration referred to in this Clause 22.6, that 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 Company (acting reasonably) 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 Company) and the determination of any investment bank shall be final and binding upon the Parties.

23. INDEMNITIES

23.1 Senior Creditors' indemnity

- (a) Each Senior Creditor (save for the Agent) shall (in the proportion that the Liabilities due to it bears to the aggregate of the Liabilities due to all the Senior Creditors for the time being (or, if the Liabilities due to each of those 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) and the Debtors shall jointly and severally indemnify each Senior Creditor against any payment made by it under this Clause 23.
- (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 Hedging Liabilities 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, to be certified by the relevant Hedge Counterparty and as calculated in accordance with the relevant Hedging Agreement.

23.2 Debtors' 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 22 (Costs and Expenses);
 - (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
 - (iii) the taking, holding, protection or enforcement of the Transaction Security;
 - (iv) the exercise of any of the rights, powers, discretions, authorities and remedies vested in 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 as a direct result 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 23.2 will not be prejudiced by any release or disposal under Clause 12.2 (Distressed Disposals and Appropriation) taking into account the operation of that Clause 12.2.
- (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 23.2 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.

23.3 Parent's indemnity to Senior Creditors

The Parent shall, within three Business Days of demand, 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 12.2 (Distressed Disposals and Appropriation).

23.4 Continuing obligation

Each indemnity given by a Party under or in connection with the Transaction Documents is a continuing obligation, independent of the Party's other obligation under or in connection with that or any other Transaction Document. It is not necessary for a person to pay any amount before enforcing an indemnity under or in connection with a Transaction Document.

24. INFORMATION

24.1 Information and dealing

- (a) The Creditors and the Subordinated Creditors shall provide to the Security Agent from time to time (through the Agent in the case of a Senior Lender) any information that the Security Agent may reasonably specify as being necessary or desirable to enable the Security Agent to perform its functions as trustee or security agent.
- (b) Subject to clause 37.5 (Communication when Agent is Impaired Agent) of the Senior Facilities Agreement, each Senior Lender shall deal with the Security Agent exclusively through its Agent, and the Hedge Counterparties shall deal directly with the Security Agent and shall not deal through the Agent.
- (c) 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.

24.2 Disclosure

Notwithstanding any agreement to the contrary, each of the Debtors and Subordinated Creditors consents, until the Senior Discharge Date, to the disclosure by any of the Senior Creditors, the Agent, the Mandated Lead Arrangers 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, the Agent, the Mandated Lead Arrangers or the Security Agent shall see fit.

24.3 Notification of prescribed events

- (a) If an Event of Default or a Material Event of 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 a Senior Payment Default either occurs or ceases to be continuing the Agent shall notify the Security Agent.
- (c) If a Declared Default occurs the Agent shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each other Party.
- (d) If the Security Agent receives a Super Priority Enforcement Notice under Clause 3.9 (Permitted Enforcement: Super Priority Creditors), it shall upon receiving that notice send a copy of that notice to each Hedge Counterparty and each Senior Creditor (other than a Super Priority Lender).
- (e) If the Security Agent enforces, or takes formal steps to enforce, any of the Transaction Security it shall notify each Party of that action.
- (f) 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.
- (g) 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.
- (h) 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.
- (i) If the Security Agent receives a notice under Clause 5 (Option to Purchase: Pari Passu Lenders) it shall upon receiving that notice, notify, and send a copy of that notice to the Agent, each Super Priority Lender and each Hedge Counterparty.

25. NOTICES

25.1 Communications in writing

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

25.2 Security Agent's communications with Senior Lenders and Hedge Counterparties

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

- (a) with the Senior Lenders and the Mandated Lead Arranger through the Agent and may give to the Agent any notice or other communication required to be given by the Security Agent to a Senior Lender or Mandated Lead Arranger; and

- (b) with each Hedge Counterparty directly with that Hedge Counterparty.

25.3 Addresses

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

- (a) in the case of the Parent, that identified in the Senior Facilities Agreement;
- (b) in the case of the Security Agent, that identified in its signature page to this Agreement; and
- (c) in the case of each other Party, that notified in writing to the Security Agent on or prior to the date on which it becomes a Party,

or any substitute address, fax number or department or officer which that Party may notify to 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.

25.4 Delivery

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

and, if a particular department or officer is specified as part of its address details provided under Clause 25.3 (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 25.4 will be deemed to have been made or delivered to each of the Debtors.

25.5 Notification of address and fax number

Promptly upon receipt of notification of an address and fax number or change of address or fax number pursuant to Clause 25.3 (Addresses) or changing its own address or fax number, the Security Agent shall notify the other Parties.

25.6 Electronic communication

- (a) Any communication to be made between the Security Agent and the Agent, the Mandated Lead Arranger, a Senior Lender or a Hedge Counterparty under or in connection with this Agreement may be made by electronic mail or other electronic means, if the Security Agent and the Agent, relevant Mandated Lead Arranger, relevant Senior Lender or relevant Hedge Counterparty:
 - (i) agree that, unless and until notified to the contrary, this is to be an accepted form of communication;

- (ii) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
 - (iii) notify each other of any change to their address or any other such information supplied by them.
- (b) Any electronic communication made between the Security Agent and the Agent, the Mandated Lead Arrangers, a Senior Lender or a Hedge Counterparty will be effective only when actually received in readable form and in the case of any electronic communication made by a Senior Lender, Hedge Counterparty, Mandated Lead Arranger or Agent to the Security Agent only if it is addressed in such a manner as the Security Agent shall specify for this purpose.

25.7 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.

26. PRESERVATION

26.1 Partial invalidity

If, at any time, any provision of this Agreement 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.

26.2 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.

26.3 Remedies and waivers

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

26.4 Waiver of defences

The provisions of this Agreement will not be affected by an act, omission, matter or thing which, but for this Clause 26.4, 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, assignment and transfer by way of assumption of contract, 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.

26.5 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.

27. CONSENTS, AMENDMENTS AND OVERRIDE

27.1 Required consents

- (a) Subject to paragraphs (b) and (c) below, to Clause 27.4 (Exceptions), to Clause 27.5 (Non-responding Senior Creditor), to Clause 27.6 (Replacement of Non-Consenting Lender) and to Clause 27.7

(Disenfranchisement of Sponsor Affiliates/members of the Group), this Agreement may be amended or waived only as permitted under clause 41 (Amendments and Waivers) of the Senior Facilities Agreement, provided that any term of this Agreement may be amended or waived by the Parent and the Security Agent without the consent of any other Party if that amendment or waiver is solely to cure defects or omissions or reflect changes of a minor, technical or administrative nature.

(b) Subject to paragraph (c) below:

- (i) Clause 17.1 (Equalisation Definitions) to Clause 17.3 (Equalisation) may be amended or waived with the consent of the Agent, the Majority Super Priority Creditors and the Security Agent to the extent that such amendment or waiver does not affect the Pari passu Creditors;
- (ii) an amendment or waiver which has the effect of changing or which relates to Clause 3.1 (Payment of Senior Lender Liabilities) or Clause 3.6 (Restriction on Enforcement: Super Priority Creditors) to Clause 3.9 (Permitted Enforcement: Super Priority Creditors) (inclusive) shall not be made without the consent of the Majority Senior Creditors and the Majority Super Priority Creditors; and
- (iii) an amendment or waiver which has the effect of changing or which relates to Clause 4 (Hedge Counterparties and Hedging Liabilities) shall not be made without the consent of the Majority Senior Lenders and each Hedge Counterparty to which such amendment or waiver relates.

(c) Subject to Clause 27.4 (Exceptions), to Clause 27.5 (Non-responding Senior Creditor), Clause 27.6 (Replacement of Non-Consenting Lender) and to Clause 27.7 (Disenfranchisement of Sponsor Affiliates/members of the Group), an amendment or waiver that has the effect of changing or which relates to:

- (i) Clause 2 (Ranking and Priority), Clause 5 (Option to Purchase: Pari Passu Lenders), Clause 8 (Effect of Insolvency Event), Clause 9 (Turnover of Receipts), Clause 10 (Redistribution), Clause 11 (Enforcement of Transaction Security), Clause 12 (Proceeds of Disposals and Appropriation), Clause 14.2 (Recoveries from Report Providers), Clause 14.3 (Adjustment of Mandatory Prepayments), Clause 16 (Application of Proceeds), Clause 21 (Changes to the Parties), Clause 24 (Information) or this Clause 27 (Consents, Amendments and Override);
- (ii) the definitions of Instructing Group, Majority Senior Creditors, Majority Senior Lenders, Majority Super Priority Creditors, Majority Super Priority Lenders, Senior Creditors, Super Priority Facility Liabilities, Super Priority Hedging Liabilities, Super Priority Lender, Super Priority Liabilities, and Super Priority Creditors;
- (iii) paragraphs (e)(iii), (f) and (g) of Clause 19.4 (Instructions);
- (iv) the order of priority or subordination under this Agreement;

shall not be made without the consent of:

- (A) the Agent;
- (B) all of the Senior Lenders;
- (C) each Hedge Counterparty (to the extent that the amendment or waiver would adversely affect that Hedge Counterparty); and
- (D) the Security Agent,

unless it is made pursuant to clause 41.2(d) (Exceptions) or clause 2.3(l) (Additional Facilities) of the Senior Facilities Agreement (in which case the provisions of those clauses shall apply).

27.2 Amendments and Waivers: Transaction Security Documents

- (a) Subject to paragraph (b) below and to Clause 27.4 (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 27.4 (Exceptions), the prior consent of the Senior Lenders (in accordance with the Senior Facilities Agreement) and the Hedging Counterparties is required to authorise any amendment or waiver of, or consent under, any Transaction Security Document which would affect the manner in which the proceeds of enforcement of the Transaction Security are distributed (except for a Structural Adjustment or otherwise as expressly approved pursuant to the Senior Facilities Agreement).
- (c) The Senior Creditors and the Agent shall (and hereby irrevocably instruct the Security Agent to) enter into any documentation necessary to implement an Additional Facility, any increase of a Facility made pursuant to clause 2.2 (Increase) of the Senior Facilities Agreement or a Structural Adjustment which, in each case, has been approved in accordance with the terms of the Senior Facilities Agreement.

27.3 Effectiveness

Any amendment, waiver or consent given in accordance with this Clause 27 (Consents, Amendments and Override) will be binding on all Parties and the Security Agent may effect, on behalf of the Agent, the Mandated Lead Arrangers or any Creditor, any amendment, waiver or consent permitted by this Clause 27 (Consents, Amendments and Override).

27.4 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 Senior Creditor, in a way which affects or would affect Senior Creditors of that Party's class generally; or
 - (ii) in the case of a Debtor, to the extent consented to by the Parent under paragraph (a) of Clause 27.2 (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 Mandated Lead Arrangers, 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 that Agent or, as the case may be, the Mandated Lead Arrangers, the Security Agent or that Hedge Counterparty.
- (c) Neither paragraph (a) nor (b) above, nor paragraph (b) of Clause 27.2 (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 (Proceeds of Disposals and Appropriation); or

(iii) to any waiver, amendment or consent of (or under) this Agreement required to implement a Structural Adjustment.

(d) Paragraphs (a) and (b) above shall apply to the Mandated Lead Arrangers only to the extent that Arranger Liabilities are then owed to the Mandated Lead Arrangers.

27.5 Non-responding Senior Creditor

If, in relation to:

(a) a request for a Consent in relation to any of the terms of this Agreement;

(b) a request to participate in any other vote of Senior Creditors under the terms of this Agreement;

(c) a request to approve any other action under this Agreement; or

(d) a request to provide any confirmation or notification under this Agreement;

any Senior Creditor:

(i) fails to vote on that request within 15 Business Days (or such longer period as may be specified in that request) of that request being made; or

(ii) (in the case of a Senior Creditor and paragraphs (a) to (c) above), fails to provide details of its Senior Credit Participation to the Security Agent within the timescale specified by the Security Agent:

(A) in the case of paragraphs (a) to (c) above, that Senior Creditor's Senior Credit Participation shall be deemed to be zero for the purpose of calculating the Senior Credit Participations when ascertaining whether any relevant percentage (including, for the avoidance of doubt, unanimity) of Senior Credit Participations has been obtained to give that Consent, carry that vote or approve that action;

(B) in the case of paragraphs (a) to (c) above, that Senior Creditor's status as a Senior Creditor shall be disregarded for the purposes of ascertaining whether the agreement of any specified group of Senior Creditors has been obtained to give that Consent, carry that vote or approve that action; and

(C) in the case of paragraph (d) above, that confirmation or notification shall be deemed to have been given.

27.6 Replacement of Non-Consenting Lender

In the event that the Parent elects, on five Business Days' written notice to a Senior Lender which is a Non-Consenting Lender and the Agent on an irrevocable and unconditional basis, to prepay or replace such Non-Consenting Lender in full in accordance with clause 41.3(a) (Replacement of Lender) of the Senior Facilities Agreement, then the Commitment and/or participation of such Non-Consenting Lender shall not be included for the purpose of calculating the Total Commitments or participations under the relevant Facility(ies) of the Senior Facilities Agreement when ascertaining whether any relevant percentage (including, for the avoidance of doubt, unanimity) of the Total Commitments and/or participations has been obtained to approve any request for a consent, waiver, amendment of,

or in relation to, any of the terms of any Finance Document or other vote of Senior Lenders under the terms of this Agreement or the Senior Facilities Agreement.

27.7 Disenfranchisement of Sponsor Affiliates/members of the Group

- (a) For so long as a Sponsor Affiliate or member of the Group (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:
- (A) the Majority Senior Lenders, Majority Senior Creditors, Majority Super Priority Creditors, Majority Pari passu Creditors and Majority Super Priority Lenders; or
- (B) whether:
- I. any relevant percentage (including, for the avoidance of doubt, unanimity) of Senior Credit Participations; or
- II. 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 (c)(ii) below, that Sponsor Affiliate or member of the Group (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 Senior Lender (except to the extent that a Counterparty is a Senior Lender by virtue otherwise than by beneficially owning the relevant Senior Commitment).
- (b) Paragraph (a) above does not apply to any request, consent, waiver, amendment or other vote or instruction under the Finance Documents which could reasonably be expected to result in the Commitment of the Sponsor Affiliate under a Facility being treated in a manner which is less favourable to it (in its capacity as a Lender under that Facility only) than the treatment proposed to be applied to the Commitments of the other Lenders under that Facility.
- (c) Each Sponsor Affiliate that is a Senior Lender agrees that:
- (i) in relation to any meeting or conference call to which all the Senior Creditors, all the Senior Creditors or any combination of those groups of 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.

27.8 Disenfranchisement of Defaulting Lenders and Sanctioned Finance Parties

- (a) For so long as a Defaulting Lender or a Sanctioned Finance Party has any Commitment in ascertaining:
- (i) the Majority Senior Lenders, Majority Senior Creditors, Majority Super Priority Creditors, Majority Pari passu Creditors and Majority Super Priority Lenders; or
 - (ii) 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 or Sanctioned Finance Party's (as applicable) Commitments will be reduced by the amount of its Commitments and, to the extent that that reduction results in that Defaulting Lender's or Sanctioned Finance Party's (as applicable) Commitments being zero, that Defaulting Lender or Sanctioned Finance Party (as applicable) shall be deemed not to be a Senior Lender.

- (b) For the purposes of this Clause 27.8, the Security Agent may assume that the following Creditors are Defaulting Lenders or Sanctioned Finance Parties (as applicable):
- (i) any Senior Lender which has notified the Security Agent that it has become a Defaulting Lender or a Sanctioned Finance Party (as applicable);
 - (ii) any Senior Lender to the extent that the relevant Agent has notified the Security Agent that that Senior Lender is a Defaulting Lender or a Sanctioned Finance Party (as applicable); and
 - (iii) any Senior Lender in relation to which it is aware that any of the events or circumstances referred to in paragraphs (a), (c) or (d) of the definition of **Defaulting Lender** in the Senior Facilities Agreement has occurred and/or any of the events or circumstances referred to in the definition of **Sanctioned Finance Party** has occurred (as applicable),

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

27.9 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.

27.10 Deemed consent

If, at any time prior to the Senior Discharge Date, the Senior Lenders give a Consent in respect of the Finance Documents in circumstances where the relevant Debtor is required to obtain a corresponding Consent under, or in relation to, any document evidencing Intra-Group Liabilities or Subordinated Liabilities to avoid a breach of or default under that document 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 Lenders may reasonably require to give effect to this Clause 27.10.

27.11 Excluded consents

Clause 27.10 (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 Transaction Security Document.

27.12 No liability

None of the Senior Lenders or the Agent will be liable to any other Creditor, Subordinated Creditor, Agent or Debtor for any Consent given or deemed to be given under this Clause 27.

27.13 Agreement to override

- (a) Unless expressly stated otherwise in this Agreement, this Agreement overrides anything in the Debt Documents to the contrary.
- (b) If all Liabilities owing to a Senior Lender or Hedge Counterparty are repaid in full, this Agreement may be amended or waived (no matter how fundamentally) without the consent of that Creditor (in its capacity as that class of Creditor).

28. COUNTERPARTS

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

29. CONTRACTUAL RECOGNITION OF BAIL-IN

Notwithstanding any other term of this Agreement, the Hedging Agreements, the Transaction Security Documents or the Finance Documents (for the purposes of this Clause 29, collectively the **Financing Documents**) or any other agreement, arrangement or understanding between the Parties, each Party acknowledges and accepts that any liability of any Party to any other Party under or in connection with the Financing Documents may be subject to Bail-In Action by the relevant Resolution Authority and acknowledges and accepts to be bound by the effect of:

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

- (iii) a cancellation of any such liability; and
- (b) a variation of any term of any Financing Document to the extent necessary to give effect to any Bail-In Action in relation to any such liability.

30. GOVERNING LAW

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

31. ENFORCEMENT

31.1 Jurisdiction

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

31.2 Service of process

- (a) Without prejudice to any other mode of service allowed under any relevant law:
 - (i) each Debtor (unless incorporated in England and Wales):
 - (A) 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
 - (B) agrees that failure by a process agent to notify the relevant Debtor of the process will not invalidate the proceedings concerned; and
 - (ii) each Subordinated Creditor (unless incorporated in England and Wales):
 - (A) 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
 - (B) agrees that failure by a process agent to notify the relevant Subordinated Creditor 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 Subordinated Creditors must immediately (and in any event within 14 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.

This agreement has been entered into on the date stated at the beginning of this Agreement and executed as a deed by the Parent and is intended to be and is delivered by it as a deed on the date specified above.

SCHEDULE 1

FORM OF DEBTOR ACCESSION DEED

THIS AGREEMENT is made on [●] and made between:

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

This agreement is made on [date] by the Acceding Debtor in relation to an intercreditor agreement (the **Intercreditor Agreement**) dated [●] 2023 between, amongst others, [●] as parent, [●] as security agent, [●] as facility agent, the other Creditors and the other Debtors (each as defined in the Intercreditor Agreement).

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

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

the **Relevant Documents**.

IT IS AGREED as follows:

1. Terms defined in the Intercreditor Agreement shall, unless otherwise defined in this Agreement, bear the same meaning when used in this Agreement.
2. The Acceding Debtor and the Security Agent agree that the Security Agent shall hold:
 - (a) [any Security in respect of Liabilities or any Parallel Debt created or expressed to be created pursuant to the Relevant Documents;
 - (b) all proceeds of that Security; and]¹
 - (c) all obligations expressed to be undertaken by the Acceding Debtor to pay amounts in respect of the Liabilities or the Parallel Debt pursuant to Clause 19.3 (Parallel Debt (Covenant to Pay the Security Agent)) to the Security Agent as trustee or security agent for and/or for the benefit of the Secured Parties (in the Relevant Documents or otherwise and including any Parallel Debt) 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 or security agent for the Secured Parties,

as trustee or security agent for and/or for the benefit of 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.
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

¹ 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.

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].**

[5]/[6] This agreement, and any non-contractual obligations arising out of or in connection with it, are governed by English law.

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

The Acceding Debtor

[EXECUTED AS A DEED)
By: [*Full Name of Acceding Debtor*])

_____ Director

_____ Director/Secretary

OR

[EXECUTED AS A DEED)
By: [*Full name of Acceding Debtor*])

_____ Signature of Director

_____ Name of Director

in the presence of

_____ Signature of witness

_____ Name of witness

_____ Address of witness

_____ Occupation of witness]

Address for notices:

Address:

Fax:

** Include this paragraph in the relevant Debtor Accession Deed if the Acceding Debtor is also to accede as an Intra-Group Lender to the Intercreditor Agreement.

The Security Agent

[Full Name of Current Security Agent]

By:

Date:

SCHEDULE 2

FORM OF CREDITOR/AGENT ACCESSION UNDERTAKING

To: [Insert full name of current Security Agent] for itself and each of the other parties to the Intercreditor Agreement referred to below.

[To: [Insert full name of current Agent] as Agent.]*

From: [Acceding Creditor/Agent]

THIS UNDERTAKING is made on [date] by [insert full name of new Super Priority Lender/Pari passu Lender/Hedge Counterparty/Agent/Intra-Group Lender/Subordinated Creditor] (the **Acceding [Super Priority Lender/Pari passu Lender/Hedge Counterparty/Agent/Intra-Group Lender/Subordinated Creditor]**) in relation to the intercreditor agreement (the **Intercreditor Agreement**) dated [●] 2023 between, among others, [●] as parent, [●] as security agent, [●] as facility 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 [Super Priority Lender/Pari passu Lender/Hedge Counterparty/Agent/Intra-Group Lender/Subordinated Creditor] being accepted as a [Super Priority Lender/Pari passu Lender/Hedge Counterparty/Intra-Group Lender/Agent/Subordinated Creditor] for the purposes of the Intercreditor Agreement, the Acceding [Super Priority Lender/Pari passu 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 [Super Priority Lender/Pari passu 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 [Super Priority Lender/Pari passu 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 Super Priority Lender 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 Senior Facilities Agreement, the Acceding Lender confirms, for the benefit of the parties to the Senior Facilities Agreement, that, as from [date], it intends to be party to the Senior Facilities Agreement as an Ancillary Lender, and undertakes to perform all the obligations expressed in the Senior Facilities Agreement to be assumed by a Finance Party and agrees that it shall be bound by all the provisions of the Senior Facilities Agreement, as if it had been an original party to the Senior Facilities Agreement as an Ancillary Lender.]

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

The Acceding Creditor confirms and ratifies all acts the Security Agent has undertaken and all declarations the Security Agent made to create security interest for the benefit of any of the Secured Parties.

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

* Include only in the case of (i) a Hedge Counterparty or (ii) an Ancillary Lender which is an Affiliate of a Senior Lender.

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/Agent]

[EXECUTED as a DEED]
[insert full name of Acceding Creditor/Agent]

By:

Address:

Fax:

Accepted by the Security Agent

[Accepted by the Agent]

for and on behalf of

for and on behalf of

[Insert full name of current Security Agent]

[Insert full name of Agent]

Date:

Date:**

** Include only in the case of (i) a Hedge Counterparty or (ii) an Ancillary Lender which is an Affiliate of a Senior Lender.

SCHEDULE 3

FORM OF DEBTOR RESIGNATION REQUEST

To: [●] as Security Agent

From: [*resigning Debtor*] and [●]

Dated:

Dear Sirs

**Project [●] – Intercreditor Agreement
dated [●] 2023 (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 21.12 (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.

[●]

[*resigning Debtor*]

By:

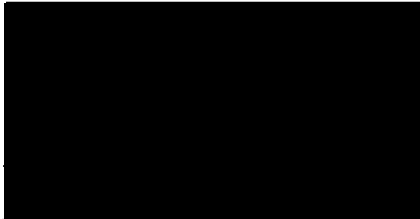
By:

SIGNATORIES

PARENT

EXECUTED as a **DEED** by

HERON UK FINCO LIMITED



acting by

Name:



Title: Director

Witness:

Name:

Address:

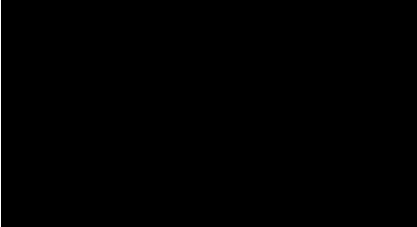


Occupation: TAX (VICE PRESIDENT)

TOPCO as SUBORDINATED CREDITOR

EXECUTED as a DEED by

HERON UK MIDCO LIMITED



acting by

Name:

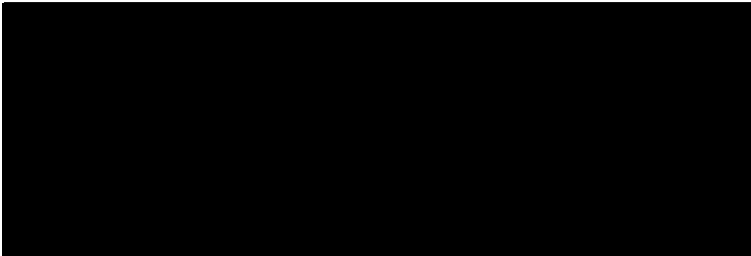


Title: Director

Witness:

Name:

Address:



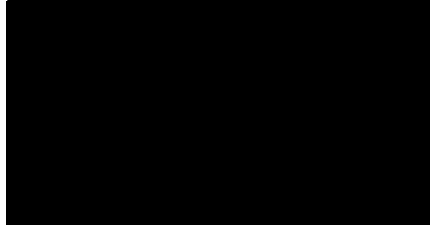
Occupation:

TAX (VICE PRESIDENT)

ORIGINAL DEBTORS

EXECUTED as a **DEED** by

HERON UK FINCO LIMITED



acting by

Name:



Title: Director

Witness:

Name:

Address:



Occupation: TAX (VICE PRESIDENT)

EXECUTED as a **DEED** by

HERON UK BIDCO LIMITED



acting by

Name:

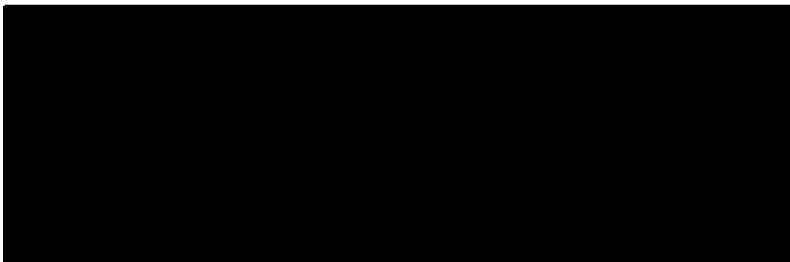


Title: Director

Witness:

Name:

Address:

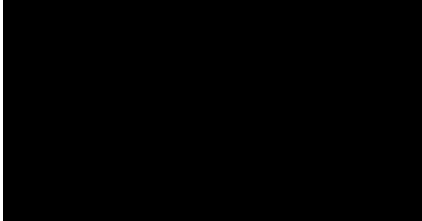


Occupation: TAX (VICE PRESIDENT)

INTRA-GROUP LENDERS

EXECUTED as a **DEED** by

HERON UK FINCO LIMITED



acting by 

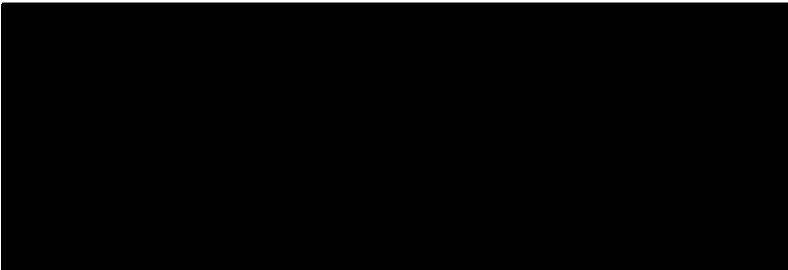
Name: 

Title: Director

Witness:

Name:

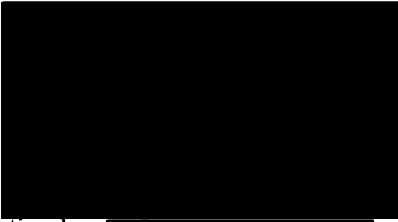
Address:



Occupation: TAX (VICE PRESIDENT)

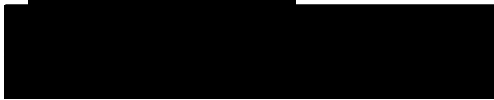
EXECUTED as a **DEED** by

HERON UK BIDCO LIMITED



acting by

Name:

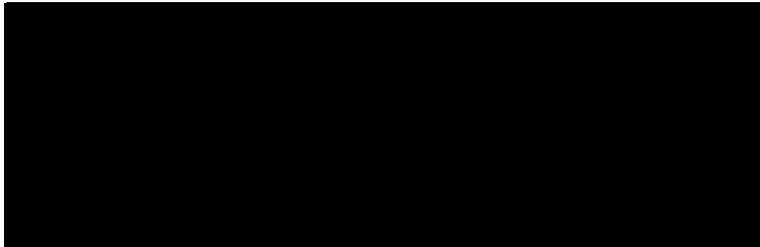


Title: Director

Witness:

Name:

Address:



Occupation: TAX (VICE PRESIDENT)

MANDATED LEAD ARRANGERS

HAYFIN DLF IV LUXCO S.À R.L.

By:  _____
Name:  _____
Title: _____

 _____
 _____

DEUTSCHE BANK AG, LONDON BRANCH

By:



Name:

Title:

A.S.



Managing Director

PARI PASSU LENDERS

HAYFIN DLF IV LUXCO S.À R.L.

By:  _____
Name:  _____
Title: _____

 _____
 _____

AGENT

GLOBAL LOAN AGENCY SERVICES LIMITED

By:  _____

Name:  _____

Title: Transaction Management Group Team Leader

SECURITY AGENT

GLAS TRUST CORPORATION LIMITED

By:



Name:

Title:

Transaction Management Group Team Leader