

Date 27 November 2023

ARES MANAGEMENT LIMITED
as Senior Agent

THE ENTITIES LISTED HEREIN
as Senior Lenders

SEED BIDCO LIMITED
as the Company

THE COMPANY AND ITS SUBSIDIARIES LISTED HEREIN
as Original Intra-Group Lenders

THE COMPANY AND ITS SUBSIDIARIES LISTED HEREIN
as Original Debtors

and

ARES MANAGEMENT LIMITED
as Security Agent

INTERCREDITOR AGREEMENT

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THIS AGREEMENT is dated 27 November 2023 and made

BETWEEN:

- (1) **ARES MANAGEMENT LIMITED** as Senior Agent;
- (2) **THE ENTITIES** listed on the signing pages as Senior Term Lenders;
- (3) **THE ENTITIES** listed on the signing pages as Alternative Senior Term Lenders;
- (4) **THE ENTITIES** listed on the signing pages as Super Senior Lenders;
- (5) **APC HOLDINGS I, L.P.** as senior backstop lender (the “**Senior Backstop Lender**”);
- (6) **SEED MIDCO LIMITED**, a non-cellular company limited by shares incorporated under the laws of Guernsey with registered number 72061 and having its registered office at Redwood House, St Julian’s Avenue, St Peter Port, Guernsey, GY1 1WA (the “**Parent**”, the “**Original Subordinated Creditor**” and the “**Original Third Party Security Provider**”);
- (7) **SEED BIDCO LIMITED**, a non-cellular company limited by shares incorporated under the laws of Guernsey with registered number 72062 and having its registered office at Redwood House, St Julian’s Avenue, St Peter Port, Guernsey, GY1 1WA (the “**Company**”);
- (8) **THE COMPANY** and **ITS SUBSIDIARIES** named on the signing pages as Intra-Group Lenders (together the “**Original Intra-Group Lenders**”);
- (9) **THE COMPANY** and **ITS SUBSIDIARIES** named on the signing pages as Debtors (together the “**Original Debtors**”); and
- (10) **ARES MANAGEMENT LIMITED** as security agent for the Secured Parties (the “**Security Agent**”).

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

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

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

“**Acceleration Event**” means the Senior Agent exercising any of its rights under clause 26.17 (*Acceleration*) of the Initial Senior Facilities Agreement or under any Additional Senior Facility Equivalent.

“Additional Senior Facility Equivalent” means, in relation to a provision or term of the Initial Senior Facilities Agreement, any equivalent provision or term in any other Senior Facilities Agreement which is similar in meaning and effect.

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

“Agent’s Spot Rate of Exchange” has the meaning given to that term in the Initial Senior Facilities Agreement or any Additional Senior Facility Equivalent (as applicable).

“Agreed Security Principles” has the meaning given to that term in the Initial Senior Facilities Agreement or any Additional Senior Facility Equivalent (as applicable).

“Alternative Senior Term Lenders” means each “Alternative Facility B Lender” under and as defined in the Initial Senior Facilities Agreement.

“Ancillary Document” means each document relating to or evidencing the terms of an Ancillary Facility.

“Ancillary Facility” means any ancillary facility made available in accordance with a Senior Facilities Agreement.

“Ancillary Lender” means each Senior Lender (or Affiliate of a Senior Lender) which makes available an Ancillary Facility.

“Appropriation” means the appropriation (or similar process) of the shares in the capital of a member of the Group 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.

“Available Commitment” means, in relation to a Senior Lender, any “Available Commitment” under and as defined in the Initial Senior Facilities Agreement or any Additional Senior Facility Equivalent (as applicable).

“Borrowing Liabilities” means, in relation to a member of the Group, the liabilities and obligations (not being Guarantee Liabilities) it may have as a principal debtor to a Creditor (other than to the Senior Backstop Lender, a Senior Arranger or a Senior Agent) or a Debtor in respect of Financial Indebtedness arising under the Debt Documents (whether incurred solely or jointly and including, without limitation, liabilities and obligations as a borrower under the Senior Finance Documents) and any New Liabilities (not being Guarantee Liabilities) incurred by any member of the Group in accordance with Clause 18 (*Senior Creditor Financings*).

“Business Day” has the meaning given to that term in the Initial Senior Facilities Agreement.

“Cash Proceeds” means:

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

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

“Close-Out Netting” means:

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

“Closing Date” has the meaning given to that term in the Initial Senior Facilities 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 any Agreed Security Principles, given to all the Secured Parties in respect of their Liabilities.

“Common Currency” means GBP.

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

“Common Transaction Security” means any Transaction Security which, to the extent legally possible and subject to any Agreed Security Principles:

- (a) is created in favour of the Security Agent as trustee or agent, as applicable, for the other Secured Parties in respect of their Liabilities; or

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

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 and run in accordance with the advice of a Financial Adviser appointed by, or approved by, the Security Agent pursuant to Clause 12.6 (*Appointment of Financial Adviser*) or the Senior Lenders; or
- (b) any enforcement of the Transaction Security carried out by way of auction or other competitive sales process pursuant to requirements of applicable law.

“Completion” has the meaning given to that term in the Initial Senior Facilities Agreement.

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

“Consolidated Pro Forma EBITDA” has the meaning given to that term in the Initial Senior Facilities Agreement or any Additional Senior Facility Equivalent (as applicable).

“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 or an Assignment Agreement (in each case, as defined in the relevant Senior Facilities Agreement) (**provided that** it contains an accession to this Agreement which is substantially in the form set out in Schedule 2 (*Form of Creditor Accession Undertaking*)); or
- (c) an Additional Facility Lender Accession Notice or an Increase Confirmation (in each case, as defined in the relevant Senior Facilities Agreement) (**provided that** it contains an accession to this Agreement which is, or contains the applicable provision, substantially in the form set out in Schedule 2 (*Form of Creditor Accession Undertaking*)),

as the context may require, or

- (d) in the case of an acceding Debtor which is expressed to accede as an Intra-Group Lender in the relevant Debtor/Third Party Security Provider Accession Deed, that Debtor/Third Party Security Provider Accession Deed.

“**Creditors**” means the Senior Creditors, the Intra-Group Lenders and the Subordinated Creditor.

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

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

“**Debtor**” means each Original Debtor and any person which becomes a Party as a Debtor in accordance with the terms of Clause 20 (*Changes to the Parties*).

“**Debtor/Third Party Security Provider Accession Deed**” means:

- (a) a deed substantially in the form set out in Schedule 1 (*Form of Debtor/Third Party Security Provider Accession Deed*); or
- (b) (only in the case of a member of the Group which is acceding as a borrower or guarantor under a Senior Facilities Agreement) an accession document in the form required by the relevant Senior Facilities Agreement (**provided that** it contains an accession to this Agreement which is, or contains the applicable provision, substantially in the form set out in Schedule 1 (*Form of Debtor/Third Party Security Provider Accession Deed*)).

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

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

“**Default**” means an Event of Default or any event or circumstance which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Debt Documents or any combination of any of the foregoing) be an Event of Default.

“**Defaulting Lender**” means any “Defaulting Lender” under and as defined in the Initial Senior Facilities Agreement or any Additional Senior Facility Equivalent (as applicable).

“**Delegate**” means any delegate, agent, attorney or co-trustee or co-agent appointed by the Security Agent, to the extent permitted under applicable law.

“Designated Gross Amount” means, in relation to a Multi-account Overdraft, that Multi-account Overdraft’s “Designated Gross Amount” under and as defined in the Initial Senior Facilities Agreement or any Additional Senior Facility Equivalent (as applicable).

“Designated Net Amount” means, in relation to a Multi-account Overdraft, that Multi-account Overdraft’s “Designated Net Amount” under and as defined in the Initial Senior Facilities Agreement or any Additional Senior Facility Equivalent (as applicable).

“Distress Event” means any of:

- (a) an Acceleration Event; or
- (b) the enforcement of any Transaction Security.

“Distressed Disposal” means a disposal of an asset of a member of the Group or a Third Party Security Provider which is:

- (a) being effected at the request of the Instructing Group in accordance with the terms of this Agreement in circumstances where the Transaction Security has become enforceable;
- (b) being effected by enforcement of the Transaction Security (including, without limitation, the disposal of any Property of a Debtor or Third Party Security Provider, 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 a Third Party Security Provider to a person or persons which is, or are, not a member, or members, of the Group.

“Enforcement Action” means:

- (a) in relation to any Liabilities:
 - (i) the acceleration of any Liabilities or the making of any declaration that any Liabilities are prematurely due and payable (other than as a result of it becoming unlawful for a Senior Facility Creditor to perform its obligations under, or of any voluntary or mandatory prepayment arising under, the Debt Documents);
 - (ii) the making of any declaration that any Liabilities are payable on demand;
 - (iii) the making of a demand in relation to a Liability that is payable on demand (other than a demand made by an Intra-Group Lender in relation to any Intra-Group Liabilities which are on-demand Liabilities to the extent (A) that the demand is made in the ordinary course of dealings between the relevant Debtor and Intra-Group Lender and (B) that any resulting Payment would be a Permitted Intra-Group Payment);

- (iv) the making of any demand against any member of the Group in relation to any Guarantee Liabilities of that member of the Group;
 - (v) in respect of the Subordinated Creditor, the making of any demand against any Debtor or any member of the Group in relation to any Subordinated Liabilities (including any guarantee liabilities (if applicable)) owing to the Subordinated Creditor by any Debtor or any member of the Group, unless permitted under this Agreement;
 - (vi) the exercise of any right to require any member of the Group or any Third Party Security Provider to acquire any Liability (including exercising any put or call option against any member of the Group or any Third Party Security Provider for the redemption or purchase of any Liability but excluding any such right which arises as a result of a Senior Debt Purchase Transaction);
 - (vii) the exercise of any right of set-off, account combination or payment netting against any member of the Group or any Third Party Security Provider 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 permitted under the Senior Facilities Agreements to the extent that the exercise of that right gives effect to a Permitted Payment; and
 - (viii) the suing for, commencing or joining of any legal or arbitration proceedings against any member of the Group or any Third Party Security Provider to recover any Liabilities;
- (b) the premature termination or close-out of any hedging transaction under any Hedging Agreement save as permitted under this Agreement;
 - (c) the taking of any steps to enforce or require the enforcement of any Transaction Security (including the crystallisation of any floating charge forming part of the Transaction Security);
 - (d) the entering into of any composition, compromise, assignment or arrangement with any member of the Group or any Third Party Security Provider 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 20 (*Changes to the Parties*) or any such rights which

arise as a result of clause 28 (*Restriction on Debt Purchase Transactions*) of the Initial Senior Facilities Agreement or any Additional Senior Facility Equivalent (as applicable)); or

- (e) 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 member of the Group or any Third Party Security Provider which owes any Liabilities, or has given any Security, guarantee, indemnity or other assurance against loss in respect of any of the Liabilities, or any of such member of the Group's or such Third Party Security Provider's assets or any suspension of payments or moratorium of any indebtedness of any such member of the Group or any such Third Party Security Provider, or any analogous procedure or step in any jurisdiction,

except that the following shall not constitute Enforcement Action:

- (i) the taking of any action falling within paragraphs (a)(ii), (iii), (iv) or (viii) 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;
- (ii) a Senior Creditor bringing legal proceedings against any person solely for the purpose of:
 - (A) obtaining injunctive relief (or any analogous remedy outside of England and Wales) to restrain any actual or putative breach of any Debt Document to which it is party;
 - (B) obtaining specific performance (other than specific performance of an obligation to make a payment) with no claim for damages; or
 - (C) requesting judicial interpretation of any provision of any Debt Document to which it is party with no claim for damages;
- (iii) bringing legal proceedings against any person in connection with any fraud, securities violation or securities or listing regulations;
- (iv) allegations of material misstatements or omissions made in connection with the information and reporting requirements under Debt Documents; and
- (v) to the extent entitled by law, the taking of action against any creditor (or any agent, trustee or receiver acting on behalf of such creditor) to challenge the basis on which any sale or disposal is to take place pursuant to powers granted to such persons under any security documentation.

“Enforcement Objective” means maximising, to the extent consistent with a prompt and expeditious realisation of value, the value to be realised from enforcement of Transaction Security.

“Event of Default” means any “Event of Default” under and as defined in the Initial Senior Facilities Agreement or any Additional Senior Facility Equivalent (as applicable).

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

“Fairness Opinion” means, in respect of a Distressed Disposal, a Liabilities Sale or an Appropriation, an opinion (including an enterprise valuation of the Debtor and/or assets being disposed of, as applicable) from a Financial Adviser that the proceeds received or recovered in connection with that Distressed Disposal, Liabilities Sale or Appropriation are fair from a financial point of view taking into account all relevant circumstances, including the method of enforcement or disposal and prevailing market conditions.

“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,

which, in each case, is:

- (i) not a Creditor (or an Affiliate of a Creditor);
- (ii) not advising the Super Senior Lenders or the Subordinated Creditor in any other capacity in relation to the Super Senior Liabilities or the Subordinated Liabilities (respectively);
- (iii) not a firm appointed as administrator or other insolvency practitioner of any member of the Group or any Third Party Security Provider; and
- (iv) appointed on arm’s length terms.

“Financial Indebtedness” has the meaning given to that term in the Initial Senior Facilities Agreement.

“Gross Outstandings” means, in relation to a Multi-account Overdraft, the aggregate gross debit balance of overdrafts comprised in that Multi-account Overdraft.

“Group” has the meaning given to that term in the Initial Senior Facilities Agreement.

“Guarantee Liabilities” means, in relation to a member of the Group, the liabilities and obligations (subject to the limitations under clause 21 (*Guarantees and Indemnity*))

of the Initial Senior Facilities Agreement or any Additional Senior Facility Equivalent (as applicable)) under the Debt Documents (present or future, actual or contingent and whether incurred solely or jointly) it may have to a Creditor (other than to the Senior Backstop Lender, a Senior Arranger or a Senior Agent) or Debtor as or as a result of its being a guarantor or surety (including, without limitation, liabilities and obligations arising by way of guarantee, indemnity, parallel debt, contribution or subrogation and in particular any guarantee or indemnity arising under or in respect of the Senior Finance Documents).

“Hardening Period” means any period during which Security, or any other assurance against loss, is capable of being avoided by virtue of any bankruptcy, insolvency, liquidation or similar laws.

“Hedge Counterparty” means any entity which becomes a Party as a Hedge Counterparty pursuant to Clause 20.9 (*Creditor Accession Undertaking*).

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

“Hedge Transfer” means a transfer to one or more of the Secured Parties (other than the Senior Agents) (or their nominee(s)) of each Hedging Agreement that constitutes Super Senior Hedging Liabilities together with:

- (a) all the rights and benefits in respect of the Super Senior Hedging Liabilities owed by the Debtors and the Third Party Security Providers to each Super Senior Hedge Counterparty; and
- (b) all the related Hedge Counterparty Obligations owed by each Super Senior Hedge Counterparty to the Debtors and the Third Party Security Providers,

in accordance with Clause 3.12 (*Hedge Transfer: Senior Term Lenders*).

“Hedging Agreement” means any “Hedging Agreement” under and as defined in the Initial Senior Facilities Agreement or any Additional Senior Facility Equivalent (as applicable).

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

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

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

“Hedging Force Majeure” means:

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

“Hedging Liabilities” means the Liabilities owed by any Debtor or any Third Party Security Provider to the Hedge Counterparties under or in connection with the Hedging Agreements, to the extent such Liabilities are permitted to be incurred by such Debtor or such Third Party Security Provider under the terms of the Senior Finance Documents.

“Hedging Purchase Amount” means, in respect of a hedging transaction under a Hedging Agreement, the amount that would be payable to (expressed as a positive number) or by (expressed as a negative number) the relevant Hedge Counterparty on the relevant date if:

- (a) in the case of a Hedging Agreement which is based on an ISDA Master Agreement:
 - (i) that date was an Early Termination Date (as defined in the relevant ISDA Master Agreement); and
 - (ii) the relevant Debtor was the Defaulting Party (under and as defined in the relevant ISDA Master Agreement); and
- (b) in the case of a Hedging Agreement which is not based on an ISDA Master Agreement:
 - (i) that date was the date on which an event similar in meaning and effect (under that Hedging Agreement) to an Early Termination Date (as defined in any ISDA Master Agreement) occurred under that Hedging Agreement; and
 - (ii) the relevant Debtor was in a position which is similar in meaning and effect to that of a Defaulting Party (under and as defined in the same ISDA Master Agreement),

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

“**Holding Company**” has the meaning given to that term in the Initial Senior Facilities Agreement.

“**Impaired Agent**” has the meaning given to that term in the Initial Senior Facilities Agreement or any Additional Senior Facility Equivalent (as applicable).

“**Initial Senior Facilities Agreement**” means the senior facilities agreement dated on or about the date of this Agreement between, among others, the Company, the Senior Agent and the Security Agent.

“**Insolvency Event**” means, in relation to any member of the Group or a Third Party Security Provider:

- (a) any resolution is passed or order made for the winding up, dissolution, administration or reorganisation of that Debtor or a Third Party Security Provider, a moratorium is declared in relation to any indebtedness of that Debtor or Third Party Security Provider or an administrator is appointed to that Debtor or the relevant Third Party Security Provider;
- (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 or other similar officer in respect of that Debtor or Third Party Security Provider or any of its assets; or
- (d) any analogous procedure or step is taken in any jurisdiction.

“**Instructing Group**” means:

- (a) subject to paragraph (b) below, the Majority Senior Term Creditors; or
- (b) if the Majority Super Senior Creditors are permitted to commence Enforcement Action pursuant to paragraphs (b)(i) or (b)(ii) of Clause 3.14 (*Permitted enforcement: Super Senior Creditors*), the Majority Super Senior Creditors, until the Super Senior Discharge Date.

“**Intercreditor Amendment**” means any amendment or waiver which is subject to Clause 26 (*Consents, Amendments and Override*).

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

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

Ancillary Document in respect of Senior Facility Liabilities owed to that Hedging Ancillary Lender by that Debtor under another Hedging Ancillary Document.

“**Intra-Group Lenders**” means:

- (a) the Original Intra-Group Lenders; and
- (b) each member of the Group which has made a loan available to, granted credit to or made any other financial arrangement having similar effect with another member of the Group and which becomes a Party as an Intra-Group Lender in accordance with the terms of Clause 20 (*Changes to the Parties*).

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

“**Investor**” has the meaning given to that term in the Initial Senior Facilities Agreement.

“**ISDA Master Agreement**” means a 1992 ISDA Master Agreement or a 2002 ISDA Master Agreement.

“**Legal Reservations**” has the meaning given to that term in the Initial Senior Facilities Agreement.

“**Liabilities**” means all present and future liabilities and obligations at any time of any member of the Group or any Third Party Security Provider, in each case, to any Creditor under the Debt Documents (or, in respect of obligations to any Intra-Group Lender or the Subordinated Creditor, whether or not documented), both actual and contingent and whether incurred solely or jointly or as principal or surety or in any other capacity together with any of the following matters relating to or arising in respect of those liabilities and obligations:

- (a) any refinancing, novation, deferral or extension;
- (b) any claim for breach of representation, warranty or undertaking or on an event of default or under any indemnity given under or in connection with any document or agreement evidencing or constituting any other liability or obligation falling within this definition;
- (c) any claim for damages or restitution; and
- (d) any claim as a result of any recovery by any Debtor or any Third Party Security Provider 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, **provided that**, in respect of any Third Party Security Provider, any such liabilities and obligations will only be in relation to its liabilities and obligations under the Debt Documents in connection with the granting of Security under such Debt Documents, and any representations, warranties or undertakings given in such Debt Documents, not being Borrowing Liabilities or Guarantee Liabilities (other than to the extent that a Third Party Security Provider has expressly assumed any such Liabilities).

“Liabilities Acquisition” means, in relation to a person and to any Liabilities, a transaction where that person:

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

the rights in respect of those Liabilities.

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

“Majority Senior Creditors” means, at any time, those Senior Creditors whose Senior Credit Participations at that time aggregate 50.1 per cent. or more of the total Senior Credit Participations.

“Majority Senior Lenders” means, at any time, those Senior Lenders whose Senior Commitments aggregate 50.1 per cent. or more of the total Senior Commitments at that time, not taking into account any Senior Commitments that would be disregarded in the determination of the “Majority Lenders” under the Initial Senior Facilities Agreement or any Additional Senior Facility Equivalent (as applicable) on the basis of the application of:

- (a) clause 39.5 (*Excluded Commitments*);
- (b) paragraph (c) of clause 28.8 (*Restriction on Debt Purchase Transactions*); or
- (c) clause 39.6 (*Disenfranchisement of Defaulting Lenders*),

of the Initial Senior Facilities Agreement or any Additional Senior Facility Equivalent (as applicable).

“Majority Senior Term Creditors” means, at any time, those Senior Creditors (other than Super Senior Creditors in their capacity as such) whose Senior Credit Participations (other than Super Senior Credit Participations) at that time aggregate 50.1 per cent. or more of the total Senior Credit Participations (excluding all Super Senior Credit Participations at that time).

“Majority Senior Term Lenders” means, at any time, those Senior Term Lenders whose Senior Term Commitments aggregate 50.1 per cent. or more of the total Senior Term Commitments at that time, not taking into account any Senior Term Commitments that would be disregarded in the determination of the “Majority Lenders” under the Initial Senior Facilities Agreement or any Additional Senior Facility Equivalent (as applicable) on the basis of the application of:

- (a) clause 39.5 (*Excluded Commitments*);
- (b) paragraph (c) of clause 28.8 (*Restriction on Debt Purchase Transactions*); or

(c) clause 39.6 (*Disenfranchisement of Defaulting Lenders*),

of the Initial Senior Facilities Agreement or any Additional Senior Facility Equivalent (as applicable).

“Majority Super Senior Creditors” means, at any time, those Super Senior Creditors whose Super Senior Credit Participations at that time aggregate 50.1 per cent. or more of the total Super Senior Credit Participations.

“Majority Super Senior Lenders” means, at any time, those Super Senior Lenders whose Super Senior Commitments aggregate 50.1 per cent. or more of the total Super Senior Commitments, not taking into account any Super Senior Commitments that would be disregarded in the determination of the “Majority Super Senior Lenders” under the Initial Senior Facilities Agreement or any Additional Senior Facility Equivalent (as applicable) on the basis of the application of:

(a) clause 39.5 (*Excluded Commitments*);

(b) paragraph (c) of clause 28.8 (*Restriction on Debt Purchase Transactions*); or

(c) clause 39.6 (*Disenfranchisement of Defaulting Lenders*),

of the Initial Senior Facilities Agreement or any Additional Senior Facility Equivalent (as applicable).

“Mandatory Prepayment” means a mandatory prepayment of any of the Senior Facility Liabilities pursuant to clause 10.1 (*Exit and Listing*) or clause 10.2 (*Disposal, Insurance and Recovery Proceeds*) of the Initial Senior Facilities Agreement or any equivalent provision in any Additional Senior Facility Equivalent (as applicable).

“Material Company” means a “Material Subsidiary” as defined in the Initial Senior Facilities Agreement or any Additional Senior Facility Equivalent (as applicable).

“Material Enforcement Action” means:

(a) the enforcement or disposal of any Transaction Security, the requesting of a Distressed Disposal and/or the release or disposal of claims and/or Transaction Security on a Distressed Disposal under Clause 12 (*Distressed Disposals and Appropriation*) and/or the commencement of a Competitive Sales Process, including the giving of instructions to a Financial Adviser to provide a Fairness Opinion in respect of any anticipated enforcement of any Transaction Security;

(b) the giving of instructions as to actions with respect to the Transaction Security and/or the Charged Property following an Insolvency Event under Clause 7.7 (*Security Agent instructions*); or

(c) the appointment of an administrator of a Debtor,

and, in each case, the taking of any other actions consequential on (or necessary to effect) any of the actions mentioned in paragraphs (a) to (c) above.

“Material Event of Default” means an event or circumstance specified as such in the Initial Senior Facilities Agreement (as at the date of this Agreement) or any Additional Senior Facility Equivalent (as at the date the relevant facilities agreement is designated as a “Senior Facilities Agreement” by the Company in accordance with the provisions of Clause 18.1 (*Senior Creditor Financing*)) (as applicable).

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

“Multi-account Overdraft Liabilities” means the Liabilities arising under any Multi-account Overdraft.

“New Debt Financing” means any additional, supplemental or new financing, guarantee or debt arrangement (or any designated loan, commitment, tranche or facility thereof) including, without limitation, by way of refinancing, replacement, increase, discharge or exchange of any new, existing, additional or supplemental financing, guarantee or debt arrangement under a Debt Document for the benefit of any person (in each case, whether or not in existence at the time of any accessions to this Agreement in respect thereof) by way of any loan (including term or revolving facilities) issued or incurred, made available or committed and together with any guarantee, security or other credit support by any member of the Group, in each case to the extent permitted by the then existing Senior Finance Documents.

“New Debt Financing Designation Certificate” means a designation certificate substantially in the form set out in Schedule 4 (*Form of New Debt Financing Designation Certificate*).

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

“Non-Cash Recoveries” means:

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

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

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

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

“Obligor” has the meaning given to that term in the Initial Senior Facilities Agreement or any Additional Senior Facility Equivalent (as applicable).

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

“Party” or **“Parties”** means a party or parties to this Agreement.

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

“Payment Netting” means:

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

“Perfection Requirements” has the meaning given to that term in the Initial Senior Facilities Agreement.

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

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

“Permitted Hedge Payments” means the Payments permitted by Clause 4.3 (*Permitted Payments: Hedging Liabilities*).

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

“Permitted Payment” means a Permitted Hedge Payment, a Permitted Intra-Group Payment, a Permitted Senior Facility Payment or a Permitted Subordinated Payment.

“Permitted Senior Facility Payments” means the Payments permitted by Clause 3.1 (*Payment of Senior Facility Liabilities*).

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

“Property” of a member of the Group or of a Debtor means:

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

“Purchasing Senior Term Lenders” has the meaning given to that term in Clause 3.11 (*Option to purchase: Senior Term Lenders*).

“Qualifying Enforcement” means:

- (a) the enforcement is made pursuant to any process or proceedings approved or supervised by or on behalf of any court of law or the enforcement is by, at the direction of or under the control of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer or court-appointed officer (or any analogous officer in any jurisdiction) appointed in respect of a member of the Group or any assets of a member of the Group, who, in each case, has, to the extent consistent with applicable laws, been requested (unless the Security Agent considers that to do so would be inconsistent with its obligations under this Agreement and only if and to the extent that the Security Agent considers it practicable to do so and within its powers and that by doing so it is able to influence the process):
 - (i) to take into account the interests of all the Senior Creditors (but at all times recognising the relevant priorities of interests of the Senior Creditors as set out in this Agreement); and
 - (ii) that any Relevant Disposal made shall, so far as is reasonably practicable, follow the principles set out in paragraphs (b) or (c) below;
- (b) the enforcement is pursuant to a Competitive Sales Process;
- (c) the Security Agent has obtained a Fairness Opinion from a Financial Adviser addressed to and capable of being relied upon by the Security Agent, the Senior Agent and the Senior Creditors (to the extent that such addressing and reliance is capable of being obtained on commercially reasonable terms) with regard to the price obtained as a result of enforcement and the process to achieve it and confirming that it is the best price reasonably obtainable in the then prevailing market conditions and taking into account any relevant circumstances. For the avoidance of doubt, the Security Agent shall have no obligation to postpone any sale in order to achieve a higher price; or
- (d) the Majority Senior Term Creditors have consented to the enforcement.

“Receiver” means a receiver or receiver and manager or administrative receiver of the whole or any part of the Charged Property, to the extent permitted under applicable law.

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

“Regulated Group Company” has the meaning given to that term in the Initial Senior Facilities Agreement.

“Related Fund” has the meaning given to that term in the Initial Senior Facilities Agreement or any Additional Senior Facility Equivalent (as applicable).

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

“Relevant Liabilities” means:

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

“Report” means any “Report” under and as defined in the Initial Senior Facilities Agreement or any Additional Senior Facility Equivalent (as applicable).

“Revolving Facility” means a “Revolving Facility” under and as defined in the Initial Senior Facilities Agreement or any Additional Senior Facility Equivalent (as applicable).

“Revolving Facility Liabilities” means the Liabilities owed by the Debtors and (if any such Liabilities are owed by them) the Third Party Security Providers to the Senior Lenders in respect of any Revolving Facility (including any amount of Revolving Facility utilised by way of an Ancillary Facility).

“Secured Obligations” means all the Liabilities and all other present and future liabilities and obligations at any time due, owing or incurred by any member of the Group and by each Debtor or Third Party Security Provider to any Secured Party under the Senior Finance Documents, both actual and contingent and whether incurred solely or jointly and as principal or surety or in any other capacity together with all interest accruing thereon and all losses, fees and expenses incurred by any Secured Party in connection therewith.

“Secured Parties” means the Security Agent, any Receiver or Delegate or any Additional Senior Facility Equivalent (as applicable), and each of the Senior Creditors from time to time but, in the case of each Senior Creditor, only if it is a Party or has acceded to this Agreement, in the appropriate capacity, pursuant to Clause 20.9 (*Creditor Accession Undertaking*).

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

“Security Agent’s Spot Rate of Exchange” means the Security Agent’s spot rate of exchange for the purchase of the relevant currency with the Base Currency (as defined in the Initial Senior Facilities Agreement) in London or such other relevant foreign exchange market at or about 11:00 am (local time) on a particular day.

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

“Senior Agent” means the Agent under and as defined in the Initial Senior Facilities Agreement or, if it becomes a Party as a Senior Agent in respect of any other Senior Facilities Agreement, any agent of the providers of any Senior Facility under that Senior Facilities Agreement.

“Senior Arranger” means, if it becomes a Party as a Senior Arranger in respect of any Senior Facilities Agreement, any arranger of any Senior Facility under that Senior Facilities Agreement.

“Senior Borrower” means a “Borrower” under and as defined in the Initial Senior Facilities Agreement or any Additional Senior Facility Equivalent (as applicable) if it becomes a Party as a Senior Borrower.

“Senior Commitment” means a “Commitment” under and as defined in the Initial Senior Facilities Agreement or any Additional Senior Facility Equivalent (as applicable).

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

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

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

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

“Senior Debt Purchase Transaction” means a “Debt Purchase Transaction” under and as defined in the Initial Senior Facilities Agreement or any Additional Senior Facility Equivalent (as applicable).

“Senior Discharge Date” means the first date on which all Senior Liabilities are fully and finally discharged to the satisfaction of each Senior Agent (in the case of the Senior Facility Liabilities) and each Hedge Counterparty (in the case of its Hedging Liabilities), whether or not as the result of an enforcement, and the Senior Creditors are under no further obligation to provide financial accommodation to any of the Debtors under the Debt Documents.

“Senior Enforcement Consultation Period” means a period of 10 Business Days (starting from the date of receipt, by the Super Senior Creditors, of a notice from the Majority Senior Term Creditors stating their intention to take Enforcement Action), during which the Majority Senior Term Creditors shall, in accordance with and subject to the terms of Clause 3.7 (*Permitted Enforcement: Majority Senior Term Creditors*), consult with the Super Senior Lenders prior to taking Enforcement Action pursuant to the terms of this Agreement.

“Senior Facilities Agreement” means the Initial Senior Facilities Agreement and any other facilities agreement pursuant to which any credit facilities are made available to a member of the Group which does not breach the terms of any other Senior Finance Document at that time and such facilities agreement has been designated as a “Senior Facilities Agreement” by the Company in accordance with the provisions of Clause 18.1 (*Senior Creditor Financing*).

“Senior Facilities Discharge Date” means the first date on which:

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

“Senior Facility” means any “Facility” under and as defined in the Initial Senior Facilities Agreement or any Additional Senior Facility Equivalent (as applicable).

“Senior Facility Creditors” means each Senior Agent, the Senior Backstop Lender, each Senior Arranger and each Senior Lender.

“Senior Facility Liabilities” means the Liabilities owed by the Debtors or Third Party Security Providers to the Senior Facility Creditors under the Senior Finance Documents.

“Senior Finance Documents” means each “Finance Document” under and as defined in the Initial Senior Facilities Agreement and each Additional Senior Facility Equivalent.

“Senior Guarantor” means a “Guarantor” under and as defined in the Initial Senior Facilities Agreement or any Additional Senior Facility Equivalent (as applicable) if it becomes a Party as a Senior Guarantor.

“Senior Lender Liabilities” means the Senior Facility Liabilities owed by the Debtors or Third Party Security Providers to the Senior Lenders.

“Senior Lenders” means:

- (a) each “Lender” under and as defined in the Initial Senior Facilities Agreement and each Additional Senior Facility Equivalent and each Ancillary Lender, in each case, if it becomes a Party as a Senior Lender; and
- (b) for the avoidance of doubt, each Alternative Senior Term Lender, to the extent it becomes a “Lender” under and as defined in the Initial Senior Facilities Agreement pursuant to clause 2.6 (*Alternative Facility B Lenders*) of the Initial Senior Facilities Agreement.

“**Senior Liabilities**” means the Senior Facility Liabilities and the Hedging Liabilities.

“**Senior Payment Default**” means a Default under clause 26.1 (*Payment Default*) of the Initial Senior Facilities Agreement or any equivalent provision in any Additional Senior Facility Equivalent (as applicable).

“**Senior Structural Adjustment**” means:

- (a) any “Structural Adjustment” under and as defined in the Initial Senior Facilities Agreement or any Additional Senior Facility Equivalent (as applicable); or
- (b) any Consent that, by operation of clause 39.3 (*Transaction Security and Guarantees*) of the Initial Senior Facilities Agreement or any Additional Senior Facility Equivalent (as applicable), does not require the consent of all the Senior Lenders under the relevant Senior Facilities Agreement.

“**Senior Term Commitments**” means:

- (a) the Facility B Commitments (as defined in the Initial Senior Facilities Agreement);
- (b) the Acquisition / Capex Facility Commitments (as defined in the Initial Senior Facilities Agreement);
- (c) any Additional Facility Commitments (as defined in the Initial Senior Facilities Agreement) in relation to an Additional Term Facility (as defined in the Initial Senior Facilities Agreement); and
- (d) any Additional Senior Facility Equivalent of paragraphs (a) to (c) above.

“**Senior Term Facilities**” means:

- (a) Facility B (as defined in the Initial Senior Facilities Agreement);
- (b) the Acquisition / Capex Facility (as defined in the Initial Senior Facilities Agreement);
- (c) any Additional Term Facility (as defined in the Initial Senior Facilities Agreement); and
- (d) any Additional Senior Facility Equivalent of paragraphs (a) to (c) above.

“Senior Term Lender” means a Senior Lender having a Senior Term Commitment in respect of a Senior Term Facility.

“Senior Term Liabilities” means the Liabilities owed by the Debtors or Third Party Security Providers to the Senior Term Lenders under or in connection with the Senior Term Facilities.

“SFA Cash Cover” means “cash cover” under and as defined in the Initial Senior Facilities Agreement or any Additional Senior Facility Equivalent (as applicable).

“SFA Cash Cover Document” means, in relation to any SFA Cash Cover, any Senior 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 a Senior Facilities Agreement.

“Sponsor” means “Sponsor” under and as defined in the Initial Senior Facilities Agreement or any Additional Senior Facility Equivalent (as applicable).

“Sponsor Affiliate” means “Sponsor Affiliate” under and as defined in the Initial Senior Facilities Agreement or any Additional Senior Facility Equivalent (as applicable).

“Subordinated Creditor” means the Original Subordinated Creditor.

“Subordinated Liabilities” means the Liabilities owed to the Subordinated Creditor by the Company.

“Subsidiary” has the meaning given to that term in the Initial Senior Facilities Agreement.

“Super Majority Super Senior Creditors” means, at any time, those Super Senior Creditors whose Super Senior Credit Participations at that time aggregate 80 per cent. or more of the total Super Senior Credit Participations at that time.

“Super Senior Arranger” means any arranger of any Super Senior Facility which becomes a Party as a Super Senior Arranger.

“Super Senior Commitments” means:

- (a) the Original Revolving Facility Commitments (as defined in the Initial Senior Facilities Agreement);
- (b) any Additional Revolving Facility Commitments (as defined in the Initial Senior Facilities Agreement); and
- (c) any Additional Senior Facility Equivalent of paragraphs (a) and (b) above.

“Super Senior Creditors” means the Super Senior Arrangers, the Super Senior Lenders and the Super Senior Hedge Counterparties.

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

- (a) its aggregate Super Senior Commitments, if any;
- (b) in respect of the Super Senior Hedging Liabilities, any hedging transaction of that Hedge Counterparty under any Hedging Agreement that has, as of the date the calculation is made, been terminated or closed out in accordance with the terms of this Agreement, the amount, if any, payable to it under any Hedging Agreement in respect of that termination or close-out as of the date of termination or close-out (and before taking into account any interest accrued on that amount since the date of termination or close-out) to the extent that amount is unpaid (that amount to be certified by the relevant Hedge Counterparty and as calculated in accordance with the relevant Hedging Agreement); and
- (c) after the Super Senior Facilities Discharge Date only, in respect of the Super Senior Hedging Liabilities, any hedging transaction of that Hedge Counterparty under any Hedging Agreement that has, as of the date the calculation is made, not been terminated or closed out, 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), that amount to be certified by the relevant Hedge Counterparty and as calculated in accordance with the relevant Hedging Agreement.

“Super Senior Default” means any Material Event of Default.

“Super Senior Discharge Date” means the date on which all of the Super Senior Liabilities are fully and finally discharged to the satisfaction of each Senior Agent (in the case of the Super Senior Facility Liabilities) and each Super Senior Hedge Counterparty (in the case of its Super Senior Hedging Liabilities), whether or not as the result of an enforcement, and the Super Senior Creditors (in such capacity) are under no further obligation to provide financial accommodation to any of the Debtors under the Debt Documents.

“Super Senior Enforcement Consultation Period” means a period of 10 Business Days (starting from the date of receipt, by the Senior Term Lenders, of a notice from the Majority Super Senior Creditors stating their intention to take Enforcement Action following expiry of the relevant Super Senior Standstill Period), during which the Majority Super Senior Creditors shall consult with the other Senior Creditors prior to taking Enforcement Action pursuant to the terms of this Agreement.

“Super Senior Enforcement Notice” has the meaning given to that term in Clause 3.14 (*Permitted enforcement: Super Senior Creditors*).

“Super Senior Facilities” means:

- (a) the Original Revolving Facility (as defined in the Initial Senior Facilities Agreement);

- (b) any Additional Revolving Facility (as defined in the Initial Senior Facilities Agreement); and
- (c) any Additional Senior Facility Equivalent of paragraphs (a) and (b) above.

“Super Senior Facilities Discharge Date” means the date on which all of the Super Senior Facility Liabilities are fully and finally discharged to the satisfaction of each Senior Agent, whether or not as the result of an enforcement, and the Super Senior Lenders (in such capacity) are under no further obligation to provide financial accommodation to any of the Debtors under the Debt Documents.

“Super Senior Facility Liabilities” means the Liabilities owed by the Debtors or a Third Party Security Provider to the Super Senior Lenders under or in connection with the Super Senior Facilities.

“Super Senior Financial Covenant Default” means a Material Event of Default under paragraph (d) of the definition of “Material Event of Default” in the Initial Senior Facilities Agreement (as at the date of this Agreement) or any Additional Senior Facility Equivalent (as applicable).

“Super Senior Hedge Counterparty” means any Hedge Counterparty in respect of Super Senior Hedging Liabilities.

“Super Senior Hedge Transfer” has the meaning given to that term in Clause 3.12 (*Hedge Transfer: Senior Term Lenders*).

“Super Senior Hedging Liabilities” means Hedging Liabilities in respect of interest rate hedging and/or foreign exchange hedging entered into in respect of any Senior Facility.

“Super Senior Lender” means a Senior Lender having a Super Senior Commitment in respect of a Super Senior Facility.

“Super Senior Liabilities” means the Super Senior Facility Liabilities and the Super Senior Hedging Liabilities.

“Super Senior Payment Default” means a Material Event of Default under paragraph (b) of the definition of “Material Event of Default” in the Initial Senior Facilities Agreement (as at the date of this Agreement) or any Additional Senior Facility Equivalent (as applicable).

“Super Senior Standstill Period” has the meaning given to that term in Clause 3.14 (*Permitted enforcement: Super Senior Creditors*).

“Target” has the meaning given to that term in the Initial Senior Facilities Agreement.

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

“Third Party Security Providers” means:

- (a) the Original Third Party Security Provider; and
- (b) any other person that is not a member of the Group and that has provided Transaction Security over any or all of its assets but is not a Debtor in respect of any of the direct Borrowing Liabilities or Guarantee Liabilities of the Secured Obligations to which that Transaction Security relates and which has acceded to this Agreement as a Third Party Security Provider in accordance with Clause 20.10 (*New Debtor/Third Party Security Provider*),

in each case, which entity has not ceased to be a Third Party Security Provider in accordance with the terms of this Agreement.

“Transaction Security” means the Security created or evidenced or expressed to be created or evidenced under or pursuant to the Security Documents.

“Transaction Security Documents” means the “Transaction Security Documents” under and as defined in the Initial Senior Facilities Agreement or any Additional Senior Facility Equivalent (as applicable).

“VAT” means:

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

1.2 Construction

- (a) Unless a contrary indication appears, a reference in this Agreement to:
 - (i) any **“Alternative Senior Term Lender”, “Ancillary Lender”, “Company”, “Creditor”, “Debtor”, “Hedge Counterparty”, “Intra-Group Lender”, “Parent”, “Party”, “Security Agent”, “Senior Agent”, “Senior Arranger”, “Senior Backstop Lender”, “Senior Borrower”, “Senior Creditor”, “Senior Facility Creditor”, “Senior Guarantor”, “Senior Lender”, “Senior Term Lender”, “Subordinated Creditor”, “Super Senior Arranger”, “Super Senior Creditor”, “Super Senior Lender”** or **“Third Party Security Provider”** shall be construed to be a reference to it in its capacity as such and not in any other capacity;
 - (ii) any **“Ancillary Lender”, “Creditor”, “Debtor”, “Hedge Counterparty”, “Party”, “Security Agent”, “Senior Agent”, “Senior Arranger”, “Senior Backstop Lender”, “Subordinated Creditor”, “Third Party Security Provider”** or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Debt Documents and, in the case of the Security Agent, any person for

the time being appointed as Security Agent or Security Agents in accordance with this Agreement;

- (iii) an “**amount**” includes an amount of cash and an amount of Non-Cash Consideration;
- (iv) “**assets**” includes present and future properties, revenues and rights of every description;
- (v) a “**Debt Document**” or any other agreement or instrument is (other than a reference to a “**Debt Document**” or any other agreement or instrument in “**original form**”) a reference to that Debt Document, or other agreement or instrument, as amended, novated, supplemented, extended or restated as permitted by this Agreement;
- (vi) a “**distribution**” of or out of the assets of a member of the Group, includes a distribution of cash and a distribution of Non-Cash Consideration;
- (vii) “**enforcing**” (or any derivation) the Transaction Security includes the appointment of an administrator (or any analogous officer in any jurisdiction) of a Debtor or Third Party Security Provider by the Security Agent;
- (viii) a “**group of Creditors**” includes all the Creditors and a “**group of Senior Creditors**” includes all the Senior 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 (whether or not having the force of law but, if not having force of law, which are binding or customarily complied with) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation; and
- (xiv) a provision of law is a reference to that provision as amended or re-enacted.

- (b) Section, Clause and Schedule headings are for ease of reference only.
- (c) A Default, an Event of Default or a Material Event of Default is “**continuing**” if it has not been remedied or waived, subject to the other provisions of paragraph (a)(xv) of clause 1.2 (*Construction*) of the Initial Senior Facilities Agreement or any Additional Senior Facility Equivalent (as applicable).
- (d) References to any matter or thing being “**permitted**” under, or pursuant to the terms of, a Debt Document shall be construed as references to a matter or thing not being prohibited under such Debt Document, whereas references to a matter or thing being “**expressly permitted**” under, or pursuant to the terms of, a Debt Document shall be construed as requiring that Debt Document to include a specific permission for such matter or thing.

1.3 **Other applicable jurisdictions**

- (a) Any principles of construction in relation to a jurisdiction not already contemplated by this Agreement set out in a Debtor/Third Party Security Provider Accession Deed shall apply as if set out in this Agreement, **provided that** such principles of construction shall not result in any amendment, variation or modification to any of the terms of this Agreement (prior to inclusion of such principles of construction) or result in any conflict or inconsistency with the terms of this Agreement (prior to inclusion of such principles of construction) and shall be limited solely to the extent required by applicable law for the accession of such new Debtor or Third Party Security Provider.
- (b) Any Debtor/Third Party Security Provider Accession Deed may include relevant provisions and customary limitation provisions (or similar constructs) as agreed between the Parties and such provisions shall be deemed to be incorporated into this Agreement.

1.4 **Third party rights**

- (a) Unless expressly provided otherwise in this Agreement, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 (the “**Third Parties Rights Act**”) to enforce or 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 19.10 (*Exclusion of liability*) may, subject to this Clause 1.4, rely on any Clause of this Agreement which expressly confers rights on it.

2. **RANKING AND PRIORITY**

2.1 **Senior Creditor Liabilities**

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

2.2 Transaction Security

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

2.3 Subordinated and Intra-Group Liabilities

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

2.4 Additional and/or Refinancing Debt

- (a) The Creditors acknowledge that the Debtors (or any of them) may wish to:
 - (i) incur incremental Borrowing Liabilities and/or Guarantee Liabilities in respect of incremental Borrowing Liabilities or new borrowing liabilities and guarantee liabilities; or
 - (ii) refinance Borrowing Liabilities and/or incur Guarantee Liabilities in respect of any such refinancing of Borrowing Liabilities,

which, in any such case, are intended to rank and/or share any existing Transaction Security *pari passu* with any existing Liabilities (or share any existing Transaction Security ranking behind Super Senior Liabilities) and/or to rank behind any existing Liabilities and/or to share in any existing Transaction Security behind any existing Liabilities.

- (b) The Creditors confirm that, if and to the extent such a financing or refinancing, such ranking, such Transaction Security and such sharing is permitted or expressly permitted by the terms of the Debt Documents at such time:
 - (i) they will (at the cost of the Debtors) co-operate with the Debtors with a view to enabling such financing or refinancing and such sharing in the Transaction Security to take place; and
 - (ii) the Senior Lenders and the Hedge Counterparties hereby authorise and direct the Security Agent and each Senior Agent (in each case as applicable) to execute any amendments to this Agreement or such other Debt Document required to reflect such arrangements,

and, in each case, subject to the terms of this Agreement.

- (c) This Clause 2.4 is without prejudice and subject to the provisions of Clause 2.5 (*Anti-layering*).

2.5 **Anti-layering**

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

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

in each case unless such ranking or subordination arises as a matter of law or the other terms of this Agreement **provided that** (without prejudice to Clause 3.2 (*Amendments and Waivers: Senior Facility Creditors*)) this Clause 2.5 shall not restrict any Debtor or other member of the Group from incurring Super Senior Liabilities which as between the relevant Super Senior Creditors are expressed to be secured by the Transaction Security on a super senior basis to the other Super Senior Liabilities and/or which are contractually senior in right of payment to any of the other Super Senior Liabilities.

3. **SENIOR FACILITY CREDITORS AND SENIOR FACILITY LIABILITIES**

3.1 **Payment of Senior Facility Liabilities**

The Debtors and Third Party Security Providers may make Payments of the Senior Facility Liabilities at any time in accordance with the Senior Finance Documents.

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

Subject to Clause 3.3 (*Restriction on amendments and waivers: Senior Facility Liabilities*) and Clause 3.4 (*Restriction on amendments and waivers: SFA guarantee*), the Senior Facility Creditors, Debtors and Third Party Security Providers may amend or waive the terms of the Senior Finance Documents in accordance with their terms (and subject to any consent required under them) at any time.

3.3 **Restriction on amendments and waivers: Senior Facility Liabilities**

Subject to Clause 3.4 (*Restriction on amendments and waivers: SFA guarantee*), the Senior Facility Creditors, Debtors and Third Party Security Providers may only amend or waive the terms of the Senior Finance Documents if the amendment or waiver is permitted by, and does not conflict with, the terms of this Agreement or any Senior Facilities Agreement.

3.4 **Restriction on amendments and waivers: SFA guarantee**

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

- (a) amend or waive the terms of the Senior Finance Documents if the amendment or waiver:
 - (i) would have the effect of changing, or relates to, the nature or scope of the guarantee and indemnity granted under clause 21 (*Guarantees and Indemnity*) of the Initial Senior Facilities Agreement or any Additional Senior Facility Equivalent (as applicable) unless expressly envisaged by the original form of the relevant Senior Facilities Agreement; or
 - (ii) relates to the release of any guarantee and indemnity granted under clause 21 (*Guarantees and Indemnity*) of the Initial Senior Facilities Agreement or any Additional Senior Facility Equivalent (as applicable) unless expressly envisaged by the original form of the relevant Senior Finance Document or relating to a sale or disposal of an asset which is a Non-Distressed Disposal,

unless the prior consent of the Hedge Counterparties is obtained **provided that** nothing in this Clause 3.4 or the other provisions of this Agreement shall restrict the Senior Facility Creditors from effecting or implementing any release or resignation (or consent thereto) of any guarantee and indemnity granted under clause 21 (*Guarantee and Indemnity*) of the Initial Senior Facilities Agreement as expressly envisaged by the terms of the Initial Senior Facilities Agreement or any Additional Senior Facility Equivalent (as applicable); or

- (b) consent to the resignation of a member of the Group which has granted a guarantee and indemnity under clause 21 (*Guarantees and Indemnity*) of the Initial Senior Facilities Agreement (or any Additional Senior Facility Equivalent (as applicable)) unless each Hedge Counterparty has:
 - (i) notified the Security Agent that no payment is due to it from that member of the Group under that clause; or
 - (ii) agreed to that consent being given.

3.5 **Designation of Senior Finance Documents**

If the terms of a document effect a change which would, if that change was effected by way of amendment to, or waiver of, the terms of a Senior Finance Document, require a notification by or the consent of the Hedge Counterparties under Clause 3.4 (*Restriction on amendments and waivers: SFA guarantee*), that document shall not constitute a Senior Finance Document for the purposes of this Agreement or a “Finance Document” for the purposes of any Senior Facilities Agreement, without such a notification or the prior consent of the Hedge Counterparties.

3.6 Security: Senior Facility Creditors

Other than as set out in Clause 3.8 (*Security: Ancillary Lenders*), the Senior Facility Creditors may take, accept or receive the benefit of:

- (a) any Security in respect of the Senior Facility Liabilities from any member of the Group or any Third Party Security Provider in addition to the Common Transaction Security which (except for any Security permitted under Clause 3.8 (*Security: Ancillary Lenders*)) to the extent legally possible and subject to any Agreed Security Principles is, at the same time, also offered either:
 - (i) to the Security Agent as trustee or agent, as applicable, 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 or agent, as applicable, for the Secured Parties:
 - (A) to the other Secured Parties in respect of their Liabilities; or
 - (B) to the Security Agent under a parallel debt structure or a joint and several creditorship structure or equivalent structure, in each case, for the benefit of all the Secured Parties,

and ranks in the same order of priority as that contemplated in Clause 2.2 (*Transaction Security*); and

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

if (except for any guarantee, indemnity or other assurance against loss permitted under Clause 3.8 (*Security: Ancillary Lenders*)) and to the extent legally possible and subject to any Agreed Security Principles, at the same time it is also offered to the other Secured Parties in respect of their Liabilities and ranks in the same order of priority as that contemplated in Clause 2 (*Ranking and Priority*).

3.7 Permitted Enforcement: Majority Senior Term Creditors

- (a) Following an Acceleration Event, the Majority Senior Term Creditors may instruct the Security Agent to take any Enforcement Action available to them in respect of the Senior Liabilities, following expiry of a Senior Enforcement Consultation Period (or such shorter period as may be agreed between the Majority Senior Term Creditors and the Majority Super Senior Creditors), unless:

- (i) the Majority Senior Term Creditors determine in good faith (and confirm the same to the Security Agent) that initiating a Senior Enforcement Consultation Period would have a material adverse effect on the amount of proceeds reasonably likely to be realised upon enforcement of the Transaction Security or Distressed Disposal (as applicable) for application towards the Senior Liabilities; or
- (ii) an Insolvency Event occurs in relation to a Material Company or a Third Party Security Provider,

in which case such instruction may be given prior to the expiry of a Senior Enforcement Consultation Period.

- (b) This Clause 3.7 shall not restrict the rights of any Senior Term Lender under and in accordance with clause 2.4 (*Finance Parties' rights and obligations*) of the Initial Senior Facilities Agreement (or any Additional Senior Facility Equivalent (as applicable)).

3.8 Security: Ancillary Lenders

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

- (a) the Common Transaction Security;
- (b) each guarantee, indemnity or other assurance against loss contained in:
 - (i) the original form of Senior Facilities Agreement;
 - (ii) this Agreement; or
 - (iii) any Common Assurance;
- (c) indemnities and assurances against loss contained in the Ancillary Documents no greater in extent than any of those referred to in paragraph (b) above;
- (d) any SFA Cash Cover permitted under the relevant Senior Facilities Agreement relating to any Ancillary Facility;
- (e) the indemnities contained in an ISDA Master Agreement (in the case of a Hedging Ancillary Document which is based on an ISDA Master Agreement) or any indemnities which are similar in meaning and effect to those indemnities (in the case of a Hedging Ancillary Document which is not based on an ISDA Master Agreement); or
- (f) any Security, guarantee, indemnity or other assurance against loss giving effect to, or arising as a result of the effect of, any netting or set-off arrangement relating to the Ancillary Facilities for the purpose of netting debit and credit balances arising under the Ancillary Facilities.

3.9 **Restriction on Enforcement: Ancillary Lenders**

Subject to Clause 3.10 (*Permitted Enforcement: Ancillary Lenders*), so long as any of the Senior 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.

3.10 **Permitted Enforcement: Ancillary Lenders**

- (a) Each Ancillary Lender may take Enforcement Action which would be available to it but for Clause 3.9 (*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 Revolving Facility Liabilities (excluding the Liabilities owing to Ancillary Lenders), in which case the Ancillary Lenders may take the same Enforcement Action as has been taken in respect of those Revolving Facility Liabilities;
 - (ii) that action is contemplated by the relevant Senior Facilities Agreement or Clause 3.8 (*Security: Ancillary Lenders*);
 - (iii) that Enforcement Action is taken in respect of SFA Cash Cover which has been provided in accordance with the relevant Senior Facilities Agreement;
 - (iv) at the same time as, or prior to, that action, the consent of the Majority Senior Creditors to that Enforcement Action is obtained; or
 - (v) an Insolvency Event has occurred, in which case after the occurrence of that Insolvency Event (unless the Security Agent has taken, or has given notice that it intends to take, action on behalf of that Ancillary Lender in accordance with Clause 7.5 (*Filing of claims*)), 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 or that Third Party Security Provider to:
 - (A) accelerate any of that Debtor's or Third Party Security Provider's Revolving Facility Liabilities or declare them prematurely due and payable on demand;
 - (B) make a demand under any guarantee, indemnity or other assurance against loss given by that Debtor or Third Party Security Provider in respect of any Revolving Facility Liabilities;
 - (C) exercise any right of set-off or take or receive any Payment in respect of any Revolving Facility Liabilities of that Debtor or Third Party Security Provider; or
 - (D) claim and prove in the liquidation of that Debtor or Third Party Security Provider for the Revolving Facility Liabilities owing to it.

(b) Clause 3.9 (*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 the relevant Senior Facilities Agreement and to the extent that the demand is required to reduce, or the netting or set-off represents a reduction from, the Permitted Gross Outstandings of that Multi-account Overdraft to or towards an amount equal to its Designated Net Amount.

3.11 Option to purchase: Senior Term Lenders

(a) Any Senior Term Lender (the “**Purchasing Senior Term Lenders**”) may, if a Material Event of Default is continuing or after a Distress Event, by giving not less than five days’ notice to the Security Agent, require the transfer to them (or to a nominee or nominees), in accordance with Clause 20.2 (*Change of Senior Lender*), of all, but not part, of the rights and obligations in respect of the Super Senior Facility Liabilities if:

(i) that transfer is lawful and, subject to paragraph (ii) below, otherwise permitted by the terms of each Senior Facilities Agreement;

(ii) any conditions relating to such a transfer contained in each Senior Facilities Agreement are complied with, other than any requirement to obtain the consent of, or consult with, any Debtor, other member of the Group or Third Party Security Provider relating to such transfer, which consent or consultation shall not be required (unless required by law);

(iii) that transfer is completed within ten Business Days of delivery of notice to the Security Agent by the Purchasing Senior Term Lenders;

(iv) each Senior Agent, on behalf of the relevant Super Senior Lenders, is paid an amount in cash equal to the aggregate of:

(A) all of the Super Senior Facility Liabilities at that time (whether or not due), including all amounts that would have been payable under any Senior Facilities Agreement if the Super Senior Facilities were being prepaid by the relevant Debtors on the date of that payment; and

(B) all costs and expenses (including legal fees) reasonably incurred by each Senior Agent and/or the Super Senior Lenders as a consequence of giving effect to that transfer;

(v) as a result of that transfer the Super Senior Lenders have no further actual or contingent liability to any Debtor under the relevant Debt Documents;

- (vi) an indemnity is provided from each Purchasing Senior Term Lender (or from another third party acceptable to all the Super Senior Lenders) in a form satisfactory to each Super Senior Lender (acting reasonably) in respect of all losses which are reasonably likely to be sustained or incurred by any Super Senior Lender in consequence of any sum received or recovered by any Super Senior Lender from any person being required (or it being alleged that it is required) to be paid back by or clawed back from any Super Senior Lender for any reason; and
 - (vii) the transfer is made without recourse to, or representation or warranty from, the Super Senior Lenders, except that each Super Senior Lender shall be deemed to have represented and warranted on the date of that transfer that it has the corporate power to effect that transfer and it has taken all necessary action to authorise the making of it of that transfer.
- (b) The Security Agent shall, at the request of the Purchasing Senior Term Lenders, notify the Purchasing Senior Term Lenders of the sum of the amounts described in paragraphs (a)(iv)(A) and (B) above.
- (c) If more than one Purchasing Senior Term Lender wishes to exercise the option to purchase the Super Senior Facility Liabilities in accordance with this Clause 3.11, each such Purchasing Senior Term Lender shall:
- (i) acquire the Super Senior Facility Liabilities *pro rata*, in the proportion that its Senior Term Commitments bear to the aggregate Senior Term Commitments of all the Purchasing Senior Term Lenders; and
 - (ii) inform each relevant Senior Agent, who will determine (consulting with each other and the Instructing Group, as required) the appropriate share of the Super Senior Facility Liabilities to be acquired by each such Purchasing Senior Term Lender and who shall inform each such Purchasing Senior Term Lender accordingly,

and the relevant Senior Agents shall promptly inform each Senior Agent of each Purchasing Senior Term Lender's share of the Super Senior Facility Liabilities to be acquired.

3.12 Hedge Transfer: Senior Term Lenders

- (a) Some or all of the Senior Term Lenders (the "**Hedge Purchasing Senior Term Lenders**") may, by giving not less than five days' notice to the Security Agent, require a Hedge Transfer in respect of the Super Senior Hedging Liabilities (a "**Super Senior Hedge Transfer**") if:
- (i) that transfer is lawful and otherwise permitted by the terms of the Hedging Agreements, in which case no Debtor or other member of the Group shall be entitled to withhold its consent to that transfer;
 - (ii) all conditions (other than the consent of, or any consultation with, any Debtor or other member of the Group) relating to that transfer contained in the Hedging Agreements are complied with;

- (iii) each Super Senior Hedge Counterparty is paid (in the case of a positive number) or pays (in the case of a negative number) an amount equal to the aggregate of (A) the Hedging Purchase Amount in respect of the hedging transactions under the relevant Hedging Agreement to which it is a party as a Hedge Counterparty at that time and (ii) all costs and expenses (including legal fees) properly incurred as a consequence of giving effect to that transfer;
 - (iv) an indemnity is provided from each Hedge Purchasing Senior Term Lender which is receiving (or for which a nominee is receiving) that transfer (or from another third party acceptable to all the relevant Hedge Counterparties) in a form satisfactory to the relevant Hedge Counterparty (acting reasonably) in respect of all losses which are reasonably likely to be sustained or incurred by the relevant Hedge Counterparty in consequence of any sum received or recovered by that Hedge Counterparty being required (or it being alleged that it is required) to be paid back by or clawed back from that Hedge Counterparty for any reason;
 - (v) as a result of that transfer, the Super Senior Hedge Counterparties have no further rights or obligations (including any actual or contingent liability) to any Debtor under the Hedging Agreements in respect of Super Senior Hedging Liabilities; and
 - (vi) that transfer is made without recourse to, or representation or warranty from, the relevant Super Senior Hedge Counterparty, except that the relevant Hedge Counterparty shall be deemed to have represented and warranted on the date of that transfer that it has the corporate power to effect that transfer and it has taken all necessary action to authorise the making by it of that transfer.
- (b) All the Hedge Purchasing Senior Term Lenders and any Super Senior Hedge Counterparty may agree (in respect of the Hedging Agreements (or one or more of them) to which that Hedge Counterparty is a party) that a transfer in accordance with this Clause 3.12 shall not apply to such Hedging Agreement(s) or to the Super Senior Hedging Liabilities and Hedge Counterparty Obligations under such Hedging Agreement(s).

3.13 **Restriction on enforcement: Super Senior Creditors**

For so long as any of the Senior Term Liabilities are or may be outstanding, a Super Senior Lender shall only be entitled to take any Enforcement Action in respect of any of the Liabilities owed to it under the Senior Finance Documents in accordance with Clause 3.14 (*Permitted enforcement: Super Senior Creditors*).

3.14 **Permitted enforcement: Super Senior Creditors**

The Majority Super Senior Creditors may take any Enforcement Action available to them in respect of the Super Senior Facility Liabilities if:

- (a) at the same time as, or prior to, that action, Enforcement Action has been taken in respect of the Senior Term Liabilities, in which case the Majority Super Senior Creditors may take the same Enforcement Action as has been taken in respect of those Senior Term Liabilities in relation to the Super Senior Facility Liabilities **provided that** such Enforcement Action taken by the Majority Super Senior Creditors is:
 - (i) in respect of the same member or members of the Group that Enforcement Action has been taken against by the Majority Senior Term Creditors;
 - (ii) in the same proportion of the Senior Facility Liabilities that Enforcement Action has been taken against by the Senior Term Lenders; and
 - (iii) not Enforcement Action under paragraph (c) of the definition thereof;
- (b) at the time that Enforcement Action is taken, a Senior Agent has given written notice (a “**Super Senior Enforcement Notice**”) to the Security Agent specifying that a Material Event of Default has occurred and is continuing and:
 - (i)
 - (A) the Security Agent has not taken any Material Enforcement Action;
 - (B) a period (a “**Super Senior Standstill Period**”) of not less than:
 - (1) 90 days has elapsed since the date on which delivery of the relevant Super Senior Enforcement Notice becomes effective in accordance with Clause 24.4 (*Delivery*), in the case of a Super Senior Payment Default;
 - (2) 120 days has elapsed since the date on which delivery of the relevant Super Senior Enforcement Notice becomes effective in accordance with Clause 24.4 (*Delivery*), in the case of a Super Senior Financial Covenant Default; or
 - (3) 150 days has elapsed since the date on which delivery of the relevant Super Senior Enforcement Notice becomes effective in accordance with Clause 24.4 (*Delivery*), in the case of any other Super Senior Default;
 - (C) the Super Senior Discharge Date has not occurred and no Senior Term Lender has given a legally binding commitment to acquire all of the Super Senior Facility Liabilities in accordance with Clause 3.11 (*Option to purchase: Senior Term Lenders*);
 - (D) a Super Senior Enforcement Consultation Period (or such shorter period as may be agreed between the Majority Super Senior Creditors and the Majority Senior Term Creditors) has expired (and **provided that** such Super Senior Enforcement

Consultation Period may not commence more than 15 Business Days prior to the expiry of the relevant Super Senior Standstill Period), other than in circumstances where:

- (1) the Majority Super Senior Creditors determine in good faith (and confirm the same to the Security Agent) that continuing a Super Senior Enforcement Consultation Period would have a material adverse effect on the amount of proceeds reasonably likely to be realised upon enforcement of the Transaction Security for application towards the Super Senior Liabilities; or
- (2) any Insolvency Event of a Material Company or a Third Party Security Provider occurs,

in which case such instruction may be given prior to the expiry of a Super Senior Enforcement Consultation Period; and

- (E) the Material Event of Default in relation to which the Super Senior Enforcement Notice was served is continuing at the end of the Super Senior Standstill Period and at the time of the relevant Enforcement Action proposed to be taken by the Majority Super Senior Creditors,

unless there is a legally binding commitment in respect of a Distressed Disposal that is reasonably likely to result in the discharge of all of the Super Senior Facility Liabilities which is subject only to any applicable regulatory approvals **provided that** reasonable action is taken to obtain the relevant approvals as soon as reasonably practicable; or

(ii)

- (A) a period of not less than:
 - (1) 180 days has elapsed since the date on which the Security Agent commenced any Material Enforcement Action; or
 - (2) 195 days has elapsed since the date on which the Security Agent received instructions to take Material Enforcement Action from the Majority Senior Term Creditors,

whichever is earlier;

- (B) the Super Senior Discharge Date has not occurred and no Senior Term Lender has given a legally binding commitment to acquire all of the Super Senior Facility Liabilities in accordance with Clause 3.11 (*Option to purchase: Senior Term Lenders*);
- (C) a Super Senior Enforcement Consultation Period (or such shorter period as may be agreed between the Majority Super Senior Creditors and the Majority Senior Term Creditors) has expired

(and **provided that** such Super Senior Enforcement Consultation Period may not commence more than 15 Business Days prior to the final day of the period referred to in paragraph (b)(ii)(A) above), other than in circumstances where:

- (1) the Majority Super Senior Creditors determine in good faith (and confirm the same to the Security Agent) that continuing a Super Senior Enforcement Consultation Period would have a material adverse effect on the amount of proceeds reasonably likely to be realised upon enforcement of the Transaction Security for application towards the Super Senior Liabilities; or
- (2) any Insolvency Event of a Material Company or a Third Party Security Provider occurs,

in which case such instruction may be given prior to the expiry of a Super Senior Enforcement Consultation Period; and

- (D) the Material Event of Default in relation to which the Super Senior Enforcement Notice was served is continuing at the end of the period set out in paragraph (b)(ii)(A) above and at the time of the relevant Enforcement Action proposed to be taken by the Majority Super Senior Creditors,

unless there is a legally binding commitment in respect of a Distressed Disposal that is reasonably likely to result in the discharge of all of the Super Senior Facility Liabilities which is subject only to any applicable regulatory approvals **provided that** reasonable action is taken to obtain the relevant approvals as soon as reasonably practicable;

- (c) at the same time as, or prior to, that Enforcement Action being taken, the prior written consent of the Majority Senior Term Creditors to that Enforcement Action is obtained; or
- (d) an Insolvency Event has occurred, in which case after the occurrence of that Insolvency Event, each Super Senior Lender shall, and shall only, be entitled (if it has not already done so and unless otherwise directed by the Security Agent or unless the Security Agent has taken, or has given notice that it intends to take, such action on behalf of that Super Senior Lender) to exercise any right it may otherwise have in respect of that member of the Group or that Third Party Security Provider to:
 - (i) accelerate any of that member of the Group's Super Senior Facility Liabilities or declare them prematurely due and payable on demand;
 - (ii) make a demand under any guarantee, indemnity or other assurance against loss given by that member of the Group in respect of any Super Senior Facility Liabilities;

- (iii) exercise any right of set-off or take or receive any Payment in respect of any Super Senior Facility Liabilities of that member of the Group; or
- (iv) claim and prove in the liquidation of that member of the Group for the Super Senior Facility Liabilities owing to it.

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 as a Hedge Counterparty.
- (b) Paragraph (a) above shall not apply to a Hedging Ancillary Lender.

4.2 Restriction on Payment: Hedging Liabilities

Neither the Debtors nor the Third Party Security Providers shall, and the Debtors shall procure that no other member of the Group will, make any Payment of the Hedging Liabilities at any time unless:

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

4.3 Permitted Payments: Hedging Liabilities

- (a) Subject to paragraph (b) below, the Debtors, the members of the Group and the Third Party Security Providers 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:
 - (A) any of sections 2(d) (*Deduction or Withholding for Tax*), 2(e) (*Default Interest; Other Amounts*), 8(a) (*Payment in the Contractual Currency*), 8(b) (*Judgments*) and 11 (*Expenses*) of the 1992 ISDA Master Agreement (if the Hedging Agreement is based on a 1992 ISDA Master Agreement);

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

Agreement) has occurred with respect to the relevant Hedge Counterparty; or

- (vi) if the Majority Senior Term Lenders and the Majority Super Senior Lenders 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 unless the prior consent of the Majority Senior Term Lenders and the Majority Super Senior Lenders is obtained.
- (c) Failure by a Debtor or a Third Party Security Provider 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 or that Third Party Security Provider under that Hedging Agreement.

4.4 **Payment obligations continue**

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

4.5 **No acquisition of Hedging Liabilities**

Neither the Debtors nor the Third Party Security Providers shall, and the Debtors shall procure that no other member of the Group will:

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

in respect of any of the Hedging Liabilities unless the prior consent of the Majority Senior Term Lenders and Majority Super Senior Lenders is obtained.

4.6 **Amendments and Waivers: Hedging Agreements**

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

- (ii) that amendment or waiver would not result in a breach of clause 25.24 (*Treasury Transactions*) of the Initial Senior Facilities Agreement or any Additional Senior Facility Equivalent (as applicable).

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 any Third Party Security Provider 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 Initial Senior Facilities Agreement or any Additional Senior Facility Equivalent (as applicable);
 - (ii) this Agreement;
 - (iii) any Common Assurance; or
 - (iv) the relevant Hedging Agreement no greater in extent than any of those referred to in paragraphs (i) to (iii) (inclusive) above;
- (c) as otherwise contemplated by Clause 3.6 (*Security: Senior Facility Creditors*); and
- (d) the indemnities contained in the ISDA Master Agreements (in the case of a Hedging Agreement which is based on an ISDA Master Agreement) or any indemnities which are similar in meaning and effect to those indemnities (in the case of a Hedging Agreement which is not based on an ISDA Master Agreement).

4.8 **Restriction on Enforcement: Hedge Counterparties**

Subject to Clause 4.9 (*Permitted Enforcement: Hedge Counterparties*) and Clause 4.10 (*Required Enforcement: Hedge Counterparties*) and without prejudice to each Hedge Counterparty's rights under Clauses 10.2 (*Enforcement Instructions*) and 10.4 (*Manner of enforcement*), the Hedge Counterparties shall not take any Enforcement Action in respect of any of the Hedging Liabilities or any of the hedging transactions under any of the Hedging Agreements at any time.

4.9 **Permitted Enforcement: Hedge Counterparties**

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

Non-Credit Related Close-Outs

- (i) if, prior to a Distress Event, the Company has certified to that Hedge Counterparty that that termination or close-out would not result in a

breach of clause 25.24 (*Treasury Transactions*) of the Initial Senior Facilities Agreement or any Additional Senior Facility Equivalent (as applicable);

- (ii) if a Hedging Force Majeure has occurred in respect of that Hedging Agreement;

Credit Related Close-Outs

- (iii) if a Distress Event has occurred;
 - (iv) if an Event of Default has occurred under clause 26.6 (*Insolvency*) or clause 26.7 (*Insolvency proceedings*) of the Initial Senior Facilities Agreement or, in each case, any Additional Senior Facility Equivalent, in relation to a Debtor which is party to that Hedging Agreement;
 - (v) on or immediately following the Senior Facilities Discharge Date; and
 - (vi) if the Majority Senior Term Lenders and the Majority Super Senior Lenders give prior consent to that termination or close-out being made.
- (b) If a Debtor has defaulted on any Payment due under a Hedging Agreement (after allowing any applicable notice or grace periods) and the default has continued unwaived for more than 30 days after notice of that default has been given to the Security Agent pursuant to paragraph (g) of Clause 23.3 (*Notification of prescribed events*), the relevant Hedge Counterparty:
- (i) may, to the extent it is able to do so under the relevant Hedging Agreement, terminate or close-out in whole or in part any hedging transaction under that Hedging Agreement; and
 - (ii) until such time as the Security Agent has given notice to that Hedge Counterparty that the Transaction Security is being enforced (or that any formal steps are being taken to enforce the Transaction Security), shall be entitled to exercise any right it might otherwise have to sue for, commence or join legal or arbitration proceedings against any Debtor to recover any Hedging Liabilities due under that Hedging Agreement.
- (c) After the occurrence of an Insolvency Event in relation to any member of the Group or any Third Party Security Provider which is a party to a Hedging Agreement and that constitutes an Event of Default, each Hedge Counterparty shall be entitled to exercise any right it may otherwise have in respect of that member of the Group or that Third Party Security Provider to:
- (i) prematurely close-out or terminate any Hedging Liabilities of that member of the Group or that Third Party Security Provider;
 - (ii) make a demand under any guarantee, indemnity or other assurance against loss given by that member of the Group or that Third Party Security Provider in respect of any Hedging Liabilities;

- (iii) exercise any right of set-off or take or receive any Payment in respect of any Hedging Liabilities of that member of the Group or that Third Party Security Provider; or
- (iv) claim and prove in the liquidation of that member of the Group or that Third Party Security Provider for the Hedging Liabilities owing to it.

4.10 Required Enforcement: Hedge Counterparties

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

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

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

4.12 Terms of Hedging Agreements

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

- (a) each Hedging Agreement documents only hedging arrangements entered into for the purpose of hedging the types of liabilities described in the definition of “**Hedging Agreement**” and that no other hedging arrangements are carried out under or pursuant to a Hedging Agreement;
- (b) each Hedging Agreement is based either:
 - (i) on an ISDA Master Agreement; or
 - (ii) on another framework agreement which is similar in effect to an ISDA Master Agreement;
- (c) in the event of a termination of the hedging transaction entered into under a Hedging Agreement, whether as a result of:
 - (i) a Termination Event or an Event of Default, each as defined in the relevant Hedging Agreement (in the case of a Hedging Agreement which is based on an ISDA Master Agreement); or
 - (ii) an event similar in meaning and effect to either of those described in paragraph (i) above (in the case of a Hedging Agreement which is not based on an ISDA Master Agreement),

that Hedging Agreement will:

- (A) if it is based on a 1992 ISDA Master Agreement, provide for payments under the “Second Method” and will make no material amendment to section 6(e) (*Payments on Early Termination*) of the ISDA Master Agreement;
- (B) if it is based on a 2002 ISDA Master Agreement, make no material amendment to section 6(e) (*Payments on Early Termination*) of the ISDA Master Agreement; or
- (C) if it is not based on an ISDA Master Agreement, provide for any other method the effect of which is that the party to which that event is referable will be entitled to receive payment under the relevant termination provisions if the net replacement value of all terminated transactions entered into under that Hedging Agreement is in its favour;
- (d) each Hedging Agreement will not provide for Automatic Early Termination; and
- (e) each Hedging Agreement will provide that the relevant Hedge Counterparty will be entitled to designate an Early Termination Date (as defined in the relevant ISDA Master Agreement) or otherwise be able to terminate each transaction under such Hedging Agreement if so required pursuant to Clause 4.10 (*Required Enforcement: Hedge Counterparties*).

4.13 Hedge Counterparties that are not party to the Senior Facilities Agreement

Each Senior Guarantor irrevocably and unconditionally jointly and severally guarantees to each Hedge Counterparty that is not a party to the Senior Facilities Agreement performance by each other Senior Guarantor of all that Senior Guarantor's obligations under the Hedging Agreements and indemnifies such Hedge Counterparty, in each case, on the same terms as are set out in clause 21 (*Guarantees and Indemnity*) of the Senior Facilities Agreement as though they were set out in full in this Agreement (including all applicable limitations and other terms (including those set out in any Accession Deed (as defined in the Senior Facilities Agreement))).

5. INTRA-GROUP LENDERS AND INTRA-GROUP LIABILITIES

5.1 Restriction on Payment: Intra-Group Liabilities

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

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

5.2 Permitted Payments: Intra-Group Liabilities

- (a) Subject to paragraph (b) below, the Debtors 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, at the time of the Payment, an Acceleration Event has occurred and the Security Agent has notified the Company that such payments may not be made, unless:
 - (i) prior to the Senior Discharge Date, the Majority Senior Creditors consent to that Payment being made; or
 - (ii) that Payment is made to facilitate Payment of the Senior Liabilities.

5.3 Payment obligations continue

No Debtor shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Debt Document by the operation of Clauses 5.1 (*Restriction on Payment: Intra-Group Liabilities*) and 5.2 (*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.

5.4 **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; 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) above may take place in respect of any Intra-Group Liabilities if:
 - (i) that action would result in a breach of any Senior Facilities Agreement; or
 - (ii) at the time of that action, an Acceleration Event has occurred and the Security Agent has notified the Company that such action may not take place.
- (c) The restrictions in paragraph (b) above shall not apply if:
 - (i) prior to the Senior Discharge Date, the Majority Senior Creditors consent to that action; or
 - (ii) that action is taken to facilitate Payment of the Senior Liabilities.

5.5 **Security: Intra-Group Lenders**

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

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

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

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

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

After the occurrence of an Insolvency Event in relation to any member of the Group, each Intra-Group Lender may (unless otherwise directed by the Security Agent or unless the Security Agent has taken, or has given notice that it intends to take, action

on behalf of that Intra-Group Lender in accordance with Clause 7.5 (*Filing of claims*)), exercise any right it may otherwise have against that member of the Group to:

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

6. SUBORDINATED CREDITOR AND SUBORDINATED LIABILITIES

6.1 Restriction on Payment: Subordinated Liabilities

Prior to the Senior Discharge Date, the Company shall not, and the Company shall procure that no other member of the Group will, make any Payment of the Subordinated Liabilities (including by way of set-off against liabilities owed to a Debtor) at any time unless:

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

provided that this Clause 6.1 shall not prevent the capitalisation of interest on any Subordinated Liabilities.

6.2 Permitted Payments: Subordinated Liabilities

The Company may make Payments in respect of the Subordinated Liabilities then due if, prior to the Senior Discharge Date, the Payment is expressly permitted by each Senior Facilities Agreement or the Majority Senior Creditors consent to that Payment being made.

6.3 Payment obligations continue

The Company 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 6.1 (*Restriction on Payment: Subordinated Liabilities*) and 6.2 (*Permitted Payments: Subordinated Liabilities*) even if its obligation to make that Payment is restricted at any time by the terms of any of those Clauses.

6.4 **No acquisition of Subordinated Liabilities**

Prior to the Senior Discharge Date, neither the Company nor any Debtor shall, and the Company shall procure that no other member of the Group will:

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

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

6.5 **Amendments and Waivers: Subordinated Creditor**

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

- (a) prior to the Senior Discharge Date, the prior consent of the Majority Senior Creditors is obtained; or
- (b) that amendment, waiver or agreement is expressly permitted by the Senior Finance Documents in effect at the time such amendment, waiver or agreement is to be made or entered into.

6.6 **Security: Subordinated Creditor**

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

6.7 **Restriction on Enforcement: Subordinated Creditor**

Subject to Clause 6.8 (*Permitted Enforcement: Subordinated Creditor*), the Subordinated Creditor shall not be entitled to take any Enforcement Action in respect of any of the Subordinated Liabilities at any time prior to the Senior Discharge Date.

6.8 **Permitted Enforcement: Subordinated Creditor**

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

- (a) accelerate any of that Debtor's Subordinated Liabilities or declare them prematurely due and payable or payable on demand;
- (b) make a demand under any guarantee, indemnity or other assurance against loss given by that Debtor in respect of any Subordinated Liabilities;

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

7. EFFECT OF INSOLVENCY EVENT

7.1 SFA Cash Cover

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

7.2 Distributions

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

7.3 Set-Off

- (a) Subject to paragraph (b) below, to the extent that any member of the Group's or a Third Party Security Provider's Liabilities are discharged by way of set-off (mandatory or otherwise) after the occurrence of an Insolvency Event in relation to that member of the Group or a Third Party Security Provider, any Creditor which benefited from that set-off shall pay an amount equal to the amount of the Liabilities owed to it which are discharged by that set-off to the Security Agent for application in accordance with Clause 16 (*Application of Proceeds*).
- (b) Paragraph (a) above shall not apply to:
 - (i) any such discharge of the Multi-account Overdraft Liabilities to the extent that the relevant discharge represents a reduction of the Gross Outstandings of a Multi-account Overdraft to or towards its 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 member of the Group or a Third Party Security Provider, each Creditor irrevocably authorises the Security Agent, on its behalf, to:

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

7.6 **Further assurance – Insolvency Event**

Each Creditor will:

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

7.7 Security Agent instructions

For the purposes of Clause 7.2 (*Distributions*), Clause 7.5 (*Filing of claims*) and Clause 7.6 (*Further assurance – Insolvency Event*) the Security Agent shall act:

- (a) on the instructions of the Instructing Group in accordance with Clause 10.2 (*Enforcement Instructions*) and Clause 10.4 (*Manner of enforcement*), respectively; or
- (b) in the absence of any such instructions, as the Security Agent sees fit.

8. TURNOVER OF RECEIPTS

8.1 SFA Cash Cover

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

8.2 Turnover by the Creditors

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

- (a) any Payment or distribution of, or on account of or in relation to, any of the Liabilities which is neither:
 - (i) a Permitted Payment; nor
 - (ii) made in accordance with Clause 16 (*Application of Proceeds*);
- (b) other than where paragraph (a) of Clause 7.3 (*Set-Off*) applies, any amount by way of set-off in respect of any of the Liabilities owed to it which does not give effect to a Permitted Payment;
- (c) notwithstanding paragraphs (a) and (b) above, and other than where paragraph (a) of Clause 7.3 (*Set-Off*) applies, any amount:
 - (i) on account of, or in relation to, any of the Liabilities:
 - (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 a Third Party Security Provider (other than after the occurrence of an Insolvency Event in respect of that member of the Group or that Third Party Security Provider);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 any Third Party Security Provider 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 that Third Party Security Provider,

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 for or otherwise on behalf 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 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 Close-Out Netting by a Hedge Counterparty or a Hedging Ancillary Lender, Payment Netting by a Hedge Counterparty or a Hedging Ancillary Lender, Inter-Hedging Agreement Netting by a Hedge Counterparty or 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);
- (c) received or recovered pursuant to any refinancing subject to Clause 18 (*Senior Creditor Financings*); or
- (d) made in accordance with Clause 17 (*Equalisation*).

8.4 Permitted assurance and receipts

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

- (a) arrange with any person which is not a member of the Group or a Third Party Security Provider 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 20 (*Changes to the Parties*), which is permitted by each Senior Facilities Agreement and is not in breach of Clause 4.5 (*No acquisition of Hedging Liabilities*) or Clause 6.4 (*No acquisition of Subordinated Liabilities*), and that Senior Creditor or Subordinated Creditor shall not be obliged to account to any other Party for any sum received by it as a result of that action.

8.5 Amounts received by Debtors and Third Party Security Providers

If any of the Debtors or Third Party Security Providers 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 or Third Party Security Provider will:

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

8.6 Saving Provision

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

8.7 Turnover of Non-Cash Consideration

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

9. REDISTRIBUTION

9.1 Recovering Creditor's rights

- (a) Any amount paid or distributed by a Creditor (a "**Recovering Creditor**") to the Security Agent under Clause 7 (*Effect of Insolvency Event*) or Clause 8 (*Turnover of Receipts*) shall be treated as having been paid or distributed by the relevant Debtor or Third Party Security Provider 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 or Third Party Security Provider, as between the relevant Debtor or Third Party Security Provider 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 or Third Party Security Provider.

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 or Third Party Security Provider and is repaid or returned by that Recovering Creditor to that Debtor or Third Party Security Provider, 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 Third Party Security Provider 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 Third Party Security Provider.
- (b) The Security Agent shall not be obliged to pay or distribute any Redistributed Amount to a Recovering Creditor under paragraph (a)(i) above until it has been able to establish to its satisfaction that it has actually received that Redistributed Amount from the relevant Sharing Party.

9.3 Deferral of subrogation

- (a) No Creditor (other than the Subordinated Creditor), Debtor or Third Party Security Provider will exercise any rights which it may have by reason of the performance by it of its obligations under the Debt Documents to take the

benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights under the Debt Documents of any Creditor (other than the Subordinated Creditor) which ranks ahead of it in accordance with the priorities set out in Clause 2 (*Ranking and Priority*) until such time as all of the Liabilities owing to each prior ranking Creditor (or, in the case of any Debtor or Third Party Security Provider, owing to each Creditor (other than the Subordinated Creditor)) have been irrevocably discharged in full.

- (b) The Subordinated Creditor shall not exercise any rights which it may have to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights under the Debt Documents of any Creditor until such time as all of the Liabilities owing to each Creditor (other than the Subordinated Creditor) have been irrevocably discharged in full.

10. ENFORCEMENT OF TRANSACTION SECURITY

10.1 SFA Cash Cover

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

10.2 Enforcement Instructions

- (a) The Security Agent may refrain from enforcing the Transaction Security unless instructed otherwise by the Instructing Group in accordance with the terms of this Agreement.
- (b) Subject to the Transaction Security having become enforceable in accordance with its terms, the Majority Senior Term Creditors or, in accordance with Clause 3.14 (*Permitted enforcement: Super Senior Creditors*), the Majority Super Senior Creditors (as the case may be) may give or refrain from giving instructions to the Security Agent to enforce or refrain from enforcing the Transaction Security as they see fit.

10.3 Enforcement Instructions: Super Senior Creditors

The Security Agent shall not give effect to any instructions of the Majority Super Senior Creditors to take any step towards enforcing the Transaction Security or to require a Debtor to make a Distressed Disposal if the Majority Senior Term Creditors have:

- (a) instructed the Security Agent to take any step towards enforcing the Transaction Security in accordance with this Agreement; or
- (b) required any Debtor or Third Party Security Provider to make a Distressed Disposal (for the avoidance of doubt, including any instruction to make any Distressed Disposal and whether or not any such disposal process has at such time commenced or been completed),

unless:

- (i) the Majority Senior Term Creditors consent to such instructions; or
- (ii) the Majority Super Senior Creditors are then the Instructing Group,

and, if the Majority Super Senior Creditors have given any instructions to the Security Agent pursuant to paragraph (ii) above, the Security Agent shall not give effect to any instructions of the Majority Senior Term Creditors with respect to the taking of any step towards enforcing the Transaction Security or requiring a Debtor or Third Party Security Provider to make a Distressed Disposal that are the subject of the instructions given by the Majority Super Senior Creditors.

10.4 Manner of enforcement

- (a) If the Transaction Security is being enforced pursuant to Clause 10.2 (*Enforcement Instructions*), the Security Agent shall enforce the Transaction Security in such manner (including, without limitation, the selection of any administrator (or any analogous officer in any jurisdiction) of any Debtor or Third Party Security Provider to be appointed by the Security Agent) as the Majority Senior Term Creditors or, in accordance with Clause 10.3 (*Enforcement Instructions: Super Senior Creditors*), the Majority Super Senior Creditors shall instruct, or, in the absence of any such instructions, as the Security Agent considers in its discretion to be appropriate.
- (b) Any enforcement of the Transaction Security shall be consistent with the Enforcement Objective.

10.5 Exercise of voting rights

- (a) Each Creditor (other than each Senior Creditor) will cast its vote in any proposal put to the vote by or under the supervision of any judicial or supervisory authority in respect of any insolvency, pre-insolvency or rehabilitation or similar proceedings relating to any member of the Group as instructed by the Security Agent.
- (b) Subject to Clause 10.4 (*Manner of enforcement*), the Security Agent shall give instructions for the purposes of paragraph (a) above in accordance with any instructions given to it by the Instructing Group.

10.6 Waiver of rights

To the extent permitted under applicable law and subject to Clause 10.2 (*Enforcement Instructions*), Clause 10.3 (*Enforcement Instructions: Super Senior Creditors*), Clause 10.4 (*Manner of enforcement*), Clause 12.2 (*Restrictions on Enforcement*), Clause 12.3 (*Release of Super Senior Liabilities*) and Clause 16 (*Application of Proceeds*), each of the Secured Parties, the Debtors and the Third Party Security Providers 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.

10.7 Duties owed

Each of the Secured Parties, the Debtors and the Third Party Security Providers acknowledges that, in the event that the Security Agent enforces or is instructed to enforce the Transaction Security prior to the Senior Discharge Date, the duties of the Security Agent and of any Receiver or Delegate owed to them in respect of the method, type and timing of that enforcement or of the exploitation, management or realisation of any of that Transaction Security shall, subject to the provisions of this Agreement, be no different to or greater than the duty that is owed by the Security Agent, Receiver or Delegate to the Debtors and Third Party Security Providers under general law.

10.8 Enforcement through Security Agent only

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

11. NON-DISTRESSED DISPOSALS

11.1 Definitions

In this Clause 11:

- (a) “**Disposal Proceeds**” means the proceeds of a Non-Distressed Disposal; and
- (b) “**Non-Distressed Disposal**” means a disposal of:
 - (i) an asset of a member of the Group; or
 - (ii) an asset which is subject to the Transaction Security,
to a person or persons outside the Group where:
 - (A) (prior to the Senior Facilities Discharge Date) each Senior Agent notifies the Security Agent that that disposal is permitted under the Senior Finance Documents; and
 - (B) 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, relevant Debtor or Third Party Security Provider) 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
 - (iii) to execute and deliver or enter into any release of the Transaction Security or any claim described in paragraphs (i) and (ii) above and issue any certificates of non-crystallisation of any floating charge or any consent to dealing that may, in the discretion of the Security Agent, be considered necessary 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.

11.3 Disposal Proceeds

If any Disposal Proceeds are required to be applied in mandatory prepayment of the Senior Facility Liabilities then those Disposal Proceeds shall be applied in or towards Payment of the Senior Facility Liabilities in accordance with the terms of each Senior Facilities Agreement and the consent or approval of any other Party shall not be required for that application.

12. DISTRESSED DISPOSALS AND APPROPRIATION

12.1 Facilitation of Distressed Disposals and Appropriation

Subject to this Clause 12, if a Distressed Disposal or an Appropriation is being effected, the Security Agent is irrevocably authorised by each other Party (at the cost of the Company and without any consent, sanction, authority or further confirmation from any Creditor, other Secured Party, Debtor or Third Party Security Provider):

- (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 the discretion of the Security Agent, be considered necessary or desirable;
- (b) *release of liabilities and Transaction Security on a share sale/Appropriation (Debtor)*: if the asset subject to the Distressed Disposal or Appropriation consists of shares in the capital of a Debtor, to release:
 - (i) that Debtor and any Subsidiary of that Debtor from all or any part of:
 - (A) its Borrowing Liabilities;
 - (B) its Guarantee Liabilities; and
 - (C) its Other Liabilities;
 - (ii) any Transaction Security granted by that Third Party Security Provider, Debtor or any Subsidiary of that Debtor over any of its assets; and

- (iii) any other claim of the Subordinated Creditor, an Intra-Group Lender, another Debtor or Third Party Security Provider over that Debtor's assets or over the assets of any Subsidiary of that Debtor,

on behalf of the relevant Creditors, Debtors and Third Party Security Providers;

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

- (i) that Holding Company and any Subsidiary of that Holding Company from all or any part of:

- (A) its Borrowing Liabilities;

- (B) its Guarantee Liabilities; and

- (C) its Other Liabilities;

- (ii) any Transaction Security granted by that Holding Company and any Subsidiary of that Holding Company over any of its assets; and

- (iii) any other claim of the Subordinated Creditor, an Intra-Group Lender, another Debtor or a Third Party Security Provider over the assets of that Holding Company or over the assets of any Subsidiary of that Holding Company,

on behalf of the relevant Creditors, Debtors and Third Party Security Providers;

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

- (i) the Liabilities (other than Liabilities due to any Senior Agent, Senior Backstop Lender or Senior Arranger); or

- (ii) the Debtors' Intra-Group Receivables,

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

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

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

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

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

on behalf of, in each case, the relevant Creditors, Debtors and Third Party Security Providers;

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

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

to execute and deliver or enter into any agreement to:

- (A) 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
- (B) 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 Restrictions on Enforcement

- (a) In the case of:
- (i) a Distressed Disposal;
 - (ii) a Liabilities Sale; or
 - (iii) an Appropriation,
- (each a “**Relevant Disposal**”) effected by, or at the request of, the Security Agent, the Security Agent shall obtain the best price reasonably obtainable taking into account all relevant circumstances (including, without limitation, the prevailing market conditions), though the Security Agent shall have no obligation to postpone (or request the postponement of) a Relevant Disposal in order to achieve a higher value.
- (b) The requirement in paragraph (a) above shall be satisfied (and as between the Senior Creditors, the Debtors and Third Party Security Providers 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 Relevant Disposal is made pursuant to any process or proceedings approved or supervised by or on behalf of any court of law;
 - (ii) that Relevant Disposal is made by, at the direction of or under the control of, a liquidator, 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 assets of a member of the Group;
 - (iii) that Relevant Disposal is made pursuant to a Competitive Sales Process; or
 - (iv) a Financial Adviser appointed by the Security Agent pursuant to Clause 12.6 (*Appointment of Financial Adviser*) has delivered a Fairness Opinion to the Security Agent in respect of that Relevant Disposal.
- (c) If a Relevant Disposal or any other action taken under Clause 12.1 (*Facilitation of Distressed Disposals and Appropriation*) is being effected at a time the Security Agent is obliged to give effect to instructions from the Majority Super Senior Creditors to enforce the Transaction Security pursuant to Clause 10.3 (*Enforcement Instructions: Super Senior Creditors*), the Security Agent is not authorised to release any Transaction Security or release, dispose of, sell or transfer any Borrowing Liabilities or Guarantee Liabilities owed to any Senior Creditor or otherwise take any action described in Clause 12.1 (*Facilitation of Distressed Disposals and Appropriation*) unless:
- (i) the Majority Senior Term Creditors have given their prior written approval;

- (ii) the proceeds of the Relevant Disposal would discharge the outstanding Senior Liabilities (excluding any Super Senior Liabilities) in full and in cash; or
- (iii) such transaction is effected simultaneously with completion of the Relevant Disposal and such Relevant Disposal constitutes a Qualifying Enforcement.

12.3 Release of Super Senior Liabilities

If a Relevant Disposal or any other action taken under Clause 12.1 (*Facilitation of Distressed Disposals and Appropriation*) is being effected by the Security Agent (acting on the instructions of the Majority Senior Term Creditors in accordance with the terms of this Agreement), the Security Agent is not authorised to release any Transaction Security or release, dispose of, sell or transfer any Borrowing Liabilities or Guarantee Liabilities owed to any Super Senior Creditor or otherwise take any action described in Clause 12.1 (*Facilitation of Distressed Disposals and Appropriation*) unless the Super Senior Liabilities are repaid in full and in cash or the Super Majority Super Senior Creditors have consented thereto.

12.4 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.

12.5 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.

12.6 Appointment of Financial Adviser

(a) Without prejudice to Clause 19.7 (*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 Senior Term Creditors or, in accordance with clause 3.14 (*Permitted enforcement: Super Senior Creditors*), the Majority Super Senior 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 12.7 (*Security Agent's actions*).

12.7 Security Agent's actions

For the purposes of Clause 12.1 (*Facilitation of Distressed Disposals and Appropriation*) to and including Clause 12.3 (*Release of Super Senior Liabilities*) and Clause 3.14 (*Permitted enforcement: Super Senior Creditors*), 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 10.4 (*Manner of enforcement*); and
- (b) in any other case:
 - (i) on the instructions of the Majority Senior Term Creditors or (if at that time the Security Agent is obliged to give effect to instructions from the Majority Super Senior Creditors to enforce the Transaction Security pursuant to Clause 10.3 (*Enforcement Instructions: Super Senior Creditors*)) the Majority Super Senior Creditors; or
 - (ii) in the absence of any such instructions, as the Security Agent sees fit.

13. NON-CASH RECOVERIES

13.1 Security Agent and Non-Cash Recoveries

To the extent the Security Agent receives or recovers any Non-Cash Recoveries, it may (acting on the instructions of the Majority Senior Term Creditors or, in accordance with Clause 3.14 (*Permitted enforcement: Super Senior Creditors*), the Majority Super Senior Creditors (as applicable)), 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 12.6 (*Appointment of Financial Adviser*) taking into account any notional conversion made pursuant to Clause 16.5 (*Currency conversion*).
- (b) If any Non-Cash Recoveries are distributed pursuant to Clause 16 (*Application of Proceeds*), the extent to which such distribution is treated as discharging the Liabilities shall be determined by reference to the cash value of those Non-Cash Recoveries determined pursuant to paragraph (a) above.

13.3 Senior Agents and Non-Cash Recoveries

- (a) Subject to paragraph (b) below and to Clause 13.4 (*Alternative to Non-Cash Consideration*), if, pursuant to Clause 16.1 (*Order of application*), a Senior Agent receives Non-Cash Recoveries for application towards the discharge of any Liabilities, that Senior Agent shall apply those Non-Cash Recoveries in accordance with the relevant Senior Facilities Agreement as if they were Cash Proceeds.
- (b) A Senior 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 relevant Senior Facilities Agreement if those Non-Cash Recoveries were Cash Proceeds;
 - (ii) hold any Non-Cash Recoveries through another person; and
 - (iii) hold any amount of Non-Cash Recoveries for so long as that Senior Agent shall think fit for later application pursuant to paragraph (a) above.

13.4 Alternative to Non-Cash Consideration

- (a) If any Non-Cash Recoveries are to be distributed pursuant to Clause 16 (*Application of Proceeds*), the Security Agent shall (prior to that distribution and taking into account the Liabilities then outstanding and the cash value of those Non-Cash Recoveries) notify the Senior Creditors entitled to receive those Non-Cash Recoveries pursuant to that distribution (the “**Entitled Creditors**”).
- (b) If:
 - (i) it would be unlawful for an Entitled Creditor to receive such Non-Cash Recoveries (or it would otherwise conflict with that Entitled Creditor’s constitutional documents for it to do so); and

- (ii) that Entitled Creditor promptly so notifies the Security Agent and supplies such supporting evidence as the Security Agent may reasonably require,

that Senior Creditor shall be a “**Cash Only Creditor**” and the Non-Cash Recoveries to which it is entitled shall be “**Retained Non-Cash**”.

- (c) To the extent that, in relation to any distribution of Non-Cash Recoveries, there is a Cash Only Creditor:
 - (i) the Security Agent shall not distribute any Retained Non-Cash to that Cash Only Creditor (or to any Senior Agent on behalf of that Cash Only Creditor) but shall otherwise treat the Non-Cash Recoveries in accordance with this Agreement;
 - (ii) if that Cash Only Creditor is a Senior Facility Creditor, the Security Agent shall notify the relevant Senior Agent of that Cash Only Creditor’s identity and its status as a Cash Only Creditor; and
 - (iii) to the extent notified pursuant to paragraph (ii) above, no Senior Agent shall distribute any of those Non-Cash Recoveries to that Cash Only Creditor.
- (d) Subject to Clause 13.5 (*Security Agent protection*), the Security Agent shall hold any Retained Non-Cash and shall, acting on the instructions of the Cash Only Creditor entitled to it, manage, exploit, collect, realise and dispose of that Retained Non-Cash for cash consideration and shall distribute any Cash Proceeds of that Retained Non-Cash to that Cash Only Creditor in accordance with Clause 16 (*Application of Proceeds*).
- (e) On any such distribution of Cash Proceeds which are attributable to a disposal of any Retained Non-Cash, the extent to which such distribution is treated as discharging the Liabilities due to the relevant Cash Only Creditor shall be determined by reference to:
 - (i) the valuation which determined the extent to which the distribution of the Non-Cash Recoveries to the other Entitled Creditors discharged the Liabilities due to those Entitled Creditors; and
 - (ii) the Retained Non-Cash to which those Cash Proceeds are attributable.
- (f) Each Senior Creditor shall, following a request by the Security Agent (acting in accordance with Clause 12.7 (*Security Agent’s actions*)), notify the Security Agent of the extent to which paragraph (b)(i) above would apply to it in relation to any distribution or proposed distribution of Non-Cash Recoveries.

13.5 **Security Agent protection**

- (a) No Distressed Disposal or Debt Disposal may be made in whole or part for Non-Cash Consideration if the Security Agent has reasonable grounds for believing that its receiving, distributing, holding, managing, exploiting, collecting,

realising or disposing of that Non-Cash Consideration would have an adverse effect on it.

- (b) If Non-Cash Consideration is distributed to the Security Agent pursuant to Clause 8.2 (*Turnover by the Creditors*), the Security Agent may, at any time after notifying the Creditors entitled to that Non-Cash Consideration and notwithstanding any instruction from a Creditor or group of Creditors pursuant to the terms of any Debt Document, immediately realise and dispose of that Non-Cash Consideration for cash consideration (and distribute any Cash Proceeds of that Non-Cash Consideration to the relevant Creditors in accordance with Clause 16 (*Application of Proceeds*)) if the Security Agent has reasonable grounds for believing that holding, managing, exploiting or collecting that Non-Cash Consideration would have an adverse effect on it.
- (c) If the Security Agent holds Retained Non-Cash for a Cash Only Creditor (each as defined in Clause 13.4 (*Alternative to Non-Cash Consideration*)), the Security Agent may at any time, after notifying that Cash Only Creditor and notwithstanding any instruction from a Creditor or group of Creditors pursuant to the terms of any Debt Document, immediately realise and dispose of that Retained Non-Cash for cash consideration (and distribute any Cash Proceeds of that Retained Non-Cash to that Cash Only Creditor in accordance with Clause 16 (*Application of Proceeds*)) if the Security Agent has reasonable grounds for believing that holding, managing, exploiting or collecting that Retained Non-Cash would have an adverse effect on it.

14. ACQUISITION AND INSURANCE CLAIMS

14.1 Facilitation of claims

So long as the requirements of Clause 14.2 (*Mandatory prepayment of Proceeds*) and, in the case of a claim against the provider of any Report, the requirements of Clause 14.3 (*Recoveries from Report Providers*) are met, if any claim relating to any Report or insurance claim is to be made, or is made, by a Debtor prior to a Distress Event and that claim or that insurance claim (or any proceeds of that claim or insurance claim (the “**Proceeds**”)) is or are expressed to be subject to the Transaction Security, the Security Agent is irrevocably authorised (at the cost of the relevant Debtor or the Company and without any consent, sanction, authority or further confirmation from any Creditor, other Secured Party or Debtor) to:

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

14.2 **Mandatory prepayment of Proceeds**

If any Proceeds are required to be applied in mandatory prepayment of the Senior Facility Liabilities then those Proceeds shall be applied in or towards Payment of the Senior Facility Liabilities in accordance with the terms of each Senior Facilities Agreement and the consent or approval of any other Party shall not be required for that application.

14.3 **Recoveries from Report Providers**

(a) In this Clause 14.3:

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

“**Net Award**” means any amount received or recovered by any Party in relation to any Proceedings less reasonable legal costs and expenses incurred by that Party in pursuing such Proceedings and any tax payable by that Party directly as a result of that receipt or recovery;

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

“**Report Provider**” means any professional adviser or other person who has provided a Report on a reliance basis.

(b) If any Party decides to commence Proceedings in relation to, or resulting from, any of the transactions contemplated by the Debt Documents, it will:

(i) give the other Parties reasonable prior notice (through the Security Agent) of its intention to do so;

(ii) give each other Party and any insolvency representative appointed under, or pursuant to the terms of, any Senior Finance Document or Hedging Agreement a reasonable opportunity to be joined into such Proceedings or initiate similar proceedings; and

(iii) co-operate with any such persons who are joined in as regards the efficient and effective conduct of such Proceedings,

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

(c) Notwithstanding any other provision in the Debt Documents, no Debtor, Third Party Security Provider or Subordinated Creditor may initiate Proceedings unless and until the Security Agent has given its prior written consent.

(d) If no Distress Event has occurred at the time of receipt of a Net Award, and a Senior Facilities Agreement requires Award Proceeds obtained by the Company to be applied in mandatory prepayment of Senior Facility Liabilities, the recipient of that Net Award (if not the Company) shall pay the Award Proceeds

to the Company for application in accordance with each relevant Senior Facilities Agreement.

- (e) If a Distress Event has occurred at the time of receipt of a Net Award, the recipient of that Net Award shall pay the Award Proceeds to the Security Agent and the Security Agent shall apply those Award Proceeds in accordance with Clause 16 (*Application of Proceeds*).
- (f) This Clause 14.3 shall apply until the Senior Discharge Date.

15. FURTHER ASSURANCE – DISPOSALS AND RELEASES

Each Creditor, Debtor and Third Party Security Provider will:

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

provided that the proceeds of those disposals are applied in accordance with Clause 11 (*Non-Distressed Disposals*) or Clause 12 (*Distressed Disposals and Appropriation*) as the case may be or (as applicable) those Proceeds are applied in accordance with Clause 14 (*Acquisition and Insurance Claims*).

16. APPLICATION OF PROCEEDS

16.1 Order of application

Subject to Clause 16.2 (*Prospective liabilities*) and Clause 16.3 (*Treatment of SFA Cash Cover*), all amounts from time to time received or recovered by the Security Agent pursuant to the terms of any Debt Document 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) *first*, in discharging any sums owing to the Senior Agents, the Security Agent, any Receiver and any Delegate;
- (b) *second*, in discharging all costs and expenses incurred by any Senior Creditor in connection with any realisation or enforcement of the Transaction Security taken in accordance with the terms of this Agreement and incurred by any Senior Creditor in connection with any action taken at the request of the Security Agent under Clause 7.6 (*Further assurance – Insolvency Event*);

- (c) *third*, in payment or distribution to:
- (i) each Senior Agent on its own behalf and on behalf of the other Senior Facility Creditors; and
 - (ii) the Hedge Counterparties,
- for application towards the discharge of:
- (A) first:
 - (1) the Super Senior Facility Liabilities (in accordance with the terms of the Senior Finance Documents) (on a *pro rata* basis between the Super Senior Facility Liabilities of each Super Senior Lender); and
 - (2) the Super Senior Hedging Liabilities (on a *pro rata* basis between the Super Senior Hedging Liabilities of each Super Senior Hedge Counterparty),

on a *pro rata* basis between paragraph (1) above and paragraph (2) above; and
 - (B) then:
 - (1) the Senior Facility Liabilities (other than the Super Senior Facility Liabilities) (in accordance with the terms of the Senior Finance Documents) (on a *pro rata* basis between the Senior Facility Liabilities (other than the Super Senior Facility Liabilities) of each Senior Term Lender); and
 - (2) the Hedging Liabilities (other than the Super Senior Hedging Liabilities) (on a *pro rata* basis between the Hedging Liabilities (other than the Super Senior Hedging Liabilities) of each Hedge Counterparty),

on a *pro rata* basis between paragraph (1) above and paragraph (2) above;
- (d) *fourth*, if none of the Debtors is under any further actual or contingent liability under any Senior Finance Document or Hedging Agreement, in payment or distribution to any person to whom the Security Agent is obliged to pay or distribute in priority to any Debtor; and
- (e) *fifth*, the balance, if any, in payment or distribution to the relevant Debtor or Third Party Security Provider.

16.2 Prospective liabilities

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

- (a) hold any amount of the Recoveries which is in the form of cash, and any cash which is generated by holding, managing, exploiting, collecting, realising or disposing of any Non-Cash Consideration, in one or more interest bearing suspense or impersonal accounts 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) (**provided that** the Security Agent shall apply the moneys standing to the credit of any such account towards the discharge of the obligations owed by the Debtors to the Senior Creditors under the Senior Finance Documents on the first full day on which such moneys would be sufficient to discharge all such obligations in full); 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 until otherwise directed by the Instructing Group for later application under Clause 16.1 (*Order of application*) in respect of:

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

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

16.3 Treatment of SFA Cash Cover

- (a) Nothing in this Agreement shall prevent any Ancillary Lender taking any Enforcement Action in respect of any SFA Cash Cover which has been provided for it in accordance with the relevant 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 Senior Facility Liabilities for which that SFA Cash Cover was provided; and
 - (ii) the balance, if any, in accordance with Clause 16.1 (*Order of application*).
- (c) To the extent that any SFA Cash Cover is held, nothing in this Agreement shall prevent that Relevant Ancillary Lender receiving and retaining any amount in respect of that SFA Cash Cover.

16.4 **Investment of Cash Proceeds**

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

16.5 **Currency conversion**

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

16.6 **Permitted Deductions**

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

16.7 **Good Discharge**

- (a) Any distribution or payment to be made in respect of the Secured Obligations by the Security Agent:
 - (i) may be made to the relevant Senior Agent on behalf of its Senior Facility Creditors;

- (ii) may be made to the Relevant Ancillary Lender in accordance with paragraph (b)(i) of Clause 16.3 (*Treatment of SFA Cash Cover*); or
 - (iii) shall be made directly to the Hedge Counterparties.
- (b) Any distribution or payment made as described in paragraph (a) above shall be a good discharge, to the extent of that payment or distribution, by the Security Agent:
 - (i) in the case of a payment made in cash, to the extent of that payment; and
 - (ii) in the case of a distribution of Non-Cash Recoveries, as determined by Clause 13.2 (*Cash value of Non-Cash Recoveries*).
- (c) The Security Agent is under no obligation to make the payments to the Senior Agents or the Hedge Counterparties under paragraph (a) above in the same currency as that in which the Liabilities owing to the relevant Senior Creditor are denominated pursuant to the relevant Debt Document.

16.8 Calculation of Amounts

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

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

17. EQUALISATION

17.1 Equalisation Definitions

For the purposes of this Clause 17:

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

“Exposure” means:

- (a) in relation to a Senior Lender, the aggregate amount of its participation (if any, and without double counting) in all Utilisations outstanding under a 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 Senior Lenders pursuant to any loss-sharing arrangement in a 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 a Senior Facilities Agreement and amounts owed to it by a Debtor in respect of any Ancillary Facility but excluding any amount owed to it by a Debtor in respect of any Ancillary Facility to the extent (and in the amount) that SFA Cash Cover has been provided by a Debtor in respect of that amount and is available to that Senior 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, the amount, if any, payable to it under that Hedging Agreement in respect of that termination or close-out as of the date of termination or close-out (taking into account any interest accrued on that amount) to the extent that amount is unpaid at the Enforcement Date (that amount to be certified by the relevant Hedge Counterparty and as calculated in accordance with the relevant Hedging Agreement); and
 - (ii) if that Hedge Counterparty has not terminated or closed out any hedging transaction under any Hedging Agreement on or prior to the Enforcement Date:
 - (A) if the relevant Hedging Agreement is based on an ISDA Master Agreement, the amount, if any, which would be payable to it under that Hedging Agreement in respect of that hedging transaction if the Enforcement Date was deemed to be an Early Termination Date (as defined in the relevant ISDA Master Agreement) for which the relevant Debtor is the Defaulting Party (as defined in the relevant ISDA Master Agreement); or
 - (B) if the relevant Hedging Agreement is not based on an ISDA Master Agreement, the amount, if any, which would be payable to it under that Hedging Agreement in respect of that hedging transaction if the Enforcement Date was deemed to be the date on which an event similar in meaning and effect (under that Hedging Agreement) to an Early Termination Date (as defined in any ISDA Master Agreement) occurred under that Hedging Agreement for which the relevant Debtor is in a position similar in meaning and effect (under that Hedging Agreement) to that of a Defaulting Party (under and as defined in the same ISDA Master Agreement),

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

“Non-Priority Senior Creditor” means a Senior Term Lender or a Hedge Counterparty (other than a Hedge Counterparty in respect of Super Senior Hedging Liabilities).

“Non-Priority Senior Liabilities” means Senior Liabilities which are not Super Senior Liabilities.

“Utilisation” means a “Utilisation” under and as defined in the Initial Senior Facilities Agreement or any Additional Senior Facility Equivalent (as applicable).

17.2 Implementation of equalisation

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

17.3 Equalisation

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

17.4 Turnover of enforcement proceeds

- (a) If:
- (i) the Security Agent or a Senior Agent is not entitled, for reasons of applicable law, to pay or distribute amounts received pursuant to the making of a demand under any guarantee, indemnity or other assurance against loss or the enforcement of the Transaction Security to the Super Senior Creditors but is entitled to pay or distribute those amounts to other Senior Creditors (such Senior Creditors, the “**Receiving Senior Creditors**”); and
 - (ii) the Super Senior Discharge Date has not yet occurred (nor would occur after taking into account such payments),

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

- (b) If:
- (i) the Security Agent or a Senior Agent is not entitled, for reasons of applicable law, to pay or distribute amounts received pursuant to the making of a demand under any guarantee, indemnity or other assurance against loss or the enforcement of the Transaction Security to certain Non-Priority Senior Creditors but is entitled to pay or distribute those amounts to other Non-Priority Senior Creditors (such Non-Priority Senior Creditors, the “**Receiving Non-Priority Senior Creditors**”); and
 - (ii) the Senior Discharge Date has not yet occurred (nor would occur after taking into account such payments),

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

17.5 Notification of Exposure

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

17.6 Default in payment

If a Senior Creditor fails to make a payment due from it under this Clause 17, the Security Agent shall be entitled (but not obliged) to take action on behalf of the Senior Creditor(s) to whom such payment was to be redistributed (subject to being indemnified

to its satisfaction by such Senior Creditor(s) in respect of costs) but shall have no liability or obligation towards such Senior Creditor(s) or any other Senior Creditor as regards such default in payment and any loss suffered as a result of such default shall lie where it falls.

18. SENIOR CREDITOR FINANCINGS

18.1 Senior Creditor Financing

It is hereby agreed that, subject to being permitted under the terms of the Debt Documents, any New Debt Financing of any member of the Group (whether incurred as a new financing or incurred to refinance, replace, increase, discharge or be exchanged for any then existing Liabilities owed to any Senior Creditors) may, without the consent of any other Creditors, be treated and designated as Super Senior Facility Liabilities or Senior Term Liabilities, and that:

- (a) any obligations incurred by any Debtor or other member of the Group pursuant to such New Debt Financing (“**New Liabilities**”) will, for all purposes of this Agreement, be Super Senior Facility Liabilities and/or Senior Term Liabilities (as applicable); and
- (b) subject to Clause 18.2 (*Amendment and release of Transaction Security by Security Agent*), the Security Documents shall secure the New Liabilities referred to in paragraph (a) above and, in respect of the Security Documents and any new security granted by any member of the Group to secure the New Liabilities referred to in paragraph (a) above, will rank *pari passu* with the Senior Lender Liabilities in the manner described in Clause 2.2 (*Transaction Security*),

provided that:

- (i) the Company has delivered to each Senior Agent and the Security Agent a New Debt Financing Designation Certificate executed by the Company (which shall also be deemed to satisfy any designation requirement in relation thereto in this Agreement, including any definition in this Agreement and any provision of Clause 20 (*Changes to the Parties*));
- (ii) the Company has supplied to the Security Agent, no later than ten Business Days after the execution by the applicable member of the Group of the Debtor/Third Party Security Provider Accession Deed delivered pursuant to paragraph (iii) below, copies of the applicable Senior Finance Documents governing the terms of that New Debt Financing to which it is a party (excluding or redacting, unless otherwise agreed by the Company and the other parties to the relevant Senior Finance Document, details of any fees, financial ratios or permissions based on financial ratios or fixed baskets relating to the New Debt Financing);
- (iii) any borrower or issuer (as applicable), guarantor or security provider with respect to the New Debt Financing (as the case may be) which are

members of the Group accedes to this Agreement as a Debtor (as applicable) to the extent not already a party hereto; and

- (iv) each lender, agent and arranger in respect of such New Debt Financing accedes to this Agreement as Senior Lender(s), Senior Agent(s) and Senior Arranger(s), respectively, in each case, by acceding to this Agreement in accordance with Clause 20.8 (*Accession of Senior Creditors under new Super Senior Facilities or new Senior Term Facilities*).

18.2 Amendment and release of Transaction Security by Security Agent

If, in relation to any refinancing, replacement, increase, discharge or exchange of any Senior Facility Liabilities referred to in Clause 18.1 (*Senior Creditor Financing*), any amount received pursuant to the enforcement of the Transaction Security would not be available for application by the Security Agent towards the discharge of the relevant New Liabilities in the order set out in Clause 16.1 (*Order of application*) to the same extent as that amount would have been available for application towards the discharge of the existing Senior Facility Liabilities, 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, Debtor or Third Party Security Provider) to:

- (a) subject to the Agreed Security Principles, amend that Transaction Security to the extent necessary under applicable law to ensure that any amount received pursuant to the enforcement of the Transaction Security would be available for application by the Security Agent towards the discharge of the relevant New Liabilities in the order set out in Clause 16.1 (*Order of application*) to the same extent as that amount would have been available for application towards the discharge of the existing Senior Facility Liabilities; or
- (b) to the extent necessary under applicable law, to release and re-grant that Transaction Security if:
 - (i) it is not legally possible and, in the opinion of the Company (acting reasonably), it is not commercially feasible to instead take second or further priority (if applicable) Transaction Security (the “**Additional Transaction Security**”) instead of releasing and re-granting the existing Transaction Security, where the relevant Liabilities will be secured by such Additional Transaction Security and will nonetheless be deemed and treated for the purposes of this Agreement as secured by the existing Transaction Security Documents and the Additional Transaction Security *pari passu* with other Liabilities which would otherwise have the same ranking as contemplated by such New Debt Financing;
 - (ii) immediately on such release, Security will be provided in favour of the Security Agent for or on behalf of the Secured Parties over the same assets as under the relevant Security Document, on terms substantially the same as the terms applicable to the Transaction Security that is released and subject to the same ranking as set out in Clause 2.2 (*Transaction Security*); and

- (iii) that release and provision of Security does not have and is not reasonably likely to have a material adverse effect on the Secured Parties **provided that** the retaking of Security and the restarting of any related Hardening Period shall not, in itself, constitute such a material adverse effect,

and, in each case, to the extent that any legal opinions customary to be given in such jurisdiction as to due capacity, authority, execution and enforceability (together with customary supporting legal documentation, certificates and resolutions and subject to qualifications reflecting applicable law at such time) are issued in relation to re-taken or new or amended Security Documents in connection with a New Debt Financing, the Security Agent shall be entitled to rely on such legal opinions and shall receive documentary evidence of such reliance.

18.3 Facilitation

Subject to Clause 18.4 (*Exceptions*), each Secured Party shall, at the request (and cost) of the Company, promptly execute such documents and give such instructions to the Security Agent as are reasonably necessary:

- (a) to provide substantially the same rights and remedies to the providers of any New Liabilities as those provided to the existing Senior Lenders, including entering into further security, priority and intercreditor agreements; and
- (b) to implement successfully the terms of any refinancing, replacement, increase, discharge or exchange of any Senior Facility Liabilities referred to in Clause 18.1 (*Senior Creditor Financing*) and to give effect to the providing of Security as contemplated by this Clause 18, in each case, including any required amendment to the terms of this Agreement or any other Senior Finance Document and any amendment, consent, waiver or release in respect of any Security Document and any grant of security pursuant to a new Security Document.

18.4 Exceptions

- (a) This Clause 18 shall not require any Secured Party to facilitate a release of, or amendment to, the Transaction Security or any guarantee, indemnity or other assurance against loss if doing so has or is reasonably likely to have a material adverse effect on the Secured Parties **provided that** the retaking of Security or assurance against loss, and the restarting of any related Hardening Period, shall not, in itself, constitute such a material adverse effect.
- (b) This Clause 18 shall not require any Party to provide financial accommodation to any member of the Group in connection with, or otherwise to participate in, such refinancing, replacement, increase, discharge or exchange.

19. THE SECURITY AGENT

19.1 Authorisation of the Security Agent

- (a) The Security Agent declares that it holds the Security Property on trust or as agent for the Secured Parties, on the terms contained in this Agreement.
- (b) Each of the Senior Creditors authorises the Security Agent to perform the duties, obligations and responsibilities 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 of the Secured Parties appoints the Security Agent to act as its security agent under and in connection with the Debt Documents. The Security Agent shall receive and hold any security interest created or purported to be created under any Debt Document and the Security Agent shall enter into and enforce such documents on behalf of and for the benefit of the Secured Parties.
- (d) Each other Secured Party authorises the Security Agent to exercise the rights, powers, authorities, and discretions, specifically given to it under and in connection with any Debt Document.

19.2 Instructions

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

- (d) Paragraph (a) above shall not apply:
- (i) where a contrary indication appears in this Agreement;
 - (ii) where this Agreement requires the Security Agent to act in a specified manner or to take a specified action;
 - (iii) in respect of any provision which protects the Security Agent's own position in its personal capacity as opposed to its role of Security Agent for the Secured Parties including, without limitation, Clause 19.5 (*No duty to account*) to Clause 19.10 (*Exclusion of liability*), Clause 19.14 (*Confidentiality*) to Clause 19.20 (*Custodians and nominees*) and Clause 19.23 (*Acceptance of title*) to Clause 19.26 (*Disapplication of Trustee Acts*); or
 - (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
 - (E) Clause 16.6 (*Permitted Deductions*).
- (e) If giving effect to instructions given by the Instructing Group would (in the Security Agent's opinion) have an effect equivalent to an Intercreditor Amendment, the Security Agent shall not act in accordance with those instructions unless consent to it so acting is obtained from each Party (other than the Security Agent) whose consent would have been required in respect of that Intercreditor Amendment.
- (f) In exercising any discretion to exercise a right, power or authority under the Debt Documents where either:
- (i) it has not received any instructions as to the exercise of that discretion;
or
 - (ii) the exercise of that discretion is subject to paragraph (d)(iv) above,
- the Security Agent shall do so having regard to the interests of all the Creditors.
- (g) The Security Agent may refrain from acting in accordance with any instructions of any Creditor or group of Creditors until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Debt Documents and which may include payment in advance) for any cost, loss or liability (together with any applicable VAT) which it may incur in complying with those instructions.

- (h) Without prejudice to the provisions of Clause 10 (*Enforcement of Transaction Security*) and the remainder of this Clause 19.2, in the absence of instructions, the Security Agent may act (or refrain from acting) as it considers in its discretion to be appropriate.

19.3 **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 each Senior Agent and to each Hedge Counterparty a copy of any document received by the Security Agent from any Debtor or a Third Party Security Provider 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) Except where a Debt Document specifically provides otherwise, 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 23.3 (*Notification of prescribed events*), if the Security Agent receives notice from a Party referring to any Debt Document, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the Senior Creditors.
- (e) To the extent that a Party (other than the Security Agent) is required to calculate a Common Currency Amount, the Security Agent shall, upon a request by that Party, promptly notify that Party of the relevant Security Agent's Spot Rate of Exchange.
- (f) The Security Agent shall have only those duties, obligations and responsibilities expressly specified in the Debt Documents to which it is expressed to be a party (and no others shall be implied).

19.4 **No fiduciary duties to Debtors, Third Party Security Providers or Subordinated Creditor**

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

19.5 **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.

19.6 **Business with the Group**

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

19.7 **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 Senior Creditors, the Majority Senior Lenders, the Majority Senior Term Creditors, the Majority Senior Term Lenders, the Majority Super Senior Creditors, the Majority Super Senior Lenders, the Super Majority Super Senior Creditors (in each case, as applicable), 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 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 agent for the Secured Parties) that:
- (i) no Default has occurred;
 - (ii) any right, power, authority or discretion vested in any Party, any Creditor or any group of Creditors has not been exercised; and
 - (iii) any notice made by the Company is made on behalf of and with the consent and knowledge of all the Debtors and Third Party Security Providers.

- (c) The Security Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
- (d) Without prejudice to the generality of paragraph (c) above or paragraph (e) below, the Security Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Security Agent (and so separate from any lawyers instructed by any Senior Creditor) if the Security Agent in its reasonable opinion deems this to be desirable.
- (e) The Security Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Security Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
- (f) The Security Agent, any Receiver and any Delegate may act in relation to the Debt Documents and the Security Property through its officers, employees and agents and shall not:
 - (i) be liable for any error of judgment made by any such person; or
 - (ii) be bound to supervise or be in any way responsible for any loss incurred by reason of misconduct, omission or default on the part of any such person,

unless such error or such loss was directly caused by the Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct.
- (g) Unless this Agreement expressly specifies otherwise, the Security Agent may disclose to any other Party any information it reasonably believes it has received as Security Agent under this Agreement.
- (h) Notwithstanding any other provision of any Debt Document to the contrary, the Security Agent is not obliged to do or omit to do anything if it would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of any fiduciary duty or duty of confidentiality.
- (i) Notwithstanding any provision of any Debt Document to the contrary, the Security Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

19.8 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, a Third Party Security Provider or any other person in or in connection with any Debt Document or the

transactions contemplated in the Debt Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Debt Document;

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

19.9 No duty to monitor

The Security Agent shall not be bound to enquire:

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

19.10 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 any Delegate), none of the Security Agent, any Receiver nor any Delegate will be liable for:
 - (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Debt Document or the Security Property unless directly caused by its gross negligence or wilful misconduct;
 - (ii) exercising or not exercising any right, power, authority or discretion given to it by, or in connection with, any Debt Document, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Debt Document or the Security Property;
 - (iii) any shortfall which arises on the enforcement or realisation of the Security Property; or
 - (iv) without prejudice to the generality of paragraphs (i) to (iii) above, any damages, costs, losses, any diminution in value or any liability whatsoever arising as a result of:

- (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 subject to Clause 1.4 (*Third party rights*) and the provisions of the Third Parties Rights Act.
- (c) Nothing in this Agreement shall oblige the Security Agent to carry out:
 - (i) any “know your customer” or other checks in relation to any person; or
 - (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Senior Creditor,

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

- (d) Without prejudice to any provision of any Debt Document excluding or limiting the liability of the Security Agent, any Receiver or any Delegate, any liability of the Security Agent, any Receiver or any 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 any Delegate be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the

Security Agent, Receiver or Delegate (as the case may be) has been advised of the possibility of such loss or damages.

19.11 Senior Creditors' indemnity to the Security Agent

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

19.12 Resignation of the Security Agent

- (a) The Security Agent may resign and appoint one of its Affiliates as successor by giving notice to the Senior Creditors and the Company.
- (b) Alternatively, the Security Agent may resign by giving 30 days' notice to the Senior Creditors and the Company, in which case the Instructing Group (after consultation with the Company and **provided that** such consultation period shall be no longer than five Business Days) may appoint a successor Security Agent.
- (c) If the Instructing Group have not appointed a successor Security Agent in accordance with paragraph (b) above within 20 days after notice of resignation was given, the retiring Security Agent (after consultation with the Senior Agents and the Hedge Counterparties) may appoint a successor Security Agent.
- (d) The retiring Security Agent shall, at its own cost (unless the Security Agent resigns pursuant to paragraph (g) below), 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 (where applicable) 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 (d) above) but shall remain entitled to the benefit of this Clause 19 and Clause 22.1 (*Indemnity to the Security Agent*) (and any Security Agent fees for the account of the retiring Security Agent shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if that successor had been an original Party.
- (g) The Instructing Group may, by notice to the Security Agent, require it to resign in accordance with paragraph (b) above. In this event, the Security Agent shall resign in accordance with paragraph (b) above.

19.13 Replacement of the Security Agent

- (a) After consultation with the Company and **provided that** such consultation period shall be no longer than five Business Days, the Instructing Group may, by giving 30 days' notice to the Security Agent (or, at any time the Security Agent is an Impaired Agent, by giving any shorter notice determined by the Instructing Group), replace the Security Agent by appointing a successor Security Agent.

- (b) The retiring Security Agent shall (at its own cost if it is an Impaired Agent and otherwise at the expense of the Instructing Group) 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.
- (c) The appointment of the successor Security Agent shall take effect on the date specified in the notice from the Instructing Group to the retiring Security Agent. As from this date, the retiring Security Agent shall be discharged from any further obligation in respect of the Debt Documents (other than its obligations under paragraph (d) below) but shall remain entitled to the benefit of Clause 22.1 (*Indemnity to the Security Agent*) and this Clause 19 (and any agency fees for the account of the retiring Security Agent shall cease to accrue from (and shall be payable on) that date).
- (d) Any successor Security Agent and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if such successor had been an original Party.

19.14 Confidentiality

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

19.15 Information from the Creditors

- (a) 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.
- (b) Each Hedge Counterparty shall promptly provide to the Security Agent copies of all Hedging Agreements to which that Hedge Counterparty is a party.
- (c) The Senior Agent appointed under the relevant Senior Facilities Agreement shall, promptly upon request by the Security Agent, notify the Security Agent of the relevant Agent's Spot Rate of Exchange.

19.16 Credit appraisal by the Secured Parties

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

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

19.17 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).

19.18 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 Third Party Security Provider to any of the Charged Property;
- (b) obtain any licence, consent or other authority for the execution, delivery, legality, validity, enforceability or admissibility in evidence of any Debt Document or the Transaction Security;

- (c) register, file or record or otherwise protect any of the Transaction Security (or the priority of any of the Transaction Security) under any law or regulation or to give notice to any person of the execution of any Debt Document or of the Transaction Security;
- (d) take, or to require any Debtor or Third Party Security Provider 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 assurance in relation to any Security Document.

19.19 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 Senior Term Creditors or the Majority Super Senior Creditors (as applicable) request it to do so in writing and the Security Agent fails to do so within fourteen days after receipt of that request.

19.20 Custodians and nominees

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

19.21 Delegation by the Security Agent

- (a) Each of the Security Agent, any Receiver and any Delegate may, at any time, delegate by power of attorney or otherwise to any person for any period, all or any right, power, authority or discretion vested in it in its capacity as such.

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

19.22 Additional Security Agents

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

19.23 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 Third Party Security Provider may have to any of the Charged Property and shall not be liable for, or be bound to require any Debtor or Third Party Security Provider to remedy, any defect in its right or title.

19.24 Winding up of trust

If the Security Agent, with the approval of each Senior 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 Third Party Security Provider pursuant to the Debt Documents,

then:

- (i) the trusts set out in this Agreement shall be wound up and the Security Agent shall release, without recourse or warranty, all of the Transaction Security and the rights of the Security Agent under each of the Security Documents; and
- (ii) any Security Agent which has resigned pursuant to Clause 19.12 (*Resignation of the Security Agent*) shall release, without recourse or warranty, all of its rights under each Security Document.

19.25 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.

19.26 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.

19.27 Subordinated Creditor, Intra-Group Lenders, Debtors and Third Party Security Provider: Power of Attorney

- (a) Each Subordinated Creditor, Intra-Group Lender, Debtor and Third Party Security Provider by way of security for its obligations under this Agreement irrevocably appoints the Security Agent to be its attorney to do anything which that Subordinated Creditor, Intra-Group Lender, Debtor or Third Party Security Provider has authorised the Security Agent or any other Party to do under this Agreement or is itself required to do under this Agreement but has failed to do (and the Security Agent may lawfully delegate that power on such terms as it sees fit).
- (b) The power of attorney given under paragraph (a) above:
 - (i) shall only be exercised upon by the Security Agent on the earlier of:
 - (A) an Enforcement Action; or

- (B) the date falling 10 Business Days after the Security Agent requested that Party to comply with any provision of this Agreement; and
- (ii) also applies to situations in which the Security Agent or any other person designated under this Agreement acts or also acts as the counterparty of the Party giving the power of attorney, or as a representative of that counterparty.

20. CHANGES TO THE PARTIES

20.1 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 20.

20.2 Change of Senior Lender

- (a) A Senior Lender may:
 - (i) assign any of its rights; or
 - (ii) transfer any of its rights and obligations,in respect of any Debt Documents or the Liabilities if:

- (A) that assignment or transfer is in accordance with the terms of the Senior Facilities Agreement to which it is a party; and
- (B) subject to paragraph (b) below, any assignee or transferee has (if not already a Party as a Senior Lender) acceded to this Agreement as a Senior Lender pursuant to Clause 20.9 (*Creditor Accession Undertaking*).

- (b) Paragraph (a)(B) above shall not apply in respect of any Senior Debt Purchase Transaction entered into by a Senior Borrower and effected in accordance with the terms of the Debt Documents.

20.3 Change of Hedge Counterparty

A Hedge Counterparty may (in accordance with the terms of the relevant Hedging Agreement and subject to any consent required under that Hedging Agreement) transfer any of its rights or obligations in respect of the Hedging Agreements to which it is a party if any transferee has (if not already a Party as a Hedge Counterparty and a party to a Senior Facilities Agreement as a Hedge Counterparty) acceded to this Agreement, pursuant to Clause 20.9 (*Creditor Accession Undertaking*), as a Hedge Counterparty.

20.4 Change of Senior Agent

No person shall become a Senior Agent unless, at the same time, it accedes to this Agreement as a Senior Agent, pursuant to Clause 20.9 (*Creditor Accession Undertaking*).

20.5 Change of Intra-Group Lender

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

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

in respect of the Intra-Group Liabilities to another member of the Group if that member of the Group has (if not already a Party as an Intra-Group Lender) acceded to this Agreement as an Intra-Group Lender, pursuant to Clause 20.9 (*Creditor Accession Undertaking*).

20.6 New Intra-Group Lender

If any Intra-Group Lender or any Obligor (but not, for the avoidance of doubt, any person deemed to be an Obligor) makes any loan to or grants any credit to or makes any other financial arrangement having similar effect with any Debtor (but excluding any loan or credit or other financial arrangement made pursuant to any cash pooling or cash management arrangement permitted under the Senior Finance Documents) in an aggregate amount of £2,000,000 (or its equivalent) (or, if higher, 5% of Consolidated *Pro Forma* EBITDA) or more, 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 20.9 (*Creditor Accession Undertaking*).

20.7 New Ancillary Lender

If any Affiliate of a Senior Facility Creditor becomes an Ancillary Lender in accordance with a Senior Facilities Agreement, it shall not be entitled to share in any of the Transaction Security or in the benefit of any guarantee or indemnity in respect of any of the liabilities arising in relation to its Ancillary Facilities unless it has (if not already a Party as a Senior Facility Creditor) acceded to this Agreement as a Senior Facility Creditor pursuant to Clause 20.9 (*Creditor Accession Undertaking*) and, to the extent required by a Senior Facilities Agreement, to such Senior Facilities Agreement as an Ancillary Lender.

20.8 Accession of Senior Creditors under new Super Senior Facilities or new Senior Term Facilities

- (a) In order for any New Debt Financing to be a “Super Senior Facility” for the purposes of this Agreement:
 - (i) the Company shall designate that New Debt Financing as a Super Senior Facility pursuant to Clause 18 (*Senior Creditor Financings*);

- (ii) each creditor in respect of that New Debt Financing shall accede to this Agreement as a Super Senior Lender in relation to that New Debt Financing by executing a Creditor Accession Undertaking; and
 - (iii) the facility agent (to the extent applicable and to the extent it acts as agent for the creditors in paragraph (ii) above) in respect of that New Debt Financing shall accede to this Agreement as the Senior Agent in relation to that New Debt Financing by executing a Creditor Accession Undertaking.
- (b) In order for any New Debt Financing to be a “Senior Term Facility” for the purposes of this Agreement:
- (i) the Company shall designate that New Debt Financing as a Senior Term Facility pursuant to Clause 18 (*Senior Creditor Financings*);
 - (ii) each creditor in respect of that New Debt Financing shall accede to this Agreement as a Senior Term Lender in relation to that New Debt Financing by executing a Creditor Accession Undertaking; and
 - (iii) the facility agent (to the extent applicable and to the extent it acts as agent for the creditors in paragraph (ii) above) in respect of that New Debt Financing shall accede to this Agreement as the Senior Agent in relation to that New Debt Financing by executing a Creditor Accession Undertaking.
- (c) Each Party irrevocably authorises and instructs the Security Agent to execute on its behalf any Creditor Accession Undertaking which has been duly completed and signed on behalf of that person.

20.9 **Creditor Accession Undertaking**

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

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

assume the same obligations and become entitled to the same rights as if it had been an original party to that Senior Facilities Agreement as an Ancillary Lender or Hedge Counterparty (as the case may be).

20.10 New Debtor/Third Party Security Provider

- (a) If any member of the Group (other than a Regulated Group Company or a general partner of a fund) or a Third Party Security Provider:
 - (i) incurs any Liabilities in an aggregate amount of £2,500,000 (or its equivalent) or more; or
 - (ii) gives any Security, guarantee, indemnity or other assurance against loss in respect of any of the Liabilities,

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

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

20.11 Additional parties

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

- (ii) the relevant Senior Agent shall, as soon as practicable after receipt by it, sign and accept that Creditor Accession Undertaking if it appears on its face to have been completed, executed and delivered in the form contemplated by this Agreement.

20.12 Resignation of a Debtor

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

The Security Agent shall, upon receiving that notification, notify each Senior Agent.

- (b) The Company may request that a Debtor ceases to be a Debtor by delivering to the Security Agent a Debtor Resignation Request.
- (c) The Security Agent shall accept a Debtor Resignation Request and notify the 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 Debtor Resignation Request;
 - (ii) to the extent that the Senior Facilities Discharge Date has not occurred, each Senior Agent notifies the Security Agent that that Debtor is not, or has ceased to be, a Senior Borrower or a Senior Guarantor;
 - (iii) each Hedge Counterparty notifies the Security Agent that that Debtor is under no actual or contingent obligations to that Hedge Counterparty in respect of the Hedging Liabilities; and
 - (iv) the Company confirms that that Debtor is under no actual or contingent obligations in respect of the Intra-Group Liabilities.
- (d) Upon notification by the Security Agent to the Company of its acceptance of the resignation of a Debtor, that member of the Group shall cease to be a Debtor and shall have no further rights or obligations under this Agreement as a Debtor.

20.13 Cessation of a Third Party Security Provider

Following the release of all Transaction Security granted by a Third Party Security Provider (in accordance with the terms of the Debt Documents and this Agreement), such Third Party Security Provider shall cease to be a Third Party Security Provider and shall have no further rights or obligations under this Agreement as a Third Party Security Provider, **provided that** this Clause 20.13 shall not affect or prejudice any claim or demand that any Party may have against such Third Party Security Provider

under or in connection with the Debt Documents arising before the date on which such Third Party Security Provider ceases to be a Third Party Security Provider.

21. COSTS AND EXPENSES

21.1 Transaction expenses

The Company shall, within five Business Days of demand, after receipt of the corresponding invoice, pay (or procure payment to) the Security Agent, any Receiver or any Delegate the amount of all third party costs and expenses (including agreed and capped legal fees (subject to agreed terms)) reasonably incurred by any of them (evidence of which shall be provided to the Company) in relation to the arrangement, negotiation, preparation, execution and perfection of this Agreement up to a maximum amount agreed (if any), **provided that** no such fees, costs and expenses (other than reasonable and properly incurred legal fees and expenses in connection with the drafting and negotiation of the Senior Finance Documents) shall be payable if the Closing Date does not occur and, if the Closing Date occurs, shall not be payable before receipt of the corresponding invoice.

21.2 Amendment costs

If a Debtor requests an amendment, waiver or consent, the Company shall, within five Business Days of demand, reimburse (or procure reimbursement of) the Security Agent for the amount of all reasonable third party costs and expenses (including agreed and capped legal fees (subject to agreed terms)) reasonably incurred by the Security Agent, Receiver or Delegate in responding to, evaluating, negotiating or complying with that request or requirement.

21.3 Enforcement and preservation costs

The Company shall, promptly on demand, pay to the Security Agent the amount of all costs and expenses (including, but not limited to, legal fees) 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.

21.4 Stamp taxes

The Company shall, promptly on demand, indemnify the Security Agent against any cost, loss or liability the Security Agent incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Debt Document **provided that** this Clause 21.4 shall not apply in respect of any stamp duty, registration or other similar Taxes payable in respect of an assignment or transfer or sub-participation or sub-contract by a Senior Lender of any of its rights or obligations under a Senior Finance Document.

21.5 Interest on demand

Without duplication of any default interest payable under any Debt Document, if any Creditor, Debtor or Third Party Security Provider 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 two per cent. per annum over the rate which the Security Agent would be able to obtain by placing on deposit with a leading bank an amount comparable to the unpaid amounts in the currencies of those amounts for any period(s) that the Security Agent may from time to time select **provided that**, if any such rate is below zero, that rate will be deemed to be zero.

22. OTHER INDEMNITIES

22.1 Indemnity to the Security Agent

- (a) Each Debtor jointly and severally shall promptly indemnify the Security Agent and every Receiver and Delegate against any cost, loss or liability (together with any applicable VAT) incurred (but excluding any costs and expenses arising as a result of the Security Agent's, Receiver's or Delegate's gross negligence or wilful default) by any of them as a result of:
- (i) any failure by the Company to comply with its obligations under Clause 21 (*Costs and Expenses*);
 - (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
 - (iii) the taking, holding, protection or enforcement of the Transaction Security;
 - (iv) the exercise of any of the rights, powers, discretions, authorities and remedies vested in the Security Agent (or, if applicable, the relevant Secured Party), each Receiver and each Delegate by the Debt Documents or by law;
 - (v) any default by any Debtor in the performance of any of the obligations expressed to be assumed by it in the Debt Documents;
 - (vi) instructing lawyers, accountants, tax advisers, surveyors, a Financial Adviser or other professional advisers or experts as permitted under this Agreement; or
 - (vii) acting as Security Agent, Receiver or Delegate under the Debt Documents or which otherwise relates to any of the Security Property (otherwise, in each case, than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct).
- (b) Each Debtor expressly acknowledges and agrees that the continuation of its indemnity obligations under this Clause 22.1 will not be prejudiced by any release or disposal under Clause 12 (*Distressed Disposals and Appropriation*) taking into account the operation of that Clause 12.
- (c) The Security Agent and every Receiver and Delegate may, in priority to any payment to the Secured Parties, indemnify itself out of the Charged Property in respect of, and pay and retain, all sums necessary to give effect to the indemnity

in this Clause 22.1 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.

22.2 Company's indemnity to Senior Creditors

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

23. INFORMATION

23.1 Dealings with Security Agent and Senior Agents

- (a) Subject to clause 35.5 (*Communication when Agent is Impaired Agent*) of the Initial Senior Facilities Agreement and to any Additional Senior Facility Equivalent thereof, each Senior Facility Creditor shall deal with the Security Agent exclusively through its Senior Agent and the Hedge Counterparties shall deal directly with the Security Agent and shall not deal through any Senior Agent.
- (b) No Senior Agent shall 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.

23.2 Disclosure between Senior Creditors and Security Agent

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

23.3 Notification of prescribed events

- (a) If an Event of Default either occurs or ceases to be continuing, the relevant Senior Agent shall, upon becoming aware of that occurrence or cessation, notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each Hedge Counterparty and each other Senior Agent.
- (b) If a Senior Payment Default either occurs or ceases to be continuing, the relevant Senior Agent shall, upon becoming aware of that occurrence or cessation, notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each other Senior Agent.
- (c) If an Acceleration Event occurs, the relevant Senior Agent shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each other Party.

- (d) If the Security Agent receives a Super Senior Enforcement Notice under paragraph (b) of Clause 3.14 (*Permitted enforcement: Super Senior Creditors*), it shall, upon receiving that notice, notify, and send a copy of that notice to, each Senior Agent and each Hedge Counterparty.
- (e) If the Security Agent enforces, or takes formal steps to enforce, any of the Transaction Security, it shall notify each Party of that action.
- (f) If any Secured Party exercises any right it may have to enforce, or to take formal steps to enforce, any of the Transaction Security and/or takes any Material Enforcement Action, it shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each Party of that action.
- (g) If a Debtor defaults on any Payment due under a Hedging Agreement, the Hedge Counterparty which is party to that Hedging Agreement shall, upon becoming aware of that default, notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each Senior Agent and each other Hedge Counterparty.
- (h) If a Hedge Counterparty terminates or closes-out, in whole or in part, any hedging transaction under any Hedging Agreement under Clause 4.9 (*Permitted Enforcement: Hedge Counterparties*), it shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each Senior Agent and each other Hedge Counterparty.
- (i) If a Mandatory Prepayment is waived, the relevant Senior 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 other Senior Agent and Hedge Counterparty.
- (j) If the Security Agent receives a notice under paragraph (a) of Clause 3.11 (*Option to purchase: Senior Term Lenders*), it shall, upon receiving that notice, notify, and send a copy of that notice to, each Senior Agent.
- (k) If the Security Agent receives a notice under paragraph (a) of Clause 3.12 (*Hedge Transfer: Senior Term Lenders*), it shall, upon receiving that notice, notify, and send a copy of that notice to, each Hedge Counterparty and each Senior Agent.
- (l) If a person becomes a Party as a Senior Agent pursuant to Clause 20.9 (*Creditor Accession Undertaking*), the Security Agent shall notify each other Senior Agent.

24. NOTICES

24.1 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.

24.2 **Security Agent's communications with Senior Creditors**

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

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

24.3 **Addresses**

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

- (a) in the case of the Company and the Third Party Security Provider, that identified with its applicable name below;
- (b) in the case of the Security Agent, that identified with its name below; and
- (c) in the case of any 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.

24.4 **Delivery**

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

and, if a particular department or officer is specified as part of its address details provided under Clause 24.3 (*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 24.4 will be deemed to have been made or delivered to each of the Debtors and Third Party Security Providers.

- (d) Any communication or document which becomes effective, in accordance with paragraphs (a) to (c) above, after 5:00 pm in the place of receipt shall be deemed only to become effective on the following day.

24.5 Notification of address and fax number

Promptly upon receipt of notification of an address and fax number or change of address or fax number pursuant to Clause 24.3 (*Addresses*) or changing its own address or fax number, the Security Agent shall notify the other Parties.

24.6 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 Subordinated Creditor, a Debtor, a Third Party Security Provider or an Intra-Group Lender and the Security Agent or a Senior 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 (or made available) 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 pm 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 24.6.

24.7 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.

25. PRESERVATION

25.1 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.

25.2 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.

25.3 Remedies and waivers

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

25.4 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 25.4, would reduce, release or prejudice the subordination and priorities expressed to be created by this Agreement including (without limitation and whether or not known to any Party):

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

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

25.5 **Priorities not affected**

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

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

26. **CONSENTS, AMENDMENTS AND OVERRIDE**

26.1 **Required consents**

- (a) Subject to paragraphs (b), (c) and (d) below, to Clause 26.4 (*Exceptions*), to Clause 26.6 (*Excluded Senior Credit Participations*) and to Clause 26.7 (*Disenfranchisement of Investors, Sponsor Affiliates and members of the Group*):
 - (i) Clause 17.1 (*Equalisation Definitions*) to Clause 17.3 (*Equalisation*) may be amended or waived with the consent of each Senior Agent, (if

the amendment or waiver relates to the Senior Term Liabilities) the Majority Senior Term Lenders, (if the amendment or waiver relates to the Super Senior Facility Liabilities) the Majority Super Senior Lenders and the Security Agent; and

- (ii) subject to paragraph (i) above, this Agreement may be amended or waived only with the consent of the Majority Senior Lenders.
- (b) An amendment or waiver that has the effect of changing or which relates to:
- (i) Clause 8 (*Turnover of Receipts*), Clause 9 (*Redistribution*), Clause 12 (*Distressed Disposals and Appropriation*), Clause 16 (*Application of Proceeds*) or this Clause 26;
 - (ii) paragraphs (d)(iii), (e) and (f) of Clause 19.2 (*Instructions*);
 - (iii) the order of priority or subordination under this Agreement; or
 - (iv) the definitions of “Hedging Liabilities”, “Instructing Group” (and definitions used therein), “Majority Senior Creditors”, “Majority Senior Lenders”, “Majority Senior Term Creditors”, “Majority Senior Term Lenders”, “Majority Super Senior Creditors”, “Majority Super Senior Lenders”, “Senior Creditors”, “Senior Facility Creditors”, “Senior Lenders”, “Senior Liabilities”, “Senior Term Liabilities” “Super Majority Super Senior Creditors”, “Super Senior Creditors”, “Super Senior Facility Liabilities”, “Super Senior Hedging Liabilities” and “Super Senior Liabilities”,

shall not be made without the consent of:

- (A) the Senior Agents (to the extent that the amendment relates to the rights and obligations of the relevant Senior Agent in such capacity);
 - (B) the Senior Lenders;
 - (C) each Hedge Counterparty (to the extent that the amendment or waiver would materially and adversely affect the Hedge Counterparty); and
 - (D) the Security Agent (to the extent that the amendment relates to the rights and obligations of the Security Agent in such capacity).
- (c) An amendment or waiver that has the effect of changing or which relates to Clause 3.11 (*Option to purchase: Senior Term Lenders*), Clause 3.12 (*Hedge Transfer: Senior Term Lenders*), Clause 3.13 (*Restriction on enforcement: Super Senior Creditors*), Clause 3.14 (*Permitted enforcement: Super Senior Creditors*) or Clause 10 (*Enforcement of Transaction Security*) or any provision which refers to Clause 10 (*Enforcement of Transaction Security*) or any provision thereof, shall not be made without the consent of the Majority Senior Term Lenders and the Majority Super Senior Lenders.

- (d) An amendment or waiver that has the effect of changing or which relates to Clause 4 (*Hedge Counterparties and Hedging Liabilities*) shall not be made without the consent of the Majority Senior Term Lenders, the Majority Super Senior Lenders and each Hedge Counterparty.

26.2 Amendments and Waivers: Transaction Security Documents

- (a) Subject to paragraph (b) below and to Clause 26.4 (*Exceptions*) and unless the provisions of any Debt Document expressly provide otherwise, the Security Agent may, if authorised by the Majority Senior Creditors, and if the 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 26.4 (*Exceptions*), any amendment or waiver of, or consent under, any Transaction Security Document which has the effect of changing or which relates to:
 - (i) the nature or scope of the Charged Property;
 - (ii) the manner in which the proceeds of enforcement of the Transaction Security are distributed; or
 - (iii) the release of any Transaction Security,

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

26.3 Effectiveness

- (a) Any amendment, waiver or consent given in accordance with this Clause 26 will be binding on all Parties and the Security Agent may effect, on behalf of any Senior Creditor, any amendment, waiver or consent permitted by this Clause 26.
- (b) Without prejudice to the generality of Clause 19.7 (*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.

26.4 Exceptions

- (a) Subject to paragraphs (c) and (d) below, if the amendment, waiver or consent may impose new or additional obligations on or withdraw or reduce the rights of any Party other than:
 - (i) in the case of a Senior Creditor (other than any Senior Agent, Senior Backstop Lender or Senior Arranger), in a way which affects or would affect Senior Creditors of that Party's class generally; or

- (ii) in the case of a Debtor or Third Party Security Provider, to the extent consented to by the Company under paragraph (a) of Clause 26.2 (*Amendments and Waivers: Transaction Security Documents*),

the consent of that Party is required.

- (b) Subject to paragraphs (c) and (d) below, an amendment, waiver or consent which relates to the rights or obligations of a Senior Agent, the Senior Backstop Lender, a Senior Arranger, the Security Agent (including, without limitation, any ability of the Security Agent to act in its discretion under this Agreement) or a Hedge Counterparty may not be effected without the consent of that Senior Agent or, as the case may be, the Senior Backstop Lender, that Senior Arranger, the Security Agent or that Hedge Counterparty.
- (c) Neither paragraphs (a) nor (b) above, nor paragraph (b) of Clause 26.2 (*Amendments and Waivers: Transaction Security Documents*), shall apply:
 - (i) to any release of Transaction Security, claims or Liabilities; or
 - (ii) to any consent,

which, in each case, the Security Agent gives in accordance with Clause 11 (*Non-Distressed Disposals*), Clause 12 (*Distressed Disposals and Appropriation*), Clause 14 (*Acquisition and Insurance Claims*), Clause 18 (*Senior Creditor Financings*) or Clause 26.5 (*Senior Structural Adjustments*).

- (d) Paragraphs (a) and (b) above shall apply to the Senior Backstop Lender or a Senior Arranger only to the extent that Liabilities are then owed to the Senior Backstop Lender or that Senior Arranger.

26.5 Senior Structural Adjustments

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, Debtor or Third Party Security Provider) to:

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

to the extent that such action:

- (i) forms part of a Senior Structural Adjustment which:
 - (A) has been approved by the Company and the requisite Senior Facility Creditors pursuant to each Senior Facilities Agreement; and
 - (B) complies with Clause 3.2 (*Amendments and Waivers: Senior Facility Creditors*); and

- (ii) does not have and is not reasonably likely to have a material adverse effect on the Secured Parties **provided that** the release coupled with the immediate retaking of any Transaction Security or any guarantee and indemnity and the restarting of any related Hardening Period will not in itself constitute such a material adverse effect.

26.6 Excluded Senior Credit Participations

- (a) If in relation to:
 - (i) a request for a Consent in relation to any of the terms of this Agreement;
 - (ii) a request to participate in any other vote of Senior Creditors or Super Senior 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 under this Agreement; or
 - (v) a request to provide details of an Exposure,any Senior Creditor:
 - (A) fails to respond to that request within 10 Business Days of that request being made; or
 - (B) (in the case of a Senior Creditor and paragraphs (i) to (v) above), fails to provide details of its Senior Credit Participation to the Security Agent within the timescale specified by the Security Agent:
 - (1) in the case of paragraphs (i) to (iii) above, that Senior Creditor's Senior Credit Participation shall be deemed to be zero for the purpose of calculating the Senior Credit Participations when ascertaining whether any relevant percentage (including, for the avoidance of doubt, unanimity) of Senior Credit Participations has been obtained to give that Consent, carry that vote or approve that action;
 - (2) in the case of paragraphs (i) to (iii) above, that Senior Creditor's status as a Senior Creditor shall be disregarded for the purposes of ascertaining whether the agreement of any specified group of Senior Creditors has been obtained to give that Consent, carry that vote or approve that action;
 - (3) in the case of paragraph (iv) above, that confirmation or notification shall be deemed to have been given; and

- (4) in the case of paragraph (v) above, that Senior Creditor's Exposure shall be deemed to be zero.
- (b) Paragraph (a)(A) above shall not apply to an amendment or waiver referred to in paragraph (b) of Clause 26.1 (*Required consents*).

26.7 Disenfranchisement of Investors, Sponsor Affiliates and members of the Group

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

26.8 Disenfranchisement of Defaulting Lenders

- (a) For so long as a Defaulting Lender has any Senior Commitment, in ascertaining:
- (i) the Majority Senior Term Creditors, the Majority Senior Term Lenders, the Majority Super Senior Creditors or the Majority Super Senior Lenders; or
 - (ii) whether:
 - (A) any relevant percentage (including, for the avoidance of doubt, unanimity) of Senior Credit Participations; or
 - (B) the agreement of any specified group of Senior Creditors,has been obtained to approve any request for a Consent or to carry any other vote or approve any action under this Agreement,

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

- (b) For the purposes of this Clause 26.8, the Security Agent may assume that the following Senior Creditors are Defaulting Lenders:
- (i) any Senior Lender which has notified the Security Agent that it has become a Defaulting Lender;
 - (ii) any Senior Lender to the extent that the relevant Senior Agent has notified the Security Agent that that Senior Lender is a Defaulting Lender; and
 - (iii) any Senior Lender in relation to which it is aware that any of the events or circumstances referred to in the definition of "Defaulting Lender" in the Initial Senior Facilities Agreement or any Additional Senior Facility Equivalent (as applicable) thereof has occurred,

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

26.9 Disenfranchisement of Senior Lenders

- (a) For so long as any Senior Lender or Senior Lenders, or any Affiliate or Related Fund of a Senior Lender or Senior Lenders, in each case under any Senior Facility that is not a Super Senior Facility (each a "**Relevant Senior Lender**"):
- (i) beneficially owns a Senior Commitment under any Super Senior Facility/ies (directly or indirectly and in any manner whatsoever); or

- (ii) has entered into a sub-participation agreement which carries voting rights relating to a Senior Commitment under any Super Senior Facility/ies or other agreement or arrangement having a substantially similar economic effect and such agreement or arrangement has not been terminated,

in ascertaining:

- (A) the Majority Super Senior Lenders or the Majority Super Senior Creditors; or
- (B) whether:
 - (1) any given percentage (including, for the avoidance of doubt, unanimity) of the aggregate Senior Commitments under the relevant Senior Facilities; or
 - (2) the agreement of any specified group of Senior Lenders or Creditors,

has been obtained to approve any request for a consent, waiver, amendment or other vote of Senior Lenders or Creditors under the Senior Finance Documents,

for the purposes of this Clause 26 and determining the requisite voting thresholds only, the aggregate of all Relevant Senior Lender's Senior Commitments under the Super Senior Facility/ies shall be deemed to be zero under the relevant Super Senior Facility/ies.

(b) Notwithstanding paragraph (a) of this Clause 26.9, if:

- (i) the Relevant Senior Lender(s) are exercising their right to effect a transfer of Super Senior Facility Liabilities under Clause 3.11 (*Option to purchase: Senior Term Lenders*) in respect of all outstanding Super Senior Facility Liabilities or any Relevant Senior Lender otherwise holds one hundred (100) per cent. of the Super Senior Commitments; or
- (ii) any vote in respect of a consent, waiver, amendment or other vote of Senior Lenders or Creditors under the Senior Finance Documents affects the rights of any Relevant Senior Lender and treats the Relevant Senior Lender in a materially and adverse manner to the rights of other Senior Lenders or Creditors in the same Senior Facility,

paragraph (a) of this Clause 26.9 shall not apply.

26.10 Calculation of Senior Credit Participations and Super Senior Credit Participations

For the purpose of ascertaining whether any relevant percentage of Senior Credit Participations or Super Senior Credit Participations has been obtained under this Agreement, the Security Agent may notionally convert the Senior Credit Participations

or Super Senior Credit Participations (as applicable) into their Common Currency Amounts.

26.11 **Deemed consent**

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

- (a) give a corresponding Consent in equivalent terms in relation to each of the Debt Documents to which they are a party; and
- (b) do anything (including executing any document) that the Senior Facility Creditors may reasonably require to give effect to this Clause 26.11.

26.12 **Excluded consents**

Clause 26.11 (*Deemed consent*) does not apply to any Consent which has the effect of:

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

26.13 **Deemed consent in respect of minor, technical or administrative amendments**

- (a) If a Senior Agent (acting on the instructions of the requisite Senior Facility Creditors pursuant to the Senior Facilities Agreement to which such Senior Agent acts as agent) at any time in respect of any Senior Finance Document gives any consent of a minor, technical or administrative nature which does not adversely affect the interests of the other Creditors or change the commercial terms contained in the other relevant Senior Finance Documents, then, if that action was permitted by the terms of this Agreement, each other Creditor will (or will be deemed to), to the extent it is required to give consent:
 - (i) give a corresponding consent in equivalent terms in relation to each of the Senior Finance Documents to which they are a party; and
 - (ii) do anything (including executing any document) that the relevant Senior Agent (acting on the instructions of the requisite Senior Facility Creditors pursuant to the Senior Facilities Agreement to which such Senior Agent acts as agent) may reasonably require to give effect to this Clause 26.13.
- (b) If a Hedge Counterparty in respect of a Hedging Agreement to which it is party, or an Ancillary Lender in respect of any Ancillary Document, gives any consent of a minor, technical or administrative nature under, as the case may be, that relevant Hedging Agreement or Ancillary Document, which does not (in the opinion of the Majority Senior Lenders (acting reasonably), such opinion to be

notified to the relevant Hedge Counterparty by the Senior Agent (on behalf of the Majority Senior Lenders) within 3 Business Days of any request by the Company) adversely affect the interests of the other Creditors or change the commercial terms contained in the other relevant Senior Finance Documents then, if that action was permitted by the terms of this Agreement, each other Creditor will (or will be deemed to), to the extent it is required to give consent:

- (i) give a corresponding consent in equivalent terms in relation to each of the Senior Finance Documents to which they are a party; and
- (ii) do anything (including executing any document) that the relevant Hedge Counterparty or, as the case may be, Ancillary Lender may reasonably require to give effect to this paragraph (b) of Clause 26.13.

26.14 No liability

None of the Senior Facility Creditors will be liable to any other Creditor, Debtor or Third Party Security Provider for any Consent given or deemed to be given under this Clause 26.

26.15 Agreement to override

Unless expressly stated otherwise in this Agreement, this Agreement overrides anything in the Debt Documents (other than any mandatory provisions of law applicable to Transaction Security Documents) (to the extent legally possible) to the contrary, unless such override would jeopardise the legality, validity or binding effect of a Transaction Security Document.

27. COUNTERPARTS

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

28. GOVERNING LAW

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

29. ENFORCEMENT

29.1 Jurisdiction

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a “**Dispute**”).
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

- (c) This Clause 29.1 is for the benefit of the Senior Creditors only. As a result, no Senior Creditor shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Senior Creditors may take concurrent proceedings in any number of jurisdictions.

29.2 Service of process

- (a) Without prejudice to any other mode of service allowed under any relevant law, each Debtor, Third Party Security Provider and Subordinated Creditor (in each case, unless incorporated in England and Wales):
 - (i) appoints:
 - (A) until (but excluding) the date on which Completion occurs, Searchlight Capital Partners UK, LLP; and
 - (B) from and including the date on which Completion occurs, the Target,

as its agent for service of process in relation to any proceedings before the English courts in connection with this Agreement; and
 - (ii) agrees that failure by a process agent to notify the relevant Debtor, Third Party Security Provider or Subordinated Creditor of the process will not invalidate the proceedings concerned.
- (b) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Company (in the case of an agent for service of process for a Debtor), the Third Party Security Provider or the Subordinated Creditor (as applicable) must promptly (and in any event within 10 Business Days of such event taking place) appoint another agent on terms acceptable to each Senior Agent (acting reasonably and in good faith). Failing this, the Senior Agents may appoint another agent for this purpose.

30. BAIL-IN

30.1 Notwithstanding any other term of any Debt 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 Debt 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:
 - (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 Debt Document to the extent necessary to give effect to any Bail-In Action in relation to any such liability.

30.2 For the purposes of this Clause 30:

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

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

“**Bail-In Legislation**” means:

- (a) in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 BRRD, the relevant implementing law or regulation as described in the EU Bail-In Legislation Schedule from time to time;
- (b) in relation to any state other than such an EEA Member Country and the United Kingdom, any analogous law or regulation from time to time which requires contractual recognition of any Write-down and Conversion Powers contained in that law or regulation; and
- (c) in relation to the United Kingdom, the UK Bail-In Legislation.

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

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

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

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

“**Write-down and Conversion Powers**” means:

- (a) in relation to any Bail-In Legislation described in the EU Bail-In Legislation Schedule from time to time, the powers described as such in relation to that Bail-In Legislation in the EU Bail-In Legislation Schedule;
- (b) in relation to any other applicable Bail-In Legislation other than the UK Bail-In Legislation:
 - (i) any powers under that Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a

liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers; and

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

THIS AGREEMENT has been entered into on the date stated at the beginning of this Agreement and executed as a deed by the Intra-Group Lenders, the Parent, the Company, the Debtors, the Third Party Security Providers and the Subordinated Creditor, and is intended to be and is delivered by them as a deed on the date specified above.

SCHEDULE 1

Form of Debtor/Third Party Security Provider Accession Deed

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

- (1) [Insert name of New [Debtor]/[Third Party Security Provider]] (registration number [●]) (the “**Acceding [Debtor]/[Third Party Security Provider]**”); and
- (2) [Insert full name of current Security Agent], for itself and each of the other parties to the intercreditor agreement referred to below.

This Agreement is made on [●] by the Acceding [Debtor]/[Third Party Security Provider] in relation to an intercreditor agreement dated [●] 2023 between [●] as the company, [●] as senior agent, [●] as security agent and others (the “**Intercreditor Agreement**”).

The Acceding [Debtor]/[Third Party Security Provider] 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]/[grant Security (as defined in the Intercreditor Agreement) in respect of Liabilities under the following documents]:

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

the “**Relevant Documents**”.

IT IS AGREED as follows:

Terms defined in the Intercreditor Agreement shall, unless otherwise defined in this Agreement, bear the same meaning when used in this Agreement.

The Acceding [Debtor]/[Third Party Security Provider] 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]/[Third Party Security Provider] to pay amounts in respect of the Liabilities to the Security Agent as trustee or agent or otherwise for, on behalf of or for the benefit of 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]/[Third Party Security Provider] (in the Relevant Documents or otherwise) in favour of the Security Agent as trustee or agent or otherwise for, on behalf of or for the benefit of the Secured Parties,

* 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.

for, on behalf of or otherwise for the benefit of the Secured Parties on the terms and conditions contained in the Intercreditor Agreement.

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

[The Acceding Debtor also confirms that it intends to be party to the Intercreditor Agreement as an Intra-Group Lender, and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by an Intra-Group Lender and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement.]**

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

THIS AGREEMENT has been signed on the date stated above.

The Acceding [Debtor]/[Third Party Security Provider]

[Name of Acceding [Debtor]/[Third Party Security Provider]]

By:

Date:

Address for notices:

Address:

Fax:

The Security Agent

[Full name of current Security Agent]

By:

Date:

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

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

[To: [Insert full name of relevant Senior Agent] as Senior Agent]*

From: [Acceding Creditor]

THIS UNDERTAKING is made on [●] by [insert full name of new Super Senior Lender/Super Senior Arranger/Senior Term Lender/Hedge Counterparty/Senior Agent/Senior Arranger/Intra-Group Lender] (the “**Acceding [Super Senior Lender/Super Senior Arranger/Senior Term Lender/Hedge Counterparty/Senior Agent/Senior Arranger/Intra-Group Lender]**”) in relation to the intercreditor agreement dated [●] between [●] as the company, [●] as senior agent, [●] as security agent and others (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.

The Acceding [Super Senior Lender/Super Senior Arranger/Senior Term Lender/Hedge Counterparty/Senior Agent/Senior Arranger/Intra-Group Lender] confirms that, as from [●], it intends to be party to the Intercreditor Agreement as a [Super Senior Lender/Super Senior Arranger/Senior Term Lender/Hedge Counterparty/Senior Agent/Senior Arranger/Intra-Group Lender] and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a [Super Senior Lender/Super Senior Arranger/Senior Term Lender/Hedge Counterparty/Senior Agent/Senior Arranger/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.

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

[The Acceding Hedge Counterparty has become or will become a provider of hedging arrangements to [●]]. In consideration of the Acceding Hedge Counterparty being accepted as a Hedge Counterparty for the purposes of [specify Senior Facilities Agreement], the Acceding Hedge Counterparty confirms, for the benefit of the parties to that Senior Facilities Agreement, that, as from [●], it intends to be party to [specify Senior Facilities Agreement] as a Hedge Counterparty, and undertakes to perform all the obligations expressed in that Senior Facilities

* Include only in the case of (a) a Hedge Counterparty or (b) an Ancillary Lender which is an Affiliate of a Senior Lender which is using this undertaking to accede to the Senior Facilities Agreement in accordance with paragraph (c) of Clause 20.9 (*Creditor Accession Undertaking*).

** Include only in the case of an Ancillary Lender which is an Affiliate of a Senior Lender which is using this undertaking to accede to the Senior Facilities Agreement in accordance with paragraph (c) of Clause 20.9 (*Creditor Accession Undertaking*).

Agreement to be assumed by a Hedge Counterparty and agrees that it shall be bound by all the provisions of that Senior Facilities Agreement, as if it had been an original party to that 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.

The Acceding [Super Senior Lender/Super Senior Arranger/Senior Term Lender/Hedge Counterparty/Senior Agent/Senior Arranger/Intra-Group Lender]

[Name of Acceding Creditor]

By:

Date:

Address for notices:

Address:

Fax:

Accepted by the Security Agent

.....
for and on behalf of

[Insert full name of current Security Agent]

Date:

[Accepted by Senior Agent

.....
for and on behalf of

[Insert full name of relevant Senior Agent]

Date:]****

**** Include only in the case of (a) a Hedge Counterparty or (b) an Ancillary Lender which is an Affiliate of a Senior Lender which is using this undertaking to accede to the Senior Facilities Agreement in accordance with paragraph (c) of Clause 20.9 (*Creditor Accession Undertaking*).

SCHEDULE 3

Form of Debtor Resignation Request

To: [Insert full name of current Security Agent] as Security Agent

From: [resigning Debtor] and [Company]

Dated: [Insert date]

[Seed Bidco Limited] – Intercreditor Agreement dated [●] (the “Intercreditor Agreement”)

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

.....
For and on behalf of
[Company]

By:

.....
For and on behalf of
[resigning Debtor]

By:

SCHEDULE 4

Form of New Debt Financing Designation Certificate

To: [Insert full name of current Security Agent] as Security Agent and [insert name of each current Senior Agent] as Senior Agent

From: [Company]

Dated: [Insert date]

Dear Sirs,

[Seed Bidco Limited] – Intercreditor Agreement dated [●] (the “Intercreditor Agreement”)

1. We refer to the Intercreditor Agreement. This is a New Debt Financing Designation Certificate. Terms defined in the Intercreditor Agreement have the same meaning in this New Debt Financing Designation Certificate unless given a different meaning in this New Debt Financing Designation Certificate.
2. We refer to a New Debt Financing constituted by [insert description of instrument] (the “Applicable Agreement”) in an amount of [insert (if applicable) principal amount] with [insert names of applicable agents, trustees or, as applicable, lenders] (the “Applicable Financing”).
3. We certify that the Applicable Financing (and its ranking and status for the purposes of the Intercreditor Agreement as designated in paragraphs 4 and 5 of this New Debt Financing Designation Certificate) is permitted under the terms of any Senior Finance Document as at the Effective Date.
4. We hereby designate the Applicable Financing as [insert type of ranking and status – e.g. a Senior Term Facility].
5. We hereby designate the Applicable Agreement as [insert nature of Agreement – e.g. a Senior Facilities Agreement].
6. We hereby designate [insert date] as the “Effective Date”.
7. [We hereby designate the [existing Senior Agent] as a [Senior Agent]].
8. This New Debt Financing Designation Certificate and any non-contractual obligations arising out of or in connection with it are governed by English law.

[The Company]

By:

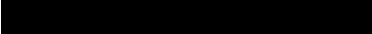
SIGNATURES

PARENT, ORIGINAL SUBORDINATED CREDITOR AND ORIGINAL THIRD PARTY SECURITY PROVIDER

Signed as a DEED by

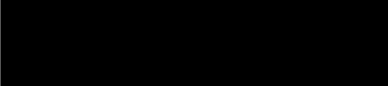
SEED MIDCO LIMITED

By: ... 

Name: 

Title: DIRECTOR

In the presence of: 

Signed: 

Occupation: Solicitor

Address: 

Address: Redwood House, St Julian's Avenue, St Peter Port, Guernsey GY1 1WA

Attention: The Directors

Tel: +44 1481 721672

Email: OGLGuernsey@ogier.com

COMPANY, ORIGINAL INTRA-GROUP LENDER AND ORIGINAL DEBTOR

Signed as a DEED by

SEED BIDCO LIMITED

By: ... [REDACTED]

Name: [REDACTED]

Title: *DIRECTOR*

In the presence of:

Signed: [REDACTED]

Occupation: *Solicitor*

Address: [REDACTED]

Address: Redwood House, St Julian's Avenue, St Peter Port, Guernsey GY1 1WA

Attention: The Directors

Tel: [REDACTED]

Email: [REDACTED]

SENIOR TERM LENDERS

APC HOLDINGS I, L.P.

By: Ares Management Limited, its subadvisor

By:



Name:



Title: Authorised signatory

APC UL EU LOAN HOLDINGS S.À R.L.

By: ... 

Name: 

Title: Manager

By: ... 

Name: 

Title: Manager

ARES CSIDF LUXCO S.À R.L.

By: 

Name: 

Title: Manager

By: 

Name: 

Title: Manager

ARES DCSF (S) HOLDINGS S.À R.L.

By: 

Name: 

Title: Manager

By: 

Name: 

Title: Manager

ARES CAPITAL EUROPE V (E) INVESTMENTS S.À R.L.

By: 

Name: 

Title: Manager

By: 

Name: 

Title: Manager

ARES CAPITAL EUROPE V (G) INVESTMENTS S.À R.L.

By: [Redacted]

Name: [Redacted]

Title: Manager

By: [Redacted]

Name: [Redacted]

Title: Manager

ARES CAPITAL EUROPE V (E) ASSETS S.À R.L.

By: ... 

Name: 

Title: Manager

By: ... 

Name: 

Title: Manager

ARES CAPITAL EUROPE V (G) ASSETS S.À R.L.

By: [Redacted]

Name: [Redacted]

Title: Manager

By: [Redacted]

Name: [Redacted]

Title: Manager

ARES ECSF XII (Z) (E) HOLDINGS S.À R.L.

By: 

Name: 

Title: Manager

By: 

Name: 

Title: Manager

ARES ECSF XII (Z) (G) HOLDINGS S.À R.L.

By: ... 

Name: 

Title: Manager

By: ... 

Name: 

Title: Manager

SC ACM EU PD S.À R.L.

By: Ares Management Limited, its portfolio manager

By: 

Name: 

Title: Authorised signatory

VG ACME EU PD S.À R.L.

By: Ares Management Limited, its portfolio manager

By: 

Name: 

Title: Authorised signatory

MC CA INVESTMENT S.À R.L.

By: 

Name: 

Title: Manager

By: 

Name: 

Title: Manager

ARES CREDIT STRATEGIES FEEDER III UK, L.P.

By: Ares Management Limited, its manager

By: .....

Name: 

Title: Ares Management Limited

ARES ECSF VII (P) HOLDINGS S.À R.L.

By: 

Name: 

Title: Manager

By: ... 

Name: 

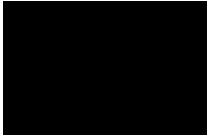
Title: Manager

ARES ECSF II SOUTH S.À R.L.

By: 

Name: 

Title: Manager

By: ... 

Name: 

Title: Manager

**ALTERNATIVE SENIOR TERM LENDERS
APC UL EU LOAN HOLDINGS S.À R.L.**

By: 

Name: 

Title: Manager

By: 

Name: 

Title: Manager

ARES CSIDF LUXCO S.À R.L.

By: ... 

Name: 

Title: Manager

By: ... 

Name: 

Title: Manager

ARES DCSF (S) HOLDINGS S.À R.L.

By: ... 

Name: 

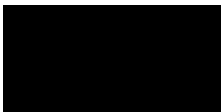
Title: Manager

By: ... 

Name: 

Title: Manager

ARES CAPITAL EUROPE V (E) INVESTMENTS S.À R.L.

By: ... 

Name: 

Title: Manager

By: 

Name: 

Title: Manager

ARES CAPITAL EUROPE V (G) INVESTMENTS S.À R.L.

By: ... 

Name: 

Title: Manager

By: .. 

Name: 

Title: Manager

ARES CAPITAL EUROPE V (E) ASSETS S.À R.L.

By: 

Name: 

Title: Manager

By: 

Name: 

Title: Manager

ARES CAPITAL EUROPE V (G) ASSETS S.À R.L.

By: .. [REDACTED]

Name: [REDACTED]

Title: Manager

By: .. [REDACTED]

Name: [REDACTED]

Title: Manager

ARES ECSF XII (Z) (E) HOLDINGS S.À R.L.

By: .. [REDACTED]

Name: [REDACTED]

Title: Manager

By: .. [REDACTED]

Name: [REDACTED]

Title: Manager

ARES ECSF XII (Z) (G) HOLDINGS S.À R.L.

By: 

Name: 

Title: Manager

By: 

Name: 

Title: Manager

SC ACM EU PD S.À R.L.

By: Ares Management Limited, its portfolio manager

By: 

Name: 

Title: Authorised signatory

VG ACME EU PD S.À R.L.

By: Ares Management Limited, its portfolio manager

By: .....

Name: 

Title: Authorised signatory

MC CA INVESTMENT S.À R.L.

By: ... 

Name: 

Title: Manager

By: ... 

Name: 

Title: Manager

ARES CREDIT STRATEGIES FEEDER III UK, L.P.

By: Ares Management Limited, its manager

By: 

Name: 

Title: Authorised signatory

ARES ECSF VII (P) HOLDINGS S.À R.L.

By:.....

Name: 

Title: Manager

By:.....

Name: 

Title: Manager

ARES ECSF II SOUTH S.À R.L.

By: ... [Redacted]

Name: [Redacted]

Title: Manager

By: ... [Redacted]

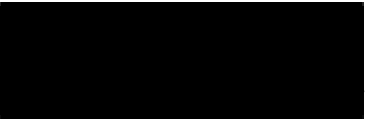
Name: [Redacted]

Title: Manager

SUPER SENIOR LENDERS

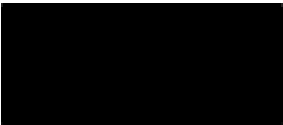
For and on behalf of

Hamburg Commercial Bank AG, Luxembourg Branch

.....  ..

Name: 

Title: Authorized Signatory

.....  ..

Name: 

Title: Authorized Signatory

SENIOR BACKSTOP LENDER

APC HOLDINGS I, L.P.

By: Ares Management Limited, its subadvisor

By: 

Name: 

Title: Authorised signatory

SENIOR AGENT

ARES MANAGEMENT LIMITED

By: 

Name: 

Title: Authorised signatory

SECURITY AGENT

ARES MANAGEMENT LIMITED

By: 

Name: 

Title: Authorised signatory

Address: C/O Tmf Group 8th Floor, 20 Farringdon Street, London EC4A 4AB

Copy to: Ares Management Limited, 10 New Burlington Street, 6th Floor, London W1S
3BE

Attention: 

Tel: 

Email: MiddleOfficeEurope@aresmgmt.com