

Dated 27 July 2021

Intercreditor Agreement

between

HSBC BANK PLC
as Agent

HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED
as Security Agent

THE LENDERS

ANTWERP INVESTMENTS LIMITED
as Parent

ANTWERP MANAGEMENT LIMITED
as the Company

and

Others

White & Case LLP
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London EC2N 1DW

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This Agreement is dated 27 July 2021 and made

Between:

- (1) **HSBC BANK PLC** as agent under the Senior Facilities Agreement (the “**Agent**”);
- (2) **HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED** as security agent and security trustee for the Secured Parties (the “**Security Agent**”).
- (3) **The Financial Institutions** named on the signing pages as original lenders under the Senior Facilities Agreement (the “**Original Lenders**”);
- (4) **NATIONAL WESTMINSTER BANK PLC, HSBC UK BANK PLC and NATWEST MARKETS PLC** as mandated lead arrangers under the Senior Facilities Agreement (whether acting individually or together, the “**Arrangers**”);
- (5) **ANTWERP INVESTMENTS LIMITED** (the “**Parent**”);
- (6) **ANTWERP MANAGEMENT LIMITED** (the “**Company**”, the “**Original Debtor**”, the “**Original Guarantor**” and the “**Original Intra-Group Lender**”);

It is agreed as follows:

Section 1 Interpretation

1. Definitions and Interpretation

1.1 Definitions

In this Agreement:

“**Acceleration Event**” means an Event of Default in respect of which notice has been served by the Agent pursuant to clause 26.18 (*Acceleration*) of the Senior Facilities Agreement.

“**Additional Guarantor**” means each person which becomes a Party as a Guarantor in accordance with Clause 19.10 (*New Debtor and/or Guarantor*), unless it has ceased to be a Guarantor in accordance with the terms of this Agreement.

“**Aggregate Interest Rate Hedged Amount**” means, in relation to a Hedge Counterparty, the aggregate of the notional amounts hedged by the relevant Debtors under each Hedging Agreement that is an interest rate hedge transaction and to which that Hedge Counterparty is party (but, for the purposes of calculating such notional amounts, after taking into account the net effect of any additional hedge transaction entered into by the relevant Debtor with that Hedge Counterparty in connection with reducing or negating exposure under the original interest rate hedge transaction under such Hedging Agreement, such additional hedge transaction being, an “**Offsetting Swap**”).

“**Agreed Security Principles**” means the principles set out in Schedule 4 (*Agreed Security Principles*).

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

“**Automatic Early Termination**” means the termination or close-out of any hedging transaction prior to the maturity of that hedging transaction which is brought about

automatically by the terms of the relevant Hedging Agreement and without any party to the relevant Hedging Agreement taking any action to terminate that hedging transaction.

“Borrowing Liabilities” means, in relation to any Debtor, the liabilities and obligations (not being Guarantee Liabilities) it may have as a principal debtor to a Creditor (other than to an Arranger or the Agent only and not, for the avoidance of doubt, in its capacity as a Lender (if applicable)) or the 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 or issuer under the Debt Documents).

“Cash Proceeds” means:

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

“Charged Property” means all of the assets of the Parent and any member of the Group which from time to time are, or are expressed to be, the subject of the Transaction Security.

“Close-Out Netting” means, in respect of a Hedging Agreement or a Hedging Ancillary Document, any step involved in determining an Early Termination Amount (as defined in the ISDA Master Agreement) under section 6(e) (*Payments on Early Termination*) of the ISDA Master Agreement before the application of any subsequent set-off under section 6(f) of the ISDA Master Agreement.

“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 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 agent for itself and 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 agent for the Secured Parties is created in favour of all the Secured Parties in respect of their Liabilities,

and which ranks in the order of priority contemplated in Clause 2.2 (*Transaction Security*).

“Competitive Sales Process” means:

- (a) any auction or other competitive sales process conducted with the advice of a Financial Adviser appointed by, or approved by, the Security Agent pursuant to Clause 12.5 (*Appointment of Financial Adviser*); and
- (b) any enforcement of the Transaction Security carried out by way of auction or other competitive sales process pursuant to requirements of applicable law.

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

“Corresponding Commitment” means, in relation to a Hedge Counterparty, its (or its Affiliate’s) Commitment under the Senior Facilities Agreement as a Lender.

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

“Creditor Accession Undertaking” means:

- (a) an undertaking substantially in the form set out in Schedule 2 (*Form of Creditor Accession Undertaking*);
- (b) a Transfer Certificate, an Assignment Agreement, an Increase Confirmation or an Incremental Facility Lender Accession Notice,

as the context may require, or

- (c) in the case of an acceding Debtor which is expressed to accede as an Intra-Group Lender in the relevant Debtor/Guarantor Accession Deed, that Debtor/Guarantor Accession Deed.

“Creditors” means the External Creditors, the Intra-Group Lenders and the Parent.

“Debt Disposal” means any disposal of any Liabilities or Debtors’ Intra-Group Receivables pursuant to paragraphs (c) or (d) of Clause 12.1 (*Facilitation of Distressed Disposals and Appropriation*).

“Debt Document” means each Finance Document, any Hedging Agreement, any agreement evidencing (whether or not in writing) or account record of the terms of the Parent Liabilities or the Intra-Group Liabilities and any other document designated as such by the Security Agent and the Company.

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

“Debtor/Guarantor Accession Deed” means:

- (a) a deed substantially in the form set out in Schedule 1 (*Form of Debtor/Guarantor 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 and in the form required by the Senior Facilities Agreement.

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

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

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

“Disposal Proceeds” has the meaning given to that term in Clause 11.1 (*Definitions*).

“Distress Event” means any of:

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

“Distressed Disposal” means a disposal of an asset of the Parent or a member of the Group which is:

- (a) being effected at the request of the Majority External Creditors in circumstances where the Transaction Security has become enforceable in accordance with the relevant Transaction Security Document and this Agreement;

- (b) being effected by enforcement of the Transaction Security (including, without limitation, the disposal of any Property of a member of the Group or the Parent, the shares in which have been subject to an Appropriation); or
- (c) being effected, after the occurrence of a Distress Event, by a Debtor or the Parent to a person or persons which is, or are, not a member, or members of the Group.

“**Enforcement Action**” means:

- (a) in relation to any Liabilities:
 - (i) the acceleration of any Liabilities or the making of any declaration that any Liabilities are prematurely due and payable other than as a result of it becoming unlawful for the relevant External Creditor to perform its obligations under, or of any voluntary or mandatory prepayment or redemption arising under, the relevant Debt Documents;
 - (ii) the making of any declaration that any Liabilities which were not previously payable on demand have become payable on demand;
 - (iii) the making of a demand in relation to a Liability that is payable on demand other than a Permitted Payment;
 - (iv) the exercise of any right of set-off, account combination or payment netting against any Debtor 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; or
 - (E) which is otherwise expressly permitted under the Finance Documents to the extent that the exercise of that right gives effect to a Permitted Payment; and
 - (v) the suing for, commencing or joining of any legal or arbitration proceedings against any Debtor or the Parent or to recover any Liabilities;
- (b) the premature termination or close-out of any hedging transaction under any Hedging Agreement;
- (c) the taking of any steps to enforce or require enforcement of any Transaction Security (including the crystallisation of any floating charge forming part of the Transaction Security);
- (d) the entering into of any composition, compromise, assignment or arrangement with any Debtor or the Parent which owes any Liabilities, or has given any Security, guarantee or indemnity or other assurance against loss in respect of the Liabilities (other than any action permitted under Clause 19 (*Changes to the Parties*)); or
- (e) save to the extent permitted by the Finance Documents, the petitioning, applying or voting for, or the taking of any steps (including the appointment of any liquidator, receiver, administrator or similar officer) in relation to, the winding up, dissolution,

administration or reorganisation of any Debtor or the Parent 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 any Debtor's or the Parent's assets or any suspension of payments or moratorium of any indebtedness of any Debtor or the Parent, or any analogous procedure or step in any jurisdiction,

except that the following will not constitute Enforcement Action:

- (i) the taking of any action falling within paragraphs (a)(v) or (e) above which is necessary (but only to the extent necessary) to preserve the validity, existence or priority of claims in respect of Liabilities, including the registration of such claims before any court or governmental authority and the bringing, supporting or joining of proceedings to prevent any loss of the right to bring, support or join proceedings by reason of applicable limitation periods; and
- (ii) an External Creditor 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 Finance Document to which it is party;
 - (B) obtaining specific performance (other than specific performance of an obligation to make a payment) with no claim for damages; or
 - (C) requesting judicial interpretation of any provision of any Finance Document to which it is party with no claim for damages.

“**Exposure**” has the meaning given to it in Clause 17.1 (*Equalisation Definitions*).

“**External Credit Participation**” means, in relation to an External Creditor:

- (a) in relation to the Lender Liabilities:
 - (i) prior to any Enforcement Action, its aggregate Commitments under the Senior Facilities Agreement; and
 - (ii) at any time following any Enforcement Action, its aggregate participation in any loans outstanding under the Senior Facilities Agreement (including, if applicable, any accretion through indexation, make-whole amount or otherwise);
- (b) after the Senior Facilities Discharge Date only, in respect of any hedging transaction of that External 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),

to the extent that amount constitutes Hedging Liabilities, such amount, in each case, to be certified by the relevant Hedge Counterparty and as calculated in accordance with the relevant Hedging Agreement; and

- (c) in respect of any hedging transaction of that External Creditor under any Hedging Agreement which 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 to the extent that amount is unpaid (that amount to be certified by the relevant Hedge Counterparty and as calculated in accordance with the relevant Hedging Agreement) (its “**Closed Out Liabilities**”).

“**External Creditor Liabilities**” means the Senior Facilities Liabilities and the Hedging Liabilities.

“**External Creditors**” means the Senior Facilities Creditors and the Hedge Counterparties.

“**Fairness Opinion**” means, in respect of a Liabilities Sale or a Distressed Disposal, an opinion that the proceeds received or recovered in connection with that Liabilities Sale or Distressed Disposal are fair from a financial point of view taking into account all relevant circumstances, including, without limitation, the method of enforcement or disposal.

“**Final Discharge Date**” means the first date on which:

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

“**Financial Adviser**” means any:

- (a) independent internationally recognised investment bank;
- (b) independent internationally recognised accountancy firm; or
- (c) other independent internationally recognised professional services firm which is regularly engaged in providing valuations of businesses or financial assets or, where applicable, advising on competitive sales processes.

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

“**Guarantor**” means each Original Guarantor and each Additional Guarantor.

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

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

“Hedging Ancillary Lender” means an Ancillary Lender to the extent that that Ancillary Lender makes available a Hedging Ancillary Facility.

“Hedging Force Majeure” means, in relation to a Hedging Agreement, an Illegality or Tax Event, Tax Event Upon Merger or a Force Majeure Event (each as defined in the ISDA Master Agreement).

“Hedging Liabilities” means the Liabilities owed by any Debtor to the Hedge Counterparties under or in connection with the Hedging Agreements.

“Insolvency Event” means, in relation to any Debtor or the Parent:

- (a) any resolution is passed or petition or order made for the winding-up, dissolution, administration or reorganisation of that Debtor or the Parent, a moratorium is declared in relation to any indebtedness of that Debtor or the Parent (as applicable) or an administrator is appointed to that Debtor or the Parent (as applicable);
- (b) any composition, compromise, assignment or arrangement is made with any of its creditors;
- (c) the appointment of any liquidator, receiver, administrative receiver, administrator, compulsory manager, bankruptcy trustee, interim bankruptcy trustee or other similar officer in respect of that Debtor or the Parent or any of their respective assets; or
- (d) any analogous procedure or step is taken in any jurisdiction,

other than:

- (A) any winding-up petition which is (x) being contested in good faith by the relevant Debtor or the Parent; or (y) frivolous or vexatious and, in each case, is discharged, stayed or dismissed within 21 days of commencement; or
- (B) any Permitted Transaction; or
- (C) in respect of any such action, legal proceedings or step over or relating to assets, the aggregate value of which does not exceed GBP 5,000,000 (or its equivalent in any other currencies).

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

“Interest Rate Hedge Excess” means the amount (if any) by which the Total Interest Rate Hedged Amount exceeds the Permitted Maximum Interest Rate Hedged Amount.

“Interest Rate Hedged Outstandings” means the aggregate of all principal amounts outstanding under the Senior Facilities Agreement from time to time, excluding (i) the aggregate of all such principal amounts issued or incurred on a fixed rate basis; and (ii) the aggregate of all such principal amounts under any revolving or re-drawable facility (including the Revolving 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 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 External Creditor Liabilities owed to that Hedging Ancillary Lender by that Debtor under another Hedging Ancillary Document.

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

“Intra-Group Liabilities” means the Liabilities owed by any member of the Group to any of the Intra-Group Lenders.

“ISDA Benchmarks Supplement” means the ISDA Benchmarks Supplement, published by the International Swaps and Derivatives Association, Inc. on 19 September 2018.

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

“Lender Liabilities” means the Liabilities owed by any Debtor to the Lenders and any Ancillary Lenders under the Finance Documents.

“Liabilities” means all present and future liabilities and obligations at any time of any Debtor or the Parent to any Creditor under the Debt Documents, both actual and contingent and whether incurred solely or jointly or as principal or surety or in any other capacity together with any of the following matters relating to or arising in respect of those liabilities and obligations:

- (a) any refinancing, novation, deferral or extension;
- (b) any claim for breach of representation, warranty or undertaking or on an event of default or termination event 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;
- (d) any claim as a result of any recovery by any Debtor or the Parent 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 or acquires 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.

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

“Majority External Creditors” means, at any time, subject to Clause 25.6 (*Disenfranchisement of Sponsor Affiliates*) and Clause 25.7 (*Disenfranchisement of Defaulting Lenders*), those External Creditors whose External Credit Participations at that time aggregate more than 66^{2/3} per cent. of the total External Credit Participations at that time.

“MTM Liabilities” means in respect of any hedging transaction of a Hedge Counterparty under any Hedging Agreement that has, as of the date the calculation is made, not been terminated or closed out, 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 ISDA Master Agreement) for which the relevant Debtor is the Defaulting Party (as defined in the ISDA Master Agreement), as certified by the relevant Hedge Counterparty and as calculated in accordance with the relevant Hedging Agreement and after taking into account the net effect of any Offsetting Swap, **provided that** in relation to any consent or waiver being requested of a Hedge Counterparty under this Agreement, the date of calculation referred to above shall be the date of the relevant request for consent in respect of such consent or waiver.

“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 a Debt Disposal;
- (b) any shares in the capital of a member of the Group received by the Security Agent as a result of an Appropriation; or
- (c) any amount distributed to the Security Agent pursuant to Clause 8.2 (*Turnover by the Creditors*),

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

“Non-Credit Related Close-Out” means a Permitted Hedge Close-Out described in any of paragraphs (a)(v) to (a)(xiii) of Clause 4.9 (*Permitted Enforcement: Hedge Counterparties*).

“Non-Distressed Disposal” has the meaning given to that term in Clause 11.1 (*Definitions*).

“Offsetting Swap” has the meaning given to such term in the definition of Aggregate Interest Rate Hedged Amount.

“Other Liabilities” means, in relation to any Debtor, any trading and other liabilities and obligations (not being Borrowing Liabilities or Guarantee Liabilities) it may have to the Parent, an Intra-Group Lender.

“Parent Liabilities” means any Liabilities owed by the Company to the Parent in respect of any loan, credit or other financial arrangement having similar effect that the Parent has made or granted to the Company.

“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) other than that satisfied by way of Close-Out Netting or Payment Netting.

“Payment Netting” means in respect of a Hedging Agreement or a Hedging Ancillary Document based on an ISDA Master Agreement, netting under section 2(c) of the ISDA Master Agreement.

“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 Lender Payments” means the Payments permitted by Clause 3 (*Payment of Facilities Liabilities*).

“Permitted Maximum Interest Rate Hedged Amount” means, at any time, an amount equal to 110 per cent. of the Interest Rate Hedged Outstandings at that time.

“Permitted Parent Payments” means the Payments permitted by Clause 5.3 (*Permitted Payments: Parent Liabilities*).

“Permitted Payment” means a Permitted Lender Payment, a Permitted Hedge Payment, a Permitted Intra-Group Payment or a Permitted Parent Payment.

“Property” of a Debtor or the Parent means:

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

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

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

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

“Relevant Liabilities” means:

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

“Secured Obligations” means all the Liabilities and all other present and future liabilities and obligations at any time due, owing or incurred by any Debtor or the Parent to any Secured Party

under the Finance Documents, both actual and contingent and whether incurred solely or jointly and as principal or surety or in any other capacity.

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

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

“**Security Documents**” means:

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

“**Security Property**” means:

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

“**Senior Facilities Agreement**” means the facilities agreement made between, amongst others, the Company, the Lenders and the Agent dated on or about the date of this Agreement.

“**Senior Facilities Creditors**” means the Agent, the Security Agent, each Arranger, each Lender and each Ancillary Lender

“**Senior Facilities Discharge Date**” means the first date on which all Senior Facilities Liabilities have been fully and finally discharged to the satisfaction of the Agent, whether or not as the result of an enforcement, and the Senior Facilities Creditors are under no further obligation to provide financial accommodation to any Debtor under the Finance Documents.

“**Senior Facilities Liabilities**” mean the Liabilities owed by the Debtors and the Parent to the Senior Facilities Creditors under the Finance Documents.

“**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**” means:

- (a) each Investor and each of its Affiliates;
- (b) any trust of which an Investor or any of its Affiliates is a trustee;
- (c) any partnership of which an Investor or any of its Affiliates is a partner; and
- (d) any trust, fund or other entity which is managed or advised by, or is under the control of, an Investor or any of its Affiliates provided that any such trust, fund or other entity which has been established for at least six months solely for the purpose of making, purchasing or investing in loans or debt securities and which is managed, advised or controlled independently from all other trusts, funds or other entities managed, advised or controlled by the Investors or any of their Affiliates which has been established for the primary or main purpose of investing in the share capital of companies shall not constitute a Sponsor Affiliate.

“**Term Outstandings**” means, at any time, the aggregate of the amounts of principal (not including any capitalised or deferred interest) then outstanding under:

- (a) the Term Facility; and
- (b) any Incremental Facility which represents term indebtedness and is not otherwise of a revolving nature.

“**Total Interest Rate Hedged Amount**” means, at any time, the aggregate of each Aggregate Interest Rate Hedged Amount at that time.

1.2 Construction

- (a) Capitalised terms defined in the Senior Facilities Agreement have, unless expressly defined in this Agreement, the same meaning when used in this Agreement.
- (b) Unless a contrary indication appears, a reference in this Agreement to:
 - (i) any “**Agent**”, “**Ancillary Lender**”, “**Arranger**”, “**Company**”, “**Creditor**”, “**Debtor**”, “**Delegate**”, “**External Creditor**”, “**Hedge Counterparty**”, “**Intra-Group Lender**”, “**Investor**”, “**Lender**”, “**Parent**”, “**Party**”, “**Receiver**”, “**Security Agent**”, “**Senior Facilities Creditor**” or “**Sponsor Affiliate**” or any other person:
 - (A) shall be construed to be a reference to it in its capacity as such and not in any other capacity; and
 - (B) shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Debt Documents and, in the case of the Security Agent, any person for the time being appointed as Security Agent or Security Agents in accordance with this Agreement;
 - (ii) an “**amount**” includes an amount of cash and an amount of Non-Cash Consideration;
 - (iii) “**assets**” includes present and future properties, revenues and rights of every description;

- (iv) in the context of a particular Debt Document, a Default or an Event of Default continuing shall (if appropriate) have the meaning given to it under that Debt Document;
 - (v) a Debt Document or any other agreement or instrument is (other than a reference to a Debt Document or any other agreement or instrument in “**original form**”) a reference to that Debt Document, or other agreement or instrument, as amended, novated, supplemented, extended or restated as permitted by this Agreement;
 - (vi) a “**distribution**” of or out of the assets of a Debtor or the Parent, includes a distribution of cash and a distribution of Non-Cash Consideration;
 - (vii) “**enforcing**” (or any derivation) the Transaction Security includes the appointment of an administrator (or any analogous officer in any jurisdiction) of a Debtor or the Parent by the Security Agent;
 - (viii) a “**group of Creditors**” includes all the Creditors and a “**group of External Creditors**” includes all the External Creditors;
 - (ix) “**indebtedness**” includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
 - (x) the “**original form**” of a Debt Document or any other agreement or instrument is a reference to that Debt Document, agreement or instrument as originally entered into;
 - (xi) a “**person**” includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
 - (xii) “**proceeds**” of a Distressed Disposal or of a Debt Disposal includes proceeds in cash and in Non-Cash Consideration;
 - (xiii) a “**regulation**” includes any regulation, rule, official directive, request or guideline (having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
 - (xiv) a provision of law is a reference to that provision as amended or re-enacted from time to time; and.
 - (xv) a time of day is a reference to London time.
- (c) Section, Clause and Schedule headings are for ease of reference only.
- (d) If all of the Liabilities under any Debt Document owing to a particular Creditor or group of Creditors have been unconditionally and irrevocably paid and discharged in full and all commitments of those Creditors to provide for Liabilities under those Debt Documents have been terminated in full, then unless the context otherwise requires:
- (i) the relevant Debt Documents will cease to be Debt Documents for the purposes of this Agreement; and
 - (ii) the relevant Creditors will cease to be Senior Facilities Creditors and Hedge Counterparties (as the case may be) for all purposes under this Agreement and shall no longer be deemed to be a Party.

1.3 Interpretation

Any reference to the Security Agent acting “reasonably” or in the reasonable opinion of the Security Agent shall not constrain the instructions that may be provided to the Security Agent in accordance with Clause 18.2 (*Instructions*) and the Security Agent shall not be responsible for any consequences in acting or refraining from acting in accordance therewith.

1.4 Third Party Rights

- (a) Unless expressly provided to the contrary in this Agreement, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the “**Third Parties Act**”) to enforce or to enjoy the benefit of any term of this Agreement.
- (b) Notwithstanding any term of this Agreement, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.
- (c) Any Receiver, Delegate or any other person described in paragraph (b) of Clause 18.10 (*Exclusion of liability*) may, subject to this Clause 1.3 and the Third Parties Act, rely on any Clause of this Agreement which expressly confers rights on it.

1.5 Currency symbols and definitions

“£”, “GBP” or “sterling” denote the single currency of the United Kingdom.

1.6 Effect as a deed

It is intended that this document takes effect as a deed notwithstanding the fact that a party may only execute this document under hand.

Section 2

Ranking and Primary Creditors

2. Ranking and Priority

2.1 External Creditor Liabilities

Each of the Parties agrees that, subject to Clause 16.1 (*Order of application*), the Senior Facilities Liabilities and the Hedging Liabilities rank in right and priority of payment on a *pari passu* basis and without any preference between them.

2.2 Transaction Security

Each of the Parties agrees that, subject to Clause 16.1 (*Order of application*), the Transaction Security shall rank and secure the Senior Facilities Liabilities and the Hedging Liabilities *pari passu* and without any preference between them.

2.3 Parent and Intra-Group Liabilities

- (a) Each of the Parties agrees that the Parent Liabilities and the Intra-Group Liabilities are postponed and subordinated to the External Creditor Liabilities.
- (b) This Agreement does not purport to rank any of the Parent Liabilities or the Intra-Group Liabilities as between themselves.

3. Senior Facilities Creditors and Senior Facilities Liabilities

3.1 Payment of Senior Facilities Liabilities

The Debtors may make Payments of the Senior Facilities Liabilities at any time in accordance with the Senior Facilities Agreement.

3.2 Amendments and Waivers: Senior Facilities Creditors

The Senior Facilities Creditors may amend or waive the terms of any Finance Document in accordance with its terms (and subject to any consent required under it) at any time.

3.3 Designation of Finance Documents

If the terms of a document effect a change which would, if that change were effected by way of an amendment to, waiver of or supplement to the terms of a Finance Document, require a notification by or the consent of the Hedge Counterparties under Clause 25.4 (*Exceptions*), that document shall not constitute a Finance Document for the purposes of this Agreement or a "Finance Document" for the purposes of any Debt Document without such a notification by or the prior consent of the Hedge Counterparties.

3.4 Security: Senior Facilities Creditors

Other than as set out in Clause 3.5 (*Security: Ancillary Lenders*), each Senior Facilities Creditor may take, accept or receive the benefit of:

- (a) any Security in respect of the Senior Facilities Liabilities in addition to the Common Transaction Security if and to the extent legally possible and subject to the Agreed Security Principles at the same time, it is also offered (except for any Security permitted under Clause 3.5 (*Security: Ancillary Lenders*)) either:
 - (i) to the Security Agent as trustee or agent 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 to the other Secured Parties in respect of their Liabilities,

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 in respect of the Senior Facilities Liabilities in addition to those in:
 - (i) the original form of the Senior Facilities Agreement;
 - (ii) any Common Assurance ; or
 - (iii) this Agreement,

if and to the extent legally possible and subject to the Agreed Security Principles at the same time it is also offered (except for any guarantee, indemnity or other assurance against loss permitted under Clause 3.5 (*Security: Ancillary Lenders*)) 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*).

3.5 **Security: Ancillary Lenders**

No Ancillary Lender will, unless the prior consent of the Majority External Creditors is obtained, take, accept or receive from any member of the Group or the Parent the benefit of any Security, guarantee, indemnity or other assurance against loss in respect of any of the Liabilities owed to it other than:

- (a) the Common Transaction Security;
- (b) any guarantee, indemnity or other assurance in respect of the relevant Senior Facilities Liabilities against loss contained in:
 - (i) the original form of the Finance Documents;
 - (ii) any Common Assurance; or
 - (iii) this Agreement;
- (c) that which is set out in Clause 3.4 (*Security: Senior Facilities Creditors*);
- (d) indemnities and assurances against loss contained in the Ancillary Documents no greater in extent than any of those referred to in paragraph (b) above;
- (e) any SFA Cash Cover permitted under the Senior Facilities Agreement relating to any Ancillary Facility;
- (f) the indemnities and rights of set-off contained in an ISDA Master Agreement; or
- (g) any Security, guarantee, indemnity or other assurance against loss giving effect to, or arising as a result of the effect of, any netting or set-off arrangement relating to the Ancillary Facilities for the purpose of netting debit and credit balances arising under the Ancillary Facilities.

3.6 **Restriction on Enforcement: Ancillary Lenders**

Subject to Clause 3.7 (*Permitted Enforcement: Ancillary Lenders*), so long as any of the Senior Facilities Liabilities (other than any Liabilities owed to the Ancillary Lenders) are or may be

outstanding, none of the Ancillary Lenders shall be entitled to take any Enforcement Action in respect of any of the Liabilities owed to it in its capacity as an Ancillary Lender.

3.7 Permitted Enforcement: Ancillary Lenders

- (a) Each Ancillary Lender may take Enforcement Action which would be available to it but for Clause 3.6 (*Restriction on Enforcement: Ancillary Lenders*) if:
- (i) at the same time as, or prior to, that action, Enforcement Action has been taken in respect of the Senior Facilities Liabilities (excluding the Liabilities owing to Ancillary Lenders), in which case the Ancillary Lenders may take the same Enforcement Action as has been taken in respect of those Senior Facilities Liabilities;
 - (ii) that action is contemplated by the Senior Facilities Agreement or Clause 3.5 (*Security: Ancillary Lenders*);
 - (iii) that Enforcement Action is taken in respect of SFA Cash Cover which has been provided in accordance with the Senior Facilities Agreement;
 - (iv) at the same time as or prior to, that action, the consent of the Majority External Creditors to that Enforcement Action is obtained; or
 - (v) an Insolvency Event has occurred in relation to any Debtor, in which case after the occurrence of that Insolvency Event, each Ancillary Lender shall be entitled (if it has not already done so) to exercise any right it may otherwise have in respect of that Debtor to:
 - (A) accelerate the Senior Facilities Liabilities owed by that Debtor to that Ancillary Lender in such capacity 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 Senior Facilities Liabilities owed by that Debtor to that Ancillary Lender in such capacity;
 - (C) exercise any right of set-off or take or receive any Payment in respect of any Senior Facilities Liabilities owed by that Debtor to that Ancillary Lender in such capacity; or
 - (D) claim and prove in any insolvency process of that Debtor for the Senior Facilities Liabilities owed to that Ancillary Lender in such capacity.
- (b) Clause 3.6 (*Restriction on Enforcement: Ancillary Lenders*) shall not restrict any right of an Ancillary Lender:
- (i) to demand repayment or prepayment of any of the Liabilities owed to it prior to the expiry date of the relevant Ancillary Facility; or
 - (ii) to net or set off in relation to a Multi-account Overdraft,
- in accordance with the terms of any Finance Document and to the extent that the demand is required to reduce, or the netting or set-off represents a reduction from, the Gross Outstandings of that Multi-account Overdraft to or towards an amount equal to its Net Outstandings.

4. Hedge Counterparties and Hedging Liabilities

4.1 Identity of Hedge Counterparties

- (a) Subject to paragraph (b) below, no entity providing hedging arrangements to any Debtor shall be entitled to share in any of the Transaction Security or in the benefit of any guarantee or indemnity in respect of any of the liabilities and obligations arising in relation to those hedging arrangements nor shall those liabilities and obligations be treated as Hedging Liabilities unless that entity is or becomes a party to this Agreement and the Senior Facilities Agreement as a Hedge Counterparty.
- (b) Paragraph (a) 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 (b) of Clause 4.9 (*Permitted Enforcement: Hedge Counterparties*).

4.3 Permitted Payments: Hedging Liabilities

- (a) Subject to paragraph (b) below, the Debtors may make Payments to any Hedge Counterparty in respect of the Hedging Liabilities then due to that Hedge Counterparty under any Hedging Agreement in accordance with the terms of that Hedging Agreement:
 - (i) if the Payment is a scheduled Payment arising under the relevant Hedging Agreement;
 - (ii) to the extent that the relevant Debtor's obligation to make the Payment arises as a result of the operation of 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 ISDA Master Agreement;
 - (iii) to the extent that the relevant Debtor's obligation to make the Payment arises from a Non-Credit Related Close-Out;
 - (iv) subject to Clause 4.9 (*Permitted Enforcement: Hedge Counterparties*) to the extent that the Debtor's obligation to make the Payment arises from a Credit Related Close-Out in relation to that Hedging Agreement;
 - (v) to the extent that no Event of Default in respect of a Debtor is continuing or would result from that Payment and the relevant Debtor's obligation to make the Payment arises as a result of a close-out or termination arising as a result of:
 - (A) section 5(a)(vii) (*Bankruptcy*) of the ISDA Master Agreement and the Event of Default (as defined in the relevant Hedging Agreement) has occurred with respect to the relevant Hedge Counterparty; or
 - (B) the relevant Debtor terminating or closing-out the relevant Hedging Agreement as a result of a Hedging Force Majeure and the Termination

Event (as defined in the relevant Hedging Agreement) has occurred with respect to the relevant Hedge Counterparty; or

- (vi) to the extent that the relevant Debtor's obligation to meet the Payment arises from its own termination or close out of the relevant Hedging Agreement where such termination or close out has not resulted in a breach of a Debt Document;
 - (vii) to the extent such Payment is an Adjustment Payment (as defined in the ISDA Benchmarks Supplement); or
 - (viii) if the Majority External Creditors give prior consent to the Payment being made.
- (b) No Payment may be made to a Hedge Counterparty under paragraph (a) above if any scheduled Payment due from that Hedge Counterparty to a Debtor under a Hedging Agreement to which they are both party is due and unpaid without the prior consent of the Majority External Creditors unless:
- (i) the Hedge Counterparty has withheld such amounts in accordance with section 2(a)(iii) (General Obligations) of the ISDA Master Agreement; or
 - (ii) the Hedge Counterparty has already designated an Early Termination Date (as defined in the relevant ISDA Master Agreement).
- (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 Debt 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. However, the Debtors shall not be required to make any Payment (including any accrued default interest) until any restrictions that may prevent it from making such Payment pursuant to the terms of any of those Clauses have ceased to exist.

4.5 **No acquisition of Hedging Liabilities**

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

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

in respect of any of the Hedging Liabilities unless the prior consent of the Majority External 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 unless the prior consent of the Majority External Creditors is obtained.
- (b) A Hedge Counterparty may amend or waive any term of a Hedging Agreement in accordance with the terms of that Hedging Agreement if:

- (i) that amendment or waiver:
 - (A) does not breach another term of this Agreement (including, without limitation, Clause 4.13 (*Hedged Amount*)); and
 - (B) would not result in a breach of clause 25.26 (*Treasury Transactions*) or clause 25.37 (*Compliance with Hedging Letter*) of the Senior Facilities Agreement; and
- (ii) that amendment or waiver is:
 - (A) required in order for the Hedge Counterparty to comply with any applicable law or regulation;
 - (B) minor, technical, administrative or corrects a manifest error;
 - (C) required in order to reflect a change to any other Debt Document; or
 - (D) made with the prior consent of the Majority External Creditors.
- (c) Notwithstanding any other provision of any Finance Document, the parties to this Agreement acknowledge, agree and consent that a Hedge Counterparty and a Debtor may amend the terms of a Hedging Agreement (whether in anticipation of, or following an Index Cessation Event, as defined in the ISDA Benchmarks Supplement) to agree a Continuation Amendment (as defined in the ISDA Benchmarks Supplement).

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 or the Parent in respect of the Hedging Liabilities other than:

- (a) the Common Transaction Security;
- (b) any guarantee, indemnity or other assurance against loss contained in:
 - (i) the original form of the Senior Facilities Agreement;
 - (ii) this Agreement;
 - (iii) any Common Assurance; or
 - (iv) the relevant Hedging Agreement which is no greater in extent than any of those referred to in sub-paragraphs (i) to (iii) above; and
- (c) the indemnities and rights of set-off contained in the 2002 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 Clause 10 (*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 that it is able to do so under the relevant Hedging Agreement and this Agreement, any Hedge Counterparty may terminate or close out in whole or in part any hedging transaction under that Hedging Agreement prior to its stated maturity:

Credit Related Close-Outs

- (i) if a Distress Event has occurred;
- (ii) if an Insolvency Event has occurred in relation to the relevant Debtor party to that Hedging Agreement;
- (iii) if any Event of Default referred to in clause 26.6 (*Insolvency*) or clause 26.7 (*Insolvency proceedings*) of the Senior Facilities Agreement has occurred and is continuing in relation to the relevant Debtor party to that Hedging Agreement;
- (iv) if the relevant Debtor has defaulted on any Payment due under a Hedging Agreement (after allowing any applicable notice or grace periods) and the default has continued unwaived for more than ten (10) Business Days after the date on which notice of that default has been given to the Security Agent;

Non-Credit Related Close-Outs

- (v) if a Hedging Force Majeure has occurred in respect of that Hedging Agreement;
- (vi) to the extent that such termination or close-out is required or is necessary to enable the Company to comply with Clause 4.13 (*Hedged Amount*);
- (vii) in respect of Hedging Liabilities under Hedging Agreements which incorporate by reference the amendments set out in the attachment to the ISDA 2013 EMIR NFC Representation Protocol, if an Additional Termination Event (as defined in the relevant Hedging Agreement) occurs pursuant to section (iii)(2) of such attachment;
- (viii) with effect from the Senior Facilities Discharge Date ;
- (ix) upon the occurrence of the sale of all or substantially all of the business and assets of the Group, whether in a single transaction or a series of related transactions to an entity or entities which are not members of the Group;
- (x) in accordance with a close out or termination right which arises pursuant to section 1.5 (No fault termination right) of the ISDA Benchmarks Supplement, to the extent incorporated by reference into the relevant Hedging Agreement;
- (xi) if the Hedge Counterparty or its Affiliate (as applicable) ceases to have any Corresponding Commitment under the Senior Facilities Agreement as a result of the Lender exercising its right to require the Agent to cancel its Commitments and declare the participation of that Lender in all outstanding Utilisations and Ancillary Outstandings, together with accrued interest and all other amounts accrued under the Finance Documents, immediately due and payable in accordance with clause 11.1 (*Exit*) of the Senior Facilities Agreement (provided that the relevant Hedge Counterparty may only terminate or close out hedging transactions under Hedging Agreements entered into in connection with its Corresponding Commitment under the Senior Facilities Agreement), or for any other reason with agreement from the relevant Debtor that is a party to that Hedging Agreement;
- (xii) if the Hedge Counterparty or its Affiliate (as applicable) ceases to have any Corresponding Commitment under the Senior Facilities Agreement as a result of the operation of paragraphs (a)(i) or (a)(ii) of clause 39.7 (*Replacement of a Lender*) or paragraphs (a)(i), (a)(ii) or (a)(iii) of clause 10.4 (*Right of*

replacement or repayment and cancellation in relation to a single Lender) of the Senior Facilities Agreement, provided that the relevant Hedge Counterparty may only terminate or close out hedging transactions under Hedging Agreements entered into in connection with its Corresponding Commitment under the Senior Facilities Agreement provided further, in each case, that if the Company has so requested within five (5) Business Days of the date on which a Hedge Counterparty or its Affiliate (as applicable) ceases to have a Corresponding Commitment, such Hedge Counterparty has first used all reasonable endeavours (taking into account any legal or regulatory impediments) for a period of not less than twenty (20) Business Days following the Company's request to novate all transactions under its Hedging Agreement to any third party that has a credit rating of at least BBB-/Baa3 according to at least one of Moody's, S&P and Fitch proposed by the Company (the cost of any such novation by the relevant Hedge Counterparty being borne by the Company (but, for the avoidance of doubt, excluding any purchase price or similar payment)), it being acknowledged that the relevant Hedge Counterparty shall only be obliged to enter into such novation documentation once it has agreed the purchase price and is satisfied that it has complied with all necessary "know your customer" requirements and has obtained all necessary internal approvals generally applicable to the relevant Hedge Counterparty, provided that the relevant Hedge Counterparty shall perform any such "know your customer" checks as soon as reasonably practicable following receipt of the Company's request referred to above and shall notify the Company and the relevant third party proposed by the Company when it is satisfied that it has complied with those checks;

- (xiii) in the case of prepayment or refinancing in full of all Term Outstandings which results in that Hedge Counterparty or its Affiliate (as applicable) ceasing to be a Lender in respect of Term Outstandings thereunder, provided that the relevant Hedge Counterparty may only terminate or close out hedging transactions under the relevant Hedging Agreement entered into in order to hedge its Corresponding Commitment under the Senior Facilities Agreement and provided further that:
- (A) the relevant Hedge Counterparty or its Affiliate (as applicable) may not terminate or close out hedging transactions under such Hedging Agreements if it has participated in the funding of such prepayment or refinancing on a floating rate basis, in a role equivalent to that of and with a ranking in the new order of priority that is equivalent to the ranking of a Lender under the order of priority as in effect immediately before the prepayment or refinancing. Where this proviso applies, that Hedge Counterparty or its Affiliate (as applicable) shall retain its participation as a Hedge Counterparty under the then existing interest rate Hedging Agreements save to the extent reduced, on a pro rata basis, by the relevant Debtor in order to comply with Clause 4.13 (*Hedged Amount*) following the prepayment or refinancing contemplated in this paragraph (xiii); and
 - (B) to the extent the relevant Hedge Counterparty is entitled to close out hedging transactions in accordance with this paragraph (xiii), if the Company has so requested, such Hedge Counterparty has first used all reasonable endeavours (taking into account any legal or regulatory impediments) for a period ending on the earlier of (i) the relevant prepayment or refinancing date referred to in this paragraph (xiii) and (ii) 20 Business Days from the date of the Company's request, to novate all transactions under its Hedging Agreement to any third party

that has a credit rating of at least BBB-/Baa3 according to at least one of Moody's, S&P and Fitch proposed by the Company (the cost of any such novation by the relevant Hedge Counterparty being borne by the Company (but, for the avoidance of doubt, excluding any purchase price or similar payment)), it being acknowledged that the relevant Hedge Counterparty shall only be obliged to enter into such novation documentation once it has agreed the purchase price and is satisfied that it has complied with all necessary "know your customer" requirements and has obtained all necessary internal approvals generally applicable to the relevant Hedge Counterparty, provided that the relevant Hedge Counterparty shall perform any such "know your customer" checks as soon as reasonably practicable following receipt of the Company's request referred to above and shall notify the Company and the relevant third party proposed by the Company when it is satisfied that it has complied with those checks; or

- (xiv) if, prior to a Distress Event, the Parent has certified to that Hedge Counterparty that that termination or close-out would not result in a breach of 25.37 (*Compliance with Hedging Letter*) of the Senior Facilities Agreement.
- (b) To the extent it is able to do so under the relevant Hedging Agreement, after the occurrence of an Insolvency Event in relation to any Debtor or the Parent, 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 the relevant Debtor;
 - (ii) make a demand under any guarantee, indemnity or other assurance against loss given by that Debtor or the Parent 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 the relevant Debtor; and/or
 - (iv) claim and prove in any insolvency process of the relevant 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 Distress Event and delivery to it of a notice from the Security Agent that such Distress Event has occurred; and
 - (ii) delivery to it of a subsequent notice from the Security Agent (acting on the instructions of the Majority External Creditors) instructing it to do so.
- (b) Paragraph (a) above shall not apply to the extent that such Distress Event occurred as a result of an arrangement made between any Debtor and any External Creditor with the purpose of bringing about that Distress Event.
- (c) If a Hedge Counterparty is entitled to terminate or close-out any hedging transaction under paragraph (a)(iv) 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 External 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 or after receipt by the Security Agent of instructions in accordance with this Agreement or any Transaction Security Document to enforce the Transaction Security, a settlement amount or other amount (following the application of any Close-Out Netting, Payment Netting or Inter-Hedging Agreement Netting in respect of that Hedging Agreement) falls due from a Hedge Counterparty to the relevant Debtor then that amount shall be paid by that Hedge Counterparty to the Security Agent, treated as the proceeds of enforcement of the Transaction Security and applied in accordance with the terms of this Agreement.
- (b) The payment of that amount by the Hedge Counterparty to the Security Agent in accordance with paragraph (a) above shall discharge the Hedge Counterparty's obligation to pay that amount to that Debtor.

4.12 Terms of Hedging Agreements

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

- (a) each Hedging Agreement documents only hedging arrangements (or pre-hedging arrangements) entered into for the purpose of hedging or pre 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 on an ISDA Master Agreement;
- (c) in the event of a termination of a hedging transaction entered into under a Hedging Agreement, whether as a result of a Termination Event or an Event of Default, each as defined in the relevant Hedging Agreement, that Hedging Agreement will make no material amendment to the provisions of section 6(e) (*Payments on Early Termination*) of the ISDA Master Agreement;
- (d) each Hedging Agreement will provide that the relevant Hedge Counterparty will be entitled to designate an Early Termination Date (as defined in the ISDA Master Agreement) or otherwise be able to terminate each transaction under such Hedging Agreement if so permitted or required pursuant to Clauses 4.9 (*Permitted Enforcement: Hedge Counterparties*) and 4.10 (*Required Enforcement: Hedge Counterparties*);
- (e) each Hedging Agreement will permit the relevant Hedge Counterparty and the relevant Debtor to take such action as may be necessary to comply with Clause 4.13 (*Hedged Amount*);
- (f) each Hedging Agreement will provide that the relevant Debtors may terminate or close out any relevant hedging transaction(s) provided that, after such termination or close out, the Company remains in compliance with the Finance Documents;
- (g) each Hedging Agreement will provide that the relevant Hedge Counterparty is entitled to receive copies of information delivered by the relevant Debtors in accordance with clauses 23.2 (*Financial statements*) to 23.7 (*Information: miscellaneous*) of the Senior Facilities Agreement if such Hedge Counterparty or its Affiliate is not a Lender;
- (h) no Hedging Agreement will provide for Automatic Early Termination other than to the extent that:

- (i) the provision of Automatic Early Termination is consistent with practice in the relevant derivatives market, taking into account the legal status and jurisdiction of incorporation of the parties to that Hedging Agreement;
 - (ii) that Automatic Early Termination is as provided for in section 6(a) (*Right to Terminate Following Event of Default*) of the ISDA Master Agreement; and
 - (iii) the relevant Hedge Counterparty is the “Affected Party” (or other equivalent term) under the ISDA Master Agreement;
- (i) subject to paragraph (k) below, the relevant Hedge Counterparty may not transfer its interests in the relevant Hedging Agreement without prior consent from the Company (not to be unreasonably withheld or delayed) unless such transfer is to its Affiliate or its Related Fund, to a Lender, to an Affiliate of a Lender, to an existing Hedge Counterparty or to a person named on the Approved List that will or that pursuant to clause 3.2(a) (*Non-consenting Lenders*) of the Senior Facilities Agreement will simultaneously become a Lender in accordance with the Senior Facilities Agreement and provided that:
- (A) the transferee has a credit rating of at least BBB-/Baa3 according to at least one of Moody’s, S&P and Fitch; or
 - (B) the transferring Hedge Counterparty has provided credit support in respect of the obligations of the transferee reasonably satisfactory to the Company;
- (j) subject to paragraph (l) below, the Company will be deemed to have given its consent ten Business Days after the existing Hedge Counterparty has requested it unless consent is expressly refused by the Company within that time;
- (k) notwithstanding paragraph (j) above, the consent of the Company shall be required to a transfer of interests in the relevant Hedging Agreement to:
- (i) a Defaulting Lender;
 - (ii) a Competitor; or
 - (iii) unless a Distress Event is continuing, a Hedge Fund or Distressed Debt Fund; and
- (l) the Company may withhold or delay the giving of its consent to any proposed transfer to any Competitor, Hedge Fund or Distressed Debt Fund in its absolute discretion and will not be deemed to have given that consent in any circumstances unless expressly provided by it in writing.

4.13 Hedged Amount

- (a) If the Total Interest Rate Hedged Amount is less than the Permitted Maximum Interest Rate Hedged Amount, the relevant Debtor may (but, subject to compliance with clause 25.26 (*Treasury Transactions*) and clause 25.37 (*Compliance with Hedging Letter*) of the Senior Facilities Agreement, shall be under no obligation to) enter into additional hedging arrangements to increase the Total Interest Rate Hedged Amount.
- (b) If any reduction in aggregate principal amounts outstanding under the Debt Documents results in an Interest Rate Hedge Excess (an “**Interest Rate Overhedging Event**”), the relevant Debtor shall, as soon as reasonably practicable, and in any event:
 - (i) within ten (10) Business Days of such Interest Rate Overhedging Event notify the Hedge Counterparties that they intend to enter into Offsetting Swaps and,

subject to the consent of the relevant Hedge Counterparty, within thirty (30) Business Days of such Interest Rate Overhedging Event enter into those Offsetting Swaps; and/or

- (ii) within thirty (30) Business Days of such Interest Rate Overhedging Event occurring, terminate or close out pro rata across hedging transactions with the same maturity dates (or on a non pro rata basis if a Hedge Counterparty agrees to waive an obligation to terminate or close out by entering into Offsetting Swaps provided by it pursuant to paragraph (i) above) or reduce the outstanding notional amount (to be selected in the sole discretion of the Debtors),

in order to remedy such Interest Rate Overhedging Event, provided that following the relevant entry into of Offsetting Swaps or close out or termination or reduction, the Total Interest Rate Hedged Amount is an amount which is no greater than the Permitted Maximum Interest Rate Hedged Amount and is no less than the minimum amount required pursuant to clause 25.26 (*Treasury Transactions*) of the Senior Facilities Agreement.

- (c) Subject to compliance with Clause 13.6 (*Adjustment of Mandatory Prepayments*), the relevant Debtor shall pay to that Hedge Counterparty (in accordance with the relevant Hedging Agreement) an amount equal to the sum of all payments (if any) that become due from that Debtor to a Hedge Counterparty under the relevant Hedging Agreement(s) as a result of any action described in paragraph (a) above.
- (d) Each Hedge Counterparty shall co-operate in any process described in paragraph (b) above and shall pay (in accordance with the relevant Hedging Agreement(s)) any amount that becomes due from it under the relevant Hedging Agreement(s) to the relevant Debtor as a result of any action described in paragraph (b) above.

4.14 **Notice of Transaction Security**

The execution of this Agreement by the Company and any Hedge Counterparty (or, in the case of any Hedge Counterparty, of any Creditor Accession Undertaking) shall constitute notice to, and acknowledgement by, each Hedge Counterparty of any Security created by the Company over all its rights to and title and interests in any Hedging Agreement entered into between it and the relevant Hedge Counterparty (but without prejudice to, and after giving effect to, any netting or set off provisions contained in such Hedging Agreement).

Section 3 Other Creditors

5. Parent and Parent Liabilities

5.1 Restriction on incurrence: Parent Liabilities

Other than expressly permitted under the Finance Documents, prior to the Senior Facilities Discharge Date, the Company shall procure that no member of the Group (other than the Company) will, incur or allow to remain outstanding any Liabilities to the Parent.

5.2 Restriction on Payment: Parent Liabilities

Prior to the Final Discharge Date, the Debtors shall not, and the Company shall procure that no other member of the Group will, make any Payment of the Parent Liabilities at any time unless:

- (a) that Payment is permitted under Clause 5.3 (*Permitted Payments: Parent Liabilities*); or
- (b) the taking or receipt of that Payment is permitted under Clause 5.9 (*Permitted Enforcement: Parent*).

5.3 Permitted Payments: Parent Liabilities

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

- (a) the Payment is expressly permitted by the Finance Documents; or
- (b) the Majority External Creditors consent to that Payment being made.

5.4 Payment obligations continue

The Debtors shall not be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Debt Document by the operation of Clauses 5.2 (*Restriction on Payment: Parent Liabilities*) and 5.3 (*Permitted Payments: Parent Liabilities*) even if its obligation to make that Payment is restricted at any time by the terms of any of those Clauses.

5.5 No acquisition of Parent Liabilities

Prior to the Final 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 Parent Liabilities, unless:

- (i) it is expressly permitted by the Finance Documents; or
- (ii) the prior consent of the Majority External Creditors is obtained.

5.6 Amendments and Waivers: Parent Liabilities

Prior to the Final Discharge Date, the Debtors and the Parent may amend or waive the terms of any agreement evidencing the terms of the Parent Liabilities unless the amendment or waiver is or would be reasonably likely to be adverse to any External Creditor, in which case the prior

consent of the Majority External Creditors must be obtained and provided always that the Parent Liabilities continue to be subordinated to the External Creditor Liabilities.

5.7 Security: Parent

Prior to the Final Discharge Date, the Parent shall not take, accept or receive the benefit of any Security, guarantee, indemnity or other assurance against loss in respect of the Parent Liabilities other than to the extent expressly permitted by the Finance Documents.

5.8 Restriction on Enforcement: Parent

Subject to Clause 5.9 (*Permitted Enforcement: Parent*), the Parent shall not be entitled to take any Enforcement Action in respect of any of the Parent Liabilities at any time prior to the Final Discharge Date.

5.9 Permitted Enforcement: Parent

After the occurrence of an Insolvency Event in relation to any Debtor, the Parent 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 the Parent in accordance with Clause 7.5 (*Filing of claims*)) exercise any right it may otherwise have against that Debtor to:

- (a) accelerate any of that Debtor's Parent 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 Parent Liabilities;
- (c) exercise any right of set-off or take or receive any Payment in respect of any Parent Liabilities of that Debtor; or
- (d) claim and prove in the liquidation of that Debtor for the Parent Liabilities owing to it.

5.10 Notice of Transaction Security: Parent Liabilities

The execution of this Agreement by the Company and the Parent shall, where so required pursuant to the Agreed Security Principles, constitute notice to, and acknowledgement by, the Company of any Security created by the Parent over its rights to and title and interests in any Parent Liabilities

6. Intra-Group Lenders and Intra-Group Liabilities

6.1 Restriction on Payment: Intra-Group Liabilities

Prior to the Final 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*); or
- (b) the taking or receipt of that Payment is permitted under paragraph (c) of Clause 6.7 (*Permitted Enforcement: Intra-Group Lenders*).

6.2 Permitted Payments: Intra-Group Liabilities

- (a) Subject to paragraph (b) below, the Debtors may make Payments 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:
 - (i) that Payment would result in a breach of the Finance Documents; or
 - (ii) at the time of the Payment, an Acceleration Event has occurred.
- (c) Paragraph (b) above shall not apply if:
 - (i) the Majority External Creditors consent to that Payment being made; or
 - (ii) that Payment is made to facilitate Payment of the External Creditor Liabilities in accordance with the terms of this Agreement.

6.3 **Payment obligations continue**

No Debtor shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Debt Document by the operation of Clauses 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.

6.4 **Acquisition of Intra-Group Liabilities**

- (a) Subject to paragraph (b) below, each Debtor may, and may permit any other member of the Group to:
 - (i) enter into any Liabilities Acquisition; and/or
 - (ii) beneficially own all or any part of the share capital of a company that is party to a Liabilities Acquisition,in respect of any Intra-Group Liabilities at any time.
- (b) Subject to paragraph (c) below, no action described in paragraph (a) may take place in respect of any Intra-Group Liabilities if:
 - (i) that action would result in a breach of a Finance Document; or
 - (ii) at the time of that action, an Acceleration Event has occurred.
- (c) The restrictions in paragraph (b) above shall not apply if:
 - (i) the Majority External Creditors consent to that action; or
 - (ii) that action is taken to facilitate Payment of the External Creditor Liabilities.

6.5 **Security: Intra-Group Lenders**

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

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

6.6 **Restriction on enforcement: Intra-Group Lenders**

Subject to Clause 6.7 (*Permitted Enforcement: Intra-Group Lenders*), none of the Intra-Group Lenders shall be entitled to take any Enforcement Action in respect of any of the Intra-Group Liabilities at any time prior to the Final Discharge Date.

6.7 **Permitted Enforcement: Intra-Group Lenders**

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

- (a) accelerate any of that Debtor'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 Debtor 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 Debtor; or
- (d) claim and prove in the liquidation of that Debtor for the Intra-Group Liabilities owing to it.

6.8 **Notice of Transaction Security: Intra-Group Liabilities**

The execution of this Agreement (or, as the case may be, a Creditor Accession Undertaking) by any Intra-Group Lender shall, where so required pursuant to the Agreed Security Principles, constitute notice to, and acknowledgement by, each member of the Group party hereto of any Security created by each Intra-Group Lender over its rights to and title and interests in any Intra-Group Liabilities entered into between it any other member of the Group.

Section 4

Insolvency, Turnover and Enforcement

7. Effect of Insolvency Event

7.1 SFA Cash Cover

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

7.2 Distributions

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

7.3 Set-Off

- (a) Subject to paragraph (b) below and without limiting Clause 8 (*Turnover of Receipts*), to the extent that any Debtor's or the Parent's Liabilities are discharged by way of set-off (mandatory or otherwise) after the occurrence of an Insolvency Event in relation to that Debtor or the Parent, any Creditor which benefited from that set-off shall pay an amount equal to the amount of the Liabilities owed to it which are discharged by that set-off to the Security Agent (or to such other person as the Security Agent may direct) for application in accordance with Clause 16 (*Application of Proceeds*).
- (b) Paragraph (a) shall not apply to:
 - (i) any such discharge of the Multi-account Overdraft Liabilities 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;
 - (ii) any Close-Out Netting by a Hedge Counterparty or a Hedging Ancillary Lender;
 - (iii) any Payment Netting by a Hedge Counterparty or a Hedging Ancillary Lender;
 - (iv) any Inter-Hedging Agreement Netting by a Hedge Counterparty; and
 - (v) any Inter-Hedging Ancillary Document Netting by a Hedging Ancillary Lender.

7.4 Non-cash distributions

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

7.5 Filing of claims

Without prejudice to any Ancillary Lender's right of netting or set-off relating to a Multi-account Overdraft (to the extent that the netting or set-off represents a reduction of the 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 or the Parent, each Creditor irrevocably authorises the Security Agent, on its behalf, to:

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

provided that this authorisation shall be without prejudice to any rights it may have (but subject to the terms of this Agreement) to take any such actions on its own behalf.

7.6 Further assurance – Insolvency Event

Each Creditor will at their own cost:

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

7.7 Security Agent instructions

For the purposes of Clause 7.2 (*Distributions*), Clause 7.5 (*Filing of claims*) and Clause 7.6 (*Further assurance – Insolvency Event*) the Security Agent shall act on the instructions of the Majority External Creditors or, in the absence of any such instructions, as the Security Agent sees fit.

8. Turnover of Receipts

8.1 SFA Cash Cover

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

8.2 Turnover by the Creditors

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

- (a) any Payment or distribution of, or on account of or in relation to, any of the Liabilities which is neither:
 - (i) a Permitted Payment; nor
 - (ii) made in accordance with Clause 16 (*Application of Proceeds*);

- (b) other than where paragraph (a) of Clause 7.3 (*Set Off*) applies, any amount by way of set-off in respect of any of the Liabilities owed to it which does not give effect to a Permitted Payment;
- (c) notwithstanding paragraphs (a) and (b) above, and other than where paragraph (a) of Clause 7.3 (*Set Off*) applies, any amount:
 - (i) on account of, or in relation to, any of the Liabilities:
 - (A) after the occurrence of a Distress Event; or
 - (B) as a result of any other litigation or proceedings against a member of the Group or the Parent (other than after the occurrence of an Insolvency Event in respect of that Debtor or the Parent); or
 - (ii) by way of set-off in respect of any of the Liabilities owed to it after the occurrence of a Distress Event,

other than, in each case, any amount received or recovered in accordance with Clause 16 (*Application of Proceeds*);

- (d) the proceeds of any enforcement of any Transaction Security except in accordance with Clause 16 (*Application of Proceeds*); or
- (e) other than where paragraph (a) of Clause 7.3 (*Set Off*) applies, any distribution or Payment of, or on account of or in relation to, any of the Liabilities owed by any member of the Group or the Parent which is not in accordance with Clause 16 (*Application of Proceeds*) and which is made as a result of, or after, the occurrence of an Insolvency Event in respect of that member of the Group or the Parent,

that Creditor will:

- (i) in relation to receipts and recoveries not received or recovered by way of set-off:
 - (A) hold an amount of that receipt or recovery equal to the Relevant Liabilities (or if less, the amount received or recovered) on trust (other than the Agent who will hold money on as a banker at all times) for or separate from its own funds for the benefit of the Security Agent and promptly pay or distribute that amount to the Security Agent for application in accordance with the terms of this Agreement; and
 - (B) promptly pay or distribute an amount equal to the amount (if any) by which the receipt or recovery exceeds the Relevant Liabilities to the Security Agent for application in accordance with the terms of this Agreement; and
- (ii) in relation to receipts and recoveries received or recovered by way of set-off, promptly pay an amount equal to that receipt or recovery to the Security Agent for application in accordance with the terms of this Agreement.

8.3 Exclusions

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

- (a) by way of:
 - (i) Close-Out Netting by a Hedge Counterparty or a Hedging Ancillary Lender;
 - (ii) Payment Netting by a Hedge Counterparty or a Hedging Ancillary Lender;

- (iii) Inter-Hedging Agreement Netting by a Hedge Counterparty; or
- (iv) Inter-Hedging Ancillary Document Netting by a Hedging Ancillary Lender;
- (b) by an Ancillary Lender by way of that Ancillary Lender's right of netting or set-off relating to a Multi-account Overdraft (to the extent that that netting or set-off represents a reduction of the Permitted Gross Outstandings of that Multi-account Overdraft to or towards an amount equal to its Designated Net Amount); or
- (c) made in accordance with Clause 17.3 (*Equalisation*).

8.4 Permitted assurance and receipts

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

- (a) arrange with any person which is not a member of the Group any assurance against loss in respect of, or reduction of its credit exposure to, a Debtor (including assurance by way of credit based derivative or sub-participation); or
- (b) make any assignment or transfer permitted by Clause 19 (*Changes to the Parties*), which:
 - (i) is permitted by the Senior Facilities Agreement; and
 - (ii) is not in breach of Clause 4.5 (*No acquisition of Hedging Liabilities*), and that Creditor shall not be obliged to account to any other Party for any sum received by it as a result of that action.

8.5 Turnover of Non-Cash Consideration

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

8.6 Amounts received by a Debtor

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

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

8.7 Saving provision

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

9. Redistribution

9.1 Recovering Creditor's rights

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

9.2 Reversal of redistribution

- (a) If any part of the Shared Amount received or recovered by a Recovering Creditor becomes repayable or returnable to a Debtor and is repaid or returned by that Recovering Creditor to that Debtor or the Parent, then:
 - (i) each Party that received any part of that Shared Amount pursuant to an application by the Security Agent of that Shared Amount under Clause 9.1 (*Recovering Creditor's rights*) (a "**Sharing Party**") shall, upon request of the Security Agent, pay or distribute to the Security Agent for the account of that Recovering Creditor an amount equal to the appropriate part of its share of the Shared Amount (together with an amount as is necessary to reimburse that Recovering Creditor for its proportion of any interest on the Shared Amount which that Recovering Creditor is required to pay) (the "**Redistributed Amount**"); and
 - (ii) as between the relevant Debtor or the Parent and each relevant Sharing Party, an amount equal to the relevant Redistributed Amount will be treated as not having been paid or distributed by that Debtor or the Parent.
- (b) The Security Agent shall not be obliged to pay or distribute any Redistributed Amount to a Recovering Creditor under paragraph (a)(i) above until it has been able to establish to its satisfaction that it has actually received that Redistributed Amount from the relevant Sharing Party.

9.3 Deferral of Subrogation

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 discharged in full.

10. Enforcement

10.1 SFA Cash Cover

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

10.2 **Enforcement Instructions**

- (a) The Security Agent may refrain from enforcing the Transaction Security unless instructed otherwise by the Majority External Creditors.
- (b) The Majority External Creditors may give or refrain from giving instructions to the Security Agent to enforce or refrain from enforcing the Transaction Security as they see fit.
- (c) The Security Agent is entitled to rely on and comply with instructions given in accordance with this Clause 10.2.

10.3 **Manner of enforcement**

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

10.4 **Waiver of rights**

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

10.5 **Exercise of voting rights**

- (a) Each Creditor (other than the Agent and an Arranger) will, unless prohibited by any law, rule or regulation to which such Creditor is subject, cast its vote in any proposal put to the vote by or under the supervision of any judicial or supervisory authority in respect of any insolvency, pre-insolvency or rehabilitation or similar proceedings relating to any Debtor or the Parent as instructed by the Security Agent.
- (b) The Security Agent shall give instructions for the purposes of paragraph (a) above in accordance with any instructions given to it by the Majority External Creditors.

10.6 **Enforcement through Security Agent only**

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

Section 5

Non-Distressed Disposals, Distressed Disposals and Claims

11. Non-Distressed Disposals

11.1 Definitions

In this Clause 11.1:

“**Disposal Proceeds**” means the proceeds of a Non-Distressed Disposal; and

“**Non-Distressed Disposal**” means a disposal of:

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

to a person or persons outside the Group, where:

- (i) the Agent notifies the Security Agent that that disposal is permitted under the Finance Documents including, without limitation, as a Permitted Transaction or Permitted Disposal; and
- (ii) that disposal is not a Distressed Disposal.

11.2 Facilitation of Non-Distressed Disposals

- (a) If a disposal of an asset is a Non-Distressed Disposal the Security Agent is irrevocably authorised (at the cost of the Company and without any consent, sanction, authority or further confirmation from any Creditor, other Secured Party or Debtor) but subject to paragraph (b) below:
 - (i) to release the Transaction Security or any other claim (relating to a Debt Document) over that asset;
 - (ii) where that asset consists of shares in the capital of a member of the Group, to release the Transaction Security or any other claim (relating to a Debt Document) over that member of the Group’s Property and those of any of its Subsidiaries as well as all Secured Obligations and Guarantee Liabilities owed by that Debtor to any of its Subsidiaries; and
 - (iii) to execute and deliver or enter into any release of the Transaction Security or any claim described in sub-paragraphs (i) and (ii) above and issue any certificates of non-crystallisation of any floating charge or any consent to dealing that may, in the discretion of the Security Agent, be considered necessary or desirable.
- (b) Each release of Transaction Security or any claim described in paragraph (a) above shall become effective only on the making of the relevant Non-Distressed Disposal.
- (c) The Parties shall execute all documents necessary to effect the releases referred to above or will grant a power of attorney to the Security Agent to enable it to take such action and the Agent undertakes to provide the notification to the Security Agent referred to in the definition of “Non Distressed Disposal” above promptly upon request by the Company.

11.3 Disposal Proceeds

If any Disposal Proceeds are required to be applied in mandatory prepayment of the Senior Facilities Liabilities then, subject to Clause 13.6 (*Adjustment of Mandatory Prepayments*), those Disposal Proceeds shall be applied in or towards Payment of the Senior Facilities Liabilities requiring that application and shall be applied in accordance with the Finance Documents (and the consent of any other Party shall not be required for that application).

12. Distressed Disposals and Appropriation

12.1 Facilitation of Distressed Disposals and Appropriation

If a Distressed Disposal or an Appropriation is being effected, the Security Agent is irrevocably authorised (at the cost of the Company and without any consent, sanction, authority or further confirmation from any Creditor, other Secured Party or Debtor or the Parent):

(a) *release of Transaction Security/non-crystallisation certificates*: to release the Transaction Security or any other claim over the asset subject to the Distressed Disposal or Appropriation and execute and deliver or enter into any release of that Transaction Security or claim and issue any letters of non-crystallisation of any floating charge or any consent to dealing that may, in accordance with Clause 12.6 (*Security Agent's actions*), be considered necessary or desirable;

(b) *release of liabilities and Transaction Security on a share sale/Appropriation (Debtor)*: if the asset subject to the Distressed Disposal or Appropriation consists of shares in the capital of a Debtor, to release:

(i) that Debtor and any Subsidiary of that Debtor from all or any part of its Borrowing Liabilities, Guarantee Liabilities and Other Liabilities;

(ii) any Transaction Security granted by the Holding Company of that Debtor over shares in that Debtor or granted by that Debtor or any Subsidiary of that Debtor over any of its assets; and

(iii) any other claim of the Parent, an Intra-Group Lender, or another Debtor over that Debtor's assets or over the assets of any Subsidiary of that Debtor,

on behalf of the relevant Creditors and Debtors;

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

(i) the Liabilities (other than the Liabilities due to the Agent or any Arranger); or

(ii) the Debtors' Intra-Group Receivables,

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

- (d) *sale of liabilities on a share sale/Appropriation*: if the asset subject to the Distressed Disposal or Appropriation consists of shares in the capital of a Debtor or the Holding Company of a Debtor and the Security Agent decides to dispose of all or any part of:
- (i) the Liabilities (other than Liabilities due to the Agent or any Arranger); or
 - (ii) the Debtors' Intra-Group Receivables,
- owed by that Debtor or Holding Company or any Subsidiary of that Debtor or Holding Company on the basis that any transferee of those Liabilities or Debtors' Intra-Group Receivables will be treated as an External Creditor or a Secured Party for the purposes of this Agreement, to execute and deliver or enter into any agreement to dispose of:
- (A) all (and not part only) of the Liabilities owed to the External Creditors (other than to the Agent or any Arranger); and
 - (B) all or part of any other Liabilities (other than Liabilities owed to the Agent or any Arranger) and the Debtors' Intra-Group Receivables,
- on behalf of, in each case, the relevant Creditors and Debtors;
- (e) *transfer of obligations in respect of liabilities on a share sale/Appropriation*: if the asset subject to the Distressed Disposal or Appropriation consists of shares in the capital of a Debtor or the Holding Company of a Debtor (the “**Disposed Entity**”) and the Security Agent decides to transfer to another Debtor (the “**Receiving Entity**”) all or any part of the Disposed Entity's obligations or any obligations of any Subsidiary of that Disposed Entity in respect of Intra-Group Liabilities or the Debtors' Intra-Group Receivables, 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 Debtors' Intra-Group Receivables on behalf of the relevant Intra-Group Lenders and Debtors to which those obligations are owed and on behalf of the Debtors which owe those obligations; and
 - (ii) to accept the transfer of all or part of the obligations in respect of those Intra-Group Liabilities or Debtors' Intra-Group Receivables on behalf of the Receiving Entity or Receiving Entities to which the obligations in respect of those Intra-Group Liabilities or Debtors' Intra-Group Receivables are to be transferred.

12.2 Form of consideration for Distressed Disposals and Debt Disposals

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

12.3 Proceeds of Distressed Disposals and Debt Disposals

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

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

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

12.4 Fair value

- (a) In the case of a Liabilities Sale or a Distressed Disposal effected by, or at the request of, the Security Agent, the Security Agent shall take reasonable care to obtain a fair market price having regard to the prevailing market conditions (though the Security Agent shall have no obligation to postpone (or request the postponement of) any Distressed Disposal or Liabilities Sale in order to achieve a higher price).
- (b) The requirement in paragraph (a) above shall be satisfied (and as between the Creditors, the Debtors and the Parent shall be conclusively presumed to be satisfied) and the Security Agent will be taken to have discharged all its obligations in this respect under this Agreement, the other Debt Documents and generally at law if:
 - (i) that Distressed Disposal or Liabilities Sale is made pursuant to any process or proceedings approved or supervised by or on behalf of any court of law;
 - (ii) that Distressed Disposal or Liabilities Sale is made by, at the direction of or under the control of, a liquidator, bankruptcy trustee, receiver, administrative receiver, administrator, compulsory manager or other similar officer (or any analogous officer in any jurisdiction) appointed in respect of a member of the Group or the Parent or the assets of that member of the Group or the Parent;
 - (iii) that Distressed Disposal or Liabilities Sale is made pursuant to a Competitive Sales Process; or
 - (iv) a Financial Adviser appointed by the Security Agent pursuant to Clause 12.5 (*Appointment of Financial Adviser*) has delivered a Fairness Opinion to the Security Agent in respect of that Distressed Disposal or Liabilities Sale.

12.5 Appointment of Financial Adviser

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

12.6 Security Agent's actions

For the purposes of Clause 12.1 (*Facilitation of Distressed Disposals and Appropriation*), Clause 12.2 (*Form of consideration for Distressed Disposals and Debt Disposals*), Clause 12.4

(*Fair value*) and Clause 12.5(b)(i) (*Appointment of Financial Adviser*) the Security Agent shall act:

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

13. Non-Cash Recoveries

13.1 Security Agent and Non-Cash Recoveries

To the extent the Security Agent receives or recovers any Non-Cash Recoveries, it may (acting on the instructions of the Majority External Creditors but without prejudice to its ability to exercise discretion under Clause 16.2 (*Prospective liabilities*)):

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

13.2 Cash value of Non-Cash Recoveries

- (a) The cash value of any Non-Cash Recoveries shall be determined by reference to a valuation obtained by the Security Agent from a Financial Adviser appointed by the Security Agent pursuant to Clause 12.5 (*Appointment of Financial Adviser*).
- (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 paragraph (b) and to Clause 13.4 (*Alternative to Non-Cash Consideration*), if, pursuant to Clause 16.1 (*Order of application*), the Agent receives Non-Cash Recoveries for application towards the discharge of any Liabilities, the Agent shall apply those Non-Cash Recoveries in accordance with the 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 as if those Non-Cash Recoveries were Cash Proceeds;
 - (ii) hold any Non-Cash Recoveries through another person; and
 - (iii) hold any amount of Non-Cash Recoveries for so long as that Agent shall think fit for later application pursuant to paragraph (a) above.

13.4 Alternative to Non-Cash Consideration

- (a) If any Non-Cash Recoveries are to be distributed pursuant to Clause 16 (*Application of Proceeds*), the Security Agent shall (prior to that distribution and taking into account the Liabilities then outstanding and the cash value of those Non-Cash Recoveries) notify the External 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 External 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 an External 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 sub-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 External Creditor shall, following a request by the Security Agent (acting in accordance with Clause 12.6 (*Security Agent’s actions*)), notify the Security Agent of the extent to which paragraph (b)(i) above would apply to it in relation to any distribution or proposed distribution of Non-Cash Recoveries.

13.5 Security Agent protection

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

13.6 Adjustment of Mandatory Prepayments

If the making of any Mandatory Prepayment (an “**Original Mandatory Prepayment**”) would result in a payment (a “**Hedge Reduction Payment**”) becoming due to any Hedge Counterparty pursuant to paragraph (b) of Clause 4.13 (*Hedging Amount*), the amount of that Mandatory Prepayment will be reduced so that the aggregate of:

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

is equal to the amount of the Original Mandatory Prepayment.

14. Further Assurance – Disposals and Releases

Each Creditor, each Debtor and the Parent will:

- (a) do all things that the Security Agent reasonably requests in order to give effect to Clause 11 (*Non-Distressed Disposals*), Clause 12 (*Distressed Disposals and Appropriation*) and Clause 13.6 (*Adjustment of Mandatory Prepayments*) (which shall include, without limitation, the execution of any assignments, transfers, releases or other documents that the Security Agent may consider to be necessary to give effect to the releases or disposals contemplated by those Clauses); and
- (b) if the Security Agent is not entitled to take any of the actions contemplated by those Clauses or if the Security Agent requests that any Creditor or Debtor take any such action, take that action itself in accordance with the instructions of the Security Agent,

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

15. Guarantee and Indemnity

15.1 Guarantee and Indemnity

Each Guarantor irrevocably and unconditionally jointly and severally:

- (a) guarantees to each External Creditor punctual performance by each other Debtor of all that Debtor's obligations under the Finance Documents and the Hedging Agreements;
- (b) undertakes with each External Creditor that whenever another Debtor does not pay any amount when due under or in connection with any Finance Document or a Hedging Agreement, that Guarantor shall immediately on demand pay that amount as if it was the principal obligor; and
- (c) agrees with each External Creditor that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify that External Creditor immediately on demand against any cost, loss or liability it incurs as a result of a Debtor not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Finance Document or any Hedging Agreement on the date when it would have been due. The amount payable by a Guarantor under this indemnity will not exceed the amount it would have had to pay under this Clause 15 if the amount claimed had been recoverable on the basis of a guarantee.

15.2 Continuing guarantee

This guarantee is a continuing guarantee and will extend to the ultimate balance of sums payable by any Debtor under the Finance Documents and the Hedging Agreements, regardless of any intermediate payment or discharge in whole or in part.

15.3 Reinstatement

If any discharge, release or arrangement (whether in respect of the obligations of any Debtor or any security for those obligations or otherwise) is made by an External Creditor in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of each Guarantor under this Clause 15 will continue or be reinstated as if the discharge, release or arrangement had not occurred.

15.4 Waiver of Defences

The obligations of each Guarantor under this Clause 15 will not be affected by an act, omission, matter or thing which, but for this Clause 15, would reduce, release or prejudice any of its obligations under this Clause 15 (without limitation and whether or not known to it or any External Creditor) including:

- (a) any time, waiver or consent granted to, or composition with, any Debtor, the Parent or other person;
- (b) the release of any other Debtor or the Parent 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 the Parent 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 a Debtor, the Parent or any other person;
- (e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of a Finance Document, Hedging Agreement or any other document or security including, without limitation, any change in the purpose of, any extension of or increase in any facility or the addition of any new facility under any Finance Document or other document or security;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Finance Document, Hedging Agreement or any other document or security; or
- (g) any insolvency or similar proceedings.

15.5 **Guarantor intent**

Without prejudice to the generality of Clause 15.4 (*Waiver of Defences*), each Guarantor expressly confirms that it intends that this guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any of the Finance Documents, Hedging Agreements and/or any facility or amount made available under any of the Finance Documents for the purposes of or in connection with any of the following: business acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

15.6 **Immediate Recourse**

Each Guarantor waives any right it may have of first requiring any External Creditor (or any trustee or agent on its behalf) to proceed against or enforce any other rights or security or claim payment from any person before claiming from that Guarantor under this Clause 15. This waiver applies irrespective of any law or any provision of a Finance Document or Hedging Agreement to the contrary.

15.7 **Appropriations**

Until all amounts which may be or become payable by the Debtors or the Parent under or in connection with the Finance Documents and the Hedging Agreements have been irrevocably paid in full, each External Creditor (or any trustee or agent on its behalf) may:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by that External Creditor (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Guarantor shall be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any moneys received from any Guarantor or on account of any Guarantor's liability under this Clause 15.

15.8 **Deferral of Guarantors' Rights**

- (a) Until all amounts which may be or become payable by the Debtors or the Parent under or in connection with the Finance Documents and the Hedging Agreement have been irrevocably paid in full and unless the Agent otherwise directs, no Guarantor will

exercise any rights which it may have by reason of performance by it of its obligations under the Finance Documents and the Hedging Agreements or by reason of any amount being payable, or liability arising, under this Clause 15:

- (i) to be indemnified by a Debtor;
 - (ii) to claim any contribution from any other guarantor of any Debtor's obligations under the Finance Documents or the Hedging Agreements;
 - (iii) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the External Creditors under the Finance Documents or the Hedging Agreements of any other guarantee or security taken pursuant to, or in connection with, the Finance Documents or the Hedging Agreements by any External Creditor;
 - (iv) to bring legal or other proceedings for an order requiring any Debtor to make any payment, or perform any obligation, in respect of which any Guarantor has given a guarantee, undertaking or indemnity under Clause 15.1 (*Guarantee and Indemnity*);
 - (v) to exercise any right of set-off against any Debtor; and/or
 - (vi) to claim or prove as a creditor of any Debtor in competition with any External Creditor.
- (b) If a Guarantor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the External Creditors by the Debtors under or in connection with the Finance Documents or the Hedging Agreements to be repaid in full on trust for the External Creditors (or, if the relevant Guarantor is not able to hold such amount on trust under the laws of its jurisdiction of incorporation, for the benefit of the External Creditors) and shall promptly pay or transfer the same to the Security Agent or as the Security Agent may direct for application in accordance with, prior to the taking of any Enforcement Action, the partial payment provisions in the Senior Facilities Agreement and thereafter in accordance with Clause 16 (*Application of Proceeds*).

15.9 Release of Guarantors' Right of Contribution

If any Guarantor (a "**Retiring Guarantor**") ceases to be a Guarantor in accordance with the terms of the Finance Documents and the Hedging Agreements for the purpose of any sale or other disposal of that Retiring Guarantor then on the date such Retiring Guarantor ceases to be a Guarantor:

- (a) that Retiring Guarantor is released by each other Guarantor from any liability (whether past, present or future and whether actual or contingent) to make a contribution to any other Guarantor arising by reason of the performance by any other Guarantor of its obligations under the Finance Documents and the Hedging Agreements; and
- (b) each other Guarantor waives any rights it may have by reason of the performance of its obligations under the Finance Documents and the Hedging Agreements to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the External Creditors under any Finance Document, Hedging Agreement or of any other security taken pursuant to, or in connection with, any Finance Document or Hedging Agreement where such rights or security are granted by or in relation to the assets of the Retiring Guarantor.

15.10 Additional Security

This guarantee is in addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by any External Creditor.

15.11 Guarantee limitations

This guarantee does not apply to any liability to the extent that it would result in this guarantee constituting unlawful financial assistance within the meaning of sections 678 or 679 of the Companies Act 2006 or any equivalent and applicable provisions under the laws of the jurisdiction of incorporation of the relevant Guarantor and, with respect to any Additional Guarantor, is subject to any limitations set out in the Debtor/Guarantor Accession Deed applicable to such Additional Guarantor.

Section 6 Proceeds and Equalisation

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

- (a) in discharging any sums owing to the Security Agent, any Receiver or any Delegate;
- (b) in discharging all costs and expenses incurred by any External Creditor in connection with any realisation or enforcement of the Transaction Security taken in accordance with the terms of this Agreement or any action taken at the request of the Security Agent under Clause 7.6 (*Further assurance – Insolvency Event*);
- (c) in payment or distribution to:
 - (i) the Agent on its own behalf and on behalf of the Senior Facilities Creditors in respect of their Senior Facilities Liabilities under the Finance Documents; and
 - (ii) each Hedge Counterparty in respect of its Hedging Liabilities.

for application towards the discharge of:

- (A) the Senior Facilities Liabilities (and in respect of the Lender Liabilities, on a pro rata and *pari passu* basis between the Lender Liabilities of each Lender) in accordance with the terms of the Finance Documents; and
 - (B) the Hedging Liabilities (on a pro rata and *pari passu* basis between the Hedging Liabilities of each Hedge Counterparty);
- on a pro rata and *pari passu* basis between paragraphs (A) and (B) above;
- (d) if none of the Debtors is under any further actual or contingent liability under any Debt Document, in payment or distribution to any person to whom the Security Agent is obliged to pay or distribute in priority to that Debtor; and

- (e) the balance, if any, in payment or distribution to the relevant Debtor or the Parent.

16.2 **Prospective liabilities**

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

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

in each case for 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 Cash Collateral**

- (a) Nothing in this Agreement shall prevent any 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 Ancillary Lender, all amounts from time to time received or recovered in connection with the realisation or enforcement of that SFA Cash Cover shall be paid to the Security Agent and shall be held by the Security Agent on trust to apply them at any time as the Security Agent (in its discretion) sees fit, to the extent permitted by applicable law, in the following order of priority:
 - (i) to the Relevant Ancillary Lender towards the discharge of the relevant Lender Liabilities for which that SFA Cash Cover was provided; and
 - (ii) the balance, if any, in accordance with Clause 16.1 (*Order of application*).
- (c) To the extent that any SFA Cash Cover is held with the Relevant Ancillary Lender, nothing in this Agreement shall prevent that Relevant Ancillary Lender receiving and retaining any amount in respect of that SFA Cash Cover.

16.4 **Investment of Cash Proceeds**

Prior to the application of the proceeds of the Security Property in accordance with Clause 16.1 (*Order of application*) the Security Agent may, in its discretion, hold all or part of any Cash Proceeds in one or more interest bearing suspense or impersonal 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 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 or regulation to make from,

any distribution or payment made by it under this Agreement, and to pay all Taxes which may be assessed against it in respect of any of the Charged Property, or as a consequence of performing its duties or exercising its rights, powers, authorities and discretions, or by virtue of its capacity as Security Agent under any of the Debt Documents or otherwise (other than in connection with its remuneration for performing its duties under this Agreement).

16.6 Good Discharge

- (a) Any distribution or payment to be made in respect of the Secured Obligations by the Security Agent:
 - (i) may be made to the Agent on behalf of the Senior Facilities Creditors;
 - (ii) may be made to the Relevant Ancillary Lender in accordance with paragraph (b)(i) of Clause 16.3 (*Treatment of SFA Cash Cover and Cash Collateral*); and
 - (iii) shall be made directly to the Hedge Counterparties.
- (b) Any distribution or payment made as described in paragraph (a) shall be a good discharge, to the extent of that payment or distribution, by the Security Agent:
 - (i) in the case of a payment made in cash, to the extent of that payment; and
 - (ii) in the case of a distribution of Non-Cash Recoveries, as determined by Clause 13.2 (*Cash value of Non-Cash Recoveries*).

16.7 Calculation of Amounts

For the purpose of calculating any person's share of any amount payable to or by it, the Security Agent shall (in consultation with the Agent, if necessary) be entitled to:

- (a) notionally convert the Liabilities owed to any person into a common base currency (decided in its discretion by the Security Agent), that notional conversion to be made at the spot rate at which the Security Agent is able to purchase the notional base currency with the actual currency of the Liabilities owed to that person at the time at which that calculation is to be made; and
- (b) assume that all 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 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 enforcement action of the type described in paragraphs (a)(i) or (a)(iii) of the definition of Enforcement Action occurs in accordance with the terms of this Agreement.

“**Exposure**” means:

- (a) in relation to a Lender, the aggregate principal amount of its participation (if any, and without double counting) in all Utilisations outstanding under the Senior Facilities Agreement at the Enforcement Date (assuming all contingent liabilities which have become actual liabilities since the Enforcement Date to have been actual liabilities at the Enforcement Date (but not including, for these purposes only, any interest that would have accrued from the Enforcement Date to the date of actual maturity in respect of those liabilities) and assuming any transfer of claims between Lenders pursuant to any loss-sharing arrangement in 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 Lender of any provision of clause 7 (*Ancillary Facilities*) of the Senior Facilities Agreement; and
 - (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 Lender 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, its Closed Out Liabilities; 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, its MTM Liabilities.

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 External Creditors shall make appropriate adjustment payments amongst themselves.

17.3 **Equalisation**

If, for any reason, any External Creditor Liabilities remain unpaid after the Enforcement Date and the resulting losses are not borne by the External Creditors in the proportions which their respective Exposures at the Enforcement Date bore to the aggregate Exposures of all the External Creditors at the Enforcement Date, the External Creditors will make such payments amongst themselves as the Security Agent shall require to put the External 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, the Agent or any External Creditor is not entitled, for reasons of applicable law, to pay or distribute amounts received pursuant to the making of a demand under any guarantee, indemnity or other assurance against loss or the enforcement of the Transaction Security to all External Creditors but is entitled to pay or distribute those amounts to some External 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 External Creditors; and
- (b) the Final Discharge Date has not yet occurred (nor would occur after taking into account such payments),

then the Receiving Creditors shall make such payments or distributions to the other External Creditors as the Security Agent shall require to place all External Creditors in the position they would have been in had such amounts been available for application against the External Creditor 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 requesting that it notify it of its Exposure and in the case of the Agent, that of each Lender.

17.6 **Default in payment**

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

Section 7

The Parties

18. The Security Agent

18.1 Security Agent as trustee or agent

- (a) The Security Agent is hereby irrevocably appointed by the External Creditors to (to the extent possible under applicable law and in accordance with the terms of the relevant Security Document) receive and hold the Transaction Security on behalf of the Secured Parties and the Security Agent declares that, to the fullest extent permitted by applicable laws, it holds the Security Property on trust (where applicable) for the Secured Parties or, as applicable, as agent of the Secured Parties on the terms contained in this Agreement.
- (b) Each of the Parties 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.
- (c) Each other Secured Party acknowledges and agrees that the Security Agent may enter in its name and on its behalf as direct representative into contractual arrangements pursuant to or in connection with the Transaction Security Documents to which the Security Agent is also a party (in its capacity as agent, trustee, or otherwise, as applicable).

18.2 Instructions

- (a) The Security Agent shall:
 - (i) subject to paragraphs (d) and (e) below, exercise or refrain from exercising any right, power, authority or discretion vested in it as Security Agent in accordance with any instructions given to it by the Majority External Creditors; and
 - (ii) will not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with paragraph (i) above (or, if this Agreement stipulates the matter is a decision for any other Creditor or group of Creditors, in accordance with instructions given to it by that Creditor or group of Creditors).
- (b) The Security Agent shall be entitled to request instructions, or clarification of any instruction, from the Majority External Creditors (or, if this Agreement stipulates the matter is a decision for any other Creditor or group of Creditors, from that Creditor or group of Creditors) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion and the Security Agent may refrain from acting unless and until it receives those instructions or that clarification.
- (c) Save in the case of decisions stipulated to be a matter for any other Creditor or group of Creditors under this Agreement and unless a contrary intention appears in this Agreement, any instructions given to the Security Agent by the Majority External Creditors shall override any conflicting instructions given by any other Parties and will be binding on all Secured Parties.
- (d) Paragraph (a) above shall not apply:
 - (i) where a contrary indication appears in this Agreement;

- (ii) where this Agreement requires the Security Agent to act in a specified manner or to take a specified action;
- (iii) in respect of any provision which protects the Security Agent's own position in its personal capacity as opposed to its role of Security Agent for the Secured Parties including, without limitation, the provisions set out in Clause 18 (*The Security Agent*), Clause 20 (*Costs and Expenses*) and Clause 21 (*Other Indemnities*); and
- (iv) in respect of the exercise of the Security Agent's discretion to exercise a right, power or authority under any of:
 - (A) Clause 11 (*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 Cash Collateral*); and
 - (E) Clause 16.5 (*Permitted Deductions*).
- (e) If giving effect to instructions given by the Majority External Creditors 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. Without prejudice to its obligation to ascertain whether the relevant percentage of External Credit Participations has been obtained under this Agreement where applicable, nothing in this Clause 18.2 shall oblige the Security Agent to consider or monitor the effect of any instructions delivered to it in accordance with this Agreement and the Security Agent shall have no liability to any Party whatsoever (including as a result of any corresponding delay) if, in fact, such instructions do or do not have the effect of an Intercreditor Amendment.
- (f) In exercising any discretion to exercise a right, power or authority under the Debt Documents where either:
 - (i) it has not received any instructions from the Majority External Creditors as to the exercise of that discretion; or
 - (ii) the exercise of that discretion is subject to paragraph (d)(iv) above,
- (g) the Security Agent shall if (in its opinion) there is a conflict between the interests of one group of External Creditors and the interests of another group of External Creditors in relation to the matter in respect of which the discretion is to be exercised, do so having primary regard to the interests of the External Creditors taken as a whole. Notwithstanding anything to the contrary in this Agreement or any Debt Document and without prejudice to its obligation to ascertain whether the relevant percentage of External Credit Participations has been obtained under this Agreement where applicable, any reference to the Security Agent acting in its discretion, as it sees fit or analogous term shall not oblige the Security Agent to exercise any such discretion and the Security Agent shall be required at all times (subject to being indemnified and/or secured and/or prefunded to its satisfaction and except insofar as such determination is for the purpose of enabling the Security Agent to protect its own interests or receive sums for its own account) to act or refrain from acting in accordance with the instructions of the Majority External Creditors, or if this Agreement stipulates the matter is a decision for any Creditor or group of Creditors, from that Creditor or

group of Creditors that is entitled to so instruct the Security Agent in accordance with the terms of this Agreement and, in doing so, the Security Agent shall be acting in a purely mechanical and administrative capacity. The Security Agent shall not be responsible to any Party as a consequence of so acting, including for any delay in receiving such instructions, requesting clarification or being provided with mutually agreed instructions (if applicable), nor if any such delay causes another Party or Creditor's instructions to prevail or to become excluded pursuant to the terms of this Agreement.

- (h) The Security Agent may refrain from acting in accordance with any instructions of any Creditor or group of Creditors until it has received any indemnification and/or security and/or prefunding that it may in its discretion require (which may be greater in extent than that contained in the Debt Documents) for any cost, loss or liability (together with any applicable VAT) which it may incur in complying with those instructions.
- (i) The Security Agent may carry out what in its discretion it considers to be administrative acts, or acts which are incidental to any instruction (though not contrary to any such instruction), in the absence of any further instructions, but so that if further instructions are received, 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.

18.3 Duties of the Security Agent

- (a) The Security Agent's duties under the Debt Documents are solely mechanical and administrative in nature.
- (b) The Security Agent shall promptly:
 - (i) forward to the Agent and to each Hedge Counterparty a copy of any document received by the Security Agent from any Debtor or the Parent under any Debt Document; and
 - (ii) forward to a Party the original or a copy of any document which is delivered to the Security Agent for that Party by any other Party.
- (c) The Security Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (d) Without prejudice to Clause 22.3 (*Notification of prescribed events*), if the Security Agent receives notice from a Party referring to any Debt Document, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the External Creditors.
- (e) The Security Agent shall have only those duties, obligations and responsibilities expressly specified in the Debt Documents to which it is expressed to be a party (and no others shall be implied).

18.4 No fiduciary duties to Debtors or Parent

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

18.5 No duty to account

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

18.6 Business with the Group and the Parent

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

18.7 Rights and discretions

- (a) The Security Agent may:
- (i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
 - (ii) assume that:
 - (A) any instructions received by it from the Majority External Creditors, any Creditors or any group of Creditors are duly given in accordance with the terms of the Debt Documents;
 - (B) unless it has received notice of revocation, that those instructions have not been revoked; and
 - (C) if it receives any instructions to act in relation to the Transaction Security, that all applicable conditions under the Debt Documents for so acting have been satisfied; and
 - (iii) rely on a certificate from any person:
 - (A) as to any matter of fact or circumstance which might reasonably be expected to be within the knowledge of that person; or
 - (B) to the effect that such person approves of any particular dealing, transaction, step, action or thing,

as sufficient evidence that that is the case and, in the case of sub-paragraph (A) above, may assume the truth and accuracy of that certificate.
- (b) The Security Agent may assume (unless it has received notice to the contrary in its capacity as security trustee or agent for the Secured Parties) that:
- (i) no Default has occurred;
 - (ii) no Debtor nor the Parent is in breach of or default under its obligations under any of the Debt Documents;
 - (iii) any right, power, authority or discretion vested in any Party, any Creditor or any group of Creditors has not been exercised; and
 - (iv) any notice made by the Company is made on behalf of and with the consent and knowledge of all the Debtors and the Parent.
- (c) Without prejudice to the generality of paragraph (d) below, the Security Agent may at any time engage, pay for and rely without liability on the services of any lawyers to act as independent counsel to the Security Agent (and so separate from any lawyers instructed by any External Creditor) if the Security Agent in its reasonable opinion deems this to be desirable.
- (d) The Security Agent may engage, pay for and rely without liability 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.

- (e) The Security Agent, any Receiver and any Delegate may act in relation to the Debt Documents and the Security Property through its officers, employees and agents and shall not:
 - (i) be liable for any error of judgement made by any such person; or
 - (ii) be bound to supervise, or be in any way responsible for any loss incurred by reason of misconduct, omission or default on the part of any such person,unless such error or such loss was directly caused by the Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct.
- (f) Unless this Agreement expressly specifies otherwise, the Security Agent may disclose to any other Party any information it reasonably believes it has received as security trustee under this Agreement.
- (g) Notwithstanding any other provision of any Debt Document to the contrary, the Security Agent is not obliged to do or omit to do anything if it would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of any fiduciary duty or duty of confidentiality.
- (h) Notwithstanding anything in any Debt Document to the contrary, the Security Agent shall not do, or be authorised or required to do, anything which might constitute a regulated activity for the purpose of the Financial Services and Markets Act 2000 ("FSMA"), unless it is authorised under FSMA to do so. The Security Agent shall have the discretion at any time:
 - (A) 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 licences; and
 - (B) 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.
- (i) Notwithstanding any provision of any Debt Document to the contrary, the Security Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

18.8 Responsibility for documentation

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

- (a) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Security Agent, a Debtor, the Parent 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, report 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, any report, any reliance letter entered into by the Security Agent in respect of any report, or any other agreement, arrangement or document entered into,

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

- (c) any determination as to whether any information provided or to be provided to any Secured Party is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.

18.9 **No duty to monitor**

The Security Agent shall not be bound to enquire:

- (a) whether or not any Default has occurred;
- (b) as to the performance, default or any breach by any Party of its obligations under any Debt Document;
- (c) whether any other event specified in any Debt Document has occurred; or
- (d) whether a Sponsor Affiliate or member of the Group beneficially owns or has any participation in an External Credit Participation for the purposes of Clause 25.5 (*Snooze/Lose*).

18.10 **Exclusion of liability**

- (a) Without limiting paragraph (b) below (and without prejudice to any other provision of any Debt Document excluding or limiting the liability of the Security Agent, any Receiver or Delegate), none of the Security Agent, any Receiver nor any Delegate will be liable for:
 - (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Debt Document or the Security Property unless directly caused by its gross negligence or wilful misconduct;
 - (ii) exercising or not exercising any right, power, authority or discretion given to it by, or in connection with, any Debt Document, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Debt Document or the Security Property;
 - (iii) any shortfall which arises on the enforcement or realisation of the Security Property; or
 - (iv) without prejudice to the generality of sub-paragraphs (i) to (iii) above, any damages, costs, losses, any diminution in value or any liability whatsoever arising as a result of:
 - (A) any act, event or circumstance not reasonably within its control; or
 - (B) the general risks of investment in, or the holding of assets in, any jurisdiction,

including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets; breakdown, failure or malfunction of any third party transport, telecommunications,

computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.

- (b) No Party (other than the Security Agent, that Receiver or that Delegate) (as applicable) may take any proceedings against any officer, employee or agent of the Security Agent, a Receiver or a Delegate in respect of any claim it might have against the Security Agent, a Receiver or a Delegate or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Debt Document or any Security Property and any officer, employee or agent of the Security Agent, a Receiver or a Delegate may rely on this Clause 18.10 subject to Clause 1.4 (*Third Party Rights*) and the provisions of the Third Parties Act.
- (c) Nothing in this Agreement shall oblige the Security Agent to carry out:
 - (i) any “know your customer” or other checks in relation to any person; or
 - (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any External Creditor,

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

- (d) Without prejudice to any provision of any Debt Document excluding or limiting the liability of the Security Agent, any Receiver or Delegate, any liability of the Security Agent, any Receiver or Delegate arising under or in connection with any Debt Document or the Security Property shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered (as determined by reference to the date of default of the Security Agent, Receiver or Delegate (as the case may be) or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Security Agent, Receiver or Delegate (as the case may be) at any time which increase the amount of that loss. In no event shall the Security Agent, any Receiver or Delegate be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Security Agent, Receiver or Delegate (as the case may be) has been advised of the possibility of such loss or damages.

18.11 External Creditors' indemnity to the Security Agent

- (a) Each External Creditor shall (in the proportion that the Liabilities due to it bear to the aggregate of the Liabilities due to all the External Creditors for the time being (or, if the Liabilities due to the External Creditors are zero, immediately prior to their being reduced to zero)), indemnify the Security Agent and every Receiver and every Delegate, within five (5) 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 or the Parent pursuant to a Debt Document in respect of such cost, loss or liability).
- (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 the MTM Liabilities. The Security Agent shall be entitled to determine the amount of the MTM Liabilities through the Agent.

- (c) The Company shall, within five (5) Business Days of demand reimburse any External Creditor for any payment that External Creditor makes to the Security Agent pursuant to paragraph (a) above.
- (d) The provisions of this Clause 18 shall continue in full force and effect notwithstanding the discharge of the trust created hereunder (if applicable) and whether or not the Security Agent is then the Security Agent of this Agreement.

18.12 Resignation of the Security Agent

- (a) The Security Agent may resign and appoint one of its Affiliates as successor by giving notice to the External Creditors and the Company.
- (b) Alternatively the Security Agent may resign by giving thirty (30) days' notice to the External Creditors and the Company, in which case the Majority External Creditors may appoint a successor Security Agent.
- (c) If the Majority External Creditors have not appointed a successor Security Agent in accordance with paragraph (b) above within twenty (20) days after notice of resignation was given, the retiring Security Agent (after consultation with the Agent and the Hedge Counterparties) may appoint a successor Security Agent.
- (d) The retiring Security Agent shall make available to the successor Security Agent such documents and records and provide such assistance as the successor Security Agent may reasonably request for the purposes of performing its functions as Security Agent under the Debt Documents.
- (e) The Security Agent's resignation notice shall only take effect upon:
 - (i) the appointment of a successor; and
 - (ii) the transfer of all the Security Property to that successor.
- (f) Upon the appointment of a successor, the retiring Security Agent shall be discharged from any further obligation in respect of the Debt Documents (other than its obligations under paragraph (b) of Clause 18.25 (*Winding up of trust*) and paragraph (d) above) but shall remain entitled to the benefit of this Clause 18.13 and Clause 21.1 (*Indemnity to the Security Agent*) (and any Security Agent fees for the account of the retiring Security Agent shall cease to accrue (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if that successor had been an original Party.
- (g) The Majority External Creditors may, by notice to the Security Agent, require it to resign in accordance with paragraph (b) above.

18.13 Confidentiality

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

- (c) Notwithstanding any other provision of any Debt Document to the contrary, the Security Agent is not obliged to disclose to any other person (i) any confidential information or (ii) any other information if the disclosure would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of any fiduciary duty.

18.14 **Information from the Creditors**

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

18.15 **Credit appraisal by the Secured Parties**

Without affecting the responsibility of any Debtor or the Parent 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 and the Parent;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Debt Document, the Security Property and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Debt Document or the Security Property;
- (c) whether that Secured Party has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Debt Document, the Security Property, the transactions contemplated by the Debt Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Debt Document or the Security Property;
- (d) the adequacy, accuracy or completeness of any information provided by the Security Agent, any Party or by any other person under or in connection with any Debt Document, the transactions contemplated by any Debt Document or any report or other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Debt Document; and
- (e) the right or title of any person in or to, or the value or sufficiency of any part of the Charged Property, the priority of any of the Transaction Security or the existence of any Security affecting the Charged Property.

18.16 **Security Agent's management time**

Following the occurrence of an Event of Default which is continuing, any amount payable to the Security Agent under Clause 18.11 (*External Creditors' indemnity to the Security Agent*), Clause 20 (*Costs and expenses*) or Clause 21.1 (*Indemnity to the Security Agent*) shall include the cost of utilising the Security Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Security Agent may notify to the Company and the External Creditors, and is in addition to any other fee paid or payable to the Security Agent.

18.17 **Reliance and engagement letters**

The Security Agent may obtain and rely on any certificate or report from any Debtor's auditor and may enter into any reliance letter or engagement letter relating to that certificate or report

on such terms as it may consider appropriate (including, without limitation, restrictions on the auditor's liability and the extent to which that certificate or report may be relied on or disclosed).

18.18 No responsibility to perfect Transaction Security

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

- (a) require the deposit with it of any deed or document certifying, representing or constituting the title of any Debtor or the Parent to any of the Charged Property;
- (b) obtain any licence, consent or other authority for the execution, delivery, legality, validity, enforceability or admissibility in evidence of any Debt 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 the Parent or any member of the Group to take, any step to perfect its 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 assurances in relation to any Security Document.

18.19 Insurance by Security Agent

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

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

- (b) Where the Security Agent is named on any insurance policy as an insured party, it shall not be liable for any damages, costs or losses to any person as a result of its failure to notify the insurers of any material fact relating to the risk assumed by such insurers or any other information of any kind, unless the Majority External Creditors request it to do so in writing and the Security Agent fails to do so within 14 days after receipt of that request.

18.20 Custodians and nominees

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

18.21 **Delegation by the Security Agent**

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

18.22 **Additional Security Agents**

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

18.23 **Acceptance of title**

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

18.24 **Winding up of trust**

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

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

then:

- (i) the trusts set out in this Agreement shall be wound up (if applicable) and the Security Agent shall release, without recourse or warranty, all of the Transaction Security and the rights of the Security Agent under each of the Security Documents; and
- (ii) any Security Agent which has resigned pursuant to Clause 18.13 (*Resignation of the Security Agent*) shall release, without recourse or warranty, all of its rights under each Security Document except those which are expressed to survive such discharge.

18.25 Powers supplemental to Trustee Acts

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

18.26 Disapplication of Trustee Acts

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

18.27 Intra-Group Lenders, Parent and Debtors: Power of Attorney

Each Intra-Group Lender, the Parent and each Debtor by way of security for its obligations under this Agreement irrevocably appoints the Security Agent to be its attorney to do anything which each Intra-Group Lender, the Parent and each Debtor has authorised the Security Agent or any other Party to do under this Agreement or is itself required to do under this Agreement but has failed to do within ten (10) Business Days of being notified of such failure (or otherwise after an Acceleration Event) (and the Security Agent may delegate that power on such terms as it sees fit).

18.28 Security Agent fee

- (a) Subject to paragraph (b) below, the Company shall pay to the Security Agent (for its own account) a security agent fee in the amount and at the times agreed in a Fee Letter.
- (b) No fees shall be payable pursuant to this Clause 18.29 unless the Closing Date (as defined in the Senior Facilities Agreement) occurs.

19. Changes to the Parties

19.1 Assignments and transfers

No Party may:

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

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

19.2 **No change of Parent**

The Parent may not:

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

in respect of the Parent Liabilities until after the Final Discharge Date other than as envisaged by Clause 5.5 (*No acquisition of Parent Liabilities*).

19.3 **Change of External Creditor (other than a Hedge Counterparty)**

An External Creditor (other than a Hedge Counterparty) may assign any of its rights and benefits or transfer any of its rights, benefits and obligations in respect of the Finance Documents or any of its Liabilities if:

- (a) that assignment or transfer is in accordance with the terms of the Finance Documents to which it is a party; and
- (b) any assignee or transferee has (if not already a Party as a Lender) acceded to this Agreement, in its capacity as an External Creditor, pursuant to Clause 19.9 (*Creditor Accession Undertaking*).

19.4 **Change of Hedge Counterparty**

A Hedge Counterparty may transfer any of its rights or obligations in respect of the Hedging Agreements to which it is a party, in accordance with Clause 4.12 (*Terms of Hedging Agreements*) if any transferee has (if not already a Party as a Hedge Counterparty and a party to the Senior Facilities Agreement as a Hedge Counterparty) acceded to this Agreement as a Hedge Counterparty pursuant to Clause 19.9 (*Creditor Accession Undertaking*).

19.5 **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:

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

in respect of the Intra-Group Liabilities to another member of the Group if that member of the Group has (if not already a Party as an Intra-Group Lender) acceded to this Agreement as an Intra-Group Lender, pursuant to Clause 19.9 (*Creditor Accession Undertaking*) provided that no member of the Group shall be required to accede to this Agreement as an Intra Group Lender under this Clause 19.5 if it would otherwise not have been required to do so under the terms of Clause 19.7 (*New Intra-Group Lender*) if it had been the original creditor of such Intra-Group Liability

19.6 **Change of Agent**

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

19.7 **New Intra-Group Lender**

If any Intra-Group Lender or any member of the Group makes any loan to or grants any credit to or makes any other financial arrangement having similar effect with any Debtor, in an aggregate amount of £1,000,000 or more and is or will be outstanding for more than 10 Business

Days, the Company will procure that the person giving that loan, granting that credit or making that other financial arrangement (if not already a Party as an Intra-Group Lender) accedes to this Agreement, as an Intra-Group Lender, pursuant to Clause 19.9 (*Creditor Accession Undertaking*).

19.8 **New Ancillary Lender**

If any Affiliate of a Lender becomes an Ancillary Lender in accordance with clause 7.8 (*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 until it has (if not already a Party as an External Creditor) acceded to this Agreement as an External Creditor and to the Senior Facilities Agreement as an Ancillary Lender pursuant to Clause 19.9 (*Creditor Accession Undertaking*).

19.9 **Creditor Accession Undertaking**

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

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

19.10 **New Debtor and/or Guarantor**

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

the Company will procure that the person incurring those Liabilities or giving that assurance accedes to this Agreement as a Debtor and as a Guarantor in each case in accordance with paragraph (d) below, no later than contemporaneously with the incurrance of those Liabilities or the giving of that assurance.

- (b) The Company will procure that no member of the Group which is not a Debtor gives any guarantee, indemnity or other assurance against loss in respect of any Financial Indebtedness of any member of the Group under a Debt Document to any person who is an External Creditor unless at the same time such person becomes a Party as a Debtor and a Guarantor in accordance with paragraph (d) below.
- (c) If any Affiliate of a Debtor becomes a borrower of an Ancillary Facility in accordance with the Senior Facilities Agreement, the relevant Debtor shall procure that its Affiliate

accedes to this Agreement as a Debtor and a Guarantor no later than contemporaneously with the date on which it becomes a borrower.

- (d) With effect from the date of acceptance by the Security Agent of a Debtor/Guarantor Accession Deed duly executed and delivered to the Security Agent by the new Debtor/Guarantor (as applicable) or, if later, the date specified in the Debtor/Guarantor Accession Deed, the new Debtor and/or Guarantor (as the case may be) 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 and/or Guarantor (as the case may be).
- (e) The Security Agent shall on the instruction from the Agent accept a Debtor/Guarantor Accession Deed in respect of a proposed new Debtor (and a proposed Additional Guarantor) if it receives:
 - (i) a completed Debtor/Guarantor Accession Deed in respect of that proposed new Debtor and/or proposed Additional Guarantor (as applicable), duly executed by that proposed new Debtor and/or proposed Additional Guarantor and the Company; and
 - (ii) in respect of a proposed Additional Guarantor only, confirmation from the Agent that all of the documents and other evidence listed in Schedule 5 (*Conditions Precedent required to be delivered by an Additional Guarantor*) in relation to that proposed Additional Guarantor, have each been received in form and substance satisfactory to the Agent (acting on the instructions of the External Creditors).

19.11 Additional parties

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

19.12 Resignation of a Debtor and/or a Guarantor

- (a) The Company may request that a Debtor (other than the Company) and/or a Guarantor (other than the Company) ceases to be a Debtor and/or a Guarantor (as applicable) by delivering to the Agent or the Security Agent a Debtor/Guarantor Resignation Request.
- (b) The Agent or the Security Agent shall accept a Debtor/Guarantor Resignation Request and notify the Company and each other Party of its acceptance if:

- (i) the Company has confirmed that no Default is continuing or would result from the acceptance of the relevant Debtor/Guarantor Resignation Request;
 - (ii) in respect of a Guarantor, the Agent notifies the Security Agent that no payment is due from that Guarantor under any guarantee given by that Guarantor under the Finance Documents to which it is a party;
 - (iii) the Company has confirmed that such Debtor and/or Guarantor is not, or has ceased to be, a borrower or guarantor under the Senior Facilities Agreement in accordance with its terms;
 - (iv) each Hedge Counterparty notifies the Security Agent that that Debtor and/or Guarantor is under no actual or contingent obligations to that Hedge Counterparty in respect of the Hedging Liabilities owed to it and the Agent notifies the Security Agent that that Debtor and/or Guarantor is under no actual or contingent obligations in respect of any Liabilities; and
 - (v) the Company confirms that that Debtor and/or Guarantor is under no actual or contingent obligations in respect of the Intra-Group Liabilities and the Parent Liabilities.
- (c) Upon notification by the Agent or the Security Agent to the Company of its acceptance of the resignation of a Debtor and/or Guarantor:
- (i) that member of the Group shall cease to be a Debtor and/or Guarantor (as applicable) and shall have no further rights or obligations under this Agreement as a Debtor and/or Guarantor (as applicable) and
 - (ii) the Security Agent is irrevocably authorised (at the cost of the Company and without any consent, sanction, authority or further confirmation from any other Party) (but subject to paragraph (d) below) to execute and deliver or enter into any release of the Transaction Security granted by the resigning Debtor and/or Guarantor or any other claim in relation to the resigning Debtor's and/or Guarantor's property and to 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.
- (d) Each release of Transaction Security or any claim described in paragraph (c) above shall become effective only on the acceptance by the Security Agent or the Agent of the relevant Debtor/Guarantor Resignation Request.

Section 8

Additional Payment Obligations

20. Costs and Expenses

20.1 Transaction expenses

The Company shall, within ten (10) Business Days of demand (which demand shall be accompanied by reasonable supporting evidence (including, without limitation, receipts and invoices)), pay the Security Agent the amount of all third-party costs and expenses (including legal fees up to any agreed cap) (together with any applicable VAT), subject to any caps agreed between the Company and the Security Agent, 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
- (b) any other Debt Documents executed after the date of this Agreement.

20.2 Amendment costs

If any Debtor or the Parent requests an amendment, waiver or consent or an amendment is required by any term of this Agreement, the Company shall, subject to any caps agreed between the Company and the Security Agent, within ten (10) Business Days of demand (which demand shall be accompanied by reasonable supporting evidence (including, without limitation, receipts and invoices)), reimburse the Security Agent for 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 responding to, evaluating, negotiating or complying with that request or requirement.

20.3 Enforcement and preservation costs

The Company shall, within ten (10) Business Days of demand, pay to the Security Agent the amount of all costs and expenses (including legal fees) (together with any applicable VAT) incurred by it in connection with the enforcement of or the preservation of any rights under any Debt Document and the Transaction Security and any proceedings instituted by or against the Security Agent as a consequence of taking or holding the Transaction Security or enforcing these rights.

20.4 Stamp taxes

The Company shall pay and, within ten (10) Business Days of demand (which demand shall be accompanied by reasonable supporting evidence), 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.

20.5 Interest on demand

If any Creditor or Debtor fails to pay any amount payable by it under this Agreement on its due date, interest shall accrue on the overdue amount (and be compounded with it) from the due date up to the date of actual payment (both before and after judgment and to the extent interest at a default rate is not otherwise being paid on that sum) at the rate which is 1 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 provided that if any such rate is below zero, that rate will be deemed to be zero.

21. Other Indemnities

21.1 Indemnity to the Security Agent

- (a) Each Debtor jointly and severally shall, within five (5) Business Days of demand indemnify the Security Agent and every Receiver and Delegate against any cost, loss or liability (together with any applicable amounts in respect of VAT) incurred by any of them (acting reasonably) as a result of:
- (i) any failure by the Company to comply with its obligations under Clause 20 (*Costs and Expenses*);
 - (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
 - (iii) the taking, holding, protection or enforcement of the Transaction Security (otherwise than as a result of its gross negligence or wilful misconduct);
 - (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 (otherwise than as a result of its gross negligence or wilful misconduct);
 - (v) any default by any Debtor or the Parent in the performance of any of the obligations expressed to be assumed by it in the Debt Documents;
 - (vi) instructing lawyers, accountants, tax advisers, surveyors, a Financial Adviser or other professional advisers or experts as permitted under this Agreement; or
 - (vii) acting as Security Agent, Receiver or Delegate under the Debt Documents or which otherwise relates to any of the Security Property (otherwise, in each case, than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct,

but in each case excluding any costs, loss or liability arising as a result of fraud, gross negligence or wilful misconduct of the Security Agent, Receiver or Delegate.

- (b) Each Debtor expressly acknowledges and agrees that the continuation of its indemnity obligations under this Clause 21 will not be prejudiced by any release or disposal under Clause 12 (*Distressed Disposals and Appropriation*) taking into account the operation of that Clause 12 (*Distressed Disposals and Appropriation*).
- (c) The Security Agent and every Receiver and Delegate may, in priority to any payment to the Secured Parties, indemnify itself out of the Charged Property in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this Clause 21.1 and shall have a lien on the Transaction Security and the proceeds of the enforcement of the Transaction Security for all moneys payable to it.

21.2 Company's indemnity to External Creditors

The Company shall within ten (10) Business Days of demand (which demand must be accompanied by reasonable details and calculations of the subject of the amount demanded) and as principal obligor indemnify each External Creditor against any cost, loss or liability (together with any applicable amounts in respect of VAT), whether or not reasonably foreseeable, incurred by any of them in relation to or arising out of the operation of Clause 12 (*Distressed Disposals and Appropriation*) unless in any case, such costs, loss or liability is caused by or as a result of the fraud, gross negligence or wilful misconduct of that External Creditor.

21.3 Currency indemnity

(a) If any sum due from a Debtor under the Debt Documents (a “**Sum**”), or any order, judgment or award given or made in relation to a Sum has to be converted from the currency (the “**First Currency**”) in which that Sum is payable into another currency (the “**Second Currency**”) for the purpose of:

- (i) making or filing a claim or proof against that Debtor; or
- (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

that Debtor shall as an independent obligation, within ten (10) Business Days of demand, indemnify each Secured Party to whom that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

(b) Each Debtor waives any right it may have in any jurisdiction to pay any amount under the Debt Documents in a currency or currency unit other than that in which it is expressed to be payable.

Section 9 Administration

22. Information

22.1 Dealings with Security Agent and Agent

- (a) Subject to clause 33.5 (*Impaired Agent*) of the Senior Facilities Agreement:
 - (i) each Lender shall deal with the Security Agent exclusively through the Agent; and
 - (ii) Hedge Counterparties shall deal directly with the Security Agent and shall not deal through the Agent.
- (b) The Agent shall not be under any obligation to act as agent or otherwise on behalf of any Hedge Counterparty except as expressly provided for in, and for the purposes of, this Agreement.

22.2 Disclosure between External Creditors and Security Agent

Notwithstanding any agreement to the contrary, each Debtor and the Parent consents, until the Final Discharge Date, to the disclosure by any External Creditor and the Security Agent to each other (whether or not through the Agent or the Security Agent) of such information concerning the Debtors and the Parent as any External Creditor or the Security Agent shall see fit provided that, in the case of disclosure to an Affiliate, the person to whom the information is to be given has entered into a Confidentiality Undertaking.

22.3 Notification of prescribed events

- (a) If a Default either occurs or ceases to be continuing under a Debt Document, the Agent or the relevant Hedge Counterparty (as applicable) shall, upon becoming aware of that occurrence or cessation, notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each other Party.
- (b) If an Event of Default occurs or ceases to be continuing the Agent or the relevant Hedge Counterparty (as applicable) shall, upon becoming aware of that occurrence (and provided that it is then continuing) or upon becoming aware of that cessation (as the case may be), notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each other Party.
- (c) Without prejudice to the operation of paragraph (b) of clause 26.18 (*Acceleration*) of the Senior Facilities Agreement, if an Acceleration Event occurs, the Agent shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each other Party.
- (d) If the Security Agent enforces, or takes formal steps to enforce, any of the Transaction Security it shall notify each Party of that action.
- (e) If any External 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 other Party of that action.
- (f) If a Debtor defaults on any Payment due under a Hedging Agreement, the Hedge Counterparty which is party to that Hedging Agreement shall, upon becoming aware of that default, and after allowing for any applicable notice of grace periods, notify the

Security Agent and the Security Agent shall, upon receiving that notification, notify the Agent and each other Hedge Counterparty.

- (g) If a Hedge Counterparty terminates or closes-out, in whole or in part, any hedging transaction under any Hedging Agreement as a result of a Credit Related Close-Out, it shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify the Agent and each other Hedge Counterparty.
- (h) If a Mandatory Prepayment is waived, the Agent shall notify the Security Agent of the amount of the Mandatory Prepayment waived and the Security Agent shall, upon receiving that notification, notify each Hedge Counterparty.
- (i) If the amount of any underlying Financial Indebtedness which is hedged pursuant to a Hedging Agreement is to be reduced (whether by way of repayment, prepayment, cancellation or otherwise) the Company shall notify each Hedge Counterparty of:
 - (i) the date and amount of that proposed reduction; and
 - (ii) any Interest Rate Hedge Excess that would result from that proposed reduction, in each case no later than five (5) Business Days before that proposed reduction.

23. Notices

23.1 Communications in writing

Any communication to be made under or in connection with this Agreement shall be made in writing and, unless otherwise stated, may be made by fax or letter (or email, in accordance with Clause 23.6 (*Electronic communication*)).

23.2 Security Agent's communications with External Creditors

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

- (a) with the Lenders through the Agent and may give to the Agent, as applicable, any notice or other communication required to be given by the Security Agent to any Lender;
- (b) with each Hedge Counterparty directly with that Hedge Counterparty.

23.3 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 each Party to this Agreement as at the date hereof, that identified with its name below:
- (b) 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.

23.4 Delivery

- (a) Any communication or document made or delivered by one person to another under or in connection with this Agreement will only be effective if by way of letter, when it has been left at the relevant address or five (5) Business Days after being deposited in

the post postage prepaid in an envelope addressed to it at that address and, if a particular department or officer is specified as part of its address details provided under Clause 23.3 (*Addresses*), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to the Security Agent will be effective only when actually received by the Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Security Agent's signature below (or any substitute department or officer as the Security Agent shall specify for this purpose).
- (c) Any communication or document made or delivered to the Company in accordance with this Clause 23.4 will be deemed to have been made or delivered to the Parent.
- (d) Any communication or document which becomes effective, in accordance with paragraphs (a) to (c) above, after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

23.5 **Notification of address**

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

23.6 **Electronic communication**

- (a) Any communication to be made between any two Parties under or in connection with this Agreement may be made by electronic mail or other electronic means (including, without limitation, by way of posting to a secure website) if those two Parties:
 - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means; and
 - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.
- (b) Any such electronic communication as specified in paragraph (a) above to be made between the Parent, a Debtor or an Intra-Group Lender and the Security Agent or an External Creditor may only be made in that way to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication.
- (c) Any such electronic communication as specified in paragraph (a) above made between any two Parties will be effective only when actually received in readable form and in the case of any electronic communication made by a Party to the Security Agent only if it is addressed in such a manner as the Security Agent shall specify for this purpose.
- (d) Any electronic communication which becomes effective, in accordance with paragraph (c) above, after 5:00 p.m. in the place in which the Party to whom the relevant communication is sent or made available has its address for the purpose of this Agreement shall be deemed only to become effective on the following day.
- (e) Any reference in this Agreement to a communication being sent or received shall be construed to include that communication being made available in accordance with this Clause 23.6.

23.7 **English language**

- (a) Any notice given under or in connection with this Agreement must be in English.

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

24. Preservation

24.1 Partial invalidity

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

24.2 No impairment

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

24.3 Remedies and waivers

No failure to exercise, nor any delay in exercising, on the part of any Party, any right or remedy under a Debt Document shall operate as a waiver of any such right or remedy or constitute an election to affirm any Debt Document. No election to affirm any Debt Document on the part of any Secured Party will be effective unless it is in writing. No single or partial exercise of any right or remedy will prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in each Debt Document are cumulative and not exclusive of any rights or remedies provided by law.

24.4 Waiver of defences

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

- (a) any time, waiver or consent granted to, or composition with, any Debtor, the Parent or other person;
- (b) the release of any Debtor, the Parent or any other person under the terms of any composition or arrangement with any creditor of any Debtor or the Parent;
- (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, the Parent 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, the Parent or other person;

- (e) any amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) or replacement of a Debt Document or any other document or security including, without limitation, any change in the purpose of, any extension of or increase in any facility or the addition of any new facility under any Finance Document or 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 External Creditors in whole or in part; or
- (h) any insolvency or similar proceedings.

24.5 **Priorities not affected**

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

- (a) not be affected by any reduction or increase in the principal amount secured by the Transaction Security in respect of the Liabilities owing to the External Creditors or by any intermediate reduction or increase in, amendment or variation to any Debt Document, 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 External Creditors in the order specified, regardless of the date upon which any of the Liabilities arise or of any fluctuations in the amount of any of the Liabilities outstanding.

25. **Consents, Amendments and Override**

25.1 **Required consents**

- (a) Subject to paragraph (b) and (c) below, Clause 25.4 (*Exceptions*), Clause 25.5 (*Snooze/Lose*), Clause 25.6 (*Disenfranchisement of Sponsor Affiliates*) and Clause 25.7 (*Disenfranchisement of Defaulting Lenders*), this Agreement may be amended or waived only with the consent of the Majority External Creditors and the Company.
- (b) An amendment or waiver that has the effect of changing or which relates to:
 - (i) the definitions of “External Creditor”, “External Credit Participation” or “Majority External Creditors” in Clause 1 (*Definitions and Interpretation*);
 - (ii) Clause 8 (*Turnover of Receipts*), Clause 9 (*Redistribution*), Clause 10 (*Enforcement*), Clause 11 (*Non-Distressed Disposals*), Clause 12 (*Distressed Disposals and Appropriation*), Clause 16 (*Application of Proceeds*), Clause 17 (*Equalisation*), paragraphs (d)(iii), (e) and (f) of Clause 18.2 (*Instructions*) or this Clause 25; or
 - (iii) the order of priority or subordination under this Agreement;

shall not be made without the consent of:

- (A) the Agent; and

- (B) each affected Hedge Counterparty (unless otherwise provided in the relevant Hedging Agreement),

in each case, to the extent that any such person is or is deemed to be a Party at the relevant time.

- (c) The Security Agent may consent to any amendment or waiver which would otherwise fall within paragraph (b) above if the amendment or waiver is, in the opinion of the Security Agent, of a minor, technical or administrative nature or to correct a manifest error.

25.2 Amendments and Waivers: Transaction Security Documents

- (a) Subject to Clause 25.4 (*Exceptions*), Clause 25.5 (*Snooze/Lose*) and paragraph (b) below and unless the provisions of any Debt Document expressly provide otherwise, the Security Agent may, if authorised by the Majority External Creditors, and if the Company consents, amend the terms of, waive any of the requirements of or grant consents under, any of the Transaction Security Documents which shall be binding on each Party.
- (b) Subject to paragraph (c) of Clause 25.4 (*Exceptions*), the prior consent of:
 - (i) the Agent; and
 - (ii) each affected Hedge Counterparty (unless otherwise provided in the relevant Hedging Agreement),

is required to authorise any amendment or waiver of, or consent under, any Transaction Security Document which would adversely affect the nature or scope of the Charged Property, the manner in which the proceeds of enforcement of the Transaction Security are distributed, the release of any Transaction Security.

25.3 Effectiveness

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

25.4 Exceptions

- (a) Subject to paragraphs (c) and (d) below, if the amendment, waiver or consent has the effect of imposing new or additional obligations on, or withdrawing or reducing the rights of, any Party other than:
 - (i) in the case of an External Creditor (other than the Agent or any Arranger), in a way which affects or would affect External Creditors of that Party's class generally; or
 - (ii) in the case of a Debtor or the Parent, to the extent consented to by the Company under paragraph (a) of Clause 25.2 (*Amendments and Waivers: Transaction Security Documents*),

the consent of that Party is required.

- (b) Subject to paragraphs (c) and (d) below, an amendment, waiver or consent:

- (i) which has the effect of withdrawing or reducing the rights of or imposing new or additional obligations on the Agent, an Arranger, the Security Agent (including, without limitation, any ability of the Security Agent to act in its discretion under this Agreement) may not be effected without the consent of that Agent or, as the case may be, that Arranger or the Security Agent;
 - (ii) which relates to any rights or obligations of the Hedge Counterparties in any Debt Document and has the effect of withdrawing or reducing the rights of or imposing new or additional obligations on a Hedge Counterparty or affects the timing, currency or payment under any Debt Documents to any Hedge Counterparty, may not be effected without the consent of the Hedge Counterparty.
- (c) Neither paragraph (a) nor (b) above, nor paragraph (b) of Clause 25.2 (*Amendments and Waivers: Transaction Security Documents*) shall apply:
- (i) to any release of Transaction Security, claim or Liabilities; or
 - (ii) to any Consent,
- which, in each case, the Security Agent gives in accordance with Clause 11 (*Non-Distressed Disposals*) or Clause 12 (*Distressed Disposals and Appropriation*) or to any release the Transaction Security upon or pursuant to the occurrence of the Final Discharge Date.
- (d) Paragraphs (a) and (b) above shall apply to an Arranger only to the extent that Liabilities are then owed to that Arranger.

25.5 Snooze/Lose

- (a) In this Clause 25.5, a “**Request**” means:
- (i) a request for a Consent in relation to any of the terms of this Agreement and/or any Transaction Security Document;
 - (ii) a request to participate in any other vote of relevant External Creditors under the terms of this Agreement;
 - (iii) a request to approve any other action under this Agreement;
 - (iv) a request to provide any confirmation or notification or details of participations under this Agreement; or
 - (v) a request to provide details of an Exposure.
- (b) Subject to paragraph (c) below, if in relation to a Request, any External Creditor fails to respond to that Request within ten (10) Business Days of that Request being made or, as appropriate, fails to provide details of any relevant External Credit Participations or Exposure (as appropriate) to the Agent within the timescale specified by the Agent:
- (i) in the case of a Request referred to in paragraphs (a)(i), (a)(ii) or (a)(iii) above, the External Credit Participations (if it has an External Credit Participation) of that External Creditor shall be deemed to be zero for the purpose of calculating the External Credit Participations when ascertaining whether any relevant percentage of External Credit Participations has been obtained to give that Consent, carry that vote or approve that action;
 - (ii) in the case of a Request referred to in paragraphs (a)(i), (a)(ii) or (a)(iii) above, the status of that External Creditor as an External Creditor shall be disregarded

for the purposes of ascertaining whether the agreement of any specified group of External Creditors has been obtained to give that Consent, carry that vote or approve that action;

- (iii) in the case of a Request referred to in paragraph (a)(iv) above, that confirmation or notification shall be deemed to have been given; and
 - (iv) in the case of a Request referred to in paragraph (a)(v) above, that External Creditor's Exposure shall be deemed to be zero.
- (c) Paragraph (b) above shall not apply to an amendment or waiver referred to in paragraph (b) of Clause 25.1 (*Required consents*) or to any Request requiring the approval of the Majority External Creditors.

25.6 Disenfranchisement of Sponsor Affiliates

- (a) For so long as a Sponsor Affiliate (i) beneficially owns an External Credit Participation or (ii) has entered into a sub-participation agreement relating to an External Credit Participation or other agreement or arrangement having a substantially similar economic effect and such agreement or arrangement has not been terminated, in ascertaining:
- (i) the Majority External Creditors; or
 - (ii) whether:
 - (A) any relevant percentage (including, for the avoidance of doubt, unanimity) of External Credit Participations; or
 - (B) the agreement of any specified group of External 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 External Credit Participation shall be deemed to be zero and that Sponsor Affiliate (or the person with whom it has entered into that sub-participation, other agreement or arrangement (a "**Counterparty**")) shall be deemed not to be a Lender other than to the extent that a Counterparty is a Lender by virtue otherwise than by beneficially owning the relevant External Credit Participation.
- (b) Each Sponsor Affiliate that is an External Creditor agrees that:
- (i) in relation to any meeting or conference call to which all the External 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 External Creditors.

25.7 Disenfranchisement of Defaulting Lenders

- (a) Without prejudice to paragraph (b) of Clause 25.1 (*Required consents*) and Clause 25.6 (*Disenfranchisement of Sponsor Affiliates*), for so long as a Lender is a Defaulting Lender, in ascertaining:
- (i) the Majority External Creditors; or
 - (ii) whether:

- (A) any relevant percentage of External Credit Participations; or
- (B) the agreement of any specified group of External Creditors,

has been obtained to approve any request for a Consent or to carry any other vote or approve any action under this Agreement, the Commitment of that Lender will be reduced by the amount of its Available Commitments and, to the extent that that reduction results in the Commitment of that Lender being zero, that Lender shall be deemed not to be a Lender.

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

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

25.8 **Deemed consent**

If, at any time prior to the Final Discharge Date, the Majority External Creditors give a Consent in respect of any Finance Document or Hedging Agreement then, if that action was permitted by the terms of this Agreement, the Parent, the Intra-Group Lenders, the Company and the other Debtors 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 Security Agent may reasonably require to give effect to this Clause 25.8.

25.9 **Excluded consents**

Clause 25.8 (*Deemed consent*) does not apply to any Consent which has the effect of:

- (a) increasing or decreasing the Liabilities;
- (b) changing the basis upon which any Permitted Payments are calculated (including the timing, currency or amount of such Payments); or
- (c) changing the terms of this Agreement or of any Security Document.

25.10 **No liability**

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

25.11 **Debt Documents and this Agreement**

Unless expressly stated otherwise in this Agreement, this Agreement overrides anything in the Debt Documents to the contrary.

26. 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.

Section 10 Governing Law and Enforcement

27. Bail-In

27.1 Contractual recognition of bail-in

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

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

27.2 Bail-in definitions

“**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 the United Kingdom, the UK Bail-In Legislation; and
- (c) 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.

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

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

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

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

“Write-down and Conversion Powers” means:

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

28. Governing Law

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

29. Enforcement

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligations arising out of or in connection with this Agreement) (a “**Dispute**”).
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no such Party will argue to the contrary.
- (c) This Clause 29 is for the benefit of the Secured Parties only. As a result, to the extent allowed by law, 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.

THIS AGREEMENT has been entered into on the date stated at the beginning of this Agreement and executed as a deed by the Parent, the Company, each other Debtor and each Intra-Group Lender and is intended to be and is delivered by them as a deed on the date specified above.

Schedule 1

Form of Debtor/Guarantor Accession Deed

This Agreement is made on [●] and made

Between:

- (1) *[Insert Full Name of New Debtor/Guarantor]* (the “[**Acceding Debtor**]/[**Acceding Guarantor**]”); 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/Guarantor] in relation to an intercreditor agreement (the “[**Intercreditor Agreement**]”) dated [●] between, amongst others, [●] as parent, [●] as company, [●] as security agent, [●] as Agent, the Creditors and the Debtors (each as defined in the Intercreditor Agreement).

The Acceding [Debtor/Guarantor] 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]]/[provide Transaction Security 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/Guarantor] and the Security Agent agree that the Security Agent shall hold:
 - (a) [any Security in respect of Liabilities created or expressed to be created pursuant to the Relevant Documents;
 - (b) all proceeds of that Security; and]*
 - (c) all obligations expressed to be undertaken by the Acceding [Debtor/Guarantor] to pay amounts in respect of the Liabilities to the Security Agent as trustee for the Secured Parties (in the Relevant Documents or otherwise) and secured by the Transaction Security together with all representations and warranties expressed to be given by the Acceding [Debtor/Guarantor] (in the Relevant Documents or otherwise) in favour of the Security Agent as trustee for the Secured Parties,
on trust or, in any jurisdiction where the trust would not be recognised, as an agent for the Secured Parties on the terms and conditions contained in the Intercreditor Agreement.
3. The Acceding [Debtor/Guarantor] 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

* 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.

provisions of the Intercreditor Agreement as if it had been an original party to the Intercreditor Agreement.

4. [In consideration of the Acceding [Debtor/Guarantor] being accepted as an Intra-Group Lender for the purposes of the Intercreditor Agreement, the Acceding [Debtor/Guarantor] also confirms that it intends to be party to the Intercreditor Agreement as an Intra-Group Lender, and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by an Intra-Group Lender and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement].**
5. [The Company confirms that no Default is continuing or would occur as a result of [*Subsidiary*] becoming an Additional Guarantor].
6. This Agreement, and any non-contractual obligations arising out of or in connection with it, are governed by English law.

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

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/Guarantor

[Executed as a Deed

By: *[Full Name of Acceding Debtor/Guarantor]*

}

.....
Director

}

.....
Director/Secretary

Or

[Executed as a Deed

By: *[Full Name of Acceding Debtor/Guarantor]*

}

.....
Signature of Director

}

.....
Name of the Director

in the presence of

}

.....
Signature of witness:

Name of witness:

Address of witness:

Occupation of witness:

Address for notices:

Address:

Fax:

The Security Agent

[Full Name of Current Security Agent]

By:

Date:

Schedule 2

Form of Creditor 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.

From: [Acceding Creditor]

This Undertaking is made on [date] by [insert full name of new Agent/External Creditor/Intra-Group Lender/Hedge Counterparty] (the “**Acceding [insert capacity]**”) in relation to the intercreditor agreement (the “**Intercreditor Agreement**”) dated [●] between, among others, [●] as parent, [●] as company, [●] as security agent, [●] as Agent, the Creditors and the 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 [insert capacity] being accepted as a [insert capacity] for the purposes of the Intercreditor Agreement, the Acceding [insert capacity] confirms that, as from [date], it intends to be party to the:

- (a) Intercreditor Agreement as a [insert capacity];
- (b) [●] [insert details of other relevant Finance Documents to be acceded to and capacity],

and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a [insert capacity], the [relevant Finance Document] to be assumed by [relevant capacity], and [●] and agrees that it shall be bound by all the provisions of the Intercreditor Agreement [insert other documents], as if it had been an original party to the Intercreditor Agreement [and the insert other documents]. .

[The Acceding Lender is an Affiliate of a 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 “**Facilities Agreement**”), the Acceding Lender confirms, for the benefit of the parties to that Facilities Agreement, that, as from [date], it intends to be party to that Facilities Agreement as an Ancillary Lender, and undertakes to perform all the obligations expressed in that Facilities Agreement to be assumed by a Finance Party (as defined in that Facilities Agreement) and agrees that it shall be bound by all the provisions of that Facilities Agreement, as if it had been an original party to that Facilities Agreement as an Ancillary Lender.]

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

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

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

Acceding [Creditor]

[Executed as a Deed

[insert full name of Acceding Creditor]

}

.....
By:

Address:

Fax:

Accepted by the Security Agent

[Accepted by the Senior Agent]

for and on behalf of

[Insert full name of current Security Agent]

Date:

for and on behalf of

[Insert full name of Agent]

Date:]

[We confirm that:

- (a) we agree to the provisions of this Undertaking; and
- (b) the documents referred to above are all the material documents governing the relevant [Senior Facilities Liabilities/ Hedging Liabilities].

[COMPANY]

By:]

Schedule 3

Form of Debtor/Guarantor Resignation Request

To: [●] as Security Agent

From: [resigning Debtor] and [Company]

Dated: [●]

Dear Sirs

**[Company] - [●] Intercreditor Agreement
dated [●] (the “Intercreditor Agreement”)**

1. We refer to the Intercreditor Agreement. This is a Debtor/Guarantor Resignation Request. Terms defined in the Intercreditor Agreement have the same meaning in this Debtor/Guarantor Resignation Request unless given a different meaning in this Debtor/Guarantor Resignation Request.
2. Pursuant to clause 19.12 (*Resignation of a Debtor*) of the Intercreditor Agreement we request that [resigning Debtor/Guarantor] be released from its obligations as a [Debtor and/or Guarantor] 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/Guarantor] is under no actual or contingent obligations in respect of the Intra-Group Liabilities and the Parent Liabilities.
4. This letter and any non-contractual obligations arising out of or in connection with it are governed by English law.

[Company]
By:

[resigning Debtor/ Guarantor]
By:

Schedule 4

Agreed Security Principles

1. Considerations

- (a) In determining what guarantees and Security will be provided in support of the Secured Obligations by any Debtor and the Parent, the following matters will be taken into account. Guarantees and Security shall not be created or perfected to the extent that it would:
- (i) result in any breach of corporate benefit, financial assistance, fraudulent preference or thin capitalisation laws or regulations (or analogous restrictions) of any applicable jurisdiction;
 - (ii) result in a significant risk to the officers of the relevant grantor of Security of contravention of their fiduciary duties and/or of civil or criminal liability;
 - (iii) result in costs that, in the reasonable opinion of the Security Agent, are disproportionate to the benefit obtained by the beneficiaries of that Security or guarantee; or
 - (iv) except in the case of intra-Group receivables, breach the terms of third party arrangements which prohibit or which prevent those assets from being charged or that guarantee being provided,
- provided that in each case, the Parent or the Debtor (as applicable) shall use its reasonable endeavours to overcome any such limitations or obstacles.
- (b) For the avoidance of doubt, in these Agreed Security Principles, “cost” includes, but is not limited to, income tax cost, notarial costs, registration taxes payable on the creation or enforcement or for the continuance of any Security, stamp duties, out-of-pocket expenses, and other fees and expenses directly incurred by the relevant grantor of Security or any of its direct or indirect owners, subsidiaries or Affiliates.

2. Obligations to be Secured

- (a) Subject to paragraph 1 (*Considerations*) above and to paragraph (c) below, the obligations to be secured are the Secured Obligations (as further detailed below). The Security is to be granted in favour of the Security Agent on behalf of the Secured Parties. If “parallel debt” or “joint and several creditor” provisions are necessary, such provisions will be contained in the individual security documents. To the extent possible, there should be no action required to be taken in relation to the guarantees and/or security under the Transaction Security Documents when any Secured Party transfers any of its participation under a Finance Document to a new Secured Party.
- (b) For ease of reference, the following definitions should, to the extent legally possible, be incorporated into each Transaction Security Document (with the capitalised terms used in them having the meaning given to them in this Agreement):
- (i) “**Secured Obligations**”; and
 - (ii) “**Secured Parties**”.
- (c) The Secured Obligations will be limited:

- (i) to avoid any breach of corporate benefit, financial assistance, fraudulent preference, thin capitalisation rules or the laws or regulations (or analogous restrictions) of any applicable jurisdiction; and
 - (ii) to avoid any risk to officers of the relevant member of the Group that is granting Transaction Security of contravention of their fiduciary duties and/or civil or criminal or personal liability.
- (d) The Company will use reasonable endeavours to assist in demonstrating that adequate corporate benefit accrues to the relevant Debtor (as applicable) and to overcome any such limitations to the extent reasonably practicable.

3. General

- (a) Where appropriate, defined terms in the Transaction Security Documents should mirror those in this Agreement.
- (b) The parties to this Agreement agree to negotiate the form of each Transaction Security Document in good faith. The form of guarantee is set out in Clause 15 (*Guarantee and Indemnity*) and, with respect to any Additional Guarantor, is subject to any limitations set out in Clause 15 (*Guarantee and Indemnity*) or the Debtor/Guarantor Accession Deed applicable to such Additional Guarantor.
- (c) The Security will not be enforceable until the occurrence of an Acceleration Event.
- (d) Unless required by local law, the circumstances in which the Security shall be released should not be dealt with in individual security documents but shall be the same as those set out in this Agreement.
- (e) The Transaction Security Documents shall operate to create Security rather than to impose new commercial obligations. Accordingly, the Transaction Security Documents shall contain representations, warranties or undertakings and other obligations only to the extent those provisions are:
 - (i) required for the creation, perfection or preservation (including as to ranking) of Security or assets subject to the Security;
 - (ii) required to confirm any registration or perfection of the Security; or
 - (iii) otherwise required by applicable law,
 and where not otherwise contained in the other Finance Documents.
- (f) There will be no repetition or extension of clauses set out in other Finance Documents such as those relating to notices, costs and expenses, indemnities, Tax gross-up, distribution of proceeds and release of security interests unless required or advisable under local law.
- (g) All security (other than share security) shall be governed by the law of and secure assets located in the jurisdiction of incorporation of that security provider. No perfection action will be required in jurisdictions where the relevant security provider is not located.
- (h) Security under the Transaction Security Documents will, where possible and practical, automatically create Security over future assets of the same type as those already secured.

- (i) For the avoidance of doubt, these Agreed Security Principles, in so far as they apply to any Debtors incorporated in Scotland and any related Transaction Security, shall be interpreted in accordance with the market practice in Scotland.

4. Restrictions on Charging

In accordance with paragraph 1 (*Considerations*) above, the Parties agree that if the Parent or a Debtor is required under a Transaction Security Document to assign or grant Security over any assets (except in the case of intra-Group receivables) and making such assignment or granting such Security would contravene a prohibition in a contract with a third party:

- (a) the Parent or a Debtor (as applicable) will not be required to make such assignment or grant such Security assignment until the consent of that third party has been obtained, provided that the Parent or relevant Debtor must (having regard as to whether such steps may jeopardise or prejudice the relevant asset or commercial relationship), for a period of 20 days use reasonable endeavours to obtain the consent of such party; and
- (b) until such time as the consent of the third party has been obtained, the Parent or relevant Debtor shall assign any damages, compensation, remuneration, profit, rent or income which it may derive from that right or be awarded or entitled to in respect of that right.

5. Transaction Security Perfection

Perfection of Transaction Security (when required) and other legal formalities will be completed as soon as practicable and, in any event, within the time periods specified by applicable law in order to ensure due perfection. Perfection of Transaction Security (including the delivery of any notices to debtors or third parties) will not be required if it would materially impact the ability of the Parent or relevant Debtor to conduct its operations and business in the ordinary course or prevent the Parent or relevant Debtor from using the relevant asset in the course of its business as permitted by the Finance Documents, provided that the relevant perfection requirement will be promptly met following the occurrence of an Acceleration Event. In no event shall any control agreements be required.

6. Terms of Transaction Security Documents

The following principles will be reflected in the Transaction Security Documents:

- (a) the provisions of each security document will not be unduly burdensome on the Parent or relevant Debtor or interfere unreasonably with the operation of its business and will be limited to those required to create effective security and not impose commercial obligations. The Security Agent shall release any security in the event that such release is required to permit a disposal, merger or other transaction permitted under this Agreement or to which the relevant External Creditors have consented in accordance with this Agreement;
- (b) information, such as lists of assets, will be provided if, and only to the extent, required by local law to be provided to perfect or register the security and, that this information can be provided without breaching confidentiality requirements or damaging business relationships and, unless required to be provided by local law more frequently, will be provided annually;
- (c) subject to paragraph 4 (*Restrictions on Charging*) above:
 - (i) Debtors (including the Company) will only be required to grant Transaction Security over:
 - (A) shares in their Subsidiaries that are Material Subsidiaries;

- (B) their bank accounts (excluding, in the case of the Target, any bank account that is ringfenced for CVR Proceeds);
 - (C) any intra-Group receivables; and
 - (D) all or substantially all of their assets by way of floating charge (or equivalent, if legally permissible and customary in the relevant jurisdiction);
- (ii) the Parent will only be required to grant Transaction Security over:
 - (A) shares in the Company; and
 - (B) any intra-Group receivables from the Company,
 (and no other Transaction Security will be granted);
- (d) in respect of Transaction Security granted over shares, to the extent legally possible under local law:
 - (i) customary limitations on the exercise of voting rights by the security-grantor to protect the validity and enforceability of the Transaction Security over shares shall apply;
 - (ii) until the occurrence of an Acceleration Event: (A) the security-grantor may retain and exercise voting rights to the applicable shares subject to subparagraph (i) above; and (B) the security-grantor will be permitted to receive dividends (to the extent permitted by the Finance Documents) and to pay dividends and any other economic rights (to the extent permitted by the Finance Documents);
- (e) the Secured Parties shall only be able to exercise a power of attorney following the occurrence of an Acceleration Event or if the Parent or the relevant Debtor has failed to comply with a further assurance or perfection obligation within 10 Business Days of being notified of that failure and being requested to comply;
- (f) the enforcement of Transaction Security shall not be limited by any requirement to obtain cash consideration on sales or other disposals. Unless local law requires otherwise, non-cash consideration will be expressly permitted;
- (g) no notice of Transaction Security in respect of contracts (other than contracts in respect of Parent Liabilities, the intra-Group loans and the Hedging Agreements) will be given to contractual counterparties unless an Acceleration Event has occurred. If the Parent or relevant Debtor grants Transaction Security over any of its intercompany receivables it shall, until the occurrence of an Acceleration Event, be free to deal with those receivables in accordance with the terms of this Agreement even if this may have an impact on the validity of the security;
- (h) if required by local law to perfect the security, notification of Transaction Security over bank accounts will be given to the bank(s) with whom the accounts are maintained within five Business Days of the Transaction Security being granted. Other than in relation to the Lock-Up Account, the Parent and each Debtor shall be free to deal with (including making withdrawals from) its accounts unless an Acceleration Event has occurred even if this may have an impact on the validity of the security. Any security over bank accounts shall be subject to any prior security interests or set off rights in favour of the account bank which are created either by law or in the standard terms and conditions of the account bank. The notice of Transaction Security may request these are waived by the account bank but the Parent and each relevant Debtor shall not be

required to change its banking arrangements if these security interests or set-off rights are not waived or only partially waived;

- (i) if required by local law to perfect the security, notification of Transaction Security over shares in the Target or Material Subsidiary (each as defined in the Senior Facilities Agreement) will be given to the Target or Material Subsidiary on the date of the Transaction Security being granted;
- (j) the Parent and the relevant Debtor shall use reasonable endeavours to obtain acknowledgements of any notices given in respect of the Transaction Security. Other than in respect of Transaction Security over receivables owed to another member of the Group and in respect of Transaction Security over the shares in the Target, if the Parent or relevant Debtor has used its reasonable endeavours but has not been able to obtain acknowledgement its obligation to obtain acknowledgement shall cease after 20 Business Days from the date on which the relevant notice was served;
- (k) the Transaction Security Documents will not operate so as to prevent transactions which are permitted under this Agreement or to require additional consents or authorisations. In the case of any conflict between the provisions of the Transaction Security Documents, on the one hand, and the provisions of this Agreement and this Agreement, on the other, this Agreement and this Agreement will prevail; and
- (l) Transaction Security will be taken on an “as is, where is” basis, meaning that it shall be granted subject to the quality of title (and location of assets) held by the Parent or relevant Debtor (as applicable).

Schedule 5

Conditions Precedent required to be delivered by an Additional Guarantor

1. A Debtor/Guarantor Accession Deed executed by the Additional Guarantor and the Company.
2. A copy of the constitutional documents of the Additional Guarantor.
3. A copy of a resolution of the board of directors of the Additional Guarantor:
 - (a) approving the terms of, and the transactions contemplated by, the Debtor/Guarantor Accession Deed and the Finance Documents and resolving that it execute, deliver and perform the Debtor/Guarantor Accession Deed;
 - (b) authorising a specified person or persons to execute the Debtor/Guarantor Accession Deed on its behalf;
 - (c) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with the Finance Documents; and
 - (d) authorising the Company to act as its agent in connection with the Finance Documents.
4. A copy of a resolution signed by all the holders of the issued shares in each Additional Guarantor, approving the terms of, and the transactions contemplated by, the Finance Documents to which the Additional Guarantor is a party.
5. A specimen of the signature of each person authorised by the resolution referred to in paragraph 3 above and identified as the person who will sign the Debtor/Guarantor Accession Deed and any other Finance Document to be executed on behalf of the Additional Guarantor in connection with the accession of the Additional Guarantor.
6. A certificate of an authorised signatory of the Additional Guarantor confirming that borrowing, guaranteeing or securing the External Creditor Liabilities would not cause any borrowing, guaranteeing, securing or similar limit binding on it to be exceeded.
7. A certificate of an authorised signatory of the Additional Guarantor certifying that each copy document relating to it specified in this Schedule 5 is correct, complete and in full force and effect and has not been amended or superseded as at a date no earlier than the date of the Debtor/Guarantor Accession Deed.
8. The following legal opinions:
 - (a) a legal opinion of the legal advisers to the Secured Parties and the Security Agent in England in the form distributed to the Secured Parties prior to signing the Debtor/Guarantor Accession Deed; and
 - (b) if the Additional Guarantor is incorporated in or has its “centre of main interest” in a jurisdiction other than England and Wales, a legal opinion of the legal advisers to the Secured Parties and the Security Agent in the jurisdiction of its incorporation, “centre of main interest” or “establishment” (as applicable) (the “**Applicable Jurisdiction**”) as to the law of the Applicable Jurisdiction and in the form distributed to the Secured Parties prior to signing the Debtor/Guarantor Accession Deed.
9. If the Additional Guarantor is incorporated in England or Wales (or holds shares in a member of the Group incorporated in England or Wales and whose shares are required to be secured pursuant to the Agreed Security Principles) a copy of the “PSC register” (within the meaning of section 790C(10) of the Companies Act 2006) for such Additional Guarantor and/or member

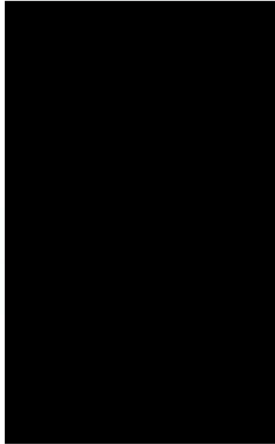
of the Group, or a certificate of an authorised signatory of the Parent certifying that such Additional Guarantor and/or Group member (as applicable) is not required to comply with Part 21A of the Companies Act 2006.

10. Any security documents, subject to the Agreed Security Principles, which are required by the Security Agent to be executed by the proposed Additional Guarantor (or by the Holding Company of the proposed Additional Guarantor).
11. A copy of all notices, share ledgers, shareholder registers, certificates, transfer and stock transfer forms or equivalent and original shareholder register required under each Transaction Security Document, on its date of execution unless the terms of the relevant Transaction Security Document stipulate for a later date for the delivery of such notices, share ledgers, shareholder registers, share certificates or stock transfer forms (or equivalent).

SIGNATORIES

The Company

EXECUTED as a **DEED** by **ANTWERP MANAGEMENT LIMITED** acting by



.....

Signature of director

Name of director

.....

Signature of director

Name of director

Address: Suite 1, 3rd Floor 11 - 12 St James's Square, London, United Kingdom, SW1Y 4LB

Attention: [Redacted]

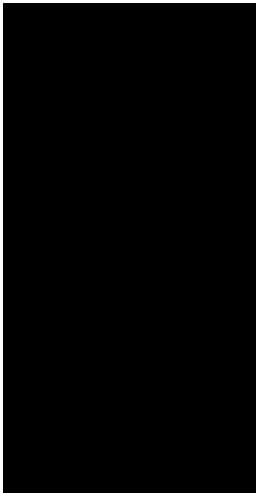
[Redacted]

Email: [Redacted]

[Redacted]

Original Debtor

EXECUTED as a **DEED** by **ANTWERP MANAGEMENT LIMITED** acting by



..... Signature of director

Name of director

..... Signature of director

Name of director

Address: Suite 1, 3rd Floor 11 - 12 St James's Square, London, United Kingdom, SW1Y 4LB

Attention: [Redacted]

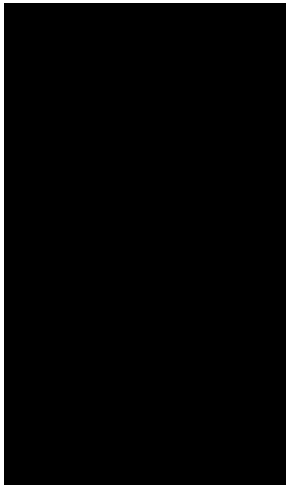


Email: [Redacted]



Original Guarantor

EXECUTED as a **DEED** by **ANTWERP MANAGEMENT LIMITED** acting by



..... Signature of director

Name of director

..... Signature of director

Name of director

Address: Suite 1, 3rd Floor 11 - 12 St James's Square, London, United Kingdom, SW1Y 4LB

Attention: [Redacted]

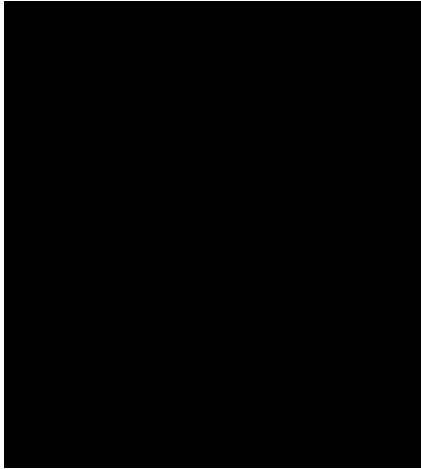
[Redacted]

Email: [Redacted]

[Redacted]

Original Intra-Group Lender

EXECUTED as a **DEED** by **ANTWERP MANAGEMENT LIMITED** acting by



..... Signature of director

Name of director

..... Signature of director

Name of director

Address: Suite 1, 3rd Floor 11 - 12 St James's Square, London, United Kingdom, SW1Y 4LB

Attention: 

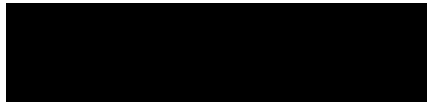


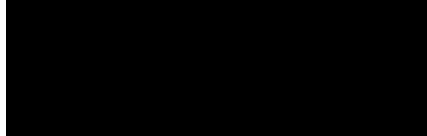
Email: 



The Parent

EXECUTED as a **DEED** by **ANTWERP INVESTMENTS LIMITED** acting by

.  Signature of director
Name of director

.  Signature of director
Name of director

Address: Suite 1, 3rd Floor 11 - 12 St James's Square, London, United Kingdom, SW1Y 4LB

Attention: 



Email: 



The Security Agent

Signed for and on behalf of **HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED**

By: 

Name: 

Title: A gnatory

Address: 8 Canada Square, London, E14 5HQ

Email: Ctl.trustee.admin@hsbc.com

Attention: ISV Trustee Services Administration

The Agent

Signed for and on behalf of **HSBC BANK PLC**

By:

Name:

Title: Authorised signatory

Address: 8 Canada Square, London, E14 5HQ

Email: lag.fax@hsbcib.com

lad.agency.pef.loans@hsbc.com

Attention: Issuer Services

The Arrangers

NATIONAL WESTMINSTER BANK PLC

By: [REDACTED]

Name: [REDACTED]

Title: Authorised signatory

Address: 250 Bishopsgate, London, EC2M 4AA

Email: [REDACTED]

Attention: [REDACTED]

The Arrangers

HSBC UK BANK PLC



By:

Name: _____



Title: Authorised Signatory

Address: HSBC House, 1 Bond Court, Leeds, LS1 2JZ

Email:



Attention:



The Arrangers

NATWEST MARKETS PLC

By: [REDACTED]

Name: [REDACTED]

Title: Authorised signatory

Address: 250 Bishopsgate, London, EC2M 4AA

Email: [REDACTED]

Attention: [REDACTED]

The Original Lenders

NATIONAL WESTMINSTER BANK PLC

By: [REDACTED]

Name: [REDACTED]

Title: Authorised signatory

Address: 250 Bishopsgate, London, EC2M 4AA

Email: [REDACTED]

Attention: [REDACTED]

The Original Lenders

HSBC UK BANK PLC



By:

Name: _____



Title: Authorised Signatory

Address: HSBC House, 1 Bond Court, Leeds, LS1 2JZ

Email: _____

Attention: _____

The Original Lenders

NATWEST MARKETS PLC

By: [REDACTED]

Name: [REDACTED]

Title: Authorised signatory

Address: 250 Bishopsgate, London, EC2M 4AA

Email: [REDACTED]

Attention: [REDACTED]