

EXECUTION VERSION

NATIONAL WESTMINSTER BANK PLC
AS BANK FACILITIES AGENT

ELEIA HOLDCO LIMITED
AS THE PARENT

ELEIA LIMITED
AS THE COMPANY

NATIONAL WESTMINSTER BANK PLC
AS SECURITY AGENT

THE BANK FACILITIES LENDERS

AND

OTHERS

INTERCREDITOR AGREEMENT

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THIS AGREEMENT is made on 24 August 2021 between the following parties

BETWEEN:

- (1) **NATIONAL WESTMINSTER BANK PLC** as agent under the Bank Facilities Agreement (the "**Bank Facilities Agent**");
- (2) **THE FINANCIAL INSTITUTIONS** named in Schedule 1 (*Institutions*) as lenders under the Bank Facilities Agreement together with any other lender or Affiliate of a lender under the Bank Facilities Agreement which has acceded to this Agreement in accordance with Clause 21.6 (*Creditor Accession Undertaking*) of this Agreement and (other than in the case of an Affiliate of a lender) which has also become party to the Bank Facilities Agreement as a "Lender" (the "**Bank Facilities Lenders**");
- (3) **THE FINANCIAL INSTITUTIONS** named in Schedule 1 (*Institutions*) as arrangers under the Bank Facilities Agreement (whether acting individually or together, the "**Arrangers**");
- (4) **ELEIA HOLDCO LIMITED**, a limited liability company incorporated in England and Wales with company number 13569889 and with its registered address at C/O Ancala Partners LLP King's House, 36-37 King Street, London, England, EC2V 8BB (the "**Parent**");
- (5) **ELEIA LIMITED**, a limited liability company incorporated in England and Wales with company number 13512747 and with its registered address at C/O Ancala Partners LLP King's House, 36-37 King Street, London, England, EC2V 8BB (the "**Company**");
- (6) **THE COMPANIES** named on the signing pages as "**Original Intra-Group Lenders**";
- (7) **THE COMPANIES** named on the signing pages as "**Original Guarantors**";
- (8) **THE COMPANIES** named on the signing pages as "**Original Debtors**"; and
- (9) **NATIONAL WESTMINSTER BANK PLC** as security trustee and security agent for the Secured Parties (the "**Security Agent**").

IT IS AGREED as follows

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

In this Agreement:

"**Acceleration Event**" means:

- (a) an Event of Default as defined in the Bank Facilities Agreement in respect of which notice has been served by the Bank Facilities Agent pursuant to clause 24.17 (*Acceleration*) of the Bank Facilities Agreement;
- (b) an Event of Default under any Additional Finance Document in respect of which notice has been served by the relevant Directing Representative under the

relevant Additional Finance Document or such Directing Representative has exercised any of its rights under any clause in the relevant Additional Finance Document, as the case may be, which are analogous to those set out in clause 24.17 (*Acceleration*) of the Bank Facilities Agreement; or

- (c) the acceleration of any External Creditor Liabilities as a result of the operation of paragraph (c) of Clause 3.2 (*Amendments and Waivers: External Creditors*).

"Accession Deed" means:

- (a) a deed substantially in the form set out in Schedule 4 (*Form of Accession Deed*); or
- (b) (only in the case of a member of the Group which is acceding as a borrower or guarantor under a Finance Document (other than this Agreement)) an accession document in the form required by the relevant Finance Document **provided that** it contains an accession to this Agreement which is substantially in the form set out in Schedule 5 (*Form of Creditor Accession Undertaking*).

"Accounting Principles" means generally accepted accounting principles in England, including IFRS.

"Acquisition" means the acquisition by the Company of 100 per cent. of the Target Shares pursuant to a Scheme or, as the case may be, at least 75 per cent. of the Target Shares pursuant to an Offer.

"Acquisition Closing Date" means:

- (a) where the Acquisition is implemented by way of a Scheme, the Scheme Effective Date; or
- (b) where the Acquisition is implemented by way of an Offer, the Offer Unconditional Date.

"Additional Agent" means:

- (a) each Additional Facility Agent;
- (b) each Bond Trustee/Agent;
- (c) any notes purchaser representative appointed to act for, and on behalf of, the PP Noteholders under the terms of the PP Note Documents and the PP Notes; and/or
- (d) any trustee or agent appointed to act for, and on behalf of, the PP Noteholders under the terms of the PP Note Documents and the PP Notes and, in the context of the Agent Liabilities, any fiscal, issuing, calculation or paying agent or registrar under the terms of the PP Note Documents,

in each case, which, subject to paragraph (c) of Clause 1.2 (*Construction*), has become a Party.

"Additional Creditor" means, subject to paragraph (c) of Clause 1.2 (*Construction*):

- (a) any Additional Facilities Lender where such person becomes a Creditor by executing a Creditor Accession Undertaking;
- (b) any PP Noteholder under PP Note Documents:
 - (i) represented by an agent or trustee where such agent or trustee has become a Creditor by executing a Creditor Accession Undertaking; or
 - (ii) not represented by an agent or trustee where such person has become a Creditor by executing a Creditor Accession Undertaking; and
- (c) any Bondholders under Bond Documentation represented by a Bond Trustee where such Bond Trustee has become a Creditor by executing a Creditor Accession Undertaking; or not represented by a Bond Trustee where such person becomes a Creditor by executing a Creditor Accession Undertaking.

"Additional Facilities Arranger" means any arranger under any Additional Facilities Document.

"Additional Facilities Commitment" means, in respect of a particular Additional Facilities Lender, the commitments of that Additional Facilities Lender to make a loan available to, grant credit to or make any other financial arrangement having similar effect under the relevant Additional Facilities Documents in accordance with the terms and conditions set out in those Additional Facilities Documents.

"Additional Facilities Documents" means any agreement or document governing the terms of loans made available to, credit granted to or any other financial arrangement having similar effect made to a Debtor where the Financial Indebtedness incurred under that agreement constitutes Approved Debt and excluding the Bank Finance Documents, any Bond Documentation, PP Note Document or Hedging Agreement.

"Additional Facilities Lender" means each person with a commitment to make a loan available to, grant credit to or make any other financial arrangement having similar effect under any Additional Facilities Documents.

"Additional Facilities Liabilities" means all Liabilities owed by any Debtor or the Parent to any Additional Facilities Lender under any Additional Facilities Documents.

"Additional Facility Agent" means any agent appointed under a particular set of Additional Facilities Documents by the Additional Facilities Lenders under those Additional Facilities Documents.

"Additional Finance Document Equivalent" means in relation to a provision or term of the Bank Facilities Agreement, any equivalent provision or term in the Additional Finance Documents which is similar in meaning and effect.

"Additional Finance Documents" means any Additional Facilities Documents, any PP Note Documents and/or any Bond Documentation.

"Additional Guarantor" means each person which becomes a Party as a Guarantor in accordance with Clause 21.11 (*New Debtor and/or Guarantor*), unless it has ceased to be a Guarantor in accordance with the terms of this Agreement.

"Affiliate" means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or a Subsidiary of that Holding Company. Notwithstanding the foregoing, in relation to any member of the NatWest Group, the term "Affiliate" shall not include (i) the UK government or any member or instrumentality thereof, including Her Majesty's Treasury and UK Financial Investments Limited (or any directors, officers, employees or entities thereof) or (ii) any persons or entities controlled by or under common control with the UK government or any member or instrumentality thereof (including Her Majesty's Treasury and UK Financial Investments Limited) and which are not part of NatWest Group plc and its subsidiaries or subsidiary undertakings.

"Agent" means, as the context requires, the Bank Facilities Agent and/or, as the case may be, any Additional Agent.

"Agent Liabilities" means all present and future liabilities and obligations, actual and contingent, of any Debtor or the Parent to any Creditor Representative under the Debt Documents.

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

"Agreed Security Principles" means the principles set out in Schedule 3 (*Agreed Security Principles*).

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

"Ancillary Facility" has the meaning given to the term **"Ancillary Facility"** in any Facilities Agreement.

"Ancillary Lender" means each Bank Facilities Lender (or Affiliate of a Bank Facilities Lender) or Additional Facilities Lender (or Affiliate of an Additional Facilities Lender) which in each case makes available an Ancillary Facility.

"Ancillary Outstandings" means **"Ancillary Outstandings"** under and as defined in the Bank Facilities Agreement or any equivalent term under Additional Credit Documentation.

"Announcement" means any press release made by or on behalf of the Company announcing a firm intention to implement a Scheme or, as the case may be, make an Offer, in each case in accordance with Rule 2.7 of the City Code, including any

subsequent variation, revision or replacement thereof (subject, in each case, to the conditions in clause 23.33 (*Acquisition Documents*) of the Bank Facilities Agreement).

"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.

"Approved Debt" means any Financial Indebtedness which satisfies all of the following:

- (a) on or prior to the Bank Facilities Discharge Date, constitutes **"Permitted Refinancing Indebtedness"** under, and as defined in, the Bank Facilities Agreement (in original form); and
- (b) constitutes any Financial Indebtedness of any Debtor owed to any Additional Creditor which is permitted under each of the Additional Finance Documents.

"Arranger Liabilities" means all present and future liabilities and obligations, actual and contingent, of any Debtor or the Parent to any Arranger under the Debt Documents.

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

"Authorisation" means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisisation or registration.

"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" has the meaning given to that term in the Bank Facilities Agreement or, as the case may be, any Additional Finance Document Equivalent (as applicable)

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

"Bail-In Legislation" means:

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

"Bank Facilities Agreement" means the facilities agreement made between, amongst others, the Parent, the Bank Facilities Lenders and the Bank Facilities Agent dated on or about the date of this Agreement.

"Bank Facilities Commitment" means a Commitment under and as defined in the Bank Facilities Agreement.

"Bank Facilities Discharge Date" means the first date on which all Bank Lender Liabilities have been fully and finally discharged to the satisfaction of the Bank Facilities Agent, whether or not as the result of an enforcement, and the Bank Facilities Lenders are under no further obligation to provide financial accommodation to any of the Debtors under the Bank Finance Documents.

"Bank Facilities Utilisation" means a Utilisation under and as defined in the Bank Facilities Agreement.

"Bank Finance Documents" has the meaning given to the term Finance Documents in the Bank Facilities Agreement, but excluding any Hedging Agreement.

"Bank Lender Liabilities" means the Liabilities owed by any Debtor or the Parent under the Bank Finance Documents.

"Blocking Regulation" has the meaning given to that term in the Bank Facilities Agreement or as the case may be, any Additional Finance Document Equivalent.

"Bond Documentation" means any documentation constituting or governing, either solely or amongst other things, the terms of an issuance or subscription of (including any guarantee of) bonds, notes or other public or private issue of securities by any Debtor where the Financial Indebtedness incurred under those Bonds and any other Financial Indebtedness the terms of which are governed under such documentation each constitute Approved Debt and includes any fiscal, calculation or paying agency agreement, excluding any PP Note Documents.

"Bond Trustee" means any trustee or agent appointed to act for, and on behalf of, Bondholders under the terms of the Bond Documentation relevant to those Bondholders and, in the context of Agent Liabilities, any fiscal, issuing, calculation or paying agent or registrar under the terms of that Bond Documentation.

"Bondholder Liabilities" means the Liabilities owed by any Debtor or the Parent to any Bond Trustee on behalf of the relevant Bondholders or to any Bondholder (as the case may be) under any Bond Documentation.

"Bondholders" means the holders from time to time of the Bonds.

"Bonds" means any bonds, notes or other public or private issue of securities issued under any Bond Documentation.

"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 an Arranger or a Creditor Representative (in its capacity as Arranger or, as the case may be, as Creditor Representative only and not, for the avoidance of doubt in its capacity as a Bank Facilities Lender or Additional Facilities

Lender (if applicable))) 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 or issuer under the Debt Documents).

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

"Cash" has the meaning given to that term in the Bank Facilities Agreement or any Additional Finance Document Equivalent.

"Cash Cover" means cash cover under and as defined in any Facilities Agreement or any Additional Finance Document Equivalent.

"Cash Equivalent Investments" has the meaning given to that term in the Bank Facilities Agreement or any Additional Finance Document Equivalent.

"Cash Proceeds" means:

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

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

"City Code" means the UK City Code on Takeovers and Mergers, as administered by the Takeover Panel.

"Close-Out Netting" means any step involved in determining an Early Termination Amount (as defined in the ISDA Master Agreement) under section 6(e) (Payments on Early Termination) of the ISDA Master Agreement before the application of any subsequent set-off under section 6(f) of the ISDA Master Agreement.

"Closing Date" has the meaning given to that term in the Bank Facilities Agreement.

"Commitment" means a Bank Facilities Commitment or an Additional Facilities Commitment.

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

"Common Currency" means sterling, the lawful currency for the time being of United Kingdom.

"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 in accordance with Clause 27.5 (*Voting*) on the Business Day prior to the relevant calculation.

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

- (a) is created in favour of the Security Agent as trustee or agent for itself and the other Secured Parties in respect of their Liabilities; or
- (b) in the case of any jurisdiction in which effective Security cannot be granted in favour of the Security Agent as trustee or agent for the Secured Parties is created in favour of all the Secured Parties in respect of their Liabilities and which ranks in the order of priority contemplated in Clause 2.2 (*Transaction Security*).

"Competitive Sales Process" means:

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

"Competitor" has the meaning given to that term in the Bank Facilities Agreement or, as the case may be, any Additional Finance Document Equivalent.

"Confidentiality Undertaking" means a confidentiality undertaking substantially in a recommended form of the LMA or in any other form agreed between the Company and the Security Agent (each acting reasonably).

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

"Corresponding Commitment" means, in relation to a Hedge Counterparty, its (or its Affiliate's) Commitment under the Bank Facilities Agreement as a Bank Facilities Lender or, if applicable, under the relevant Additional Finance Document as an Additional Creditor (as the case may be).

"Court" means the High Court of Justice of England and Wales.

"Court Order" means the order of the Court sanctioning the Scheme, as required by Part 26 of the Companies Act 2006, in connection with the Acquisition.

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

"Credit Related Close-Out Event" means an event or circumstance which, subject to the application of Clause 3.5 (*Standstill Period: External Creditors*), would enable a Hedge Counterparty to make a Credit Related Close-Out.

"Creditor Accession Undertaking" means:

- (a) an undertaking substantially in the form set out in Schedule 5 (*Form of Creditor Accession Undertaking*); or

- (b) a Transfer Certificate (as defined in the Bank Facilities Agreement or an Additional Finance Document) or an Assignment Agreement or an Increase Confirmation (each as defined in the Bank Facilities Agreement or an Additional Facilities Document) (**provided that** it contains an accession to this Agreement which is substantially in the form set out in Schedule 5 (*Form of Creditor Accession Undertaking*)), as the context may require.

"Creditor Group" means:

- (a) in connection with the Bank Finance Documents, the Bank Facilities Lenders, the Arrangers and the Bank Facilities Agent, taken together;
- (b) in connection with the Hedging Agreements, each Hedge Counterparty taken individually;
- (c) in connection with each set of related Bond Documentation, the Bond Trustee (if any) and each Bondholder relevant to that Bond Documentation, taken together;
- (d) in connection with a particular set of Additional Facilities Documents, any Additional Facility Agent, each Additional Facilities Arranger and each Additional Facilities Lender relevant to those Additional Facilities Documents, taken together;
- (e) in connection with each set of PP Note Documents, the PP Noteholders and any Creditor Representative in relation to those PP Note Documents; and
- (f) at the request of the Company, any combination of more than one group referred to above to which such group members have agreed, taken together.

"Creditor Representative" means:

- (a) the Bank Facilities Agent;
- (b) each Bond Trustee;
- (c) any Additional Facility Agent appointed to act for, and on behalf of, the Additional Facilities Lender under the terms of a particular set of Additional Facilities Documents; and
- (d) any trustee, agent or other representative appointed to act for, and on behalf of, the PP Noteholders under the terms of the PP Note Documents and the PP Notes and, in the context of Agent Liabilities, any fiscal, issuing, calculation or paying agent or registrar under the terms of the PP Note Documents, in each case, which, subject to paragraph (c) of Clause 1.2 (*Construction*), has become a Party pursuant to Clause 21.6 (*Creditor Accession Undertaking*).

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

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

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

"Debtor" means the Original Debtors and any member of the Group which becomes a Party as a Debtor in accordance with the terms of Clause 21 (*Changes to the Parties*).

"Debtor/Guarantor Resignation Request" means a notice substantially in the form set out in Schedule 6 (*Form of Debtor/Guarantor Resignation Request*).

"Debtors' Agent" means the Company, appointed to act on behalf of each Debtor and the Parent in relation to the Debt Documents pursuant to Clause 1.5 (*Debtors' Agent*).

"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 in relation to a Lender, a Lender which is a Defaulting Lender under, and as defined in, the Bank Facilities Agreement or any Additional Finance Document Equivalent.

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

"Directing Representative" means, in relation to a particular Creditor Group:

- (a) the Creditor Representative of that Creditor Group (acting, if applicable, on the instructions of the Requisite Majority of that Creditor Group); or
- (b) if no Creditor Representative represents that Creditor Group, either:
 - (i) each member of that Creditor Group for itself or any person appointed by such member to act on its behalf;
 - (ii) any member of that Creditor Group that has evidenced to the relevant person's satisfaction that that person is acting on the instruction of the Requisite Majority of that Creditor Group; or
 - (iii) the Requisite Majority of that Creditor Group, acting collectively,

provided that in the case of paragraph (b) above, the Requisite Majority of each Creditor Group which is not represented by a Creditor Representative shall collectively notify the Security Agent from time to time as to which of paragraphs (i), (ii) or (iii) above will constitute its **"Directing Representative"**.

"Distress Event" means any of:

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

"Distressed Debt Fund" means any trust, fund or other entity which is or would reasonably be recognised or characterised as a "**distressed debt fund**" by reputable institutions which are prominent participants in the financial markets including any person or entity (or any of its Related Funds) whose principal business or material activity is the purchase of loans or other debt securities with the intention of owning the equity or gaining control of a business (directly or indirectly). A Distressed Debt Fund shall be construed so as to include the debt trading desk (or equivalent) operated by a bank or financial institution, where that trading desk would be engaging in trading for or on behalf of an entity which itself constitutes a Distressed Debt Fund.

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

- (a) being effected at the request of the Instructing Group in circumstances where the Transaction Security has become enforceable in accordance with the relevant Transaction Security Document and this Agreement;
- (b) being effected by enforcement of the Transaction Security (including, without limitation, the disposal of any Property of a member of the Group or of the Parent); or
- (c) being effected, after the occurrence of a Distress Event, by a Debtor or the Parent to a person or persons which is, or are, not a member, or members, of the Group.

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

"Enforcement Action" means:

- (a) in relation to any Liabilities:
 - (i) the acceleration of any Liabilities or the making of any declaration that any Liabilities are prematurely due and payable (other than as a result of it becoming unlawful for the relevant External Creditor to perform its obligations under, or of any voluntary or mandatory prepayment or redemption arising under, the relevant Debt Documents);
 - (ii) the making of any declaration that any Liabilities which were not previously payable on demand have become payable on demand;
 - (iii) the making of a demand in relation to a Liability that is payable on demand (other than a Permitted Payment or where such demand is made by a member of the Group in respect of any Intra-Group Liabilities to the extent that: (A) the demand is made in the ordinary course of

- dealings between the relevant Debtor and Intra-Group Lender; or (B) any resulting Payment would be a Permitted Intra-Group Payment);
- (iv) the making of any demand against any member of the Group or the Parent in relation to any Guarantee Liabilities of that member of the Group or the Parent (as applicable);
 - (v) the exercise of any right to require any member of the Group or the Parent to acquire any Liability;
 - (vi) the exercise of any right of set-off, account combination or payment netting against any member of the Group or the Parent in respect of any Liabilities other than the exercise of any such right:
 - (A) as Close-Out Netting by a Hedge Counterparty or by a Hedging Ancillary Lender;
 - (B) as Payment Netting by a Hedge Counterparty or by a Hedging Ancillary Lender;
 - (C) as Inter-Hedging Agreement Netting by a Hedge Counterparty;
 - (D) as Inter-Hedging Ancillary Document Netting by a Hedging Ancillary Lender; or
 - (E) which is otherwise expressly permitted under the relevant Secured Debt Documents to the extent that the exercise of that right gives effect to a Permitted Payment; and
 - (vii) the suing for, commencing or joining of any legal or arbitration proceedings against any member of the Group or the Parent to recover any Liabilities;
- (b) the premature termination or close-out of any hedging transaction under any Hedging Agreement (other than a Non-Credit Related Close-Out);
 - (c) Security Enforcement Action;
 - (d) the entering into of any composition, compromise, assignment or arrangement with any member of the Group or the Parent which owes any Liabilities, or has given any Security, guarantee or indemnity or other assurance against loss in respect of the Liabilities (other than any action permitted under Clause 21 (*Changes to the Parties*)); or
 - (e) the petitioning, applying or voting for, or the taking of any steps (including the appointment of any liquidator, receiver, administrator or similar officer) in relation to the winding-up, dissolution or administration or reorganisation of any member of the Group or the Parent which owes any Liabilities, or has given any Security, guarantee, indemnity or other assurance against loss in respect of any of the Liabilities, or any of such member of the Group's or the Parent's assets or any suspension of payments or moratorium of any indebtedness of any such

member of the Group or the Parent, or any analogous procedure or step in any jurisdiction, except that the following shall not constitute Enforcement Action:

- (i) the taking of any action falling within paragraphs (a)(vii) or (e) above which is necessary (but only to the extent necessary) to preserve the validity, existence or priority of claims in respect of Liabilities, including the registration of such claims before any court or governmental authority and the bringing, supporting or joining of proceedings to prevent any loss of the right to bring, support or join proceedings by reason of applicable limitation periods; and
- (ii) an External Creditor bringing legal proceedings against any person solely for the purpose of:
 - (A) obtaining injunctive relief (or any analogous remedy outside England and Wales) to restrain any actual or putative breach of any 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.

"Enforcement Notice" has the meaning given to it in Clause 24.3 (*Notification of prescribed events*).

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

"Event of Default" means an event of default (however described) in a Debt Document.

"Exposure" has the meaning given to it in Clause 17 (*Equalisation*).

"External Credit Participation" means, in relation to an External Creditor:

- (a) in relation to a Facilities Agreement:
 - (i) prior to any Security Enforcement Action, its aggregate Commitments under the relevant Facilities Agreement; and
 - (ii) at any time following any Security Enforcement Action, its aggregate participation in any loans outstanding under that Facilities Agreement (including, if applicable, any make-whole amount or otherwise);
- (b) in relation to any PP Notes or any Bond Documentation, its aggregate principal amounts outstanding under any PP Notes or, as relevant, any Bond Documentation (including, if applicable, any make-whole amount); and
- (c) in respect of any hedging transaction of that External Creditor under any Hedging Agreement which has, as of the date the calculation is made, been

terminated or closed out in compliance with the terms of this Agreement, the amount, if any, payable to it under any Hedging Agreement in respect of that termination or close-out as of the date of termination or close-out to the extent that amount is unpaid (that amount to be certified by the relevant Hedge Counterparty and as calculated in accordance with the relevant Hedging Agreement) (its "**Closed Out Liabilities**").

"**External Creditor Liabilities**" means the Agent Liabilities, the Arranger Liabilities, the Bank Lender Liabilities, the Bondholder Liabilities, the Additional Facilities Liabilities, the PP Liabilities and the Hedging Liabilities.

"**External Creditors**" means the Bank Facilities Lenders, the Additional Creditors, the Creditor Representatives, the Arrangers, the Additional Facilities Arrangers and the Hedge Counterparties.

"**Facilities Agreement**" means, as the context requires, the Bank Facilities Agreement or any Additional Facilities Documents.

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

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

- (a) all External Creditor Liabilities have been fully and finally discharged to the satisfaction of the Bank Facilities Agent (in the case of the Bank Lender Liabilities), each Bond Trustee or, where there is no Bond Trustee in relation to a particular set of Bond Documentation, the relevant Bondholders (in the case of the Bondholder Liabilities), each Additional Facility Agent or, if none, the Additional Facilities Lenders (in the case of any Additional Facilities Liabilities), each PP Noteholder (in the case of the PP Liabilities), each Hedge Counterparty (in the case of its Hedging Liabilities), each Creditor Representative (in the case of any Agent Liabilities) and each Arranger (in the case of its Arranger Liabilities) whether or not as the result of an enforcement; and
- (b) the External Creditors are under no further obligation to provide financial accommodation to any of the Debtors under the Debt Documents.

"**Finance Documents**" means the Bank Finance Documents and the Additional Finance Documents.

"**Finance Lease**" has the meaning given to that term in the Bank Facilities Agreement or, as the case may be, any Additional Finance Document Equivalent.

"**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.

"Financial Indebtedness" means (without double counting) any indebtedness for or in respect of:

- (a) moneys borrowed and debit balances at banks or other financial institutions;
- (b) any acceptance under any acceptance credit or bill discounting facility (or dematerialised equivalent);
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument (other than pursuant to any Trade Instrument);
- (d) the amount of any liability in respect of Finance Leases;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis (other than to an Investor) or where recourse is limited to customary warranties and indemnities);
- (f) any Treasury Transaction **provided that** when calculating the value of that Treasury Transaction:
 - (i) only the marked to market value; or
 - (ii) if, taking into account any netting arrangements, any actual amount is due as a result of the termination or close out of that Treasury Transaction, that amount,

shall be taken into account;

- (g) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution in respect of an underlying liability (but not, in any case, Trade Instruments) of an entity which is not a member of the Group which liability would fall within one of the other paragraphs of this definition;
- (h) any amount raised by the issue of shares which are redeemable (other than at the option of the issuer) before the Final Discharge Date or are otherwise classified as borrowings under the Accounting Principles (excluding the effect of IFRS 16 or any adoption of IFRS 16 principles by IFRS 102 and any successor standard thereto, or any equivalent measure under any other generally accepted accounting standards);
- (i) any amount of any liability under an advance or deferred purchase agreement if:
 - (i) one of the primary reasons behind entering into the agreement is to raise finance or to finance the acquisition or construction of the asset or service in question; or

- (ii) the agreement is in respect of the supply of assets or services and payment is due more than 180 days after the date of supply;
- (j) any amount raised under any other transaction (including any forward sale or purchase agreement, sale and sale back or sale and leaseback agreement) having the commercial effect of a borrowing or otherwise classified as borrowings under the Accounting Principles (excluding the effect of IFRS 16 or any adoption of IFRS 16 principles by IFRS 102 and any successor standard thereto, or any equivalent measure under any other generally accepted accounting standards); and
- (k) the amount of any liability in respect of any guarantee for any of the items referred to in the paragraphs above.

"**Fitch**" means Fitch Ratings Limited or any successor to its ratings business.

"**Gross Outstandings**" has the meaning given to that term in the Bank Facilities Agreement or, as the case may be, any Additional Finance Document Equivalent.

"**Group**" means the Company and each of its Subsidiaries from time to time and following the Acquisition Closing Date, the Target Group. A "**member of the Group**" shall be construed accordingly.

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

"**Guarantor**" means the Original Guarantor and each Additional Guarantor.

"**Hedge Counterparty**" means any person which becomes a Party as a Hedge Counterparty pursuant to Clause 21.6 (*Creditor Accession Undertaking*).

"**Hedge Fund**" means a pooled investment vehicle or similar entity (including any Related Funds) that is or would reasonably be recognised or categorised as a "hedge fund" by reputable institutions which are prominent participants in the financial markets. Hedge Fund shall be construed so as to include "vulture funds" and any pass-through or structured finance vehicles, in whatever legal form, which are used by a Hedge Fund as part of structuring an investment.

"**Hedging Agreement**" means any master agreement, confirmation, schedule or other agreement (which may take the form of a novation agreement or confirmation evidencing the novation of any (or part of any) transaction) maintained, entered into or to be entered into by a member of the Group and a Hedge Counterparty for the purpose of hedging interest rate liabilities with respect to Secured Obligations under the Bank Facilities Agreement or any Additional Finance Document which, at the time that master agreement, confirmation, schedule or other agreement (as the case may be) is entered into, the Finance Documents require or permit to be hedged.

"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) an Illegality or Tax Event, Tax Event Upon Merger (each as defined in the ISDA Master Agreement); or
- (b) a Force Majeure Event as defined in the ISDA Master Agreement.

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

"Holding Company" means, in relation to a person, any other person in respect of which it is a Subsidiary.

"Initial Investors" means Ancala Partners LLP, Fiera Infrastructure Inc., Ancala Infrastructure Fund II SCSp (including via its general partner), EagleCrest EFW Limited and each of their respective affiliates, related trusts and partnerships and any funds (including via its general partner), limited partnerships or other entities directly or indirectly controlled, managed and/or advised by Ancala Partners LLP, Fiera Infrastructure Inc. or any of their respective affiliates.

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

- (a) any resolution is passed or order made for the winding-up, dissolution, administration or reorganisation of that Debtor or the Parent, a moratorium is declared in relation to any indebtedness of that Debtor or the Parent (as applicable) or an administrator is appointed to that Debtor or the Parent (as applicable);
- (b) any composition, compromise, assignment, assignation, trust deed 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 the Parent or any of their respective assets; or
- (d) any analogous procedure or step is taken in any jurisdiction.

"Instructing Group" means at any time:

- (a) in relation to an Ordinary Decision, the Simple Majority External Creditors; and
- (b) in relation to a Special Decision, the Majority External Creditors.

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

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

"Interest Rate Hedged Outstandings" means the aggregate of all principal amounts outstanding under a Term Facility (as such term is defined in the Bank Facilities Agreement or any Additional Finance Document Equivalent) from time to time and any other Approved Debt excluding (i) the aggregate of all such principal amounts issued or incurred on a fixed rate basis; and (ii) the aggregate of all such principal amounts under any revolving or re-drawable facility.

"Interest Rate Hedging Transaction" means any derivative transaction entered into by a member of the Group and a Hedge Counterparty for the purpose of hedging interest rate liabilities with respect to Secured Obligations under the Bank Facilities Agreement or any Additional Finance Document.

"Interest Rate Overhedging Event" has the meaning given in Clause 4.13 (*Hedging Amount*).

"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 Bank Lender Liabilities owed to that Hedging Ancillary Lender by that Debtor under another Hedging Ancillary Document.

"Intra-Group Lenders" means each member of the Group which has made a loan available to, granted credit to or made any other financial arrangement having similar effect with another member of the Group and which becomes a Party as an Intra-Group Lender in accordance with the terms of Clause 21 (*Changes to the Parties*).

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

"Investor" means the Initial Investors and any of its subsequent successors or assignees or transferees.

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

"Legal Reservations" means:

- (a) the principle that certain remedies may be granted or refused at the discretion of the court, the limitation of enforcement by laws relating to bankruptcy, insolvency, liquidation, reorganisation, court schemes, moratoria, administration and other laws generally affecting the rights of creditors and secured creditors;
- (b) the time barring of claims under applicable limitation laws and defences of acquiescence, set off or counterclaim and the possibility that an undertaking to assume liability for or to indemnify a person against non-payment of stamp duty may be void;
- (c) the principle that in certain circumstances Security granted by way of fixed charge may be re-characterised as a floating charge or that Security purported to be constituted as an assignment may be re-characterised as a charge;
- (d) the principle that additional interest imposed pursuant to any relevant agreement may be held to be unenforceable on the grounds that it is a penalty and thus void;
- (e) the principle that a court may not give effect to an indemnity for legal costs incurred by an unsuccessful litigant;
- (f) the principle that the creation or purported creation of Security over any contract or agreement which is subject to a prohibition on transfer, assignment or charging may be void, ineffective or invalid and may give rise to a breach of the contract or agreement over which Security has purportedly been created;
- (g) the principle that a court may not give effect to any parallel debt provisions, covenants to pay the Security Agent or other similar provisions;
- (h) similar principles, rights and defences under the laws of any Relevant Jurisdiction referred to in paragraphs (a) to (g) (inclusive) above of this definition;
- (i) the principles of private and procedural laws of the Relevant Jurisdiction which affect the enforcement of a foreign court judgment; and
- (j) any other matters which are set out as qualifications or reservations (however described) as to matters of law in any relevant legal opinion delivered in connection with the Secured Debt Documents.

"Lender Approved List" has the meaning given to that term in the Bank Facilities Agreement or any Additional Finance Document Equivalent.

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

- (a) any refinancing, novation, deferral or extension;

- (b) any claim for breach of representation, warranty or undertaking or on an event of default or termination event or under any indemnity given under or in connection with any document or agreement evidencing or constituting any other liability or obligation falling within this definition;
- (c) any claim for damages or restitution; and
- (d) any claim as a result of any recovery by any Debtor or the Parent of a Payment on the grounds of preference or otherwise, and any amounts which would be included in any of the above but for any discharge, non-provability, unenforceability or non-allowance of those amounts in any insolvency or other proceedings.

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

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

the rights 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*).

"Lock-Up Account" has the meaning given to that term in the Bank Facilities Agreement or any Additional Finance Document Equivalent.

"Majority External Creditors" means those External Creditors whose aggregate External Credit Participations at that time are 66 $\frac{2}{3}$ per cent. or more of the total aggregate External Credit Participations of those External Creditors who voted in respect of the relevant Special Decision (the **"Special Decision Participating Creditors"**), **provided that** during the period from and including the date on which voting in respect of the relevant Special Decision commences (the **"Special Decision Commencement Date"**) until but excluding the date which is 60 Business Days after the Special Decision Commencement Date, a Special Decision shall not be passed unless the relevant quorum set out in paragraphs (a), (b), (c) or (d) below has been met, such quorum being that:

- (a) during the period from and including the Special Decision Commencement Date until but excluding the date which is 20 Business Days after the Special Decision Commencement Date, the External Credit Participations of the Special Decision Participating Creditors aggregate 75 per cent. or more of the total External Credit Participations;
- (b) during the period from and including the date which is 20 Business Days after the Special Decision Commencement Date to but excluding the date which is 40 Business Days after the Special Decision Commencement Date, the External

Credit Participations of the Special Decision Participating Creditors aggregate 66⅔ per cent. or more of the total External Credit Participations; and

- (c) during the period from and including the date which is 40 Business Days after the Special Decision Commencement Date to but excluding the date which is 60 Business Days after the Special Decision Commencement Date, the External Credit Participations of the Special Decision Participating Creditors aggregate 50 per cent. or more of the total External Credit Participations; and
- (d) if from and after the date that is 60 Business Days after the Special Decision Commencement Date, the quorum has still not been met, there is no longer any such quorum requirement.

"Make-Whole Amount" means any make-whole amount or prepayment premium (howsoever defined in the relevant Debt Document) above par (other than in respect of accrued interest, break costs, costs, expenses and indemnities) which is payable upon redemption or repayment under any Debt Document.

"Mandatory Prepayment" means a mandatory prepayment or mandatory redemption of any External Creditor Liabilities pursuant to:

- (a) clause 9 (*Mandatory Prepayment*) of the Bank Facilities Agreement; and
- (b) equivalent clauses pursuant to any other Debt Document (other than a Hedging Agreement).

"Material Adverse Effect" has the meaning given to that term in the Bank Facilities Agreement or any Additional Finance Document Equivalent.

"Money Laundering Laws" means, in respect of the Parent, financial record keeping and reporting requirements and money laundering statutes applicable to it, rules and regulations thereunder and any related or similar rules or regulations, issued, administered or enforced by any governmental agency, in each case, in relation to which the Parent is obliged to comply.

"Moody's" means Moody's Investor Service Limited or any successor to its ratings business.

"MTM Liabilities" means in respect of any hedging transactions of a Hedge Counterparty under any Hedging Agreement that has, as of the date the calculation is made, not been terminated or closed out, the amount, if any, which would be payable to it under that Hedging Agreement in respect of those hedging transactions, if the date on which the calculation is made was deemed to be an Early Termination Date (as defined in the ISDA Master Agreement) for which the relevant Debtor is the Defaulting Party (as defined in the ISDA Master Agreement), as calculated in accordance with the relevant Hedging Agreement and after taking into account the net effect of any Offsetting Swap, **provided that** in relation to any consent or waiver being requested of a Hedge Counterparty under this Agreement, the date of calculation referred to above shall be the date of the relevant request for consent or waiver and, in relation to the determination of the Exposure of a Hedge Counterparty, the date of calculation referred to above shall be the Enforcement Date.

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

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

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

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

"Non-Cash Recoveries" means:

- (a) any proceeds of a Distressed Disposal or a Debt Disposal;
- (b) any shares in the capital of a member of the Group received by the Security Agent as a result of an Appropriation; or
- (c) any amount distributed to the Security Agent pursuant to Clause 8.1 (*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)(D) to (a)(i)(O) (inclusive) and (a)(ii)(E) to (a)(ii)(J) (inclusive) of Clause 4.9 (*Permitted Enforcement: Hedge Counterparties*).

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

"Offer" means an offer proposed to be made by the Company to acquire all of the Target Shares not already held by it, substantially on the terms set out in an Offer Document as such offer may from time to time be amended, added to, revised, renewed or waived as permitted in accordance with this Agreement.

"Offer Document" means the applicable Announcement and the offer documents dispatched to the shareholders of the Target setting out the terms and conditions of an Offer and otherwise made available to such persons and in the manner required by Rule 24.1 of the Takeover Code.

"Offer Unconditional Date" means the date on which the Offer becomes or is declared to be unconditional in all respects in accordance with its terms.

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

"Ordinary Decision" means any instruction, amendment, waiver or consent in relation to this Agreement or the Transaction Security, which is not a Special Decision.

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

"Outstanding Tax Claims" means any amounts paid by way of landfill tax (including interest and penalties thereon) that may be paid or repaid to the Target or any member of the Target Group in consequence of:¹

- (a) the appeals of the Target or its subsidiaries in relation to landfill tax, including without limitation the appeals of Augean North Limited and Augean South Limited proceeding before the First Tier Tribunal with case reference numbers TC/2018/07241, TC/2019/05264, TC/2019/01281, TC/2020/03692, TC/2021/00631 and TC/2021/02366; and
- (b) the requests for review of assessments or any subsequent appeals that may be made by the Target or its subsidiaries in respect of any assessment for landfill tax received by the Target or its subsidiaries as at the date of the Announcement, to the extent it has been paid by the Target or any member of the Target Group prior to the date of the Announcement, including without limitation the assessments dated 27 October 2017, 29 January 2018, 27 April 2018, 30 July 2018, 24 August 2017, 24 November 2017, 28 February 2018, 30 May 2018 and 31 August 2018 which are under review by HMRC; and
- (c) any claim for repayment interest payable by HMRC, for repayment of penalties or for recovery of costs in connection with the matters referred to in paragraphs (a) and (b) above.

"Parent Group" means the Parent and each of its Subsidiaries from time to time.

"Parent Liabilities" means all Liabilities owed by the Company to the Parent.

"Party" means a party to this Agreement.

"Payment" means, in respect of any Liabilities (or any other liabilities or obligations), a payment, prepayment, repayment, redemption, defeasance or discharge (whether by way of set-off or otherwise) of those Liabilities (or other liabilities or obligations).

"Payment Netting" means netting under section 2(c) of the ISDA Master Agreement.

"Permitted External Creditor Payment" means the Payments permitted by Clause 3.1 (*Payment of External Creditor Liabilities*).

"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*).

¹ Note: to be aligned with SFA.

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

"Permitted Parent Payments" means the Payments permitted by Clause 6.3 (*Permitted Payments: Parent Liabilities*).

"Permitted Payment" means a Permitted External Creditor Payment, a Permitted Hedge Payment, a Permitted Intra-Group Payment or a Permitted Parent Payment.

"Permitted Refinancing Indebtedness" has the meaning given to the term Permitted Refinancing Indebtedness in the Bank Facilities Agreement (in original form).

"PP Liabilities" means all Liabilities owed by any Debtor or the Parent to any PP Noteholder.

"PP Note Documents" means, in relation to any PP Notes, the relevant note purchase agreement and other legal documentation entered into by the relevant Debtor and PP Noteholders in relation to those PP Notes, where the Financial Indebtedness incurred under those documents constitutes Approved Debt.

"PP Noteholders" means the holders of any PP Notes under any PP Note Documents.

"PP Notes" means any private placement notes.

"Property of a member of the Group or of the Parent" means:

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

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

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

"Related Fund" has the meaning given to that term in the Bank Facilities Agreement or, as the case may be, any Additional Finance Document Equivalent.

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

"Relevant Jurisdiction" means, in relation to a Debtor or the Parent, as applicable:

- (a) its jurisdiction of incorporation or establishment;
- (b) any jurisdiction where any asset subject to or intended to be subject to the Transaction Security to be created by it is situated;
- (c) any jurisdiction where it conducts its business (and for these purposes the holding of an interest in a Subsidiary shall not be deemed to constitute

conducting business in the jurisdiction of incorporation or establishment of that Subsidiary); and

- (d) the jurisdiction whose laws govern the perfection of any of the Transaction Security Documents entered into by it.

"Relevant Liabilities" means:

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

"Requisite Majority" means, in relation to any request, proposal, vote or instruction to be voted on under this Agreement, External Creditors whose External Credit Participations in respect of a Debt Document are sufficient to approve the relevant request, proposal, vote or instruction in accordance with the terms of such Debt Document (the **"Debt Document Majority"**) or, if no Debt Document Majority is specified in the relevant Debt Document:

- (a) subject to Clause 27.8 (*Disenfranchisement of Defaulting Lenders and Defaulting Noteholders*), in relation to a Facilities Agreement, the Lenders whose External Credit Participations aggregate 66⅔ per cent. or more of the External Credit Participations in respect of the relevant Facilities Agreement;
- (b) in relation to any other Debt Document, External Creditors whose External Credit Participations aggregate 50 per cent. or more of the External Credit Participations in respect of the relevant Debt Document.

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

"Restricted Party" means a person that is:

- (a) listed on, or owned or controlled by (directly or indirectly), or acting on behalf of, at the direction or for the benefit of, a person listed on, a Sanctions List;
- (b) located in or organised under the laws of a country or territory that is a Sanctioned Country, or a person who is owned or controlled by (directly or indirectly), or acting on behalf of, at the direction or for the benefit of, such person or whose government is the subject of country-wide or territory-wide Sanctions;
- (c) a member of the government of a Sanctioned Country; or

(d) otherwise a subject of Sanctions.

"Ringfenced Account" means any bank account opened or to be opened by the Company in connection with the payment of the Target Shareholder Tax Claim Proceeds (if any) to the Target Shareholders.

"Standard and Poor's" means Standard and Poor's Rating Services.

"Sanctioned Country" means any country or portion thereof which is subject to countrywide or territory-wide Sanctions including any jurisdiction which any Agent or the Security Agent has notified to the Company in writing from time to time is a prohibited or restricted jurisdiction or territory which, as at this date, includes the (i) Islamic Republic of Iran, (ii) Democratic People's Republic of Korea, (iii) Republic of Cuba, (iv) the Syrian Arab Republic, (v) Crimea, (vi) Sudan, and (vii) South Sudan.

"Sanctions" means any trade, economic or financial sanctions laws, regulations, embargoes or restrictive measures administered, enacted or enforced by a Sanctions Authority.

"Sanctions Authority" means:

- (a) the United Nations;
- (b) the United States of America;
- (c) the European Union (or any member state thereof);
- (d) the United Kingdom; and
- (e) the governments and official institutions or agencies of any of paragraphs (a) to (d) above, including OFAC, the US Department of State and Her Majesty's Treasury.

"Sanctions List" means the Specially Designated Nationals and Blocked Persons list maintained by OFAC, the Consolidated List of Financial Sanctions Targets and the Investment Ban List maintained by Her Majesty's Treasury, the consolidated list of persons, groups or entities subject to European Union sanctions administered by the European External Action Service or any similar list maintained by, or public announcement of a Sanctions designation made by, a Sanctions Authority, each as amended, supplemented or substituted from time to time.

"Scheme" means the scheme of arrangement under Part 26 of the Companies Act 2006 proposed by the Target to its shareholders in connection with the Acquisition substantially on the terms set out in the applicable Announcement, as such scheme may from time to time be amended, added to, revised, renewed or waived, as permitted in accordance with this Agreement.

"Scheme Effective Date" means the date on which the Court Order is duly delivered on behalf of the Target to the Registrar of Companies in accordance with section 899 of the Companies Act 2006.

"Secured Debt Documents" means each of this Agreement, the Finance Documents, the Hedging Agreements, the Security Documents and any other document designated as such by the Security Agent and the Debtors' Agent.

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

"Secured Parties" means the Security Agent, any Receiver or Delegate and each of the External Creditors from time to time but, in the case of each External Creditor, only if it (or the relevant Creditor Representative) is a Party or has (or the relevant Creditor Representative has) acceded to this Agreement, in the appropriate capacity, pursuant to Clause 21.6 (*Creditor Accession Undertaking*).

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

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

- (a) the Security Agent's spot rate of exchange; or
- (b) (if the Security Agent does not have an available spot rate of exchange) any other publicly available spot rate of exchange selected by the Security Agent (acting reasonably), for the purchase of the Second Currency with the First Currency in the London foreign exchange market at or about 11.00am (London time) on a particular day, which shall, in either case, be notified by the Security Agent in accordance with paragraph (e) of Clause 19.3 (*Duties of the Security Agent*).

"Security Documents" means:

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

"Security Enforcement Action" means 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).

"Security Property" means:

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

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

"Special Decision" means any instruction to the Security Agent to take Security Enforcement Action (including any action described in paragraph (a) of the definition of Distressed Disposal) or any amendment, waiver or consent relating to:

- (a) resignation of the Security Agent pursuant to paragraph (g) of Clause 19.11 (*Resignation of the Security Agent*);
- (b) termination of the Standstill Period in accordance with paragraph (c)(iii) of Clause 3.5 (*Standstill Period: External Creditors*); or
- (c) any matter relating to the definition of or use of Approved Debt other than any definition of "Permitted Refinancing Indebtedness" used in such definition under the Bank Facilities Agreement or any Additional Finance Document, which notwithstanding anything to the contrary in this Agreement, shall only be amended or waived in accordance with the terms of the relevant Secured Debt Document.

"Sponsor Affiliate" means each Investor, each of its Affiliates, any trust of which an Investor or any of its Affiliates is a trustee, any partnership of which an Investor or any of its Affiliates is a partner and any trust, fund or other entity which is managed by, or is under the control of, an Investor or any of its Affiliates **provided that** any such trust, fund or other entity which has been established for at least 6 months solely for the purpose of making, purchasing or investing in loans or debt securities and which is managed or controlled independently from all other trusts, funds or other entities managed or controlled by an Investor or any of its Affiliates which have been

established for the primary or main purpose of investing in the share capital of companies shall not constitute a Sponsor Affiliate.

"Standstill Period" is as defined in Clause 3.5 (*Standstill Period: External Creditors*).

"Standstill Termination Event" is as defined in Clause 3.5 (*Standstill Period: External Creditors*).

"Subsidiary" means:

- (a) a subsidiary within the meaning of section 1162 of the Companies Act 2006; and
- (b) otherwise, a subsidiary undertaking within the meaning of section 1159 of the Companies Act 2006.

"Target" means Augean plc.

"Target Group" means the Target and its Subsidiaries from time to time.

"Target Shares" means the entire issued and to be issued share capital of the Target.

"Target Shareholder" means a holder of shares in the Target prior to the Acquisition Closing Date.

"Target Shareholder Tax Claim Proceeds" means, if applicable, such amount of the cash proceeds (including without limitation any repayment of landfill tax, repayment interest, repayment of penalties or recovery of costs) received by the Target or any member of the Target Group after the date of the Announcement pursuant to a final determination of any proceedings or other matter forming part of the Outstanding Tax Claims that the Target has agreed to pay to Target Shareholders pursuant to the Announcement.

"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).

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

"Trade Instruments" means any performance bonds, advance payment bonds or documentary letters of credit issued in respect of the obligations of any member of the Group arising in the ordinary course of trading of that member of the Group.

"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 any Secured Debt Document.

"Treasury Transactions" means any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price.

"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).

"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 paragraph (a) or (b) above, or imposed elsewhere.

"Write-down and Conversion Powers" means:

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

1.2 Construction

- (a) Unless a contrary indication appears, a reference in this Agreement to:
- (i) any "**Additional Creditor**", "**Additional Facility Agent**", "**Additional Facilities Lender**", "**Ancillary Lender**", "**Arranger**", "**Bank Facilities Agent**", "**Bank Facilities Lender**", "**Bondholder**", "**Bond Trustee**", "**Company**"; "**Creditor**", "**Creditor Representative**", "**Debtor**", "**Delegate**", "**Directing Representative**", "**External Creditor**", "**Financial Adviser**", "**Guarantor**", "**Hedge Counterparty**", "**Intra-Group Lender**", "**Parent**" "**Party**", "**PP Noteholder**", "**Receiver**", "**Sponsor Affiliate**", "**Security Agent**" or any other person,
 - (A) shall be construed to be a reference to it in its capacity as such and not in any other capacity; and
 - (B) shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Debt Documents and, in the case of the Security Agent, any person for the time being appointed as Security Agent in accordance with this Agreement;
 - (ii) an amount includes an amount of cash and an amount of Non-Cash Consideration;
 - (iii) assets includes present and future properties, revenues and rights of every description;
 - (iv) in the context of a particular Debt Document, a Default or an Event of Default continuing shall have the meaning given to it under that Debt Document;
 - (v) a Debt Document or any other agreement or instrument is (other than a reference to a "**Debt Document**" or any other agreement or instrument in "**original form**") a reference to that Debt Document, or other agreement or instrument, as amended, novated, supplemented, extended or restated (however fundamentally and whether or not more onerously) or replaced and includes any change in the purpose of, any extension of or any increase in any facility under as permitted by this Agreement;
 - (vi) a "**distribution**" of or out of the assets of a member of the Parent 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 the Parent by the Security Agent;
 - (viii) a "**group of Creditors**" includes all the Creditors and a "**group of External Creditors**" includes all the External Creditors or, as the case may be, all of the External Creditors of a Creditor Group;

- (ix) "**indebtedness**" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
 - (x) the "**original form**" of a "**Debt Document**" or any other agreement or instrument is a reference to that Debt Document, agreement or instrument as originally entered into;
 - (xi) a "**person**" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
 - (xii) "**proceeds**" of a Distressed Disposal or of a Debt Disposal includes proceeds in cash and in Non-Cash Consideration;
 - (xiii) a "**regulation**" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but, if not having the force of law, being of a type with which it is the customary practice of the relevant person to comply) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
 - (xiv) "**GBP**", "**£**" and "**sterling**" denotes the lawful currency of the United Kingdom;
 - (xv) a provision of law is a reference to that provision as amended or re-enacted;
 - (xvi) a time of day is a reference to London time;
 - (xvii) release shall, to the extent it relates to assets located in Scotland or otherwise governed by Scots law, be construed to also refer to retrocess;
 - (xviii) stamp duty shall, to the extent it relates to assets located in Scotland or otherwise governed by Scots law, be construed to refer to any analogous Tax in Scotland (including land and buildings transaction tax); and
 - (xix) assignment shall, to the extent it relates to Scottish assets or assets governed by Scots law, be construed to refer to assignation.
- (b) section, clause and schedule headings are for ease of reference only.
- (c) If all of the Liabilities under any Debt Document owing to a particular Creditor or Creditor Group have been unconditionally and irrevocably paid and discharged in full and all commitments of those Creditors to provide for Liabilities under those Debt Documents have been terminated in full, then unless the context otherwise requires:
- (i) the relevant Debt Documents will cease to be Debt Documents for the purposes of this Agreement; and

- (ii) the relevant Creditors will cease to be Creditors for all purposes under this Agreement and shall no longer be deemed to be a Party.

1.3 Interpretation

Any reference to the Security Agent acting "**reasonably**" or in the reasonable opinion of the Security Agent shall not constrain the instructions that may be provided to the Security Agent in accordance with Clause 19.2 (*Instructions*) of this Agreement and the Security Agent shall not be responsible for any consequences in acting or refraining from acting in accordance therewith.

1.4 Third party rights

- (a) Unless expressly provided to the contrary in this Agreement, a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 or the Contract (Third Party Rights) (Scotland) Act 2017 (the "**Third Parties Rights Acts**") to enforce or to enjoy the benefit of any term of this Agreement.
- (b) Notwithstanding any term of this Agreement, the consent of any person who is not a Party is not required to rescind or vary this Agreement at any time.
- (c) Any Receiver, Delegate or any other person described in paragraph (b) of Clause 19.10 (*Exclusion of liability*) may, subject to this Clause 1.4 and the Third Parties Rights Acts, rely on any Clause of this Agreement which expressly confers rights on it.
- (d) The Third Parties Rights Acts shall apply to this Agreement in respect of any Bondholder which by holding a Bond has effectively agreed to be bound by the provisions of this Agreement and such Bondholder will be deemed to receive the benefits of the terms of this Agreement, and will be subject to the terms and conditions of this Agreement, as if it was a Party hereto.

1.5 Debtors' Agent

- (a) Notwithstanding any provision to the contrary in any Debt Document, the Parent and each Debtor (other than the Company) by its execution of this Agreement or an Accession Deed irrevocably appoints the Company (acting through one or more authorised signatories) to act on its behalf as its agent in relation to the Debt Documents and irrevocably authorises:
 - (i) the Company on its behalf to supply all information concerning itself contemplated by this Agreement to the External Creditors and to give all notices and instructions, to make such agreements and to effect the relevant amendments, supplements and variations capable of being given, made or effected by the Parent or any Debtor notwithstanding that they may affect the Parent or the Debtor, without further reference to or the consent of the Parent or that Debtor (as applicable); and
 - (ii) each External Creditor to give any notice, demand or other communication to the Parent or that Debtor (as applicable) pursuant to the Debt Documents to the Company,

and in each case the Parent and a Debtor shall be bound as though the Parent and that Debtor (as applicable) itself had given the notices and instructions or executed or made the agreements or effected the amendments, supplements or variations, or received the relevant notice, demand or other communication.

- (b) Every act, omission, agreement, undertaking, settlement, waiver, amendment, supplement, variation, notice or other communication given or made by the Debtors' Agent or given to the Debtors' Agent under any Debt Document on behalf of another Debtor or the Parent or in connection with any Debt Document (whether or not known to any other Debtor, or the Parent and whether occurring before or after such other Debtor or the Parent became a party to any Debt Document) shall, notwithstanding any provision of any Debt Document to the contrary, be binding for all purposes on the Parent and that Debtor as if the Parent or that Debtor had expressly made, given or concurred with it. In the event of any conflict between any notices or other communications of the Debtors' Agent and any other Debtor or the Parent, those of the Debtors' Agent shall prevail.

1.6 **Security Agent**

Any reference in this Agreement or any other Finance Document to (i) the Security Agent acting reasonably, (ii) a matter being in the reasonable opinion of the Security Agent, (iii) the Security Agent's approval or consent not being unreasonably withheld or delayed or (iv) any document, report, confirmation or evidence being required to be reasonably satisfactory to the Security Agent, are to be construed, unless otherwise specified in this Agreement or such other relevant Finance Document, as a reference to the Security Agent acting on the instructions of the Instructing Group (or, if the relevant Finance Document stipulates the matter is a decision for any Creditor or group of Creditors, on the instructions of that Creditor or group of Creditors) who are acting reasonably, or not being unreasonable in their opinion, or not unreasonably withholding or delaying their consent (as the case may be)

2. **RANKING AND PRIORITY**

2.1 **External Creditor Liabilities**

Each of the Parties agrees that, subject to Clause 16.1 (*Order of application*), the Bank Lender Liabilities, the Hedging Liabilities, the Agent Liabilities, the Arranger Liabilities, the Additional Facilities Liabilities (if any), the PP Liabilities (if any) and the Bondholder Liabilities (if any) shall rank in right and priority of payment on a *pari passu* basis and without any preference between them.

2.2 **Transaction Security**

Each of the Parties agrees that, subject to Clause 16.1 (*Order of application*), the Transaction Security shall rank and secure the Bank Lender Liabilities, the Hedging Liabilities, the Agent Liabilities, the Arranger Liabilities the Additional Facilities Liabilities (if any), the PP Liabilities (if any) and the Bondholder Liabilities (if any), *pari passu* and without any preference between them.

2.3 **Parent Liabilities and Intra-Group Liabilities**

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

3. **EXTERNAL CREDITORS AND EXTERNAL CREDITOR LIABILITIES**

3.1 **Payment of External Creditor Liabilities**

The Debtors may make Payments of the External Creditor Liabilities at any time in accordance with the relevant Debt Documents other than Payments of Hedging Liabilities which shall be made in accordance with Clause 4 (*Hedge Counterparties and Hedging Liabilities*).

3.2 **Amendments and Waivers: External Creditors**

- (a) Subject to paragraphs (b) and (c) below, any Creditor Group may amend or waive the terms of any relevant Debt Document (other than this Agreement or any Security Document) in accordance with its terms (and subject to any Requisite Majority required under it) at any time.
- (b) Amendments and waivers of the Hedging Agreements are subject to Clause 4.6 (*Amendments and Waivers: Hedging Agreements*).
- (c) Prior to the Final Discharge Date, no Creditor Group may amend or waive the terms of any relevant Debt Document if the amendment or waiver results in the terms of the relevant debt not meeting the conditions of Approved Debt as at the date on which the relevant Debt Document was entered into unless the prior consent of the Instructing Group is obtained.
- (d) Each Secured Debt Document (the "**First Secured Debt Document**") shall (to the extent necessary) be deemed to be amended such that, upon receipt by the Security Agent of an instruction under paragraph (c)(iii) of Clause 3.5 (*Standstill Period: External Creditors*) following the occurrence of an Acceleration Event in respect of any other Secured Debt Document (the "**Second Secured Debt Document**"), the External Creditor Liabilities under such First Secured Debt Document shall become automatically due and payable on the same date as the External Creditor Liabilities under the Second Secured Debt Document became due and payable as a result of the relevant Acceleration Event.

3.3 **Designation of Finance Documents**

If the terms of a document effect a change which would, if that change were effected by way of an amendment to, or waiver of, the terms of a Finance Document, require a notification by or the consent of the Ancillary Lenders and Hedge Counterparties under Clause 27.4 (*Exceptions*), that document shall not constitute a Finance Document for the purposes of this Agreement (or a "**Finance Document**" for the purposes of any Debt

Document) without such a notification by, or the prior consent of, the Ancillary Lenders and/or the Hedge Counterparties (as applicable).

3.4 **Restriction on Enforcement: External Creditors**

No External Creditor shall:

- (a) take Enforcement Action other than in accordance with Clause 3.5 (*Standstill Period: External Creditors*) and, in the case of Ancillary Lenders and the Hedge Counterparties, as additionally contemplated by Clauses 3.7 (*Permitted Enforcement: Ancillary Lenders*) or 4.9 (*Permitted Enforcement: Hedge Counterparties*) (as applicable); or
- (b) take any Security Enforcement Action other than in accordance with Clause 10 (*Enforcement of Transaction Security*),

in each case in respect of any of its relevant External Creditor Liabilities or any of the Debt Documents to which it is a party at any time.

3.5 **Standstill Period: External Creditors**

- (a) Following the occurrence of an Event of Default or, in the case of a Hedge Counterparty, a Credit Related Close-Out Event, which is continuing and in relation to which an External Creditor wishes to take Enforcement Action (a "**Standstill Default**"), prior to taking any Enforcement Action the relevant External Creditor shall notify the Security Agent and (if it has not already done so) the Company in writing (such notice an "**Enforcement Action Notice**") of the Standstill Default and the Enforcement Action which it wishes to take in connection with the Standstill Default.
- (b) Immediately upon receipt by the Security Agent of an Enforcement Action Notice, a standstill period ("**Standstill Period**") will commence, during which no External Creditor shall take any Enforcement Action and the provisions of Clause 8 (*Turnover of Receipts*) will apply.
- (c) The Standstill Period will continue until the earliest of:
 - (i) the Standstill Default being remedied or waived (and the Security Agent being notified of such remedy or waiver in accordance with Clause 24.3 (*Notification of prescribed events*));
 - (ii) the date which is 90 days after receipt by the Security Agent of an Enforcement Action Notice;
 - (iii) the Security Agent receiving an instruction from the Instructing Group to take Security Enforcement Action in accordance with Clause 10 (*Enforcement of Transaction Security*) and an Acceleration Event shall be deemed to automatically occur under each relevant Debt Document on the making of such instruction;
 - (iv) an Insolvency Event occurring with respect to a member of the Group or the Parent in relation to which an External Creditor notifies the

Security Agent that it wishes to take Enforcement Action which, but for the Standstill Period, it would otherwise be entitled to take; or

- (v) an External Creditor notifying the Security Agent that a Debtor has failed to discharge External Creditor Liabilities due within five Business Days of the final maturity date of the relevant Secured Debt Document or, in the case of a Hedging Agreement, within five Business Days of the date on which payment of such External Creditor Liabilities were due in respect of the relevant hedging transaction and, in each case, that such External Creditor wishes to take Enforcement Action,

(each a "**Standstill Termination Event**").

- (d) Following the occurrence of a Standstill Termination Event, the Standstill Period will end and in the case of any Standstill Termination Event specified in paragraphs (c)(ii) to (v) above, the External Creditors shall be free to take Enforcement Action in relation to the Standstill Default in accordance with the provisions of the Debt Documents.
- (e) For the avoidance of doubt, any grace period applicable in respect of a Default under a Debt Document shall continue to run during a Standstill Period in accordance with the terms of the relevant Debt Document.
- (f) In the event that during a Standstill Period an Event of Default or a Credit Related Close-Out Event is continuing which was not included in the Enforcement Action Notice which triggered the relevant Standstill Period (an "**Additional Event of Default**") and in relation to which an External Creditor wishes to take Enforcement Action:
 - (i) the Additional Event of Default will, at the request of the relevant External Creditor be added to the relevant Enforcement Action Notice (the "**Updated Enforcement Action Notice**"); and
 - (ii) a Standstill Termination Event pursuant to paragraph (c)(i) above will not occur until each Standstill Default and each Additional Event of Default has been remedied or waived but, for the avoidance of doubt, the relevant Standstill Period will not be extended beyond the date on which it would otherwise have ended pursuant to paragraph (c)(ii) above.
- (g) The Security Agent shall:
 - (i) promptly upon receipt by it of an Enforcement Action Notice or Updated Enforcement Action Notice, send the same to the Company and the External Creditors; and
 - (ii) promptly notify the Company and the External Creditors following the occurrence of a Standstill Termination Event pursuant to paragraph (c) above.
- (h) Only one Standstill Period shall be in effect at any time but External Creditors may jointly issue an Enforcement Action Notice or an Updated Enforcement Action Notice and more than one Standstill Default may be specified in an

Enforcement Action Notice or an Updated Enforcement Action Notice. References in the foregoing provisions of this Clause 3.5 to an External Creditor which has delivered an Enforcement Action Notice or an Updated Enforcement Action Notice shall be construed as a reference to each External Creditor which has delivered an Enforcement Action Notice or an Updated Enforcement Action Notice and references to a Standstill Default shall be construed as a reference to each Standstill Default specified in the relevant Enforcement Action Notice or Updated Enforcement Action Notice.

- (i) To the extent that during the Standstill Period a Debtor has insufficient funds to pay External Creditor Liabilities falling due from it on the same date, such External Creditor Liabilities shall be paid *pari passu* and on a *pro rata* basis between the relevant Liabilities of the relevant External Creditors.

3.6 **Restriction on Enforcement: Ancillary Lenders**

Subject to Clause 3.7 (*Permitted Enforcement: Ancillary Lenders*), so long as any of the Bank Lender Liabilities (other than any Liabilities owed to the Ancillary Lenders) under a Facilities Agreement are or may be outstanding, none of the Ancillary Lenders in respect of that Facilities Agreement shall be entitled to take any Enforcement Action in respect of any of the Liabilities owed to it in its capacity as Ancillary Lender.

3.7 **Permitted Enforcement: Ancillary Lenders**

- (a) Subject to Clause 3.5 (*Standstill Period: External Creditors*), each Ancillary Lender may take Enforcement Action which would be available to it but for Clause 3.6 (*Restriction on Enforcement: Ancillary Lenders*) if in relation to the relevant Facilities Agreement:
 - (i) at the same time as, or prior to, that action, Enforcement Action has been taken in respect of the Bank Lender 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 Bank Lender Liabilities;
 - (ii) that action is contemplated by the relevant Facilities Agreement or Clause 3.9 (*Security: Ancillary Lenders*);
 - (iii) that Enforcement Action is taken in respect of Cash Cover which has been provided in accordance with the relevant Facilities Agreement;
 - (iv) at the same time as, or prior to, that action, the consent of the Majority External Creditors to that Enforcement Action is obtained; or
 - (v) an Insolvency Event has occurred in relation to the Parent or any member of the Group, in which case after the occurrence of that Insolvency Event, each Ancillary Lender shall be entitled (if it has not already done so) to exercise any right it may otherwise have in respect of that member of the Group or the Parent to:
 - (A) accelerate any of that member of the Group's Bank Lender Liabilities owed to that Ancillary Lender in its capacity as an

Ancillary Lender or declare them prematurely due and payable on demand;

- (B) make a demand under any guarantee, indemnity or other assurance against loss given by the Parent or that member of the Group in respect of any Bank Lender Liabilities owed to that Ancillary Lender in its capacity as an Ancillary Lender;
 - (C) exercise any right of set-off or take or receive any Payment in respect of any Bank Lender Liabilities of the Parent or that member of the Group owed to that Ancillary Lender in its capacity as an Ancillary Lender; or
 - (D) claim and prove in the liquidation of that member of the Group or the Parent for the Bank Lender Liabilities owed to that Ancillary Lender in its capacity as an Ancillary Lender.
- (b) Clause 3.6 (*Restriction on Enforcement: Ancillary Lenders*) shall not restrict any right of an Ancillary Lender:
- (i) to demand repayment or prepayment of any of the Liabilities owed to it prior to the expiry date of the relevant Ancillary Facility; or
 - (ii) to net or set-off in relation to a Multi-account Overdraft,

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

3.8 Security: External Creditors (other than Hedge Counterparties)

- (a) Subject to paragraph (b) below, no External Creditor other than a Hedge Counterparty (to which, for the avoidance of doubt, Clause 4.7 (*Security: Hedge Counterparties*) applies) may take, accept or receive the benefit of:
- (i) any Security in respect of the External Creditor Liabilities from any member of the Group or the Parent in addition to the Common Transaction Security; or
 - (ii) any guarantee, indemnity or other assurance against loss from any member of the Group or the Parent in respect of the relevant External Creditor Liabilities in addition to those in:
 - (A) the original form of the relevant Debt Document;
 - (B) any Common Assurance; or
 - (C) this Agreement.
- (b) Paragraph (a)(i) above shall not apply to any Security in respect of the External Creditor Liabilities from any member of the Group or the Parent which (except

for any Security permitted under Clause 3.9 (*Security: Ancillary Lenders*)), to the extent legally possible, is, at the same time, also offered either:

- (i) to the Security Agent as trustee for the other Secured Parties in respect of their Liabilities; or
 - (ii) in the case of any jurisdiction in which effective Security cannot be granted in favour of the Security Agent as trustee or agent for the Secured Parties to the other Secured Parties in respect of their Liabilities and ranks in the same order of priority as that contemplated in Clause 2.2 (*Transaction Security*).
- (c) Paragraph (a)(ii) above shall not apply to any guarantee, indemnity or other assurance against loss from any member of the Group or the Parent in respect of the relevant External Creditor Liabilities if (except for any guarantee, indemnity or other assurance against loss permitted under Clause 3.9 (*Security: Ancillary Lenders*)) and to the extent legally possible, 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*).

3.9 **Security: Ancillary Lenders**

In addition to that which is set out in Clause 3.9 (*Security: External Creditors*) an Ancillary Lender may take, accept or receive the benefit of:

- (a) the Common Transaction Security;
- (b) each guarantee, indemnity or other assurance against loss contained in:
 - (i) the original form of the Facilities Agreement or the relevant Additional Facilities Documents; and
 - (ii) 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 Clause 3.8 (*Security: External Creditors*);
- (d) any Cash Cover permitted under the relevant Facilities Agreement relating to any Ancillary Facility;
- (e) the indemnities contained in 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.

3.10 Lock-Up Account

Any Transaction Security granted in respect of any Lock-Up Account shall secure all Secured Obligations, **provided that**, notwithstanding any provisions of any other Secured Debt Document, the Company and the relevant Directing Representative shall be permitted to withdraw amounts credited to such accounts for the purposes permitted or required by each relevant Secured Debt Document including, subject to Clause 8 (*Turnover of Receipts*), applying amounts standing to the credit of such accounts in prepayment of Liabilities as permitted by the terms of each relevant Secured Debt Document, **provided that**:

- (a) during a Standstill Period, no such withdrawals shall be made other than:
 - (i) to be applied in payment of any External Creditor Liabilities then due (otherwise than as a result of a notice of voluntary prepayment), **provided that** no such withdrawal shall be made for so long as a payment default is subsisting in respect of any External Creditor Liabilities unless the relevant withdrawal will be first applied in whole or in part to remedy such payment default and **provided further that** the Group has no or insufficient other funds available to meet such obligations; or
 - (ii) to be applied in payment of:
 - (A) amounts due in respect of interest, principal or periodic fees, costs and expenses and other payments under the Finance Documents (**provided that** the Group has no or insufficient other funds available to meet such obligations);
 - (B) make voluntary prepayments of under the Finance Documents on a *pro rata* basis; and
 - (C) finance capital expenditure to the extent required in connection with health and safety requirements or to comply with regulatory and/or environmental requirements (**provided that** the Group has no or insufficient other funds available to meet such obligations); and
 - (D) finance operating costs, working capital needs, administrative payments or tax payments of the Group (**provided that** the Group has no or insufficient other funds available to meet such obligations,
- provided that** such matter has been certified by a director of the Company; and
- (b) on and from the date the Security Agent is instructed to undertake any Security Enforcement Action, such right to withdraw shall no longer apply and amounts standing to the credit of such accounts shall be subject to Security Enforcement Action.

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

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

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

4.3 Permitted Payments: Hedging Liabilities

- (a) Subject to paragraph (b) below, the Debtors may make Payments to any Hedge Counterparty in respect of the Hedging Liabilities then due to that Hedge Counterparty under any Hedging Agreement in accordance with the terms of that Hedging Agreement:
 - (i) if the Payment is a scheduled Payment arising under the relevant Hedging Agreement;
 - (ii) to the extent that the relevant Debtor's obligation to make the Payment arises as a result of the operation of any of sections 2(d) (*Deduction or Withholding for Tax*), 8(a) (*Payment in the Contractual Currency*), 8(b) (*Judgments*), 9(h)(i) (*Prior to Early Termination*) and 11 (*Expenses*) of the ISDA Master Agreement;
 - (iii) to the extent that the relevant Debtor's obligation to make the Payment arises from a Non-Credit Related Close-Out;
 - (iv) subject to Clause 3.5 (*Standstill Period: External Creditors*) and Clause 4.9 (*Permitted Enforcement: Hedge Counterparties*) to the extent that the relevant Debtor's obligation to make the Payment arises from a Credit Related Close-Out in relation to that Hedging Agreement;
 - (v) to the extent that no Event of Default is continuing or would result from that Payment and the relevant Debtor's obligation to make the Payment arises as a result of a close-out or termination arising as a result of:

- (A) section 5(a)(vii) (*Bankruptcy*) of the ISDA Master Agreement and the Event of Default (as defined in the relevant Hedging Agreement) has occurred with respect to the relevant Hedge Counterparty; or
 - (B) the relevant Debtor terminating or closing-out the relevant Hedging Agreement as a result of a Hedging Force Majeure and the Termination Event (as defined in the relevant Hedging Agreement) has occurred with respect to the relevant Hedge Counterparty;
- (vi) to the extent that the relevant Debtor's obligation to make the Payment arises from its own termination or close-out of the relevant Hedging Agreement where such termination or close-out has not resulted in a breach of a Debt Document and the relevant Debtor has certified to the relevant Hedge Counterparty that such termination or close-out has not resulted in a breach of a Debt Document; or
 - (vii) if the Instructing Group gives prior consent to the Payment being made.
- (b) No Payment may be made to a Hedge Counterparty under paragraph (a) above if any scheduled Payment due from that Hedge Counterparty to a Debtor under a Hedging Agreement to which they are both party is due and unpaid without the prior consent of the Instructing Group unless:
- (i) the Hedge Counterparty has withheld such amounts in accordance with section 2(a)(iii) (*General Obligations*) of the ISDA Master Agreement; or
 - (ii) the relevant Debtor or the Hedge Counterparty has designated an Early Termination Date (as defined in the relevant ISDA Master Agreement) in accordance with the terms of the Hedging Agreement.
- (c) Failure by a Debtor to make a Payment to a Hedge Counterparty which results solely from the operation of paragraph (b) above shall, without prejudice to Clause 4.4 (*Payment obligations continue*), not result in a default (however described) in respect of that Debtor under that Hedging Agreement or any other Debt Document unless the Hedge Counterparty has already designated an Early Termination Date (as defined in the ISDA Master Agreement) other than as a result of failure by the Debtor to make a Payment to the Hedge Counterparty in accordance with paragraph (b) above.

4.4 **Payment obligations continue**

No Debtor nor the Parent shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Debt Document by the operation of Clauses 4.2 (*Restriction on Payment: Hedging Liabilities*) and 4.3 (*Permitted Payments: Hedging Liabilities*) even if its obligation to make that Payment is restricted at any time by the terms of any of those Clauses. However, no Debtor, the Parent nor the Company shall be required to make any Payment (including any accrued

default interest) until any restrictions that may prevent it from making such Payment pursuant to the terms of any of those Clauses have ceased to exist.

4.5 **No acquisition of Hedging Liabilities**

The Debtors shall not, and shall procure that no other member of the Parent 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 Instructing Group is obtained.

4.6 **Amendments and Waivers: Hedging Agreements**

- (a) Subject to paragraph (b) below, the Hedge Counterparties may not, at any time, amend or waive any term of the Hedging Agreements unless the prior consent of the Instructing Group is obtained.
- (b) A Hedge Counterparty may amend or waive any term of a Hedging Agreement in accordance with the terms of that Hedging Agreement if:
 - (i) that amendment or waiver is required in order for the Hedge Counterparty to comply with any applicable law or regulation;
 - (ii) that amendment or waiver:
 - (A) does not result in a breach of another term of this Agreement; and
 - (B) would not result in a breach of clause 23.23 (*Hedging*) of the Bank Facilities Agreement or any Additional Finance Document Equivalent; or
 - (iii) that amendment is required in order to reflect a change to any other Debt Document.

4.7 **Security: Hedge Counterparties**

The Hedge Counterparties may not take, accept or receive the benefit of any Security, guarantee, indemnity or other assurance against loss from any member of the Group or the Parent in respect of the Hedging Liabilities other than:

- (a) the Common Transaction Security;
- (b) any guarantee, indemnity or other assurance against loss contained in:
 - (i) in the case of Hedge Counterparties under Hedging Agreements entered into in connection with the Bank Facilities Agreement, the original form of Bank Facilities Agreement;

- (ii) in the case of Hedge Counterparties under Hedging Agreements entered into in connection with any Additional Finance Documents, the original form of that Additional Finance Documents;
 - (iii) this Agreement;
 - (iv) any Common Assurance; or
 - (v) the relevant Hedging Agreement no greater in extent than any of those referred to in paragraphs (i) to (iv) above; and
- (c) the indemnities contained in the ISDA Master Agreement.

4.8 **Restriction on Enforcement: Hedge Counterparties**

Subject to Clause 4.9 (*Permitted Enforcement: Hedge Counterparties*) and Clause 4.10 (*Required Enforcement: Hedge Counterparties*) and without prejudice to Clause 10 (*Enforcement of Transaction Security*), 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 and this Agreement and in the case of any Credit Related Close-Out subject to Clause 3.5 (*Standstill Period: External Creditors*):
 - (i) any Hedge Counterparty may terminate or close out in whole or in part any hedging transaction under that Hedging Agreement prior to its stated maturity:

Credit Related Close-Outs

- (A) if a Distress Event has occurred;
- (B) if any event referred to in clauses 24.6 (*Insolvency*), 24.7 (*Insolvency proceedings*) or 24.8 (*Creditors' process*) of the Bank Facilities Agreement or any Additional Finance Document Equivalent has occurred in relation to the Debtor party to that Hedging Agreement;
- (C) 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 five (5) Business Days (such period running concurrently with any Standstill Period but commencing for the avoidance of doubt after the expiry of any applicable notice or grace periods) after the date on which notice of that default has been given to the Security Agent;

Non-Credit Related Close-Outs

- (D) if prior to a Distress Event, with the agreement of the Company, to the extent that, following such termination or close-out, the Company has certified that it remains in compliance with paragraph (b) of clause 23.23 (*Hedging*) of the Bank Facilities Agreement and any Additional Finance Document Equivalent;
- (E) if a Hedging Force Majeure has occurred in respect of that Hedging Agreement;
- (F) on or immediately following the Final Discharge Date **provided that** for the purposes of this sub-paragraph (F) only, the Final Discharge Date shall be deemed not to include the discharge of the Hedging Liabilities owed to the Hedge Counterparties or any further obligation of any Hedge Counterparty to provide financial accommodation under the Hedging Agreements to which it is a party;
- (G) to the extent such termination or close-out is required or is necessary to enable a Debtor to comply with its obligations under Clause 4.13 (*Hedging Amount*);
- (H) in respect of Hedging Liabilities under Hedging Agreements which incorporate by reference the amendments set out in the attachment to the ISDA 2013 EMIR NFC Representation Protocol, if an Additional Termination Event (as defined in the relevant Hedging Agreement) occurs pursuant to section (iii)(2) of such attachment;
- (I) in respect of Hedging Liabilities under Hedging Agreements entered into to hedge amounts under the Bank Facilities Agreement pursuant to the terms thereof, with effect from the Bank Facilities Discharge Date or any refinancing in full of such Bank Facilities;
- (J) in respect of Hedging Liabilities under Hedging Agreements entered into to hedge amounts under any other Additional Finance Document pursuant to the terms of such Additional Finance Document, with effect from the Additional Finance Document Equivalent of the Bank Facilities Discharge Date or, if none, the applicable final maturity of such Additional Finance Document;
- (K) upon the occurrence of a sale of all or substantially all of the assets of the Group whether in a single transaction or a series of related transactions;

- (L) at the election of the Hedge Counterparty only, if the Hedge Counterparty or its Affiliate (as applicable) ceases to have any Corresponding Commitment under:
- (1) the Bank Facilities Agreement as a result of the Bank Facilities Lender exercising its right to require the Bank Facilities Agent to cancel its Bank Facilities Commitment and declare participations of that Bank Facilities Lender in all outstanding Bank Facilities Utilisations, together with accrued interest under the Bank Finance Documents, immediately due and payable in accordance with clause 9.1 (*Change of Control*) of the Bank Facilities Agreement (**provided that** the relevant Hedge Counterparty may only terminate or close out hedging transactions under Hedging Agreements entered into in connection with its Corresponding Commitment under the Bank Facilities Agreement), or for any other reason with agreement from the relevant Debtor that is party to that Hedging Agreement; or
 - (2) an Additional Finance Document as an Additional Creditor as a result of the exercise of any right under the Additional Finance Document Equivalent to clause 9.1 (*Change of Control*) (**provided that** the relevant Hedge Counterparty may only terminate or close out hedging transactions under Hedging Agreements entered into in connection with its Corresponding Commitment under that Additional Finance Document), or for any other reason with agreement from the relevant Debtor that is party to that Hedging Agreement;
- (M) if the Hedge Counterparty or its Affiliate (as applicable) ceases to have any Corresponding Commitment under (i) the Bank Facilities Agreement (the date upon which this occurs being the "**Cessation Date**") as a result of the operation of paragraphs (a)(i) or (a)(iv) of clause 37.8 (*Replacement of Lender*), clause 8.1 (*Illegality*) or paragraphs (a)(ii), (a)(iii) or (a)(iv) of clause 8.5 (*Right of cancellation and repayment in relation to a single Lender*) of the Bank Facilities Agreement; or (ii) an Additional Finance Document (the date upon which this occurs being the "**Additional Finance Cessation Date**") as a result of the operation of the Additional Finance Document Equivalent to paragraphs (a)(i) or (a)(iv) of clause 37.8 (*Replacement of Lender*), clause 8.1 (*Illegality*) or paragraphs (a)(ii), (a)(iii) or (a)(iv) of clause 8.5 (*Right of cancellation and repayment in relation to a single Lender*) of the Bank Facilities Agreement, **provided that:**
- (1) if the Company has requested that all the relevant hedging transactions be novated to a third party proposed by the Company (a "**Novation Request**") within 12

Business Days of the Cessation Date or Additional Finance Cessation Date (as applicable) (the date on which such request is made, the "**Novation Request Date**"), such Hedge Counterparty has first used all reasonable endeavours (taking into account any legal and regulatory impediments) to effect a novation of the applicable hedging transactions in accordance with such Novation Request for a period of not less than 20 Business Days following the Novation Request Date and no novation has been effected; or

- (2) the Company has not made a Novation Request by the date falling 13 Business Days following the Cessation Date or Additional Finance Cessation Date (as applicable),

the cost of any such novation by the relevant Hedge Counterparty being borne by the Company (but, for the avoidance of doubt, excluding any purchase price or similar payment), it being acknowledged that the relevant Hedge Counterparty shall only be obliged to enter into any such novation documentation once it has agreed the purchase price and is satisfied that it has complied with all necessary "**know your customer**" requirements; **provided that** the relevant Hedge Counterparty shall perform any such checks as soon as reasonably practicable following receipt of the Novation Request and shall notify the Company and the relevant third party proposed by the Company when it is satisfied that it has complied with those checks;

- (N) if the Term Facilities (as defined in the Bank Facilities Agreement) are repaid or prepaid and cancelled in full; or
 - (O) if the Instructing Group give prior consent to that termination or close-out being made.
- (ii) in respect of a Hedging Agreement entered into by any Hedge Counterparty in order to hedge liabilities of a Debtor under the Bank Facilities Agreement, if the relevant Hedge Counterparty or its Affiliate (if applicable) does not have any Corresponding Commitment, that Hedge Counterparty may terminate or close out in whole or in part any hedging transaction under that Hedging Agreement prior to its stated maturity:

Credit Related Close-Outs

- (A) if an Event of Default (as defined in the relevant Hedging Agreement) has occurred with respect to the Debtor that is party to such Hedging Agreement under section 5(a)(ii) (*Breach of Agreement*) of the ISDA Master Agreement;

- (B) if an Event of Default (as defined in the relevant Hedging Agreement) has occurred with respect to the Debtor that is party to such Hedging Agreement under section 5(a)(iii) (*Credit Support Default*) of the ISDA Master Agreement, **provided that** in each case such Event of Default (as defined in the relevant Hedging Agreement) is materially adverse to the interests of the Secured Parties (in the opinion of the Instructing Group (acting reasonably));
- (C) if any of the representations made to it by the Debtor that is party to such Hedging Agreement is incorrect or misleading in any material respect on the date of any transaction under a Hedging Agreement unless the event or circumstance giving rise to the breach is capable of remedy and is remedied within 30 days of the earlier of (i) the Hedge Counterparty giving notice to the Company; and (ii) the Company becoming aware of the relevant event or circumstance;
- (D) if an Event of Default (as defined in the relevant Hedging Agreement) has occurred with respect to the Debtor that is party to such Hedging Agreement under section 5(a)(viii) (*Merger Without Assumption*) of the ISDA Master Agreement;

Non Credit Related Close Outs

- (E) if a Hedging Force Majeure has occurred in respect of that Hedging Agreement;
- (F) on or immediately following the Final Discharge Date **provided that** for the purposes of this sub-paragraph (F) only, the Final Discharge Date shall be deemed not to include the discharge of the Hedging Liabilities owed to the Hedge Counterparties or any further obligation of any Hedge Counterparty to provide financial accommodation under the Hedging Agreements to which it is a party;
- (G) to the extent such termination or close-out is required or is necessary to enable a Debtor to comply with its obligations under Clause 4.13 (*Hedging Amount*);
- (H) in respect of Hedging Liabilities under Hedging Agreements which incorporate by reference the amendments set out in the attachment to the ISDA 2013 EMIR NFC Representation Protocol, if an Additional Termination Event (as defined in the relevant Hedging Agreement) occurs pursuant to section (iii)(2) of such attachment;
- (I) in respect of Hedging Liabilities under Hedging Agreements entered into to hedge amounts under the Bank Facilities Agreement pursuant to the terms thereof, with effect from the

Bank Facilities Discharge Date or any refinancing in full of such Bank Facilities; or

- (J) in respect of Hedging Liabilities under Hedging Agreements entered into to hedge amounts under any other Additional Finance Document pursuant to the terms of such Additional Finance Document, with effect from the Additional Finance Document Equivalent of the Bank Facilities Discharge Date or, if none, the applicable final maturity of such Additional Finance Document.
- (b) To the extent it is able to do so under the relevant Hedging Agreement, after the occurrence of an Insolvency Event in relation to any member of the Group, each Hedge Counterparty shall be entitled to exercise any right it may have in respect of that member of the Group to:
 - (i) prematurely close out or terminate any Hedging Liabilities of that member of the Group;
 - (ii) make a demand under any guarantee, indemnity or other assurance against loss given by that member of the Group in respect of any Hedging Liabilities;
 - (iii) exercise any right of set-off or take or receive any Payment in respect of any Hedging Liabilities of that member of the Group; and/or
 - (iv) claim and prove in the liquidation of that member of the Group for the Hedging Liabilities owing to it.

4.10 **Required Enforcement: Hedge Counterparties**

- (a) Subject to paragraph (b) below, a Hedge Counterparty shall promptly terminate or close out in full any hedging transaction under all or any of the Hedging Agreements to which it is party prior to their stated maturity, following:
 - (i) the occurrence of any Enforcement Action and delivery to it of a notice from the Security Agent that such Enforcement Action 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 the Hedge Counterparty is party to the arrangement next referred to or has been notified by the Security Agent that that Enforcement Action occurred as a result of an arrangement made between any Debtor and any External Creditor with the purpose of bringing about that Enforcement Action.
- (c) If a Hedge Counterparty is entitled to terminate or close out any hedging transaction under paragraph (a)(i)(C) of Clause 4.9 (*Permitted Enforcement: Hedge Counterparties*) (or, subject to Clause 3.5 (*Standstill Period: External Creditors*)) 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 or after receipt by the Security Agent of instructions in accordance with this Agreement or any Transaction Security Document to enforce the Transaction Security, a settlement amount or other amount (following the application of any Close-Out Netting, Payment Netting or Inter-Hedging Agreement Netting in respect of that Hedging Agreement) falls due from a Hedge Counterparty to the relevant Debtor then that amount shall be paid by that Hedge Counterparty to the Security Agent, treated as the proceeds of enforcement of the Transaction Security and applied in accordance with the terms of this Agreement, **provided that** the Hedge Counterparty has been notified of the occurrence of that Distress Event or the giving to the Security Agent of such instructions.
- (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 on an ISDA Master Agreement;
- (c) in the event of a termination of a hedging transaction entered into under a Hedging Agreement, whether as a result of a Termination Event (as defined in the relevant Hedging Agreement) or an Event of Default, each as defined in the relevant Hedging Agreement, that Hedging Agreement will make no material amendment to section 6(e) (*Payments on Early Termination*) of the ISDA Master Agreement;
- (d) each Hedging Agreement will provide that the relevant Hedge Counterparty will be entitled to designate an Early Termination Date (as defined in the ISDA Master Agreement) or otherwise be able to terminate each transaction under such Hedging Agreement if so permitted or required pursuant to Clauses 4.9 (*Permitted Enforcement: Hedge Counterparties*) and 4.10 (*Required Enforcement: Hedge Counterparties*);
- (e) each Hedging Agreement will permit the relevant Hedge Counterparty and each relevant Debtor to take such action as may be necessary to comply with Clause

4.9 (*Permitted Enforcement: Hedge Counterparties*), Clause 4.10 (*Required Enforcement: Hedge Counterparties*) and Clause 4.13 (*Hedging Amount*);

- (f) each Hedging Agreement will provide that the Debtor party to that Hedging Agreement may terminate or close out any relevant hedging transaction(s) to the extent it is able to do so under the Hedging Agreement and this Agreement **provided that**, after such termination or close-out, the Debtors remain in compliance with the Secured Debt Documents;
- (g) each Hedging Agreement will provide that the relevant Debtor which is party to such Hedging Agreement will provide to the relevant Hedge Counterparty copies of information delivered by the Debtors in accordance with:
 - (i) clauses 21.1 (*Financial statements*) to 21.6 (*Information: miscellaneous*) of the Bank Facilities Agreement if the Hedge Counterparty is providing hedging in relation to amounts due under the Bank Facilities Agreement, and such Hedge Counterparty or its Affiliate is not a Bank Facilities Lender;
 - (ii) any Additional Finance Document Equivalent if the Hedge Counterparty is providing hedging in relation to amounts due under any Additional Finance Document and such Hedge Counterparty or its Affiliate is not an Additional Creditor under any Additional Finance Documents (as the case may be),

in each case at the same time as such information is delivered under the Bank Facilities Agreement or the Additional Finance Document, as the case may be.

- (h) no Hedging Agreement will provide for Automatic Early Termination; and
- (i) subject to paragraph (j) and (k) below, the relevant Hedge Counterparty may not transfer its interests in the relevant Hedging Agreement without prior consent from the Company (not to be unreasonably withheld or delayed and deemed given if the Company has not responded within 10 Business Days of being requested in writing to do so) unless such transfer is:
 - (i) to a Bank Facilities Lender;
 - (ii) to an Affiliate of a Bank Facilities Lender;
 - (iii) to an existing Hedge Counterparty or an Affiliate of an existing Hedge Counterparty or if the existing Hedge Counterparty is a fund, to a fund which is a Related Fund of such existing Hedge Counterparty;
 - (iv) to a bank or financial institution named on the Lender Approved List (including any Affiliate or fund or securitisation vehicle controlled or managed by such bank or financial institution listed on the Lender Approved List), **provided that**, in each case, such entity is not a Hedge Fund, Distressed Debt Fund, a Defaulting Lender or a Competitor; or
 - (v) made at a time when a Distress Event is continuing;

- (j) notwithstanding paragraph (i) above (except with respect to (i)(v) above), no transfer by a Hedge Counterparty of its rights and obligations of a Hedging Agreement to which it is a party is permitted without the prior consent from the Company where the proposed transferee is:
 - (i) a Distressed Debt Fund;
 - (ii) a Hedge Fund;
 - (iii) a Defaulting Lender; or
 - (iv) an entity that has a credit rating of BBB- or lower by Standard & Poor's or Fitch or Baa3 or lower by Moody's; and
- (k) notwithstanding paragraph (i) above, a Hedge Counterparty may not transfer its interests in the relevant Hedging Agreement (unless the Company has consented in its sole and absolute discretion) where the proposed transferee is a Competitor.

4.13 Hedging Amount

- (a) If the Total Interest Rate Hedged Amount is less than the Permitted Maximum Interest Rate Hedged Amount, a Debtor may (but subject to compliance with the Debt Documents, shall be under no obligation to) enter into additional hedging arrangements and/or terminate or close out Offsetting Swaps to increase the Total Interest Rate Hedged Amount **provided that**, in each case:
 - (i) as at the date on which such hedging and/or termination or close out is entered into and taking into account such hedging, termination and close out, the Total Interest Rate Hedged Amount does not exceed the Permitted Maximum Interest Rate Hedged Amount;
 - (ii) without prejudice to (i) above, such hedging arrangements are entered into in accordance with the Secured Debt Documents; and
 - (iii) such hedging arrangements are not entered into for speculative purposes.
- (b) If any reduction in aggregate principal amounts outstanding under the Debt Documents results in an Interest Rate Hedge Excess (an "**Interest Rate Overhedging Event**") (but, for the purposes of calculating such notional amounts, excluding the notional amounts of Interest Rate Hedging Transactions in respect of which the relevant member of the Group does not have ongoing future payment or delivery obligations, whether absolute or contingent (such transactions, "**Interest Rate Cap Transactions**")), the Debtors shall, within five Business Days of such Interest Rate Overhedging Event:
 - (i) enter into Offsetting Swaps; and/or
 - (ii) terminate or close out hedging transactions (other than Interest Rate Cap Transactions) (to be selected in the sole discretion of the Debtors) **provided that** the selection must (unless a Hedge Counterparty agrees to waive an obligation to close out hedging transactions provided by it pursuant to this paragraph (ii) and one or more Hedge Counterparties are

willing to terminate or close out hedging transactions by such waived amount) be made in relation to all Interest Rate Hedging Transactions with the same maturity date or maturity dates (as applicable) (other than in respect of Interest Rate Cap Transactions) and must be applied *pro rata* across such hedging transactions (other than in respect of Interest Rate Cap Transactions),

in order to remedy such Interest Rate Overhedging Event, **provided that** following the relevant entry into Offsetting Swaps or close out or termination, the Total Interest Rate Hedged Amount is an amount which is no greater than the Permitted Maximum Interest Rate Hedged Amount and is no less than any minimum amount required by any Secured Debt Document.

- (c) Subject to Clause 13.7 (*Adjustment of Mandatory Prepayments*), the relevant Debtor(s) shall, and the Company shall procure that the relevant Debtor(s) will, pay to that Hedge Counterparty (in accordance with the relevant Hedging Agreements) an amount equal to the sum of all payments (if any) that become due from each relevant Debtor to a Hedge Counterparty under the relevant Hedging Agreement(s) as a result of any action described in paragraph (b) above.
- (d) Each Hedge Counterparty shall co-operate in any process described in paragraph (a) above and shall pay (in accordance with the relevant Hedging Agreement(s)) any amount that becomes due from it under the relevant Hedging Agreement(s) to the Debtor as a result of any action described in paragraph (c) above.

4.14 **Notice of Transaction Security**

The execution of this Agreement or any accession deed to this Agreement by any Debtor and Hedge Counterparty (as applicable) shall constitute notice to, and acknowledgment by, each Hedge Counterparty of any Security created by the Debtors on the date of this Agreement over all its rights to and title and interests in any Hedging Agreement entered into between it and the relevant Hedge Counterparty.

5. **INTRA-GROUP LIABILITIES**

5.1 **Restriction on Payment: Intra-Group Liabilities**

Prior to the Final Discharge Date, no Debtor shall, and the Company shall procure that no other member of the Group will, make any Payment 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 the Payment would result in a breach of any Secured Debt Document or if, at the time of the Payment, an Acceleration Event has occurred unless:
 - (i) the Instructing Group has consented to the relevant Payment being made; or
 - (ii) the Payment is made solely to facilitate Payment of the External Creditor 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/or 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 No 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) No action described in paragraph (a) above may take place in respect of any Intra-Group Liabilities, if such action would result in a breach of any Secured Debt Document or if, at the time of the action, an Acceleration Event has occurred unless:
 - (i) the Instructing Group has consented to the action; or
 - (ii) the action is made solely to facilitate Payment of the External Creditor Liabilities in accordance with the terms of this Agreement.

5.5 Security: Intra-Group Liabilities

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

in respect of the Intra-Group Liabilities other than to the extent expressly permitted by the Secured Debt Documents.

5.6 Restriction on Enforcement: Intra-Group Lenders

Subject to Clause 5.7 (*Permitted Enforcement: Intra-Group Lenders*) the Intra-Group Lenders shall not be entitled to take any Enforcement Action in respect of any of the Intra-Group Liabilities at any time prior to the Final Discharge Date.

5.7 Permitted Enforcement: Intra-Group Lenders

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

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

5.8 Representations: Intra-Group Lenders

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

- (a) it is a limited liability company, duly incorporated and validly existing under the laws of its jurisdiction of incorporation;
- (b) subject to the Legal Reservations, the obligations expressed to be assumed by it in this Agreement are legal, valid, binding and enforceable obligations; and
- (c) subject to the Legal Reservations, the entry into and performance by it of this Agreement do not and will not conflict with:
 - (i) any material law or regulation applicable to it;
 - (ii) its constitutional documents; or
 - (iii) any agreement or instrument binding upon it or any of its assets,

in the case of paragraph (iii) above to an extent which has, or could reasonably be expected to have, a Material Adverse Effect.

5.9 **Notice in respect of Intra-Group Liabilities**

The execution of this Agreement or any accession deed to this Agreement by any Intra-Group Lender shall constitute notice to, and acknowledgment by, each member of the Group party hereto of any Security created by any Intra-Group Lender on the date of this Agreement over all its rights to and title and interests in any Intra-Group Liabilities entered into between it and any other member of the Group.

6. **PARENT LIABILITIES**

6.1 **Restriction on Incurrence: Parent Liabilities**

Prior to the Final Discharge Date, the Company shall procure that no member of the Group (other than the Company) shall incur or allow to remain outstanding any Liabilities to the Parent or any Affiliate of the Parent (other than another member of the Group).

6.2 **Restriction on Payment: Parent Liabilities**

Prior to the Final Discharge Date, no Debtor shall, and the Company shall procure that no other member of the Group will, make any Payment of the Parent Liabilities at any time unless:

- (a) that Payment is permitted under Clause 6.3 (*Permitted Payments: Parent Liabilities*); or
- (b) the taking or receipt of that Payment is permitted under Clause 6.9 (*Permitted Enforcement: Parent*).

6.3 **Permitted Payments: Parent Liabilities**

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

- (a) the Payment is permitted by the Secured Debt Documents; or
- (b) the Instructing Group consents to that Payment being made.

6.4 **Payment obligations continue**

No Debtor shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Debt Document, by the operation of Clauses 6.2 (*Restriction on Payment: Parent Liabilities*) and 6.3 (*Permitted Payments: Parent Liabilities*) even if its obligation to make that Payment is restricted at any time by the terms of any of those Clauses.

6.5 **No acquisition of Parent Liabilities**

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

- (a) enter into any Liabilities Acquisition; or

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

in respect of any of the Parent Liabilities, unless the prior consent of the Instructing Group is obtained.

6.6 **Amendments and Waivers: Parent**

Prior to the Final Discharge Date, the Company and the Parent may amend or waive the terms of any agreement evidencing the terms of the Parent Liabilities unless:

- (a) the Liabilities evidenced by that agreement continue to be subordinated to the Liabilities owed by the Debtors to the External Creditors in accordance with Clause 2.3 (*Parent Liabilities and Intra-Group Liabilities*) and the amendment or waiver is not and would not be reasonably likely to be adverse to any External Creditor; or
- (b) the prior consent of the Instructing Group is obtained.

6.7 **Security: Parent**

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

6.8 **Restriction on Enforcement: Parent**

Subject to Clause 6.9 (*Permitted Enforcement: Parent*) the Parent shall not be entitled to take any Enforcement Action in respect of any of the Parent Liabilities at any time prior to the Final Discharge Date.

6.9 **Permitted Enforcement: Parent**

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

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

6.10 Notice in respect of Parent Liabilities

The execution of this Agreement by the Company and the Parent shall constitute notice to, and acknowledgment by, the Company of any Security created by the Parent over all its rights to and title and interests in any Parent Liabilities.

7. EFFECT OF INSOLVENCY EVENT

7.1 Cash Cover

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

7.2 Distributions

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

7.3 Set-Off

- (a) Subject to paragraph (b) below and without limiting Clause 8 (*Turnover of Receipts*), to the extent that any Debtor's or the Parent's Liabilities are discharged by way of set-off (mandatory or otherwise) after the occurrence of an Insolvency Event in relation to that Debtor or the Parent, any Creditor which benefited from that set-off shall pay an amount equal to the amount of the Liabilities owed to it which are discharged by that set-off to the Security Agent 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 an amount equal to its Net Outstandings;
 - (ii) any Close-Out Netting by a Hedge Counterparty or Hedging Ancillary Lender;
 - (iii) any Payment Netting by a Hedge Counterparty or Hedging Ancillary Lender;
 - (iv) any Inter-Hedging Agreement Netting by a Hedge Counterparty or Hedging Ancillary Lender; and

- (v) any Inter-Hedging Ancillary Document Netting by a Hedging Ancillary Lender.

7.4 **Non-cash distributions**

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

7.5 **Filing of claims**

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

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

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

7.6 **Further assurance – Insolvency Event**

Each Creditor will:

- (a) do all things that the Security Agent reasonably requests in order to give effect to this Clause 7; and
- (b) if the Security Agent is not entitled to take any of the actions contemplated by this Clause 7.6 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 7.1 (*Distributions*), Clause 7.5 (*Filing of claims*) and Clause 7.6 (*Further assurance – Insolvency Event*) the Security Agent shall act on the instructions of the Majority External Creditors or, in the absence of any such instructions, as the Security Agent sees fit.

8. TURNOVER OF RECEIPTS

8.1 Cash Cover

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

8.2 Turnover by the Creditors

Subject to Clause 8.3 (*Exclusions*) and to Clause 8.5 (*Permitted assurance and receipts*), if at any time prior to the Final Discharge Date any Creditor receives or recovers:

- (a) any Payment or distribution of, or on account of or in relation to, any of the Liabilities which is not either:
 - (i) a Permitted Payment; or
 - (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) during a Standstill Period;
 - (B) after the occurrence of a Distress Event; or
 - (C) as a result of any other litigation or proceedings against a Debtor or the Parent (other than after the occurrence of an Insolvency Event in respect of that Debtor or the Parent (as applicable)); 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 Debtor or the Parent which is not in accordance with Clause 16 (*Application of Proceeds*) and which is made as a result of, or after, the occurrence of an Insolvency Event in respect of that Debtor or the Parent,

that Creditor will:

- (i) in relation to receipts and recoveries not received or recovered by way of set-off:
 - (A) hold an amount of that receipt or recovery equal to the Relevant Liabilities (or if less, the amount received or recovered) on trust for or separate from its own funds for the benefit of the Security Agent and promptly pay or distribute that amount to the Security Agent for application in accordance with the terms of this Agreement (it being agreed that, in relation to any jurisdiction the courts of which would not recognise or give effect to the trust expressed to be created by this clause, the relationship of the External Creditor to the Creditors shall be construed as one of principal and agent); 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:

- (a) any receipt or recovery by an Ancillary Lender by way of that Ancillary Lender's right of netting or set-off relating to a Multi-account Overdraft (to the extent that that netting or set-off represents a reduction of the Gross Outstandings of that Multi-account Overdraft to or towards an amount equal to its Net Outstandings);
- (b) any receipt or recovery by way of
 - (i) Close-Out Netting by a Hedge Counterparty or Hedging Ancillary Lender;
 - (ii) Payment Netting by a Hedge Counterparty or Hedging Ancillary Lender;
 - (iii) Inter-Hedging Agreement Netting by a Hedge Counterparty; or
 - (iv) Inter-Hedging Ancillary Document Netting by a Hedging Ancillary Lender

- (c) made in accordance with Clause 17 (*Equalisation*); or
- (d) any amount received by a Bond Trustee and paid to the Bondholders where at the time of such payment the Bond Trustee has no actual knowledge that such receipt or recovery is not permitted by Clause 16 (*Application of Proceeds*) and no other External Creditor shall be responsible to any Debtor or to any other person for any amount the Bond Trustee is excused from turning over by this Clause 8.3.

8.4 **Turnover: Standstill Period**

- (a) Any amounts received or recovered by the Security Agent during a Standstill Period will be held by the Security Agent for so long as the Standstill Period is continuing and:
 - (i) following the occurrence of a Standstill Termination Event specified in paragraphs (c)(ii) to (v) of Clause 3.5 (*Standstill Period: External Creditors*), will be applied by the Security Agent in accordance with Clause 16 (*Application of Proceeds*); or
 - (ii) following the occurrence of a Standstill Termination Event specified in paragraph (c)(i) of Clause 3.5 (*Standstill Period: External Creditors*), will be distributed to the Creditors in such manner and in such amounts due as such amounts would have been applied had no Standstill Period existed.
- (b) No Default or Event of Default will occur in respect of the discharge of any External Creditor Liability after its due date due to the operation of Clause 3.5 (*Standstill Period: External Creditors*) and this Clause 8.

8.5 **Permitted assurance and receipts**

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

- (a) arrange with any person which is not a member of the Group or the Parent any assurance against loss in respect of, or reduction of its credit exposure to, a Debtor or the Parent (including assurance by way of credit based derivative or sub-participation); or
- (b) make any assignment or transfer permitted by Clause 21 (*Changes to the Parties*), which:
 - (i) is permitted by the Debt Documents; and
 - (ii) is not in breach of Clause 4.5 (*No acquisition of Hedging Liabilities*) or Clause 6.5 (*No acquisition of Parent Liabilities*),

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

8.6 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 8.1 (*Turnover by the Creditors*) the cash value of that Non-Cash Consideration shall be determined in accordance with Clause 13.2 (*Cash value of Non-Cash Recoveries*).

8.7 Amounts received by Debtors

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

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

8.8 Saving provision

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

9. REDISTRIBUTION

9.1 Recovering Creditor's rights

- (a) Any amount paid or distributed by a Creditor (a "**Recovering Creditor**") to the Security Agent under Clause 7 (*Effect of Insolvency Event*) or Clause 8 (*Turnover of Receipts*) shall be treated as having been paid or distributed by the relevant Debtor and distributed to the Security Agent and Creditors (each a "**Sharing Creditor**") in accordance with the terms of this Agreement and, in the case of amounts held by the Security Agent pursuant to Clause 8.4 (*Turnover: Standstill Period*), only so treated when applied by the Security Agent pursuant to paragraph (a)(i) of Clause 8.4 (*Turnover: Standstill Period*).
- (b) On a distribution by the Security Agent under paragraph (a) above of a Payment or distribution received by a Recovering Creditor from a Debtor, as between the relevant Debtor and the Recovering Creditor an amount equal to the amount received or recovered by the Recovering Creditor and paid or distributed to the Security Agent (the "**Shared Amount**") will be treated as not having been paid or distributed by that Debtor.

9.2 Reversal of redistribution

- (a) If any part of the Shared Amount received or recovered by a Recovering Creditor becomes repayable or returnable to a Debtor and is repaid or returned by that Recovering Creditor to that Debtor, then:
 - (i) each Sharing Creditor shall, upon request of the Security Agent, pay or distribute to the Security Agent for the account of that Recovering Creditor an amount equal to the appropriate part of its share of the Shared Amount (together with an amount as is necessary to reimburse that Recovering Creditor for its proportion of any interest on the Shared Amount which that Recovering Creditor is required to pay) (the "**Redistributed Amount**"); and
 - (ii) as between the relevant Debtor and each relevant Sharing Creditor, an amount equal to the relevant Redistributed Amount will be treated as not having been paid or distributed by that Debtor.
- (b) The Security Agent shall not be obliged to pay or distribute any Redistributed Amount to a Recovering Creditor under paragraph (a)(i) above until it has been able to establish to its satisfaction that it has actually received that Redistributed Amount from the relevant Sharing Creditor.
- (c) A Bond Trustee shall not be required to repay any amount received by it and paid to Bondholders under paragraph (a)(i) above if that Bond Trustee has no actual knowledge that such receipt or recovery is not a Permitted Payment or is not permitted by Clause 16 (*Application of Proceeds*) and no other External Creditor shall be responsible to any Debtor or to any other person for any amount the Bond Trustee is excused from repaying or returning to a Debtor by this paragraph (c).

9.3 Deferral of subrogation

- (a) No Creditor (other than the Parent or an Intra-Group Lender) or Debtor will exercise any rights which it may have by reason of the performance by it of its obligations under the Debt Documents to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights under the Debt Documents of any Creditor (other than the Parent or an Intra-Group Lender) which ranks ahead of it in accordance with the priorities set out in Clause 2 (*Ranking and Priority*) until such time as all of the Liabilities owing to each prior ranking Creditor (or, in the case of any Debtor, owing to each Creditor (other than the Parent or an Intra-Group Lender)) have been irrevocably discharged in full.
- (b) Neither the Parent nor any Intra-Group Lender shall exercise any right 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 External Creditor have been irrevocably discharged in full.

10. ENFORCEMENT OF TRANSACTION SECURITY

10.1 Cash Cover

This Clause 10 is subject to Clause 16.3 (*Treatment of 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) The Instructing Group may give or refrain from giving instructions to the Security Agent to enforce or refrain from enforcing the Transaction Security as they see fit **provided that** the Instructing Group may only instruct the Security Agent to enforce the Transaction Security if the Transaction Security has become enforceable in accordance with its terms and, if a Standstill Period is continuing, by means of an instruction in accordance with paragraph (c)(iii) of Clause 3.5 (*Standstill Period: External Creditors*).
- (c) The Security Agent is entitled to rely on and comply with instructions given in accordance with this Clause 10.1.

10.3 Manner of enforcement

If the Transaction Security is being enforced pursuant to Clause 10.1 (*Enforcement Instructions*), the Security Agent shall, subject to the terms of this Agreement, enforce the Transaction Security in such manner (including, without limitation, the selection of any administrator or receiver (or any analogous officer in any jurisdiction) of the Parent or any Debtor to be appointed by the Security Agent) as the Instructing Group shall instruct.

10.4 Waiver of rights

To the extent permitted under applicable law and subject to Clause 10.1 (*Enforcement Instructions*), Clause 10.3 (*Manner of enforcement*), Clause 12.4 (*Fair value*) and Clause 16 (*Application of Proceeds*), each of the Secured Parties, the Parent and the Debtors waives all rights it may otherwise have to require that the Transaction Security be enforced in any particular order or manner or at any particular time or that any amount received or recovered from any person, or by virtue of the enforcement of any of the Transaction Security or of any other security interest, which is capable of being applied in or towards discharge of any of the Secured Obligations is so applied.

10.5 Exercise of voting rights

- (a) Each Creditor (other than each Creditor Representative and each Arranger) will, unless prohibited by any law, rule or regulation to which such Creditor is subject, cast its vote in any proposal put to the vote by or under the supervision of any judicial or supervisory authority in respect of any insolvency, pre-insolvency or rehabilitation or similar proceedings relating to any member of the Group as instructed by the Security Agent.

- (b) The Security Agent shall give instructions for the purposes of paragraph (a) above in accordance with any instructions given to it by the Instructing Group.

10.6 **Enforcement through Security Agent only**

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

11. **NON-DISTRESSED DISPOSALS**

11.1 **Definitions**

In this Clause 11:

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

"Non-Distressed Disposal" means a disposal of:

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

to a person or persons where:

- (i) each Directing Representative of each Creditor Group which is a Party at the relevant time notifies the Security Agent that that disposal is permitted under the relevant Debt Documents relevant to that Directing Representative including, without limitation, as a Permitted Transaction or Permitted Disposal (each as defined in the relevant Finance Document); and
- (ii) that disposal is not a Distressed Disposal.

11.2 **Facilitation of Non-Distressed Disposals**

- (a) If a disposal of an asset is a Non-Distressed Disposal, the Security Agent is irrevocably authorised (at the cost of the Debtors' Agent and without any consent, sanction, authority or further confirmation from any Creditor, other Secured Party, the Parent or any Debtor) but subject to paragraph (b) below:
 - (i) to release the Transaction Security or any other claim (relating to a Debt Document) over that asset;
 - (ii) where that asset consists of shares in the capital of a member of the Group, to release the Transaction Security or any other claim (relating to a Debt Document) over that member of the Group's Property and those of any of its Subsidiaries as well as all Secured Obligations and Guarantee Liabilities owed by that Debtor or any of its Subsidiaries; 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.
- (c) The Parties shall execute all documents necessary to effect the releases referred to above or will grant a power of attorney to the Security Agent to enable it to take such action and each Creditor Representative undertakes to provide the notification to the Security Agent referred to in the definition of Non-Distressed Disposal above.

11.3 Disposal Proceeds

If any Disposal Proceeds are required to be applied in mandatory prepayment or mandatory redemption of External Creditor Liabilities (other than Hedging Liabilities) then, subject to Clause 13.7 (*Adjustment of Mandatory Prepayments*), those Disposal Proceeds shall be applied in or towards Payment of the External Creditor Liabilities requiring that application and shall be applied in accordance with the Debt Documents relevant to those External Creditor Liabilities (and the consent of any other Party shall not be required for that application).

12. DISTRESSED DISPOSALS AND APPROPRIATION

12.1 Facilitation of Distressed Disposals and Appropriation

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

- (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, acting in accordance with Clause 12.6 (*Security Agent's actions*), be considered necessary or desirable;
- (b) **release of liabilities and Transaction Security on a share sale/Appropriation (Debtor):** if the asset subject to the Distressed Disposal or Appropriation consists of shares in the capital of a Debtor, to release:
 - (i) that Debtor and any Subsidiary of that Debtor from all or any part of:
 - (A) its Borrowing Liabilities;
 - (B) its Guarantee Liabilities; and

(C) its Other Liabilities;

- (ii) any Transaction Security granted by the Parent or that Debtor or any Subsidiary of that Debtor over any of its assets; and
- (iii) any other claim of the Parent, an Intra-Group Lender or another Debtor over that Debtor's assets or over the assets of any Subsidiary of that Debtor,

on behalf of the relevant Creditors and Debtors;

(c) **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 Parent, an Intra-Group Lender or another Debtor over that Holding Company's assets or the assets of any Subsidiary of that Holding Company,

on behalf of the relevant Creditors and Debtors;

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

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

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

any Debt Document, the Transferee shall not be treated as an External Creditor or a Secured Party for the purposes of this Agreement;

(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 acting in accordance with Clause 12.6 (*Security Agent's actions*) decides to dispose of all or any part of:

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

(ii) the Debtors' Intra-Group Receivables,

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

(A) all (and not part only) of the Liabilities owed to the External Creditors (other than Agent Liabilities due to any Creditor Representative or Arranger Liabilities due to any Arranger); and

(B) all or part of any other Liabilities (other than Agent Liabilities owed to any Creditor Representative or Arranger Liabilities owed to any Arranger) and the Debtors' Intra-Group Receivables,

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

(f) **transfer of obligations in respect of liabilities on a share sale/Appropriation:** if the asset subject to the Distressed Disposal or Appropriation consists of shares in the capital of a Debtor or the Holding Company of a Debtor (the "**Disposed Entity**") and the Security Agent decides, acting in accordance with Clause 12.6 (*Security Agent's actions*), 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 the Intra-Group Liabilities or the Debtors' Intra-Group Receivables to execute and deliver or enter into any agreement to:

(i) agree to the transfer of all or part of the obligations in respect of those Intra-Group Liabilities or those Debtors' Intra-Group Receivables on behalf of the relevant Intra-Group Lenders and Debtors to which those obligations are owed and on behalf of the Debtors which owe those obligations; and

(ii) to accept the transfer of all or part of the obligations in respect of those Intra-Group Liabilities or Debtors' Intra-Group Receivables on behalf of the Receiving Entity or Receiving Entities to which the obligations in respect of those Intra-Group Liabilities or Debtors' Intra-Group Receivables are to be transferred.

12.2 Form of consideration for Distressed Disposals and Debt Disposals

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

12.3 Proceeds of Distressed Disposals and Debt Disposals

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

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

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

12.4 Fair value

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

12.5 Appointment of Financial Adviser

- (a) Without prejudice to Clause 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 8.1 (*Turnover by the Creditors*).
- (b) For the purposes of paragraph (a) above, the Security Agent shall act:
 - (i) on the instructions of the Instructing Group if the Financial Adviser is providing a valuation for the purposes of Clause 13.2 (*Cash value of Non-Cash Recoveries*); or
 - (ii) otherwise in accordance with Clause 12.6 (*Security Agent's actions*).

12.6 Security Agent's actions

For the purposes of Clause 12.1 (*Facilitation of Distressed Disposals and Appropriation*), Clause 12.2 (*Form of consideration for Distressed Disposals and Debt Disposals*), Clause 12.4 (*Fair value*) and paragraph (b)(ii) of Clause 12.5 (*Appointment of Financial Adviser*), the Security Agent shall act:

- (a) in the case of an Appropriation or if the relevant Distressed Disposal is being effected by way of enforcement of the Transaction Security, in accordance with Clause 10.3 (*Manner of enforcement*); and
- (b) in any other case on the instructions of the Instructing Group or, in the absence of any such instructions, in the manner it 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 Instructing Group) but without prejudice to its ability to exercise discretion under Clause 16.2 (*Prospective liabilities*):

- (a) distribute those Non-Cash Recoveries pursuant to Clause 16 (*Application of Proceeds*) as if they were Cash Proceeds;

- (b) hold, manage, exploit, collect, realise and dispose of those Non-Cash Recoveries; and
- (c) hold, manage, exploit, collect, realise and distribute any resulting Cash Proceeds.

13.2 Cash value of Non-Cash Recoveries

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

13.3 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*), an External Creditor and/or the relevant Creditor Representative receives Non-Cash Recoveries for application towards the discharge of any Liabilities, that External Creditor and/or relevant Creditor Representative (as applicable) shall apply those Non-Cash Recoveries in accordance with the relevant Debt Documents as if they were Cash Proceeds.
- (b) An External Creditor 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 Debt Document 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 External Creditor shall think fit for later application pursuant to paragraph (a) above.

13.4 Alternative to Non-Cash Consideration

- (a) If any Non-Cash Recoveries are to be distributed pursuant to Clause 16 (*Application of Proceeds*), the Security Agent shall (prior to that distribution and taking into account the Liabilities then outstanding and the cash value of those Non-Cash Recoveries) notify the External Creditors entitled to receive those Non-Cash Recoveries pursuant to that distribution (the "**Entitled Creditors**").

- (b) If:
 - (i) it would be unlawful for an Entitled Creditor to receive such Non-Cash Recoveries (or it would otherwise conflict with that Entitled Creditor's constitutional documents for it to do so); and
 - (ii) that Entitled Creditor promptly so notifies the Security Agent and supplies such supporting evidence as the Security Agent may reasonably require,

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

- (c) To the extent that, in relation to any distribution of Non-Cash Recoveries, there is a Cash Only Creditor:
 - (i) the Security Agent shall not distribute any Retained Non-Cash to that Cash Only Creditor (or to any Creditor Representative on behalf of that Cash Only Creditor) but shall otherwise treat the Non-Cash Recoveries in accordance with this Agreement;
 - (ii) the Security Agent shall notify the relevant Creditor Representative 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 Creditor Representative 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 External Creditor shall, following a request by the Security Agent (acting in accordance with Clause 12.6 (*Security Agent's actions*)), notify the Security Agent of the extent to which paragraph (b)(i) above would apply to it in relation to any distribution or proposed distribution of Non-Cash Recoveries.

13.5 Security Agent protection

- (a) Notwithstanding anything to the contrary in any Debt Document, no Distressed Disposal or Debt Disposal may be made in whole or part for Non-Cash Consideration if the Security Agent has reasonable grounds for believing that its receiving, distributing, holding, managing, exploiting, collecting, realising or disposing of that Non-Cash Consideration would have an adverse effect on it.
- (b) If Non-Cash Consideration is distributed to the Security Agent pursuant to Clause 8.1 (*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 18 (*Application of Proceeds*)) if the Security Agent has reasonable grounds for believing that holding, managing, exploiting or collecting that Non-Cash Consideration would have an adverse effect on it.
- (c) If the Security Agent holds Retained Non-Cash for a Cash Only Creditor (each as defined in Clause 13.4 (*Alternative to Non-Cash Consideration*)), the Security Agent may at any time, after notifying that Cash Only Creditor and notwithstanding any instruction from a Creditor or group of Creditors pursuant to the terms of any Debt Document, immediately realise and dispose of that Retained Non-Cash for cash consideration (and distribute any Cash Proceeds of that Retained Non-Cash to that Cash Only Creditor in accordance with Clause 16 (*Application of Proceeds*)) if the Security Agent has reasonable grounds for believing that holding, managing, exploiting or collecting that Retained Non-Cash would have an adverse effect on it.

13.6 Proceeds (before Enforcement Action)

- (a) In this Clause 13.6:
 - "**Insurance Proceeds**" has, as the context requires, the meaning given to that term in the Bank Facilities Agreement or any Additional Finance Document Equivalent.
 - "**Recovery Claim**" has, as the context requires, the meaning given to that term in the Bank Facilities Agreement or any Additional Finance Document Equivalent.
- (b) So long as the requirements of paragraph (c) below are met, if any Recovery Claim or insurance claim is to be made, or is made, by a Debtor prior to the occurrence of an Enforcement Action and that Recovery Claim or insurance claim (the Insurance Proceeds of that insurance claim) is or are expressed to be subject to the Transaction Security, the Security Agent is irrevocably authorised (at the cost of the relevant Debtor and without any consent, sanction, authority or further confirmation from any Creditor or Debtor or the Parent) to:

- (i) give a consent under or release the Transaction Security, or any other claim, over the relevant insurance policy solely to the extent necessary to allow that Debtor to make that Recovery Claim or insurance claim and to comply with that Debtor's obligations in respect of that claim or insurance claim and those Insurance Proceeds under the Debt Documents; and
 - (ii) execute and deliver or enter into any such consent under or release of that Transaction Security, or claim, that may, in the discretion of the Security Agent, be considered necessary or desirable.
- (c) If any Recovery Claim or Insurance Proceeds are required to be applied in mandatory prepayment or mandatory redemption of the External Creditor Liabilities then that Recovery Claim or those Insurance Proceeds shall, subject to Clause 13.7 (*Adjustment of Mandatory Prepayments*), be applied in or towards Payment of the External Creditor Liabilities requiring that application and shall be applied in accordance with the Debt Documents relevant to those External Creditor Liabilities (and the consent of any other Party shall not be required for that application).

13.7 Adjustment of Mandatory Prepayments

- (a) If the making of any Mandatory Prepayment (an "**Original Mandatory Prepayment**") would result in a payment (a "**Hedge Reduction Payment**") becoming due to any Hedge Counterparty pursuant to paragraph (c) of Clause 4.13 (*Hedging Amount*), the amount of that Mandatory Prepayment will be reduced so that the aggregate of:
- (i) the reduced Mandatory Prepayment; and
 - (ii) each Hedge Reduction Payment which would result from that reduced Mandatory Prepayment,
- is equal to the amount of the Original Mandatory Prepayment.
- (b) Where a Mandatory Prepayment is to be applied in prepayment of amounts outstanding under more than one class of Secured Debt Document, if one or more of such Secured Debt Documents (each a "**Relevant Secured Debt Document**") requires the payment of break costs or make-whole amounts ("**Repayment Costs**") in connection with any such Mandatory Prepayment, then, following the application of paragraph (a) above, the amount of such Mandatory Prepayment allocated to such Relevant Secured Debt Document in accordance with the terms of the Secured Debt Documents (the "**Relevant Secured Debt Document Original Prepayment Amount**") shall be reduced so that the aggregate of:
- (i) the reduced Mandatory Prepayment; and
 - (ii) the Repayment Costs payable under that Relevant Secured Debt Document in connection with such reduced Mandatory Prepayment,

is equal to the amount of the Relevant Secured Debt Document Original Prepayment Amount.

13.8 Application of Mandatory Prepayments

- (a) To the extent that any Secured Debt Documents require a Mandatory Prepayment in the same circumstances (and subject to any right under the relevant Secured Debt Document for External Creditors to elect not to be prepaid), each such Secured Debt Documents shall provide that the proceeds of such Mandatory Prepayment shall be applied on a *pro rata* basis in prepayment of Bank Lender Liabilities, PP Liabilities and other External Creditor Liabilities under each class of External Creditor Liabilities that is expressed to benefit from the Mandatory Prepayment pursuant to the terms of the applicable Secured Debt Documents. For the purposes of calculating the *pro rata* proportion of an underlying class of External Creditor Liabilities in order to make the prepayments envisaged by this paragraph, any make-whole amount or other prepayment premium payable in respect of those External Creditor Liabilities shall be ignored (but without prejudice to the obligation of the relevant Debtor to pay such make-whole amount or other prepayment premium in accordance with the terms of the relevant Secured Debt Document and as set out in paragraph (b) of Clause 13.7 (*Adjustment of Mandatory Prepayments*) above).
- (b) No Debtor may reborrow any Additional Facilities Liabilities which are prepaid pursuant to a mandatory prepayment or mandatory redemption provision in such Additional Finance Documents.

14. FURTHER ASSURANCE

14.1 Further assurance – disposals and releases

Each Creditor and Debtor and the Parent 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 13.6 (*Proceeds (before Enforcement Action)*) (which shall include, without limitation, the execution of any assignments, assignations transfers, releases, dispositions, standard securities, recordings 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 paragraph (a) above or if the Security Agent requests that any Creditor or Debtor take any such action, take that action itself in accordance with the instructions of the Security Agent,

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

14.2 Further assurance – security

- (a) Subject to the Agreed Security Principles, the Parent and each Debtor shall (and the Company shall ensure that each other member of the Group will) promptly do all such acts or execute or re-execute all such documents (including assignments, transfers, mortgages, charges, notices and instructions) as the Security Agent may reasonably specify (and in such form as the Security Agent may reasonably require in favour of the Security Agent or any of its nominees):
 - (i) to perfect the Security created or intended to be created under or evidenced by the Transaction Security Documents (which may include the execution or re-execution of a mortgage, charge, assignment or other Security over all or any of the assets which are, or are intended to be, the subject of the Transaction Security) or for the exercise of any rights, powers and remedies of the Security Agent or the Secured Parties provided by or pursuant to the Secured Debt Documents or by law;
 - (ii) to confer on the Security Agent, or the Secured Parties, Security over any property and assets of that Debtor (or member of the Group, as applicable) located in any jurisdiction equivalent or similar to the Security intended to be conferred by or pursuant to the Transaction Security Documents; and/or
 - (iii) to facilitate the realisation of the assets which are, or are intended to be, the subject of the Transaction Security.
- (b) Subject to the Agreed Security Principles, the Parent and each Debtor shall (and the Company shall ensure that each other member of the Group will) take all such action as is available to it (including making all filings, recordings and registrations) as may be necessary for the purpose of the creation, perfection, protection or maintenance of any Security conferred or intended to be conferred on the Security Agent or the Secured Parties by or pursuant to the Secured Debt Documents.

15. GUARANTEE AND INDEMNITY

15.1 Guarantee and indemnity

Each Guarantor irrevocably and unconditionally jointly and severally:

- (a) guarantees to each External Creditor punctual performance by each other Debtor of all that Debtors' obligations under the Secured Debt Documents;
- (b) undertakes with each External Creditor that whenever a Debtor does not pay any amount when due under or in connection with any Secured Debt Document, that Guarantor shall immediately on demand pay that amount as if it was the principal obligor; and
- (c) agrees with each External Creditor that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify that External Creditor immediately on demand against any cost, loss or liability it incurs as a result of a Debtor not paying any amount

which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Secured Debt Document on the date when it would have been due. The amount payable by a Guarantor under this indemnity will not exceed the amount it would have had to pay under this Clause 15 if the amount claimed had been recoverable on the basis of a guarantee.

15.2 Continuing guarantee

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

15.3 Reinstatement

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

15.4 Waiver of defences

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

- (a) any time, waiver or consent granted to, or composition with, any Debtor, the Parent or other person;
- (b) the release of any other Debtor, the Parent or any other person under the terms of any composition or arrangement with any creditor of any member of the Group;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Debtor or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of a Debtor, the Parent or any other person;
- (e) any amendment, novation, supplement, extension restatement (however fundamental and whether or not more onerous) or replacement of a Secured Debt Document or any other document or security including, without limitation, any change in the purpose of, any extension of or increase in any facility, bonds, notes, private placement notes, or equipment or the addition of any new facility, bonds, notes, private placement notes or equivalent under any Secured Debt Document or other document or security;

- (f) any unenforceability, illegality or invalidity of any obligation of any person under any Secured Debt Document or any other document or security; or
- (g) any insolvency or similar proceedings.

15.5 Guarantor intent

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

15.6 Immediate recourse

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

15.7 Appropriations

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

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

15.8 Deferral of Guarantors' rights

- (a) Until all amounts which may be or become payable by the Debtors under or in connection with the Secured Debt Documents have been irrevocably paid in full and unless the Security Agent otherwise directs, no Guarantor will exercise any rights which it may have by reason of performance by it of its obligations under the Secured Debt Documents or by reason of any amount being payable, or liability arising, under this Clause 15:
 - (i) to be indemnified by a Debtor;

- (ii) to claim any contribution from any other guarantor of any Debtor's obligations under the Secured Debt Documents;
 - (iii) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the External Creditors under the Secured Debt Documents or of any other guarantee or security taken pursuant to, or in connection with, the Secured Debt Documents by any External Creditor;
 - (iv) to bring legal or other proceedings for an order requiring any Debtor to make any payment, or perform any obligation, in respect of which any Guarantor has given a guarantee, undertaking or indemnity under Clause 15.4 (*Waiver of defences*);
 - (v) to exercise any right of set-off against any Debtor; and/or
 - (vi) to claim or prove as a creditor of any Debtor in competition with any External Creditor.
- (b) If a Guarantor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the External Creditors by the Debtors under or in connection with the Secured Debt Documents to be repaid in full on trust for the External Creditors (or, if the relevant Guarantor is not able to hold such amount on trust under the laws of its jurisdiction of incorporation, for the benefit of the External Creditors) and shall promptly pay or transfer the same to the Security Agent or as the Security Agent may direct for application in accordance with Clause 16 (*Application of Proceeds*).

15.9 Release of Guarantors' right of contribution

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

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

15.10 Additional security

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

15.11 Guarantee Limitations

- (a) Notwithstanding any other provision in this Agreement, this guarantee does not apply to any liability of any Guarantor to the extent that it would result in this guarantee constituting unlawful financial assistance under the laws of the jurisdiction of incorporation of the relevant Guarantor and, with respect to any Additional Guarantor, is subject to the limitations (if any) set out in the Accession Deed applicable to such Additional Guarantor.
- (b) The limitations set forth in this Clause 15.11 shall apply, *mutatis mutandis*, to any Security created by such Guarantor under any Transaction Security Documents and to any guarantee, undertaking, obligation, indemnity and any similar obligation resulting in a payment obligation and payment, including but not limited to distributions, cash sweeps, credits and set-offs, pursuant to or permitted by the Secured Debt Documents and made by such Guarantor.
- (c) To the extent permitted by applicable law, if payment of any Guarantee Liabilities or the honouring of any Security by a Guarantor has been made in contravention of the limitations contained in this Clause 15.11, the Secured Parties shall not be liable for any damages in relation thereto, and the maximum amount repayable by the Secured Parties as a consequence of such contravention shall be the amount received from that Guarantor.
- (d) This guarantee does not apply to any liability to the extent that it would result in this guarantee constituting unlawful financial assistance within the meaning of sections 678 or 679 of the Companies Act 2006 and, with respect to any Additional Guarantor, is subject to any limitations set out in the Accession Deed applicable to such Additional Guarantor.

16. APPLICATION OF PROCEEDS

16.1 Order of application

Subject to Clauses 8.4 (*Turnover: Standstill Period*), 16.2 (*Prospective liabilities*), 16.3 (*Treatment of Cash Cover*) and, all amounts from time to time received or recovered by the Security Agent pursuant to the terms of any Debt Document or in connection with the realisation or enforcement of all or any part of the Transaction Security (for the purposes of this Clause 16, the "**Recoveries**") shall be held by the Security Agent on trust to apply them at any time as the Security Agent (in its discretion) sees fit, to the extent permitted by applicable law (and subject to the provisions of this Clause 16), in the following order of priority:

- (a) in discharging any sums owing to the Security Agent, any Receiver or any Delegate;
- (b) in discharging all costs and expenses incurred by any External Creditor in connection with any realisation or enforcement of the Transaction Security

taken in accordance with the terms of this Agreement or any action taken at the request of the Security Agent under Clause 7.6 (*Further assurance – Insolvency Event*);

- (c) in payment or distribution to:
 - (i) the Bank Facilities Agent on its own behalf in respect of its Agent Liabilities and on behalf the Bank Facilities Lenders in respect of their Bank Lender Liabilities;
 - (ii) each Bond Trustee on its own behalf in respect of its Agent Liabilities and on behalf of the Bondholders for which it acts and, where there is no Bond Trustee, the Bondholders, in any case, in respect of their Bondholder Liabilities;
 - (iii) each Additional Facility Agent on its own behalf in respect of its Agent Liabilities and on behalf of any Arranger under the relevant Additional Facilities Documents in respect of its Arranger Liabilities and the Additional Facilities Lenders for which it acts under the relevant Additional Facilities Documents in respect of their Additional Facilities Liabilities for which it acts and, where there is no such Additional Facility Agent, any Arranger, in any case, in respect of its Arranger Liabilities and any Additional Facilities Lenders, in any case, in respect of their Additional Facilities Liabilities;
 - (iv) each Creditor Representative of the PP Noteholders on its own behalf in respect of its Agent Liabilities and on behalf of the PP Noteholders for which it acts and, where there is no such Creditor Representative, the PP Noteholders, in any case, in respect of their PP Liabilities; and
 - (v) each Hedge Counterparty in respect of its Hedging Liabilities,

for application towards the discharge of:

- (A) other than any Make-Whole Amounts, the Agent Liabilities, the Arranger Liabilities, the Bank Lender Liabilities, the Bondholder Liabilities, the Additional Facilities Liabilities, the PP Liabilities (*pari passu* and on a *pro rata* basis between the relevant Liabilities of the relevant External Creditors) (in accordance with the terms of the relevant Debt Documents); and
- (B) the Hedging Liabilities under the Hedging Agreements (*pari passu* and on a *pro rata* basis between the Hedging Liabilities of each Hedge Counterparty),

on a *pari passu* and *pro rata* basis between paragraphs (A) and (B) above and thereafter in payment of any Make-Whole Amounts on a *pari passu* and *pro rata* basis;

- (d) if none of the Debtors are under any further actual or contingent liability under any Debt Document, in payment or distribution to any person to whom the Security Agent is obliged to pay or distribute in priority to any Debtor; and

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

16.2 Prospective liabilities

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

- (a) hold any amount of the Recoveries which is in the form of cash, and any cash which is generated by holding, managing, exploiting, collecting, realising or disposing of any Non-Cash Consideration, in one or more interest-bearing suspense or impersonal 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); and
- (b) hold, manage, exploit, collect and realise any amount of the Recoveries which is in the form of Non-Cash Consideration,

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

- (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 Cash Cover

- (a) Nothing in this Agreement shall prevent any Ancillary Lender taking any Enforcement Action in respect of any Cash Cover which has been provided for it in accordance with a Facilities Agreement.
- (b) To the extent that any 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 Cash Cover shall be paid to the Security Agent and shall be held by the Security Agent on trust to apply them at any time as the Security Agent (in its discretion) sees fit, to the extent permitted by applicable law, in the following order of priority:
 - (i) to the Relevant Ancillary Lender towards the discharge of the relevant Bank Lender Liabilities for which that 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 Cash Cover is held with the Relevant Ancillary Lender, nothing in this Agreement shall prevent that Relevant Ancillary Lender receiving and retaining any amount in respect of that Cash Cover.

16.4 **Investment of Cash Proceeds**

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

16.5 **Currency conversion**

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

16.6 **Permitted Deductions**

The Security Agent shall be entitled, in its discretion:

- (a) to set aside by way of reserve amounts required to meet; and
- (b) to make and pay any deductions and withholdings (on account of Taxes or otherwise) which it is or 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 Ancillary Lender in accordance with paragraph (b)(i) of Clause 16.3 (*Treatment of Cash Cover*);
 - (ii) may be made to the relevant Creditor Representative on behalf of its relevant External Creditors, or if there is no such Creditor Representative, to the relevant External Creditor directly; 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*).

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 enforcement action of the type described in paragraphs (a)(i), (a)(iii), (a)(iv) or (c) of the definition of Enforcement Action occurs in accordance with the terms of this Agreement.

"Exposure" means:

- (a) in relation to an Bank Facilities Lender, the aggregate principal amount of its participation (if any, and without double counting) in all Bank Facilities Utilisations outstanding under the Bank 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 Bank Facilities Lenders pursuant to any loss-sharing arrangement in the Bank Facilities Agreement which has taken place since the Enforcement Date to have taken place at the Enforcement Date) together with the aggregate amount of all accrued interest, fees and commission owed to it under the Bank 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 Cash Cover has been provided by a Debtor in respect of that amount and is available to that Bank Facilities Lender pursuant to such Cash Cover; and
- (b) in relation to any PP Noteholder, the aggregate principal amount of its entitlement to all outstandings (including any make-whole amount, if any, and without double counting) in respect of its PP Notes issued under the relevant PP Note Documents at the Enforcement Date (assuming all contingent liabilities which have become actual liabilities since the Enforcement Date to have been actual liabilities at the Enforcement Date (but not including, for these purposes only, any interest that would have accrued from the Enforcement Date to the date of actual maturity in respect of those liabilities)) together with the aggregate amount of all accrued interest, fees and commission owed to it under the PP Notes;
- (c) in relation to a Bondholder, the aggregate principal amount of its entitlement to all outstandings (including any make-whole amount, if any, and without double counting) in respect of any Bonds issued under any relevant Bond Documentation at the Enforcement Date together with the aggregate amount of all accrued interest, fees and commission owed to it in respect of any such Bonds under any relevant Bond Documentation;
- (d) in relation to an Additional Facilities Lender, the aggregate principal amount of its participation (if any, and without double counting) in all outstandings (including any applicable make-whole amount, if any, and without double counting) under the relevant Additional Facilities Document at the Enforcement Date (assuming all contingent liabilities which have become actual liabilities since the Enforcement Date have been actual liabilities at the Enforcement Date (but not including, for these purposes only, any interest that would have accrued from the Enforcement Date to the date of actual maturity in respect of those liabilities)) together with the aggregate amount of all accrued interest, fees and commission owed to it under that Additional Facilities Document 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 Cash Cover has been provided by a Debtor in respect

of that amount and is available to that Additional Facilities Lender pursuant to such Cash Cover; and

- (e) in relation to a Hedge Counterparty:
 - (i) if that Hedge Counterparty has terminated or closed out any hedging transaction under any Hedging Agreement in accordance with the terms of this Agreement on or prior to the Enforcement Date, its Closed Out Liabilities; and
 - (ii) if that Hedge Counterparty has not terminated or closed out any hedging transaction under any Hedging Agreement on or prior to the Enforcement Date, its MTM Liabilities.

17.2 Implementation of equalisation

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

17.3 Equalisation

If, for any reason, other than as a result of amounts being properly applied in accordance with Clause 16 (*Application of Proceeds*) any External Creditor Liabilities remain unpaid after the Enforcement Date and the resulting losses are not borne by the External Creditors in the proportions which their respective Exposures at the Enforcement Date bore to the aggregate Exposures of all the External Creditors at the Enforcement Date, the External Creditors will make such payments amongst themselves as the Security Agent shall require to put the External Creditors in such a position that (after taking into account such payments) those losses are borne in those proportions.

17.4 Turnover of enforcement proceeds

If:

- (a) the Security Agent, any Creditor Representative or any External Creditor is not entitled, for reasons of applicable law, to pay or distribute amounts received pursuant to the making of a demand under any guarantee, indemnity or other assurance against loss or the enforcement of the Transaction Security to the External Creditors but is entitled to pay or distribute those amounts to Creditors (such Creditors, the "**Receiving Creditors**") who, in accordance with the terms of this Agreement, are subordinated in right and priority of payment to the External Creditors; and
- (b) the Final Discharge Date has not yet occurred (nor would occur after taking into account such payments),

then the Receiving Creditors shall make such payments or distributions to the External Creditors as the Security Agent shall require to place the External Creditors in the position they would have been in had such amounts been available for application against the External Creditor Liabilities. The Bond Trustee shall not be required to repay any amount received by it and paid to Bondholders.

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 Creditor Representative requesting that it notify it of, respectively, its Exposure and that of each of the External Creditors (if any) which it represents.

17.6 Default in payment

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

18. BOND TRUSTEES

18.1 Liability

- (a) This Agreement is executed and delivered by any Bond Trustee not individually or personally but solely in its capacity as trustee in the exercise of the powers and authority conferred and vested in it under the relevant Bond Documentation. Nothing contained in this Agreement or any other Debt Document to which a Bond Trustee is a party shall require the Bond Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties or the exercise of any right, power, authority or discretion, if it has grounds for believing the repayment of such funds is not reasonably assured to it. Prior to taking (or refraining from taking) any action under this Agreement, any Bond Trustee may request and rely upon an opinion of counsel or opinion of another qualified expert, at the expense of the Bondholders.
- (b) The obligation of any Bond Trustee under this Agreement to make any payment or to hold any amount on trust shall be only to make such payment or to hold any such amount on trust to the extent that it has received that amount and that amount is under its control.
- (c) Notwithstanding any other provision of this Agreement, each Bond Trustee's respective obligations hereunder (if any) to make any payment or repayment (however described) of any amount received or recovered under this Agreement or to hold any such amount on trust shall be only to make payment or repayment (however described) of such amount or hold any such amount on trust to the extent that:

- (i) it had actual knowledge that the receipt or recovery is an amount received in breach of a provision of this Agreement or has actual knowledge that such obligation has arisen in respect of such amount (a "**Turnover Receipt**"); and
 - (ii) prior to receiving such knowledge, it has not distributed the amount of the Turnover Receipt to the Bondholders in accordance with the provisions of the relevant Bond Documentation.
- (d) For the purpose of this Clause 18:
- (i) actual knowledge of a Bond Trustee shall be construed to mean such Bond Trustee shall not be charged with knowledge (actual or otherwise) of the existence of facts that would impose an obligation on it to make any payment or prohibit it from making any payment unless a responsible officer of such Bond Trustee has received, not less than two Business Days prior to the date of such payment, a written notice that such payments are required or prohibited by this Agreement; and
 - (ii) responsible officer when used in relation to a Bond Trustee means:
 - (A) the department or officer specified for such Bond Trustee in this Agreement and/or notified by the Bond Trustee from time to time for that purpose; and/or
 - (B) any other person who is an officer within the corporate trust and agency department of such Bond Trustee, including any director, associate director, vice president, assistant vice president, senior associate, assistant treasurer, trust officer, assistant secretary or any other officer of such Bond Trustee who customarily performs functions similar to those performed by such officers, or to whom any corporate trust matter is referred because of such individual's knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Agreement.
- (e) It is further understood by each Party that in no case shall any Bond Trustee be:
- (i) responsible or accountable in damages or otherwise to any other Party for any loss, damage or claim incurred by reason of any act or omission performed or omitted by any Bond Trustee in good faith in accordance with this Agreement or any of the Debt Documents in a manner such Bond Trustee believed to be within the scope of the authority conferred on it by this Agreement or any of the Debt Documents or by law, or
 - (ii) liable for or on account of any of the statements, representations, warranties, covenants or obligations stated to be those of any other Party, all such liability, if any, being expressly waived by the Parties and any person claiming by, through or under such Party; **provided however that** each Bond Trustee (or any successor or additional Bond Trustee)

shall be liable under this Agreement for its own gross negligence or wilful misconduct.

- (f) Notwithstanding any other provisions of this Agreement or any other Debt Document to which the Bond Trustee is a party, in no event shall the Bond Trustee be liable for special, indirect, punitive or consequential loss or damages of any kind whatsoever (including, but not limited to, loss of business, goodwill, opportunity or profits) whether or not foreseeable even if the Bond Trustee has been advised of the likelihood of such loss or damage and regardless of whether the claim for loss or damage is made in negligence, for breach of contract or otherwise.
- (g) Subject to paragraph (h) below, any obligation in this Agreement imposed on a Creditor to make any payment or take any action shall, in relation to a Bondholder that is:
 - (i) a Creditor; and
 - (ii) not a Party as a result of being represented by a Bond Trustee,be construed as an obligation on the relevant Bond Trustee.
- (h) It is also acknowledged that no Bond Trustee shall have any responsibility for the actions of any individual Bondholder and shall not be obliged to procure that an individual Bondholder takes any action.

18.2 No Bond Trustee shall be deemed to owe any fiduciary duty to any Creditor (each a "**Third Party**") (save in respect of such persons for whom it acts as trustee pursuant to the relevant Bond Documentation) and shall not be liable to any Third Party if it shall in good faith mistakenly pay over or distribute to any Third Party or to any other person cash, property or securities to which any other Third Party shall be entitled by virtue of this Agreement or otherwise save to the extent that the same results from its gross negligence or wilful misconduct. With respect to any Third Party (other than a Bondholder), each Bond Trustee undertakes to perform or to observe only such of its covenants or obligations as are specifically set forth in the Debt Documents to which it is party and this Agreement and no implied agreement, covenants or obligations on the part of a Bond Trustee shall be read into this Agreement.

18.3 **No Action**

No Bond Trustee shall have any obligation to take any action under this Agreement unless it is indemnified and/or secured to its satisfaction (whether by way of payment in advance or otherwise) by the Debtors and/or the Bondholders in accordance with the terms of the relevant Bond Documentation **provided that** this shall not affect any obligation arising under this Agreement to turnover monies received by it. No Bond Trustee is required to indemnify any person whether or not a Party, in respect of any of the transactions contemplated by this Agreement. In no event shall the permissive right of the Bond Trustee to take the actions permitted by this Agreement be construed as an obligation or duty to do so.

18.4 **Action in accordance with Bond Documentation and Debt Documents**

- (a) It is understood and agreed by each Party that when acting under and in accordance with this Agreement, each Bond Trustee does so in accordance with and subject to the detailed provisions of the relevant Bond Documentation under and in respect of which it acts as trustee.
- (b) Each Bond Trustee undertakes to perform or to observe only such of its covenants or obligations as are specifically set forth in the Debt Documents to which it is party, and this Agreement and no implied agreement, covenants or obligations on the part of a Bond Trustee shall be read into this Agreement.

18.5 **Other Parties Not Affected**

This Clause 18 is intended to afford protection to each Bond Trustee only. No provision of this Clause 18 shall alter or change the rights and obligations as between the other Parties to this Agreement in respect of each other.

18.6 **Notices**

- (a) Each Bond Trustee shall at all times be entitled to and may rely on any notice, consent, document or certificate given or granted by the Security Agent or any Bank Facilities Agent, or other Creditor Representative pursuant to the terms of this Agreement without being under any obligation to enquire or otherwise determine whether any such notice, consent, document or certificate has been given or granted by the Security Agent or relevant Creditor Representative and shall not, in any circumstances, be held liable for so relying.
- (b) In acting under and in accordance with this Agreement and without prejudice to its obligations under this Agreement, each Bond Trustee is entitled to seek instructions from the Bondholders, at any time, and where it so acts on the instructions of the relevant Bondholders, such Bond Trustee shall not incur any liability to any person for so acting, other than in accordance with the relevant Bond Documentation. A Bond Trustee shall not be liable to any person for any loss suffered as a result of any delay caused as a result of it seeking instructions from the Bondholders.

18.7 Subject to Clause 16.1 (*Order of application*), except as otherwise expressly provided for in this Agreement, no provision of this Agreement shall alter or otherwise affect the rights and obligations of any Debtor to make payments in respect of the External Creditor Liabilities owed to any Bond Trustee as and when the same are due and payable and receipt and retention by any Bond Trustee of the same or taking of any step or action by any Bond Trustee in respect of its rights under the Bond Documentation to the same.

18.8 **Provisions Survive Termination**

The provisions of this Clause 18 shall survive the termination or discharge of this Agreement.

18.9 Resignation

Any Bond Trustee may resign or be removed in accordance with the terms of the Bond Documentation **provided that** a replacement Bond Trustee agrees with the Parties to become the replacement Bond Trustee under this Agreement in accordance with Clause 21.2 (*Change of External Creditor (other than a Hedge Counterparty)*).

18.10 Reliance and Information

- (a) Any Bond Trustee may (i) rely and shall be fully protected in acting or refraining from acting upon any notice or other document reasonably believed by it to be genuine and correct and to have been signed by, or with the authority of, the proper person and (ii) engage and pay for professional advisers selected by it and rely and be fully protected in acting or refraining from acting upon the advice of such professional advisers or those representing a person other than that Bond Trustee.
- (b) Each Creditor confirms that it has not relied exclusively on any information provided to it by any Bond Trustee. No Bond Trustee is obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (c) A Bond Trustee is not responsible for:
 - (i) providing any Creditor with any credit or other information concerning the risks arising under or in connection with the Debt Documents (including any information relating to the financial condition or affairs of any Debtor or their related entities or the nature or extent of recourse against any Party or its assets) whether coming into its possession before, on or after the date of this Agreement; or
 - (ii) obtaining any certificate or other document from any Debtor.
- (d) In addition, a Bond Trustee is entitled to assume that:
 - (i) any payment or other distribution made in respect of the External Creditor Liabilities has been made in accordance with the provisions of this Agreement;
 - (ii) no Event of Default (however described) has occurred;
 - (iii) any Bonds issued comply with the provisions of this Agreement including; and/or
 - (iv) the Final Discharge Date has not occurred,

unless it has actual knowledge to the contrary (on the same basis as referred to in paragraph (b) of Clause 18.1 (*Liability*)). The Bond Trustee is not obliged to monitor or enquire whether any Default or Event of Default (however described) has occurred.

18.11 **Agents**

The Bond Trustee may act through its attorneys and agents and shall not be responsible for any loss, liability, cost or expense incurred directly as a result of the wilful misconduct, omission or default of any attorney or agent properly appointed by it.

18.12 **No Requirement for Bond or Surety**

The Bond Trustee shall not be required to give any bond or surety with respect to the performance of its duties or the exercise of its powers under this Agreement.

18.13 **Illegality**

Notwithstanding anything to the contrary expressed or implied in any other Debt Document, a Bond Trustee may refrain from taking any action in any jurisdiction if the taking of such action in that jurisdiction would or would be reasonably likely to, in its opinion based upon legal advice in that jurisdiction, be contrary to any law, directive or regulation of that jurisdiction and may do anything which is necessary in order to comply with such law, directive or regulation. Furthermore, the Bond Trustee may also refrain from taking such action if it would otherwise render it liable to any person in an applicable jurisdiction or if, in its opinion based upon such legal advice, it would not have the power to do the relevant thing in that jurisdiction by virtue of any applicable law or regulation in that jurisdiction or in England or if it is determined by any court or other competent authority in that jurisdiction or in England and Wales that it does not have such power. The Bond Trustee may do anything which, in its opinion, is necessary or desirable to comply with any law, directive or regulation.

18.14 **Creditors and the Bond Trustee**

In acting pursuant to this Agreement and the Bond Documentation, the Bond Trustee is not required to have any regard to the interests of the Creditors (other than the Bondholders).

18.15 **Departmentalisation**

In acting as a Bond Trustee, a Bond Trustee shall be treated as acting through its agency division which shall be treated as a separate entity from its other divisions and departments. Any information received or acquired by a Bond Trustee which is received or acquired by some other division or department or otherwise than in its capacity as Bond Trustee may be treated as confidential by that Bond Trustee and will not be treated as information possessed by that Bond Trustee in its capacity as such.

18.16 **Security Agent and the Bond Trustee**

- (a) No Bond Trustee shall be responsible for appointing or monitoring the performance of the Security Agent.
- (b) The Security Agent agrees and acknowledges that it shall have no claim against a Bond Trustee in respect of any fees, costs, expenses and liabilities due and payable to, or incurred by, the Security Agent.

- (c) A Bond Trustee shall be under no obligation to instruct or direct the Security Agent to take any Enforcement Action unless it shall have been instructed to do so by the Bondholders.

18.17 Disclosure of Information

Each Debtor irrevocably authorises a Bond Trustee to disclose to the Security Agent or any other External Creditor any information that is received by such Bond Trustee in its capacity as a Bond Trustee.

19. THE SECURITY AGENT

19.1 Security Agent as trustee and agent

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

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 (*The Security Agent*), Clause 22 (*Costs and Expenses*) and Clause 23 (*Other Indemnities*); and
 - (iv) in respect of the exercise of the Security Agent's discretion to exercise a right, power or authority under any of:
 - (A) Clause 11 (*Non-Distressed Disposals*);
 - (B) Clause 16.1 (*Order of application*);
 - (C) Clause 16.2 (*Prospective liabilities*);
 - (D) Clause 16.3 (*Treatment of 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. Without prejudice to its obligation to ascertain whether the relevant percentage of External Credit Participations has been obtained under this Agreement where applicable, nothing in this Clause 19.2 shall oblige the Security Agent to consider or monitor the effect of any instructions delivered to it in accordance with this Agreement and the Security Agent shall have no liability to any Party whatsoever (including as a result of any corresponding delay) if, in fact, such instructions do or do not have the effect of an Intercreditor Amendment.
- (f) In exercising any discretion to exercise a right, power or authority under the Debt Documents where either:
 - (i) it has not received any instructions 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:

- (A) other than where paragraph (B) below applies, do so having regard to the interests of all the Secured Parties; or
 - (B) if (in its opinion) there is a conflict between the interests of one group of External Creditors and the interests of another group of External Creditors in relation to the matter in respect of which the discretion is to be exercised, do so having regard only to the interests of all the External Creditors.
- (g) Notwithstanding anything to the contrary in this Agreement or any Debt Document and without prejudice to its obligation to ascertain whether the relevant percentage of External Credit Participations has been obtained under this Agreement where applicable, any reference to the Security Agent acting in its discretion, as it sees fit or analogous term shall not oblige the Security Agent to exercise any such discretion and the Security Agent shall be required at all times (subject to being indemnified and/or secured and/or prefunded to its satisfaction and except insofar as such determination is for the purpose of enabling the Security Agent to protect its own interests or receive sums for its own account) to act or refrain from acting in accordance with the instructions of the Instructing Group, or if this Agreement stipulates the matter is a decision for any Creditor or group of Creditors, from that Creditor or group of Creditors that is entitled to so instruct the Security Agent in accordance with the terms of this Agreement and, in doing so, the Security Agent shall be acting in a purely mechanical and administrative capacity. The Security Agent shall not be responsible to any Party as a consequence of so acting, including for any delay in receiving such instructions, requesting clarification or being provided with mutually agreed instructions (if applicable), nor if any such delay causes another Party or Creditor's instructions to prevail or to become excluded pursuant to the terms of this Agreement.
- (h) The Security Agent may refrain from acting in accordance with any instructions of any Creditor or group of Creditors until it has received any indemnification and/or security and/or prefunding that it may in its discretion require (which may be greater in extent than that contained in the Debt Documents) for any cost, loss or liability (together with any applicable VAT) which it may incur in complying with those instructions.

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 Creditor Representative and each External Creditor which does not have a Creditor Representative a copy of any document received by the Security Agent from any Debtor under any Debt Document; and

- (ii) forward to a Party the original or a copy of any document which is delivered to the Security Agent for that Party by any other Party.
- (c) 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 24.3 (*Notification of prescribed events*), if the Security Agent receives notice from a Party referring to any Debt Document, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the External Creditors.
- (e) 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).
- (g) The Security Agent will ascertain whether the relevant percentage of External Credit Participations has been obtained for Special Decisions or Ordinary Decisions, as applicable, in accordance with the terms of this Agreement. In ascertaining such relevant percentage, the Security Agent shall be entitled to rely on votes communicated by the relevant Directing Representative. For the avoidance of doubt, the Security Agent shall be entitled to request any clarification from a Party required in order to ascertain such relevant percentage.

19.4 No fiduciary duties to Debtors, the Intra-Group Lenders or the Parent

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

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 or the Parent.

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 Instructing Group, 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 written notice to the contrary in its capacity as security trustee and security agent for the Secured Parties) that:
 - (i) no Default has occurred;
 - (ii) no Debtor nor the Parent is in breach of or default under its obligations under any of the Debt Documents;
 - (iii) any right, power, authority or discretion vested in any Party, any Creditor or any group of Creditors has not been exercised; and
 - (iv) any notice made by the Debtors' Agent is made on behalf of and with the consent and knowledge of the Parent and all the Debtors.
- (c) Without prejudice to the generality of paragraph (e) below, the Security Agent may at any time engage, pay for and rely without liability on the services of any lawyers to act as independent counsel to the Security Agent (and so separate from any lawyers instructed by any External Creditor) if the Security Agent in its reasonable opinion deems this to be desirable.
- (d) The Security Agent may engage, pay for and rely without liability on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Security Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.

- (e) The Security Agent, any Receiver and any Delegate may act in relation to the Debt Documents and the Security Property through its officers, employees and agents and shall not:
 - (i) be liable for any error of 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.

- (f) Unless this Agreement expressly specifies otherwise, the Security Agent may disclose to any other Party any information it reasonably believes it has received as security trustee or security agent under this Agreement.
- (g) Notwithstanding any other provision of any Debt Document to the contrary, the Security Agent is not obliged to do or omit to do anything if it would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of any fiduciary duty or duty of confidentiality.
- (h) Notwithstanding 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, the Parent and any Debtor or any other person in or in connection with any Debt Document or the transactions contemplated in the Debt Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Debt Document;
- (b) the legality, validity, effectiveness, adequacy or enforceability of any Debt Document, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Debt Document or the Security Property; or
- (c) any determination as to whether any information provided or to be provided to any Secured Party is non-public information the use of which may be regulated or prohibited by applicable law or regulation relating to insider dealing or otherwise.

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;
- (c) whether any other event specified in any Debt Document has occurred; or
- (d) whether a Sponsor Affiliate beneficially owns or has any participation in an External Credit Participation for the purposes of Clause 27.7 (*Disenfranchisement of Sponsor Affiliates*).

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 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 default;
 - (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 (ii) and (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 19 subject to Clause 1.4 (*Third party rights*) and the provisions of the Third Parties Rights Acts.
- (c) Nothing in this Agreement shall oblige the Security Agent to carry out:
 - (i) any "**know your customer**" or other checks in relation to any person; or
 - (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any External Creditor,

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

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

19.11 Resignation of the Security Agent

- (a) The Security Agent may resign and appoint one of its Affiliates as successor by giving notice to the External Creditors and the Debtors' Agent.
- (b) Alternatively, the Security Agent may resign by giving 30 days' notice to the External Creditors and the Debtors' Agent, in which case the Instructing Group may appoint a successor Security Agent.
- (c) If the Instructing Group has not appointed a successor Security Agent in accordance with paragraph (b) above within 20 days after notice of resignation

was given, the retiring Security Agent (after consultation with the Creditor Representatives and the Hedge Counterparties) may appoint a successor Security Agent.

- (d) The retiring Security Agent shall, at its own cost, make available to the successor Security Agent such documents and records and provide such assistance as the successor Security Agent may reasonably request for the purposes of performing its functions as Security Agent under the Debt Documents.
- (e) The Security Agent's resignation notice shall only take effect upon:
 - (i) the appointment of a successor; and
 - (ii) the transfer of all the Security Property to that successor.
- (f) Upon the appointment of a successor, the retiring Security Agent shall be discharged from any further obligation in respect of the Debt Documents (other than its obligations under paragraph (b) of Clause 19.23 (*Winding up of trust*) and paragraph (d) above) but shall remain entitled to the benefit of this Clause 19 and Clause 23.1 (*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, after consultation with the Company, 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.

19.12 Confidentiality

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

19.13 Information from the Creditors

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

19.14 Credit appraisal by the Secured Parties

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

- (a) the financial condition, status and nature of the Parent and 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.

19.15 Security Agent's management time

Any amount payable to the Security Agent under Clause 19.27 (*External Creditors' indemnity to the Security Agent*), Clause 22 (*Costs and Expenses*) or Clause 23.1 (*Indemnity to the Security Agent*) shall include the cost of utilising the Security Agent's management time or other resources and will be calculated on the basis of such reasonable daily or hourly rates as the Security Agent may notify to the Parent and the External Creditors, and is in addition to any other fee paid or payable to the Security Agent.

19.16 Reliance and engagement letters

The Security Agent may obtain and rely on any certificate or report from any Debtor's or the Parent'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).

19.17 **No responsibility to perfect Transaction Security**

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

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

19.18 **Insurance by Security Agent**

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

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

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

19.19 **Custodians and nominees**

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

any person appointed by it under this Agreement or be bound to supervise the proceedings or acts of any person.

19.20 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 save to the extent directly caused by the Security Agent's gross negligence or wilful misconduct.

19.21 Additional Security Agents

- (a) The Security Agent may at any time appoint (and subsequently remove) any person to act as a separate agent or trustee or as a co-agent or co-trustee jointly with it:
 - (i) if it considers that appointment to be in the interests of the Secured Parties;
 - (ii) for the purposes of conforming to any legal requirement, restriction or condition which the Security Agent deems to be relevant; or
 - (iii) for obtaining or enforcing any judgment in any jurisdiction,

and the Security Agent shall give prior notice to the Debtors' Agent and the External Creditors of that appointment.

- (b) Any person so appointed shall have the rights, powers, authorities and discretions (not exceeding those given to the Security Agent under or in connection with the Debt Documents) and the duties, obligations and responsibilities that are given or imposed by the instrument of appointment.
- (c) The remuneration that the Security Agent may pay to that person, and any costs and expenses (together with any applicable VAT) incurred by that person in performing its functions pursuant to that appointment shall, for the purposes of this Agreement, be treated as costs and expenses incurred by the Security Agent.

19.22 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 the Parent or any Debtor may have to any of the

Charged Property and shall not be liable for, or bound to require the Parent or any Debtor to remedy, any defect in its right or title.

19.23 **Winding up of trust**

If the Security Agent, with the approval of each Directing Representative 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 the Parent or any Debtor pursuant to the Debt Documents,

then:

- (i) the trusts set out in this Agreement shall be wound up and the Security Agent shall release, without recourse or warranty, all of the Transaction Security and the rights of the Security Agent under each of the Security Documents; and
- (ii) any Security Agent which has resigned pursuant to Clause 19.11 (*Resignation of the Security Agent*) shall release, without recourse or warranty, all of its rights under each Security Document.

19.24 **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.

19.25 **Disapplication of Trustee Acts**

Section 1 of the Trustee Act 2000 shall not apply to the duties of the Security Agent in relation to the trusts constituted by this Agreement. Where there are any inconsistencies between the Trustee Act 1925 or the Trustee Act 2000 and the provisions of this Agreement, the provisions of this Agreement shall, to the extent 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.

19.26 **Debtors, Intra-Group Lenders and the Parent: Power of Attorney**

Each Debtor, Intra-Group Lender and the Parent by way of security for its obligations under this Agreement irrevocably appoints the Security Agent to be its attorney to do anything which that Intra-Group Lender, that Debtor or the Parent has authorised the Security Agent or any other Party to do under this Agreement or is itself required to do under this Agreement but has failed to do (and the Security Agent may delegate that power on such terms as it sees fit).

19.27 External Creditors' indemnity to the Security Agent

- (a) Each External Creditor (other than any Bond Trustee) shall (in the proportion that the Liabilities due to it bear to the aggregate of the Liabilities due to all the External Creditors for the time being (other than any Bond Trustee) (or, if the Liabilities due to the External Creditors (other than any Bond Trustee) are zero immediately prior to their being reduced to zero)), indemnify the Security Agent and every Receiver and every Delegate, within five 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 default) in acting as Security Agent, Receiver or Delegate under, or exercising any authority conferred under, the Debt Documents (unless the relevant Security Agent, Receiver or Delegate has been reimbursed by a Debtor or the Parent pursuant to a Debt Document in respect of such cost, loss or liability).
- (b) For the purposes only of paragraph (a) above, to the extent that any hedging transaction under a Hedging Agreement has not been terminated or closed out, the Hedging Liabilities due to any Hedge Counterparty in respect of that hedging transaction will be deemed to be the MTM Liabilities.
- (c) The Debtors' Agent shall, within five Business Days of demand, reimburse any External Creditor for any payment that External Creditor makes to the Security Agent pursuant to paragraph (a) above.
- (d) The provisions of this Clause 19 shall continue in full force and effect notwithstanding the discharge of the trust created hereunder and whether or not the Security Agent is then the Security Agent of this Agreement.

19.28 Security Agent Fee

The Company shall pay to the Security Agent (for its own account) a security agent fee in the amount and at the times agreed in a Fee Letter (as such term is defined in the Bank Facilities Agreement and any equivalent term in any Additional Finance Document).

20. APPROVED DEBT

The Parties will discuss in good faith, and will act reasonably in agreeing, the amendments and/or waivers to this Agreement (and executing any documentation, including for the avoidance of doubt, any supplemental Security where local law requires such supplemental Security to be delivered to ensure that the Transaction Security will extend to cover the Approved Debt, but subject at all times to the Agreed Security Principles) that may be necessary or desirable in order to permit the incurrence of Approved Debt including, without limitation:

- (a) if the raising of the Approved Debt is to be effected through the issuance of one or more Bonds under Bond Documentation to the Bondholders:
 - (i) represented by a Bond Trustee becoming External Creditors and Secured Parties and sharing in the Transaction Security on a *pari passu*

basis upon that Bond Trustee's accession to this Agreement as an External Creditor; or

- (ii) if not represented by a Bond Trustee, all becoming External Creditors and Secured Parties and sharing in the Transaction Security on a *pari passu* basis upon accession of all of those Bondholders to this Agreement as External Creditors;
- (b) if the raising of Approved Debt is to be effected through the issuance of one or more PP Notes under PP Note Documents to the PP Noteholders:
- (i) represented by a Creditor Representative becoming External Creditors and Secured Parties and sharing in the Transaction Security on a *pari passu* basis upon that Creditor Representative's accession to this Agreement as an External Creditor; or
 - (ii) if not represented by a Creditor Representative, all becoming External Creditors and Secured Parties and sharing in the Transaction Security on a *pari passu* basis upon accession of all of those PP Noteholders to this Agreement as External Creditors; or
- (c) if the raising of the Approved Debt is to be effected through the incurrence of indebtedness under Additional Facilities Documents:
- (i) the Additional Facilities Lenders under that Additional Facilities Documents and the Additional Facility Agent appointed under that Additional Facilities Documents all becoming External Creditors and Secured Parties and sharing in the Transaction Security on a *pari passu* basis upon accession of all of those persons to this Agreement as External Creditors; and
 - (ii) such amendments as may be necessary to extend substantially equivalent rights to any future providers of Approved Debt as are granted to equivalent External Creditors under this Agreement as at the date of this Agreement.

21. CHANGES TO THE PARTIES

21.1 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 21.

21.2 No change of Parent

The Parent may not:

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

in respect of the Parent Liabilities until after the Final Discharge Date other than as envisaged by Clause 6.5 (*No acquisition of Parent Liabilities*).

21.3 Change of External Creditor (other than a Hedge Counterparty)

An External Creditor (other than a Hedge Counterparty) may assign any of its rights and benefits or transfer any of its rights, benefits and obligations in respect of any Debt Documents to which it is a party or any of its Liabilities if:

- (a) that assignment or transfer is in accordance with the terms of the Debt Documents to which it is a party; and
- (b) any assignee or transferee has (if not already Party as a relevant External Creditor) acceded to this Agreement, in its capacity as an External Creditor, pursuant to Clause 21.6 (*Creditor Accession Undertaking*) save in the case of a Bondholder where a Bond Trustee representing that Bondholder has already acceded to this Agreement as an External Creditor.

21.4 Change of Hedge Counterparty

A Hedge Counterparty may transfer any of its rights or obligations in respect of the Hedging Agreements to which it is a party, in accordance with paragraph (i) of Clause 4.12 (*Terms of Hedging Agreements*), if any transferee has (if not already a Party as a Hedge Counterparty) acceded to this Agreement as a Hedge Counterparty pursuant to Clause 21.6 (*Creditor Accession Undertaking*).

21.5 Change of Creditor Representative

No person shall become a Creditor Representative unless, at the same time, it accedes to this Agreement as a Creditor Representative pursuant to Clause 21.6 (*Creditor Accession Undertaking*).

21.6 Creditor Accession Undertaking

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

- (a) any Party ceasing entirely to be a Creditor shall be discharged from further obligations towards the Security Agent and other Parties under this Agreement and their respective rights against one another shall be cancelled (except in each case for those rights which arose prior to that date);

- (b) as from that date, the replacement or new Creditor shall assume the same obligations, and become entitled to the same rights, as if it had been an original Party in the capacity specified in the Creditor Accession Undertaking; and
- (c) to the extent envisaged by the relevant Facilities Agreement, any new Ancillary Lender (which is an Affiliate of a Lender) shall also become party to the relevant Facilities Agreement as an Ancillary Lender and shall assume the same obligations and become entitled to the same rights as if it had been an original party to the relevant Facilities Agreement as an Ancillary Lender.

21.7 Change of Intra-Group Lender

Subject to Clause 5.4 (*No acquisition of Intra-Group Liabilities*) and 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 21.6 (*Creditor Accession Undertaking*).

21.8 New Ancillary Lender

If an Affiliate of a Lender becomes an Ancillary Lender in accordance with a 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 Lender) acceded to this Agreement as a Creditor pursuant to Clause 21.6 (*Creditor Accession Undertaking*) and, to the extent required by the relevant Facilities Agreement, to that Facilities Agreement as an Ancillary Lender.

21.9 New Intra-Group Lender

If any Intra-Group Lender or any member of the Group makes any loan to or grants any credit to or makes any other financial arrangement having similar effect with any Debtor, in an aggregate amount of £1,000,000 (or its equivalent in other currencies) 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 21.6 (*Creditor Accession Undertaking*).

21.10 Acknowledgments

Each Party acknowledges that, if a Bond Trustee accedes to this Agreement, such Bond Trustee will agree to become party to this Agreement for the purposes of taking the benefit of the contractual provisions expressed to be given in its favour, enabling better preservation and enforcement of its rights under the Bonds and the Bond Documentation and for administrative ease associated with matters where its consent (or that of the Bondholders) is required. The exercise of any of the rights and/or

discretions of the Bond Trustee under this Agreement will be subject to the same protections and immunities (*mutatis mutandis*) as are conferred upon each Bond Trustee in the Bond Documentation relevant to it.

21.11 New Debtor and/or Guarantor

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

the Debtors' Agent will procure that the person incurring those Liabilities or giving that assurance accedes to this Agreement as a Debtor and, if required under any relevant Secured Debt Document to become a Party as a Guarantor, as a Guarantor, in each case in accordance with paragraph (c) below, no later than contemporaneously with the incurrance of those Liabilities or the giving of that assurance.

- (b) The Debtors' Agent will procure that no member of the Group which is not a Debtor gives any guarantee, indemnity or other assurance against loss in respect of any Financial Indebtedness of any member of the Group under a Debt Document to any person who is an External Creditor unless at the same time such person becomes a Party as a Debtor and, if required under any relevant Secured Debt Document to become a Party as a Guarantor, as a Guarantor, in each case in accordance with paragraph (c) below.
- (c) If any Affiliate of a Debtor becomes a borrower of an Ancillary Facility in accordance with the terms of the relevant Facilities Agreement, the relevant Debtor shall procure that such Affiliate accedes to this Agreement as a Debtor (and, if required under the relevant Facilities Agreement to become a Party as a Guarantor, as a Guarantor) no later than contemporaneously with the date on which it becomes a borrower.
- (d) With effect from the date of acceptance by the Security Agent of an Accession Deed duly executed and delivered to the Security Agent by the new Debtor and/or Guarantor (as applicable) or, if later, the date specified in the Accession Deed, the new Debtor and/or Guarantor (as the case may be) shall assume the same obligations and become entitled to the same rights as if it had been an original Party as a Debtor and/or a Guarantor (as the case may be).
- (e) The Security Agent shall accept an Accession Deed in respect of a proposed new Debtor if it receives a completed Accession Deed in respect of that proposed new Debtor, duly executed by that proposed new Debtor and the Parent.

- (f) The Security Agent shall accept an Accession Deed in respect of a proposed Additional Guarantor if it receives:
 - (i) a completed Accession Deed in respect of that proposed Additional Guarantor, duly executed by that proposed Additional Guarantor and the Parent; and
 - (ii) all of the documents and other evidence listed in Schedule 2 (*Conditions Precedent required to be delivered by an Additional Guarantor*) in relation to that proposed Additional Guarantor, each in form and substance satisfactory to each Directing Representative and each Hedge Counterparty.
- (g) Each Directing Representative and each Hedge Counterparty shall notify the Security Agent promptly upon being satisfied that it has received the documents and other evidence referred to in paragraph (f)(ii) above. The Security Agent shall then notify the Parent of the same.

21.12 Additional parties

- (a) Each of the Parties appoints the Security Agent to receive on its behalf each 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 Debt Document.
- (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 Bank Facilities Lender) or any party acceding to this Agreement as a Hedge Counterparty or an Additional Creditor:
 - (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 each relevant Agent; and
 - (ii) each relevant 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.

21.13 Resignation of a Debtor and/or a Debtor

- (a) The Debtors' Agent may request that a Debtor and/or a Guarantor (in each case, other than the Company) ceases to be a Debtor and/or a Guarantor (as applicable) by delivering to the Security Agent a Debtor/Guarantor Resignation Request.

- (b) The Security Agent shall accept a Debtor/Guarantor Resignation Request and notify the Debtors' Agent and each other Party of its acceptance if:
- (i) the Debtors' Agent has confirmed that no Default is continuing or would result from the acceptance of the Debtor/Guarantor Resignation Request;
 - (ii) in respect of a Guarantor, each Directing Representative notifies the Security Agent that no payment is due from that Guarantor under any guarantee given by that Guarantor under the Secured Debt Documents to which it is a party;
 - (iii) the Debtors' Agent has confirmed that such Debtor and/or Guarantor has ceased to be a borrower under each Secured Debt Document in accordance with its terms;
 - (iv) each Hedge Counterparty notifies the Security Agent that that Debtor and/or Guarantor is under no actual or contingent obligations to that Hedge Counterparty in respect of the Hedging Liabilities and each Directing Representative notifies the Security Agent that that Debtor and/or Guarantor is under no actual or contingent obligations in respect of any Liabilities; and
 - (v) the Debtors' Agent confirms that that Debtor and/or Guarantor is under no actual or contingent obligations in respect of the Intra-Group Liabilities or the Parent Liabilities.
- (c) Upon notification by the Security Agent to the Debtors' Agent of its acceptance of the resignation of a Debtor and/or a Guarantor:
- (i) that member of the Group shall cease to be a Debtor and/or Guarantor (as applicable) and shall have no further rights or obligations under this Agreement as a Debtor and/or Guarantor (as applicable); and
 - (ii) the Security Agent is irrevocably authorised (at the cost of the Debtors' Agent and without any consent, sanction, authority or further confirmation from any other Party) (but subject to paragraph (d) below) to execute and deliver or enter into any release of the Transaction Security granted by the resigning Debtor and/or Guarantor or any other claim in relation to the resigning Debtor's and/or Guarantor's property and to issue any certificates of non-crystallisation of any floating charge or any consent to dealing that may, in the discretion of the Security Agent, be considered necessary or desirable.
- (d) Each release of Transaction Security or any claim described in paragraph (c) above shall become effective only on the acceptance by the Security Agent of the relevant Debtor/Guarantor Resignation Request.

22. COSTS AND EXPENSES

22.1 Transaction expenses

The Debtors' Agent shall (or shall procure that a Debtor will) within five Business Days of written demand (giving reasonable details of each of the amounts incurred, including providing documents and invoices evidencing such expenses) pay the Security Agent the amount of all reasonable third party costs and expenses (including pre-agreed third party legal fees, up to the amount of any pre-agreed caps) reasonably incurred by any of them (and by any Receiver or Delegate) in connection with the negotiation, preparation, printing, execution and perfection of:

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

22.2 Amendment costs

If a Debtor or the Parent requests an amendment, waiver or consent, the Debtors' Agent shall (or shall procure that a Debtor will), promptly and within five Business Days of written demand (including reasonable details of the amounts incurred, including providing documents and invoices evidencing such expenses), reimburse the Security Agent for the amount of all reasonable third party costs and expenses (including pre-agreed third party legal fees, up to the amount of any pre-agreed caps) reasonably incurred by the Security Agent (and by any Receiver or Delegate) in responding to, evaluating, negotiating or complying with that request or requirement.

22.3 Enforcement and preservation costs

The Debtors' Agent shall, promptly and within five Business Days of demand (including reasonable details of the amounts incurred, including providing documents and invoices evidencing such expenses), pay to the Security Agent the amount of costs and expenses (including 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.

22.4 Stamp taxes

The Debtors' Agent shall indemnify against and, within three Business Days of demand, pay (or procure the payment to) the Security Agent the amount of any cost, loss or liability the Security Agent incurs in relation to all stamp duty, transfer taxes, registration and other similar Taxes payable in respect of any Debt Document other than (for the avoidance of doubt) in relation to any transfer or assignment of any External Creditor's rights under a Debt Document except for (i) any assignment or transfer during the primary syndication of the facilities under the Bank Facilities Agreement, (ii) where such transfer or assignment is requested by a Debtor, (iii) where such transfer or assignment is required under the terms of the Finance Documents or (iv) where such transfer of assignment occurs in circumstances where an Event of Default is continuing.

22.5 Interest on demand

If any Creditor or Debtor fails to pay any amount payable by it under this Agreement on its due date, interest shall accrue on the overdue amount (and be compounded with it) from the due date up to the date of actual payment (both before and after judgment and to the extent interest at a default rate is not otherwise being paid on that sum) at the rate which is 1 per cent. per annum over the rate which the Security Agent was being offered, by leading banks in the London interbank market, deposits in an amount comparable to the unpaid amounts in the currencies of those amounts for any period(s) that the Security Agent may from time to time select **provided that** if any such rate is below zero, that rate will be deemed to be zero.

23. OTHER INDEMNITIES

23.1 Indemnity to the Security Agent

- (a) Each Debtor and the Parent jointly and severally shall within five Business Days of demand indemnify the Security Agent and every Receiver and Delegate against any cost, loss or liability (together with any applicable VAT) incurred by any of them as a result of:
- (i) any failure by the Debtors' Agent to comply with its obligations under Clause 22 (*Costs and Expenses*);
 - (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
 - (iii) the taking, holding, protection or enforcement of the Transaction Security (otherwise than as a result of its gross negligence or wilful misconduct);
 - (iv) the exercise of any of the rights, powers, discretions, authorities and remedies vested in the Security Agent, each Receiver and each Delegate by the Debt Documents or by law (otherwise than as a result of its gross negligence or wilful misconduct);
 - (v) any default by any Debtor and/or the Parent in the performance of any of the obligations expressed to be assumed by it in the Debt Documents;
 - (vi) instructing lawyers, accountants, tax advisers, surveyors, a Financial Adviser or other professional advisers or experts as permitted under this Agreement; or
 - (vii) acting as Security Agent, Receiver or Delegate under the Debt Documents or which otherwise relates to any of the Security Property (otherwise, in each case, than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct).
- (b) Each Debtor and the Parent expressly acknowledges and agrees that the continuation of its indemnity obligations under this Clause 23.1 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 (*Distressed Disposals and Appropriation*).

- (c) The Security Agent and every Receiver and Delegate may, in priority to any payment to the Secured Parties, indemnify itself out of the Charged Property in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this Clause 23.1 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.

23.2 Debtors' Agent's indemnity to External Creditors

The Debtors' Agent shall within five Business Days of demand (and giving reasonable details of the subject of such demand) and as principal obligor indemnify each External 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*) unless in any case, such costs, loss or liability is caused by or as a result of the fraud, gross negligence or wilful misconduct of that External Creditor.

23.3 Currency indemnity

- (a) If any sum due from a Debtor or the Parent under the Debt Documents (a "**Sum**"), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the "**First Currency**") in which that Sum is payable into another currency (the "**Second Currency**") for the purpose of:
 - (i) making or filing a claim or proof against that Debtor; or
 - (ii) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,

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

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

24. INFORMATION

24.1 Dealings with Security Agent and Creditor Representatives

- (a) Subject in the case of paragraph (i) below to clause 33.5 (*Communication when Agent is an Impaired Agent*) of the Bank Facilities Agreement and to any Additional Finance Document Equivalent:
- (i) each Lender shall deal with the Security Agent exclusively through its Creditor Representative;
 - (ii) each Bondholder shall deal with the Security Agent exclusively through its Bond Trustee only or, if none is appointed under the relevant Bond Documentation, its Directing Representative;
 - (iii) each PP Noteholder shall deal with the Security Agent exclusively through its Creditor Representative only or, if none is appointed under the relevant PP Note Documents, its Directing Representative; and
 - (iv) the Hedge Counterparties shall deal directly with the Security Agent and shall not deal through any Creditor Representative.
- (b) No Creditor Representative shall be under any obligation to act as agent or otherwise on behalf of any Bondholder, PP Noteholder or Hedge Counterparty except pursuant to the relevant Debt Document under which it is appointed and otherwise as expressly provided for in, and for the purposes of, this Agreement.

24.2 Disclosure between External Creditors and Security Agent

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

24.3 Notification of prescribed events

- (a) If a Default either occurs or ceases to be continuing under a Debt Document, the relevant Creditor Representative (or, if none, the relevant External Creditor) 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 External Creditor, except in respect of the Bondholders where notice will be given to the Bond Trustee as and when such Bond Trustee is appointed or, if none, to the Bondholders.
- (b) If an Event of Default occurs or ceases to be continuing the relevant Creditor Representative (or, if a particular Creditor Group is not represented by a Creditor Representative, any member of that Creditor Group) or the relevant Hedge Counterparty shall, upon becoming aware of that occurrence (and **provided that** it is then continuing) or upon becoming aware of that cessation

(as the case may be), notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each other Party.

- (c) Without prejudice to the operation of paragraph (b) of clause 24.17 (*Acceleration*) of the Bank Facilities Agreement or any Additional Finance Document Equivalent, if an Acceleration Event occurs under any Debt Document the relevant Creditor Representative (or, if none, the relevant External Creditor) shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each other Party.
- (d) If the Security Agent enforces, or takes formal steps to enforce, any of the Transaction Security it shall notify each Party of that action (an "**Enforcement Notice**").
- (e) If any External Creditor exercises any right it may have to enforce, or to take formal steps to enforce, any of the Transaction Security it shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each Party of that action.
- (f) If a Debtor defaults on any Payment due under a Hedging Agreement, the Hedge Counterparty which is party to that Hedging Agreement shall, upon becoming aware of that default, and after allowing for any applicable notice of grace periods, notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each Creditor Representative and each External Creditor which does not have a Creditor Representative.
- (g) If a Hedge Counterparty terminates or closes out, in whole or in part, any hedging transaction under any Hedging Agreement as a result of a "**Credit Related Close-Out**", it shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each Creditor Representative and External Creditor which does not have a Creditor Representative.
- (h) If a Mandatory Prepayment is waived the relevant Creditor Representative (or, if a particular Creditor Group is not represented by a Creditor Representative, any member of that Creditor Group) shall notify the Security Agent of the amount of the Mandatory Prepayment waived and the Security Agent shall, upon receiving that notification, notify each Party.
- (i) If the amount of any underlying Financial Indebtedness which is hedged pursuant to a Hedging Agreement is to be reduced (whether by way of repayment, prepayment, cancellation or otherwise) the Company shall notify each Hedge Counterparty of:
 - (i) the date and amount of that proposed reduction; and
 - (ii) any Interest Rate Hedge Excess that would result from that proposed reduction,in each case no later than five Business Days before that proposed reduction.
- (j) If the Company makes an election pursuant to Clause 13.8 (*Application of Mandatory Prepayments*), the Company shall notify the Security Agent of its

election and the Security Agent shall, upon receiving that notification, notify each party to a Relevant Secured Debt Document (as defined in Clause 13.8 (*Application of Mandatory Prepayments*)).

25. NOTICES

25.1 Communications in writing

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

25.2 Security Agent's communications with External Creditors

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

- (a) with the Bank Facilities Lenders and the Bondholders through their respective Creditor Representatives and may give to the Creditor Representatives, as applicable, any notice or other communication required to be given by the Security Agent to a Bank Facilities Lender or Bondholder;
- (b) with the PP Noteholders through their respective Creditor Representatives and may give to such Creditor Representatives, as applicable, any notice or other communication required to be given by the Security Agent to a PP Noteholder, **provided that** if no person serves as a Creditor Representative for the PP Noteholders, then the Security Agent shall deal directly with each PP Noteholder, as applicable; and
- (c) with each Hedge Counterparty directly with that Hedge Counterparty.

25.3 Addresses

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

- (a) in the case of a Debtor and the Parent, that is identified with its name on the signatures pages of this Agreement;
- (b) in the case of each other Party, that notified in writing to the Security Agent on or prior to the date on which it becomes a Party,

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

25.4 Delivery

- (a) Any communication or document made or delivered by one person to another under or in connection with this Agreement will only be effective, if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address and, if a particular department or officer is specified as part of its

address details provided under Clause 25.3 (*Addresses*), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to the Security Agent will be effective only when actually received by the Security Agent and then only if it is expressly marked for the attention of the department or officer identified with the Security Agent's signature on the signatures pages of this Agreement (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 Debtors' Agent in accordance with this Clause 25.4 will be deemed to have been made or delivered to each of the Debtors.
- (d) Any communication or document which becomes effective, in accordance with paragraphs (a) to (c) above, after 5pm in the place of receipt shall be deemed only to become effective on the following day.

25.5 Notification of address

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

25.6 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) 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 and 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 electronic communication made between those 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 an External Creditor to the Security Agent only if it is addressed in such a manner as the Security Agent shall specify for this purpose.
- (c) Any electronic communication which becomes effective, in accordance with paragraph (b) above, after 5pm 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.

- (d) 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 25.6.

25.7 **English language**

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

26. **PRESERVATION**

26.1 **Partial invalidity**

If, at any time, any provision of 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.

26.2 **No impairment**

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

26.3 **Remedies and waivers**

No failure to exercise, nor any delay in exercising, on the part of any Party, any right or remedy under a Debt Document shall operate as a waiver of any such right or remedy or constitute an election to affirm any Debt Document. No election to affirm any Debt Document on the part of any Secured Party 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.

26.4 **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 26.4, would reduce, release

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

- (a) any time, waiver or consent granted to, or composition with, any Debtor, the Parent or other person;
- (b) the release of any Debtor, the Parent or any other person under the terms of any composition or arrangement with any creditor of any member of the Group or the Parent;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce, any rights against, or security over assets of, any Debtor, the Parent or other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Security;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of any Debtor, the Parent or other person;
- (e) any amendment, novation, supplement, extension (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 External Creditors in whole or in part; or
- (h) any insolvency or similar proceedings.

26.5 **Priorities not affected**

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

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

27. CONSENTS, AMENDMENTS AND OVERRIDE

27.1 Required consents

- (a) Subject to paragraphs (b) and (c) below, to Clause 27.4 (*Exceptions*), to Clause 27.5 (*Voting*), to Clause 27.6 (*Snooze/Lose*), to Clause 27.7 (*Disenfranchisement of Sponsor Affiliates*) and to Clause 27.8 (*Disenfranchisement of Defaulting Lenders and Defaulting Noteholders*), this Agreement may be amended or waived only with the consent of the Instructing Group.
- (b) An amendment or waiver that has the effect of changing or which relates to:
 - (i) the definition of Ordinary Decision, Special Decision, External Credit Participation, External Creditor, Debtor, Instructing Group, Simple Majority External Creditors or Majority External Creditors in Clause 1.1 (*Definitions*);
 - (ii) Clauses 3.5 (*Standstill Period: External Creditors*), 8 (*Turnover of Receipts*), 9 (*Redistribution*), 10 (*Enforcement of Transaction Security*), 11 (*Non-Distressed Disposals*), 12 (*Distressed Disposals and Appropriation*), 16 (*Application of Proceeds*), 17 (*Equalisation*), paragraphs (d)(iii), (e) and (f) of Clause 19.2 (*Instructions*) or this Clause 27;
 - (iii) the order of priority or subordination under this Agreement; or
 - (iv) the definition of Standstill Period or the lengthening of a Standstill Period,

shall not be made without the consent of:

- (A) each External Creditor other than a Hedge Counterparty (through the relevant Directing Representative); and
- (B) each Hedge Counterparty (to the extent that the amendment or waiver would adversely affect the Hedge Counterparty),

in each case, to the extent that any such person is or is deemed to be party to this Agreement at the relevant time.

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

27.2 Amendments and Waivers: Transaction Security Documents

- (a) Subject to Clause 27.4 (*Exceptions*), Clause 20 (*Approved Debt*), Clause 27.6 (*Snooze/Lose*) and paragraph (b) below and unless the provisions of any Debt Document expressly provide otherwise, the Security Agent may, if authorised by the Simple Majority External Creditors, and if the Parent consents, amend

the terms of, waive any of the requirements of or grant consents under any of the Transaction Security Documents which shall be binding on each Party.

- (b) Subject to paragraph (c) of Clause 27.4 (*Exceptions*), the prior consent of:
 - (i) each External Creditor other than a Hedge Counterparty (through the relevant Directing Representative); and
 - (ii) each Hedge Counterparty (unless otherwise provided in the relevant Hedging Agreement),

in each case to the extent any such person or group of persons is, or is deemed to be, a party to this Agreement at the relevant time, is required to authorise any amendment or waiver of, or consent under, any Transaction Security Document which would adversely affect the nature or scope of the Charged Property, the manner in which the proceeds of enforcement of the Transaction Security are distributed or the release of any Transaction Security.

27.3 Effectiveness

- (a) Any amendment, waiver or consent given in accordance with this Clause 27 will be binding on all Parties and the Security Agent may effect, on behalf of any External Creditor, any amendment, waiver or consent permitted by this Clause 27.
- (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.

27.4 Exceptions

- (a) Subject to paragraphs (c) and (d) below, if the amendment, waiver or consent has the effect of imposing new or additional obligations on, or withdrawing or reducing the rights of, any Party other than:
 - (i) in the case of an External Creditor (other than any Creditor Representative or Arranger), in a way which affects or would affect External Creditors of that Party's class generally; or
 - (ii) in the case of a Debtor, to the extent consented to by the Parent under paragraph (a) of Clause 27.2 (*Amendments and Waivers: Transaction Security Documents*),

the consent of that Party is required.

- (b) Subject to paragraphs (c) and (d) below an amendment, waiver or consent:
 - (i) which has the effect of withdrawing or reducing the rights of or imposing new or additional obligations on a Creditor Representative, an Arranger or the Security Agent (including, without limitation, any ability of the Security Agent to act in its discretion under this Agreement)

may not be effected without the consent of that Creditor Representative or, as the case may be, that Arranger or the Security Agent;

- (ii) which has the effect of withdrawing or reducing the rights of or imposing new or additional obligations on an Ancillary Lender which may not be effected without the consent of that Ancillary Lender; or
 - (iii) which relates to any rights or obligations of the Hedge Counterparties in any Debt Document (including, for the avoidance of doubt, Clause 4 (*Hedge Counterparties and Hedging Liabilities*)) and has the effect of withdrawing or reducing the rights of or imposing new or additional obligations on a Hedge Counterparty or affects the timing, currency or payment under any Debt Documents to any Hedge Counterparty, may not be effected without the consent of the Hedge Counterparty.
- (c) Neither paragraph (a) nor (b) above nor paragraph (b) of Clause 27.2 (*Amendments and Waivers: Transaction Security Documents*) shall apply:
- (i) to any release of Transaction Security, claim or Liabilities; or
 - (ii) to any consent,

which, in each case, the Security Agent gives in accordance with Clause 11 (*Non-Distressed Disposals*) and Clause 12 (*Distressed Disposals and Appropriation*) or to any release of the Transaction Security upon or pursuant to the Final Discharge Date.

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

27.5 **Voting**

- (a) In determining whether an Instructing Group has passed or approved any request, proposal, vote or instruction to be voted on under this Agreement, votes from the External Creditors shall be counted by the Security Agent in accordance with the following paragraphs:
- (i) in respect of the Bank Facilities Agreement and any Additional Finance Document, in the event that the Requisite Majority in respect of such Finance Document has voted in favour of the relevant instruction, amendment, waiver or consent, External Creditors whose External Credit Participations aggregate 100 per cent. of the External Credit Participations in relation to the relevant Finance Document shall be deemed to have voted in favour of the relevant instruction, amendment, waiver or consent, or if the Requisite Majority under the relevant Finance Document does not vote in favour of the relevant instruction, amendment, waiver or consent, votes cast by the relevant External Creditors in respect of the Bank Facilities Agreement and any Additional Finance Document will be divided between votes cast in favour and votes cast against the relevant instruction, amendment, waiver or consent; and

- (ii) in respect of transactions under a Hedging Agreement, a Hedge Counterparty will vote in respect of the External Credit Participations in relation to such Hedging Agreement.
- (b) Voting under paragraphs (a)(i) and (a)(ii) above shall be on a GBP for GBP basis and the Security Agent shall aggregate votes cast in favour of and votes cast against the relevant request, proposal, vote or instruction.
- (c) For the purposes of this Clause 27, GBP for GBP basis shall mean in the case of any other External Credit Participations not denominated in GBP, the GBP equivalent amount of such External Credit Participations converted at the Security Agent's Spot Rate of Exchange on the date on which it requested the External Creditors to vote.

27.6 Snooze/Lose

- (a) In this Clause 27, a "**Request**" means:
 - (i) a request for a Consent in relation to any of the terms of this Agreement and/or any Transaction Security Document;
 - (ii) a request to participate in any other vote of relevant External Creditors under the terms of this Agreement;
 - (iii) a request to approve any other action under this Agreement;
 - (iv) a request to provide any confirmation or notification or details of participations under this Agreement; or
 - (v) a request to provide details of an Exposure.
- (b) Subject to paragraph (c) below, if, in relation to a Request, any Hedge Counterparty or Creditor Representative (for itself or on behalf of the Creditor Group it represents) fails to respond or, in the case of a Creditor Group not represented by a Creditor Representative, no Directing Representative of that Creditor Group responds, in each case, to that Request within 15 Business Days of that Request being made or, as appropriate, fails to provide details of any relevant External Credit Participations or Exposure (as appropriate) to the Security Agent within the timescale specified by the Security Agent:
 - (i) in the case of a Request referred to in paragraph (a)(i), (a)(ii) or (a)(iii) above, the External Credit Participations (if it has an External Credit Participation) of:
 - (A) that Hedge Counterparty; or
 - (B) the External Creditors failing to respond through their Directing Representative,

shall, in each case, be deemed to be zero for the purpose of calculating the External Credit Participations when ascertaining whether any

relevant percentage of External Credit Participations has been obtained to give that Consent, carry that vote or approve that action;

(ii) in the case of a Request referred to in paragraph (a)(i), (a)(ii) or (a)(iii) above, the status of:

(A) that Hedge Counterparty; or

(B) the External Creditors failing to respond through their Directing Representative,

in each case as an External Creditor, shall be disregarded for the purposes of ascertaining whether the agreement of any specified group of External Creditors has been obtained to give that Consent, carry that vote or approve that action;

(iii) in the case of a Request referred to in paragraph (a)(iv) above, that confirmation or notification shall be deemed to have been given; and

(iv) in the case of a Request referred to in paragraph (a)(v) above, that External Creditor's Exposure shall be deemed to be zero.

(c) Paragraph (b) above shall not apply to an amendment or waiver referred to in paragraph (b) of Clause 27.1 (*Required consents*) or to any Request requiring the approval of the Majority External Creditors.

27.7 Disenfranchisement of Sponsor Affiliates

(a) For so long as a Sponsor Affiliate (i) beneficially owns an External Credit Participation or (ii) has entered into a sub-participation agreement relating to an External Credit Participation or other agreement or arrangement having a substantially similar economic effect and such agreement or arrangement has not been terminated, in ascertaining:

(i) the Majority External Creditors or the Simple Majority External Creditors; or

(ii) whether:

(A) any relevant percentage (including, for the avoidance of doubt, unanimity) of External Credit Participations; or

(B) the agreement of any specified group of External Creditors,

has been obtained to approve any request for a Consent or to carry any other vote or approve any action under this Agreement, that External Credit Participation shall be deemed to be zero and that Sponsor Affiliate (or the person with whom it has entered into that sub-participation, other agreement or arrangement (a "**Counterparty**")) shall be deemed not to be an External Creditor unless the relevant Counterparty is an External Creditor by virtue otherwise than by beneficially owning the relevant External Credit Participation.

- (b) Each Sponsor Affiliate that is an External Creditor agrees that:
 - (i) in relation to any meeting or conference call to which all the External Creditors are invited to attend or participate, it shall not attend or participate in the same if so requested by the Security Agent or, unless the Security Agent otherwise agrees, be entitled to receive the agenda or any minutes of the same; and
 - (ii) it shall not, unless the Security Agent otherwise agrees, be entitled to receive any report or other document prepared at the behest of, or on the instructions of, the Security Agent or one or more of the External Creditors.

27.8 **Disenfranchisement of Defaulting Lenders and Defaulting Noteholders**

- (a) Without prejudice to paragraph (b) of Clause 27.1 (*Required consents*) to Clause 27.7 (*Disenfranchisement of Sponsor Affiliates*), for so long as a Bank Facilities Lender is a Defaulting Lender or any Additional Creditor is disenfranchised from voting under the Additional Finance Documents to which it is a party pursuant to any Additional Finance Document Equivalent to clause 37.9 (*Disenfranchisement of Defaulting Lenders*) of the Bank Facilities Agreement, in ascertaining:
 - (i) the Majority External Creditors and the Simple Majority External Creditors; or
 - (ii) whether:
 - (A) any relevant percentage of External Credit Participations; or
 - (B) the agreement of any specified group of External Creditors,

has been obtained to approve any request for a Consent or to carry any other vote or approve any action under this Agreement, the Commitment of that Bank Facilities Lender or Additional Creditor will be reduced by the amount of its Available Commitments and, to the extent that that reduction results in the Commitment of that Bank Facilities Lender or Additional Creditor being zero, that Bank Facilities Lender or Additional Creditor shall be deemed not to be a Bank Facilities Lender or Additional Creditor (as applicable).
- (b) For the purposes of this Clause 27.8, the Security Agent may assume that the following External Creditors are Defaulting Lenders:
 - (i) any Bank Facilities Lender or Additional Creditor which has notified the Security Agent that it has become a Defaulting Lender;
 - (ii) any Bank Facilities Lender or Additional Creditor to the extent that the relevant Creditor Representative has notified the Security Agent that that Bank Facilities Lender or Additional Creditor is a Defaulting Lender; and

(iii) any Bank Facilities Lender or Additional Creditor which the Security Agent is aware:

- (A) has failed to make its participation in a Loan (as defined in the Bank Facilities Agreement) or any Additional Finance Document Equivalent available or has notified the relevant Creditor Representative that it will not make its participation in a Loan available by the Utilisation Date (as defined in the Bank Facilities Agreement) of that Loan in accordance with the terms of the Bank Facilities Agreement or any Additional Finance Document Equivalent under the Additional Finance Documents (as applicable);
- (B) which has otherwise rescinded or repudiated a Debt Document; or
- (C) with respect to which an Insolvency Event (as defined in the relevant Facilities Agreement) has occurred and is continuing,

unless, in the case of paragraph (i) above:

- (1) its failure to pay is caused by:
 - (a) administrative or technical error; or
 - (b) a Disruption Event (as defined in the Bank Facilities Agreement or any Additional Finance Document Equivalent); and

payment is made within three Business Days of its due date; or

- (2) the Bank Facilities Lender or Additional Creditor is disputing in good faith whether it is contractually obliged to make the payment in question.

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

27.9 Calculation of External Credit Participations

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

27.10 **Deemed consent**

If, at any time prior to the Final Discharge Date, the Simple Majority External Creditors or the Majority External Creditors give a Consent in respect of any Finance Document or Hedging Agreement then, if that action was permitted by the terms of this Agreement, the Parent, the Intra-Group Lenders and the Debtors will (or will be deemed to):

- (a) give a corresponding Consent in equivalent terms in relation to each of the Debt Documents to which they are a party; and
- (b) do anything (including executing any document) that the Security Agent may reasonably require to give effect to this Clause 27.10.

27.11 **Excluded consents**

Clause 27.10 (*Deemed consent*) does not apply to any Consent which has the effect of:

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

27.12 **No liability**

None of the External Creditors will be liable to any other Creditor or Debtor for any Consent given or deemed to be given under this Clause 27.

27.13 **Debt Documents and this Agreement to override**

Unless expressly stated otherwise in this Agreement, the Debt Documents are subject to the terms of this Agreement.

28. **CONTRACTUAL RECOGNITION OF BAIL-IN**

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

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

29. 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.

30. GOVERNING LAW

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

31. ENFORCEMENT

31.1 Jurisdiction

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

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

**SCHEDULE 1
INSTITUTIONS**

Arrangers

NatWest Markets Plc

National Westminster Bank plc

Nomura International plc

Bank Facilities Lenders

NatWest Markets Plc

National Westminster Bank plc

Nomura International plc

SCHEDULE 2
CONDITIONS PRECEDENT REQUIRED TO BE DELIVERED BY AN
ADDITIONAL GUARANTOR

1. An Accession Deed, executed by the Additional Guarantor and the Company.
2. A copy of the constitutional documents of the Additional Guarantor.
3. A copy of a resolution of the board of directors of the Additional Guarantor:
 - (a) approving the terms of, and the transactions contemplated by, the Accession Deed and the Secured Debt Documents to which it is a party and resolving that it execute, deliver and perform the Accession Deed;
 - (b) authorising a specified person or persons to execute the Accession Deed on its behalf;
 - (c) authorising a specified person or persons, on its behalf, to sign and/or despatch all other documents and notices to be signed and/or despatched by it under or in connection with the Secured Debt Documents to which it is a party; and
 - (d) authorising the Company to act as its agent in connection with the Secured Debt Documents to which it is a party.
4. A specimen of the signature of each person authorised by the resolution referred to in paragraph 3 above and identified as the person who will sign the Accession Deed and any other Secured Debt Document to be executed on behalf of the Additional Guarantor in connection with the accession of the Additional Guarantor.
5. If required under applicable law or the constitutional documents of the Additional Guarantor, a copy of a resolution signed by all the holders of the issued shares of the Additional Guarantor approving the terms of, and the transactions contemplated by, the Secured Debt Documents to which the Additional Guarantor is a party and, if required, amending the articles of association of that Additional Guarantor to permit the transfer of its shares on creation or enforcement of the relevant Transaction Security in relation to those shares.
6. A certificate of an authorised signatory of the Additional Guarantor confirming that guaranteeing or securing (as applicable) the External Creditor Liabilities would not cause any guaranteeing or security (as applicable) or similar limit binding on it to be exceeded.
7. A certificate of an authorised signatory of the Additional Guarantor certifying that each copy document listed in this Schedule 2 is correct, complete and in full force and effect as at a date no earlier than the date of the Accession Deed.
8. If available, the latest audited financial statements of the Additional Guarantor (audited if such statements are required to be audited in such Additional Guarantor's jurisdiction of incorporation or establishment).

9. The following legal opinions:
 - (a) a legal opinion of the legal advisers to the Security Agent in England in the form distributed to the Secured Parties prior to the signing of the Accession Deed; and
 - (b) if the Additional Guarantor is incorporated in or has its "**centre of main interest**" in a jurisdiction other than England and Wales or is executing a Secured Debt Document which is governed by a law other than English law, a legal opinion of the legal advisers to the Security Agent in the jurisdiction of its incorporation, "**centre of main interest**" or "**establishment**" (as applicable) and/or, as the case may be, the jurisdiction of the governing law of that Secured Debt Document (the "**Applicable Jurisdiction**") as to the law of the Applicable Jurisdiction and in the form distributed to the Secured Parties prior to signing the Accession Deed.
10. A copy of any other Authorisation or other document, opinion or assurance which the Security Agent or the Bank Facilities Agent considers to be necessary in connection with the entry into and performance of the transactions contemplated by the Accession Deed or for the validity and enforceability of any Secured Debt Document.
11. If the proposed Additional Guarantor is incorporated in a jurisdiction other than England and Wales, evidence that process agent incorporated in England & Wales, if not a Debtor, has accepted its appointment in relation to the proposed Additional Guarantor.
12. Any security documents, subject to the Agreed Security Principles, which are required by the Security Agent to be executed by the proposed Additional Guarantor.
13. Any notices or documents required to be given or executed under the terms of those security documents.
14. All share certificates, transfer and stock transfer forms or equivalent duly executed (if applicable) by the proposed Additional Guarantor in blank (or local law equivalent) in relation to the assets subject to or expressed to be subject to the Transaction Security and other documents of title and (if required under local law) registers of members to be provided under the Transaction Security Documents.

SCHEDULE 3
AGREED SECURITY PRINCIPLES

1. SECURITY PRINCIPLES

- 1.1 The guarantees and Security to be provided will be given in accordance with the principles set out in this Schedule 3. This Schedule 3 addresses the manner in which the principles will impact on the guarantees and Security proposed to be taken in relation to this transaction.
- 1.2 The Agreed Security Principles in this Schedule 3 embody recognition by all parties that there may be certain legal and practical difficulties in obtaining guarantees and/or Security from all Debtors or the Parent in every jurisdiction in which Debtors or the Parent are incorporated. In particular:
- (a) general mandatory statutory and legal limitations, financial assistance, corporate benefit, fraudulent preference, "**thin capitalisation**" rules, capital maintenance, retention of title claims, exchange control restrictions, earnings stopping and similar principles may limit the ability of a Debtor to provide a guarantee or Security or may require that the guarantee or Security be limited by an amount or otherwise; the Company and/or the relevant Debtor will use reasonable endeavours to overcome such obstacles or limitations;
 - (b) the Security and extent of its perfection will be agreed taking into account the cost to the Group or Parent (as applicable) of providing Security and the proportionate benefit accruing to the External Creditors) taking into account the extent of the obligations which can be secured and the priority that will be conferred by taking or perfecting the Security (in each case as determined by the Security Agent (acting reasonably));
 - (c) any assets subject to third party arrangements (including leasehold, intellectual property rights, joint ventures) which are permitted by the Finance Documents and which prevent those assets from being secured will be excluded from any fixed security in any relevant Transaction Security Document **provided that** reasonable endeavours (including the payment of the reasonable costs of the relevant third party in providing the consent) to obtain consent to charging any such assets shall be used by the relevant Debtor or the Parent (as applicable) if the relevant asset is material for a maximum period of not more than 20 Business Days. Prior to such consent being obtained or such restriction otherwise being overcome, Transaction Security will, to the extent legally possible, operate as an assignment of any damages, compensation, remuneration, profit or income which the relevant Debtor may derive from that asset or be awarded or entitled to in respect of that asset;
 - (d) no Debtor will be required to grant fixed Security over:
 - (i) the shares of an entity which is not a member of the Group unless the value of such shares is material or such entity is of strategic importance, in which case such Debtor will grant Security over the shares if (but only if) consent, where required, is obtained from other shareholders, in

which case it must use all reasonable endeavours to obtain any necessary consent to grant Security over the relevant shares; and/or

- (ii) any Ring-Fenced Account;
- (e) Guarantors will not be required to give guarantees and a member of the Group and the Parent will not be required to enter into Transaction Security Documents if, and to the extent, that could reasonably be expected to conflict with the fiduciary duties of their directors or contravene any prohibition under applicable law or result in a risk of personal or criminal liability on the part of any officer **provided that** the relevant member of the Group or the Parent (as applicable) shall use reasonable endeavours to overcome any such obstacle for a maximum period of not more than 20 Business Days;
- (f) perfection of Security, when required, and other legal formalities will be completed as soon as reasonably practicable (unless otherwise specified in the relevant Finance Documents) and, in any event, within the relevant time periods specified in the Finance Documents or, if earlier or to the extent no such time periods are specified in the Finance Documents, within the time periods specified by applicable law in order to ensure due perfection, **provided that**, prior to an Acceleration Event, the perfection of Security granted will not be required if it would materially prejudice the ability of the relevant member of the Group (as applicable) to conduct its operations and business in the ordinary course as otherwise permitted by the Finance Documents;
- (g) the maximum guaranteed or secured amount may be limited to minimise stamp duty, notarisation, registration or other applicable fees, taxes and duties where the benefit of increasing the guaranteed or secured amount is disproportionate to the level of such fee, tax or duty;
- (h) where a class of assets to be secured includes material and immaterial assets, if the cost of granting Security over the immaterial assets is disproportionate to the benefit of such Security (as determined by the Security Agent (acting reasonably)) Security will be granted over the material assets only (as agreed between the Company and the Security Agent (each acting reasonably));
- (i) unless granted under a global security document governed by the law of the jurisdiction of a Debtor or under English law, all Security (other than (X) any required share security granted by a Debtor or the Parent over its Subsidiaries, which will be governed by the law of the place of incorporation of that Subsidiary, (Y) any required bank accounts security, which will be governed by the law of the place in which the relevant bank accounts are opened or (Z) any required security over receivables, which, subject to applicable conflict of law rules, will be governed by the law of the governing law of the underlying agreement in respect of those receivables) shall be governed by the law of and secure assets located in the jurisdiction of incorporation of that Debtor or the Parent (as applicable);
- (j) guarantee and Security limitations under applicable law may mean that recourse to the assets of a Debtor is limited, in which case, any asset Security granted by that Debtor shall be proportionate to the value of its guarantee (or where

applicable by reference to market standard limitation language in the relevant jurisdiction);

- (k) no perfection action will be required in jurisdictions where Debtors or assets which are the subject of Security are not located (other than in relation to any security over shares or equity interests and notices to be provided as described in these Agreed Security Principles);
- (l) local law restrictions may mean that the External Creditors, or External Creditors in different classes of debt, may not be able to benefit from the same Security;
- (m) security assignment will be granted over any Hedging Agreements entered into by members of the Group;
- (n) the Security Agent will hold one set of Security for all External Creditors and not the External Creditors individually unless local law or standard market practice in the relevant jurisdiction requires separate ranking Security for different classes of debt;
- (o) the costs (including reasonable legal fees, disbursements, registration costs, taxes, notary fees and other costs and expenses) related to the guarantees and Security incurred by legal counsel to the Creditor Representatives and the External Creditors will be paid by the Parent or the Company and legal fees shall (save in the event of enforcement) be subject to an agreed cap;
- (p) Security will be taken on an "**as is, where is**" basis, meaning that the Security shall be granted subject to the quality of title (and location of assets) held by the relevant member of the Group or the Parent and, save as otherwise would constitute a Default under the Secured Debt Documents, there shall be no requirement to remedy defects in title and members of the Group and the Parent will not be required to procure any changes to or corrections of fillings on external registers;
- (q) no Security may be provided on terms which are inconsistent with the turnover or sharing provisions in this Agreement other than to the extent restricted by applicable law;
- (r) no Security will be granted over any property or asset the grant or perfection of a security interest which would require governmental consent, approval, license or authorisation (unless such consent, approval, license or authorization has been obtained), after giving effect to any applicable anti-transfer or anti-assignment provision of any applicable law (other than proceeds thereof the transfer or assignment of which is expressly deemed effective under applicable law notwithstanding such consent or restriction); and
- (s) no Security will be granted over assets which a pledge thereof or a security interest therein is prohibited by applicable law.

2. DEBTORS AND SECURITY

- 2.1 Each guarantee will be an upstream, cross-stream and downstream guarantee and each guarantee and Security will be for all liabilities of the Debtors under the Secured Debt Document in accordance with, and subject to, the requirements of the Agreed Security Principles and each Relevant Jurisdiction. In respect of each Debtor and the Parent, the Security granted by it will be to secure the secured obligations in full (subject to the applicable legal limitations of each Relevant Jurisdiction and the Agreed Security Principles).
- 2.2 The security package shall, subject to these Agreed Security Principles, comprise fixed security or security assignment (as applicable) over:
- (a) shares in the Company and the Target;
 - (b) shares in Material Companies (as such term is defined in the Bank Facilities Agreement in original form);
 - (c) receivables owing to a Debtor or the Parent under intercompany loans to members of the Group;
 - (d) receivables owing to a Debtor under any Hedging Agreements;
 - (e) bank accounts (other than any Ring-Fenced Account); and
 - (f) in respect of Debtors incorporated in jurisdictions which recognise a floating charge (or similar concept), a floating charge over all or substantially all the assets of that Debtor.

It is expressly acknowledged that in some jurisdictions (other than in England and Wales) it may be impractical to take security over certain assets for reasons referred to in these Agreed Security Principles or where it is otherwise customary that lenders do not take such security due to such security being impractical, in which case security will not be taken over those assets.

- 2.3 For the avoidance of doubt, no fixed Security will be granted over:
- (a) any fixed assets;
 - (b) any intellectual property;
 - (c) any trade receivables;
 - (d) any real property or immovable property;
 - (e) any Ring-Fenced Account;
 - (f) insurance policies; and
 - (g) any buildings, fixtures, fittings, fixed plant or machinery from time to time situated on or forming part of that real property or immovable property.

3. TERMS OF TRANSACTION SECURITY DOCUMENTS

3.1 The following principles will be reflected in the terms of any Security taken as part of this transaction:

- (a) the Security will be first ranking, to the extent possible, pursuant to provisions of applicable law;
- (b) Security will not be enforceable until the occurrence of an Acceleration Event;
- (c) save as otherwise provided in this Agreement, rights of set off will not be exercisable until the occurrence of an Event of Default which is continuing (but without prejudice to any operational netting requirements for the operation of Group clearing bank accounts);
- (d) representations and undertakings shall only be included in each Transaction Security Document:
 - (i) to confirm and/or undertake any registration or perfection of the Security;
 - (ii) to the extent expressly required by local law;
 - (iii) in respect of ownership of, preservation, maintenance of and good and full title to any assets subject to the Security;
 - (iv) to confirm that assets subject to the Transaction Security are free from any other Security, third party lien, encumbrance or right save as permitted in the Finance Documents;
 - (v) to provide such material information in relation to the assets subject to the Transaction Security as may be required by the Security Agent (acting reasonably) for the perfection, preservation, maintenance or enforcement of the Transaction Security;
 - (vi) in respect of an action that is necessary for the administration or enforcement of any Security or the preservation of the External Creditors' interests in relation thereto;
 - (vii) in respect of any action that is necessary for the preservation of the ranking of the Security; and
 - (viii) to obtain, maintain or preserve the ongoing validity of the Transaction Security in favour of the parties it is purported to be created for,in each case consistent with the terms of the Finance Documents;
- (e) the provisions of each Transaction Security Document will not be unduly burdensome on any Debtor or the Parent or interfere unreasonably with the operation of its business and will be limited to those required to create, preserve, perfect or maintain effective Security and not impose commercial obligations;

- (f) there will be no 'fixed' security over Cash, Cash Equivalent Investments, receivables (other than loans granted by the Parent to any member of the Group), investments (other than investment in members of the Group), insurance or bank accounts (other than the Lock-Up Account or Cash in the Lock-Up Account). Until the occurrence of an Acceleration Event each Debtor shall have complete discretion to move and deal with Cash, Cash Equivalent Investments, receivables, investments, insurance proceeds and bank accounts **provided that** such action is not prohibited by the terms of the Finance Documents;
- (g) information, such as lists of assets, will be provided if, and only to the extent, required by local law to be provided to perfect or register the Security and be provided annually (and to the extent required to be provided by local law more frequently, be provided quarterly) or, following an Event of Default which is continuing, on the Security Agent's reasonable request;
- (h) the External Creditors shall only be able to exercise a power of attorney following the occurrence of an Acceleration Event or if the Parent or the relevant Debtor has failed to comply with an obligation under a Transaction Security Document within 10 Business Days of notification of such failure by the Security Agent;
- (i) Security will, unless prohibited by applicable law, automatically create Security over future assets of the same type as those already secured and where local law requires supplemental pledges to be delivered in respect of future acquired assets in order for effective Security to be created over that class of asset, such further supplemental pledges shall be delivered only upon request of the Security Agent and at intervals no more than annually (unless delivered more frequently as standard market practice under local law);
- (j) in the Transaction Security Documents there will be no repetition or extension of clauses set out in the Finance Documents such as those relating to notices, cost and expenses, indemnities, tax gross up, distribution of proceeds and release of Security in each case except to the extent specifically required by local law or for the perfection of the Security or to accord with standard market practice in the relevant jurisdiction;
- (k) Transaction Security Documents should not operate so as to prevent transactions which are permitted under the Finance Documents or require additional consents or authorisations other than as set out in these Agreed Security Principles; and
- (l) A Debtor will not be required to cause any non wholly-owned Subsidiary to become a Guarantor and will not be required to grant Transaction Security over its shares in that Subsidiary if it is not within the legal capacity of such non wholly-owned Subsidiary or if it would conflict with any third party arrangements (including joint ventures and minority shareholdings) which are permitted by the Finance Documents **provided that** reasonable commercial endeavours (without incurring material costs and taking into account the Group's relationship with the relevant third party) shall be used by the relevant

Debtor to overcome any such obstacle for a maximum period of not more than 20 Business Days.

4. **BANK ACCOUNTS**

- 4.1 If a Debtor grants Security over its bank accounts it shall be free to deal with those accounts in the course of its business until the occurrence of an Acceleration Event (other than in respect of the Lock-Up Account, to the extent not otherwise permitted by the Finance Documents).
- 4.2 If required by local law to perfect the Security and if possible without disrupting operation of the account, notice of the Security will be served on the account bank as soon as reasonably practicable but, in any event, within 5 Business Days of the Security being granted and the Debtor shall use its reasonable endeavours to obtain an acknowledgement of that notice within 20 Business Days of service. If the Debtor has used its reasonable endeavours but has not been able to obtain acknowledgement its obligation to obtain acknowledgement shall cease on the expiry of that 20 Business Day period. Irrespective of whether notice of the Security is required for perfection, if the service of notice would prevent the Debtor from using a bank account (other than the Lock-Up Account, entered into pursuant to the Bank Facilities Agreement) in the course of its business no notice of Security shall be served until the occurrence of an Acceleration Event.
- 4.3 Any Security over bank accounts shall be subject to any prior Security interests in favour of the account bank which are created either by law or in the standard terms and conditions of the account bank. The notice of Security may request these be waived by the account bank but the Debtor shall not be required to change its banking arrangements if these security interests are not waived or only partially waived.
- 4.4 No Debtor shall be required to grant Security over any Ring-Fenced Account.

5. **RECEIVABLES**

- 5.1 If a Debtor or the Parent grants Security over its intercompany receivables it shall be free to deal with those receivables in the course of its business (subject to the terms of the Finance Documents) until the occurrence of an Acceleration Event.
- 5.2 Subject to this paragraph 5, if required by local law to perfect the Security or, where applicable, to accord with standard market practice in the relevant jurisdiction, notice of the Security will be served on the relevant debtor as soon as reasonably practicable but, in any event, within 5 Business Days of the Security being granted and the Debtor shall use its reasonable endeavours to obtain an acknowledgement of that notice within 20 Business Days of service, **provided that** notices and acknowledgments in respect of Intra-Group Liabilities and Parent Liabilities will be given in this Agreement. Irrespective of whether notice of the Security is required for perfection, or in accordance with standard market practice, if the service of notice would prevent the Debtor from dealing with an intercompany receivable in the ordinary course of its business no notice of Security shall be served until the occurrence of an Acceleration Event.

- 5.3 If required under local law Security over intercompany receivables will be registered subject to these Agreed Security Principles.
- 5.4 If a Debtor grants Security over its receivables under hedging agreements (within the meaning of Hedging Agreements) it shall be free to deal with those receivables in the course of its business until the occurrence of an Acceleration Event.
- 5.5 No Security will be granted over any hedging receivables which cannot be secured under the terms of the relevant hedging agreement, other than Hedging Agreements.

6. **SHARES**

- 6.1 A Debtor shall grant Security over the shares in its Subsidiaries which are Material Companies. Security over shares in Joint Ventures (as that term is defined in the Finance Documents) shall not be required.
- 6.2 Transaction Security Documents will be governed by the laws of the jurisdiction of incorporation of the Debtor whose shares are being secured and not by the law of the jurisdiction of incorporation of the relevant Debtor or the Parent (as applicable) granting the Security.
- 6.3 Until the occurrence of an Acceleration Event:
- (a) the charging Debtor or the Parent (as applicable) will be permitted to retain and to exercise (or direct the exercise of) the voting rights to any shares subject to Security by it in a manner which does not affect the validity or enforceability of the Security in a materially adverse manner or cause an Event of Default to occur;
 - (b) the company whose shares have been secured will (subject to the terms of the Finance Documents) be permitted to pay dividends; and
 - (c) to the extent that legal title to the relevant shares is vested in the Security Agent (or its nominee(s)), the Security Agent (or its nominee(s)) shall pay all dividends and distributions and exercise all voting rights and other rights corresponding to the shares subject to the Security as the relevant Debtor may reasonably direct except where any such compliance by the Security Agent would be materially adverse to the Security created by the relevant Transaction Security Document or cause an Event of Default.
- 6.4 Where customary on the date, or otherwise as soon as reasonably practicable but, in any event, within 5 Business Days, of execution and/or delivery of the relevant Transaction Security Documents, the share certificate(s) and stock transfer form(s) executed in blank (or local law equivalent) will be provided to the Security Agent (or one of its designees), the Security will be recorded in the ownership titles of the shares subject to the Security and where required by law the share certificate(s) or shareholders register will be endorsed or written up (each showing the Security Agent (or its nominee(s)) as the registered shareholder of the shares subject to the Security, if required by applicable law) and the endorsed share certificate or a copy of the written up register provided to the Security Agent.

6.5 Unless the restriction is required by law, the constitutional documents of the company whose shares have been made subject to Security will be amended to remove, or, as appropriate, disapply any restriction on the transfer or the registration of the transfer of the shares on enforcement of the Security granted over them.

7. **RELEASE OF SECURITY**

Unless required by local law or, where applicable, to accord with standard market practice in the relevant jurisdiction, the circumstances in which the Security shall be released should not be dealt with in individual Transaction Security Documents but, if so required, shall, except to the extent required by local law or, where applicable, to accord with standard market practice in the relevant jurisdiction, be the same as, or not conflict with, those set out in this Agreement.

**SCHEDULE 4
FORM OF ACCESSION DEED**

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

- (1) [Insert name of new Debtor/Guarantor] (registration number [•]) (the "**Acceding Debtor**"/[**Guarantor**"]); and
- (2) [Insert name of current Security Agent] (the "**Security Agent**"), for itself and each of the other secured parties to the intercreditor agreement referred to below.

This Agreement is made on [date] by the Acceding [Debtor]/[Guarantor] in relation to an intercreditor agreement (the "**Intercreditor Agreement**") dated [•] 2021 between, among others, [•] as company, [INSERT NAME OF SECURITY AGENT] as security agent, [INSERT NAME OF BANK FACILITIES AGENT] as [Bank Facilities Agent], the other Creditors and the other Debtors (each as defined in the Intercreditor Agreement).

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

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

the "**Relevant Documents**".

IT IS AGREED as follows:

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

² Include to the extent that the Security created in the Relevant Documents is expressed to be granted to the Security Agent as agent and trustee for the Secured Parties.

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

3. The Acceding [Debtor]/[Guarantor] confirms that it intends to be party to the Intercreditor Agreement as a [Debtor]/[Guarantor], undertakes to perform all the obligations expressed to be assumed by a [Debtor]/[Guarantor] under the Intercreditor Agreement and agrees that it shall be bound by all the provisions of the Intercreditor Agreement as if it had been an original party to the Intercreditor Agreement.
4. [In consideration of the Acceding [Debtor]/[Guarantor] being accepted as an Intra-Group Lender for the purposes of the Intercreditor Agreement, the Acceding [Debtor]/[Guarantor] also confirms that it intends to be party to the Intercreditor Agreement as an Intra-Group Lender, and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by an Intra-Group Lender and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement].³

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

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

The Acceding [Debtor]/[Guarantor]

[EXECUTED as a DEED)
by [Name of Acceding Debtor]/[Guarantor]/)
Director
Director/Secretary]

OR

[EXECUTED as a DEED
by [Name of Acceding Debtor]/[Guarantor]
Signature of Director
Name of Director
in the presence of

³ Include this paragraph in the relevant Debtor/Guarantor Accession Deed if the Acceding [Debtor]/[Guarantor] is also to accede as an Intra-Group Lender to the Intercreditor Agreement.

Signature of witness

Name of witness

Address of witness

The Security Agent

For and on behalf of

[Name of current Security Agent]

By:

Date:

SCHEDULE 5
FORM OF CREDITOR ACCESSION UNDERTAKING

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

From: [Acceding Creditor]

THIS UNDERTAKING is made on [date] by [insert name of new Bank Facilities Lender/ PP Noteholder/ Bond Trustee/ Additional Facilities Lender/ Hedge Counterparty/ Creditor Representative/ Arranger/ Intra-Group Lender (the "Acceding [Bank Facilities Lender/ PP Noteholder/ Bond Trustee / Additional Facilities Lender/ Hedge Counterparty/ Creditor Representative/ Arranger/ Intra-Group Lender")]] in relation to the intercreditor agreement (the "**Intercreditor Agreement**") dated [•] 2021 between, among others, [•] as company, [INSERT NAME OF SECURITY AGENT] as security agent, [INSERT NAME OF BANK FACILITIES AGENT] as bank facilities agent, the other Creditors and the other Debtors (each as defined in the Intercreditor Agreement)

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

In consideration of the Acceding [Bank Facilities Lender/ PP Noteholder/ Bond Trustee/ Additional Facilities Lender/ Hedge Counterparty/ Creditor Representative/ Arranger/ Intra-Group Lender] being accepted as a [Bank Facilities Lender/ PP Noteholder/ Bond Trustee/ Additional Facilities Lender/ Hedge Counterparty/ Creditor Representative/ Arranger/ Intra-Group Lender] for the purposes of the Intercreditor Agreement, the Acceding [Bank Facilities Lender/ PP Noteholder/ Bond Trustee/ Additional Facilities Lender/ Hedge Counterparty/ Creditor Representative/ Arranger/ Intra-Group Lender] confirms that, as from [date], it intends to be party to the Intercreditor Agreement as a [Bank Facilities Lender/ PP Noteholder/ Bond Trustee/ Additional Facilities Lender/ Hedge Counterparty/ Creditor Representative/ Arranger/ Intra-Group Lender] and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a [Bank Facilities Lender/ PP Noteholder/ Bond Trustee/ Additional Facilities Lender/ Hedge Counterparty/ Creditor Representative/ 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 [Bank Facilities Lender]/[Additional Facilities Lender] is an Affiliate of a [Bank Facilities Lender]/[Additional Facilities Lender] and has become a provider of an Ancillary Facility. In consideration of the Acceding [Bank Facilities Lender]/[Additional Facilities Lender] being accepted as an Ancillary Lender for the purposes of the Facilities Agreement, the Acceding [Bank Facilities Lender]/[Additional Facilities Lender] confirms, for the benefit of the parties to the Facilities Agreement, that, as from [date], it intends to be a party to the Facilities Agreement as an Ancillary Lender, and undertakes to perform all the obligations expressed in the Facilities Agreement to be assume by a Finance Party (as defined in the Facilities Agreement) and agrees that it shall be bound by all the provisions of the

Facilities Agreement, as if it had been an original party to the Facilities Agreement as an Ancillary Lender.]⁴

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.

⁴ Include only in the case of an Ancillary Lender which is an Affiliate of a Lender which is using this undertaking to accede to the Facilities Agreement in accordance with paragraph (c) of Clause 21.6 (*Creditor Accession Undertaking*).

For and on behalf of

[Name of Acceding Creditor]

[EXECUTED AS A DEED

by [Name of Acceding Creditor]

Director

Director/Secretary]

OR

[EXECUTED as a DEED

by [Name of Acceding Creditor]

Signature of Director

Name of Director

in the presence of

Signature of witness

Name of witness

Address of witness

Address:

Accepted by the Security Agent

for and on behalf of

[Insert name of current Security Agent]

Date:

SCHEDULE 6
FORM OF DEBTOR/GUARANTOR RESIGNATION REQUEST

To: [•] as Security Agent

From: [resigning Debtor]/[Guarantor] and [Company]]

Dated:

Dear Sirs

[Company] – Intercreditor Agreement
dated [•] 2021 (the Intercreditor Agreement)

1. We refer to the Intercreditor Agreement. This is a Debtor/Guarantor Resignation Request. Terms defined in the Intercreditor Agreement have the same meaning in this Debtor/Guarantor Resignation Request unless given a different meaning in this Debtor/Guarantor Resignation Request.
2. Pursuant to Clause 21.13 (*Resignation of a Debtor and/or a Guarantor*) of the Intercreditor Agreement we request that resigning [Debtor]/[Guarantor] be released from its obligations as a [Debtor][and as a Guarantor] under the Intercreditor Agreement.
3. We confirm that:
 - (a) no Default is continuing or would result from the acceptance of this request;
 - (b) [[resigning Debtor and/or Guarantor] is not a borrower or guarantor under any Debt Document; and
 - (c) [resigning Debtor] is under no actual or contingent obligations in respect of the Intra-Group Liabilities.]
4. This letter and any non-contractual obligations arising out of or in connection with it are governed by English law.

For and on behalf of
[The Company]

For and on behalf of
[resigning Debtor/Guarantor]

By: By:

SIGNATORIES

BANK FACILITIES AGENT

NATIONAL WESTMINSTER BANK PLC

By: _____
Name: _____
Title: _____

Notice Details:

Address: 250 Bishopsgate, London, EC2M 4AA

Email: _____
Attention: _____
Tel: _____

BANK FACILITIES LENDERS

NATWEST MARKETS PLC

As Bank Facilities Lender

By: _____

Name: _____

Title: _____

Notice Details:

Address: 250 Bishopsgate, London, EC2M 4AA

Attention: _____

Email address: _____

BANK FACILITIES LENDERS

NATIONAL WESTMINSTER BANK PLC

As Bank Facilities Lender

By: _____
Name: _____
Title: _____

Notice Details:

Address: 250 Bishopsgate, London, EC2M 4AA

Attention: _____
Email address: _____

BANK FACILITIES LENDERS

NOMURA INTERNATIONAL PLC

As Bank Facilities Lender

By: _____
Name: _____
Title: _____

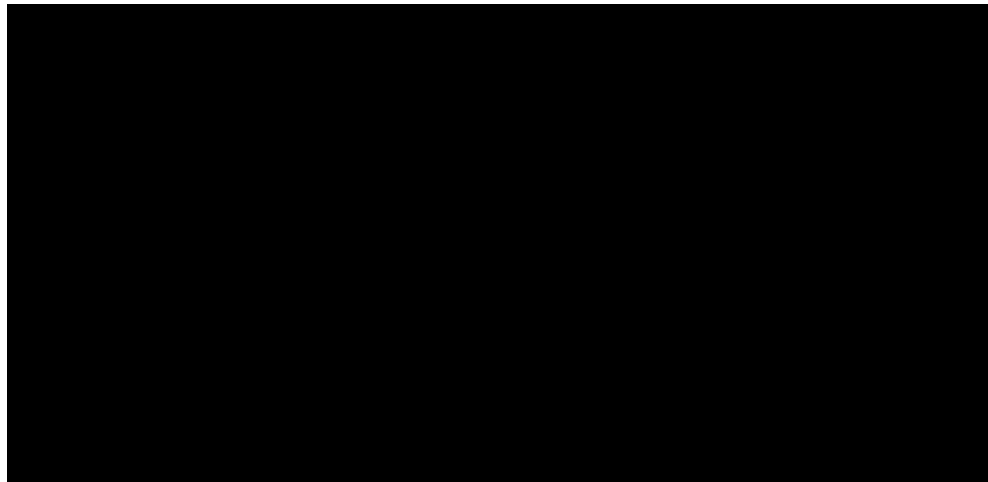
Notice Details:

Address: 1 Angel Lane, London EC4R 3AB

Attention:

Fax number:

Email address:



ARRANGERS

NATWEST MARKETS PLC

As Arranger

By: _____

Name: _____

Title: _____

Notice Details:

Address: 250 Bishopsgate, London, EC2M 4AA

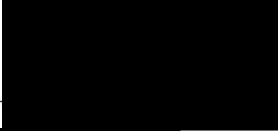
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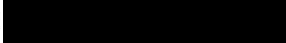
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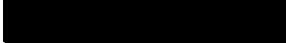
ARRANGERS

NATIONAL WESTMINSTER BANK PLC

As Arranger

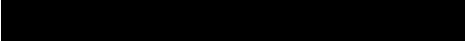
By: _____ 

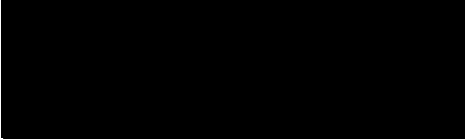
Name: 

Title: 

Notice Details:

Address: 250 Bishopsgate, London, EC2M 4AA

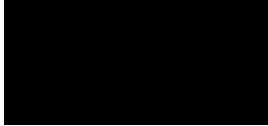
Attention: 

Email address: 

ARRANGERS

NOMURA INTERNATIONAL PLC

As Arranger

By: _____  _____

Name: 

Title: 

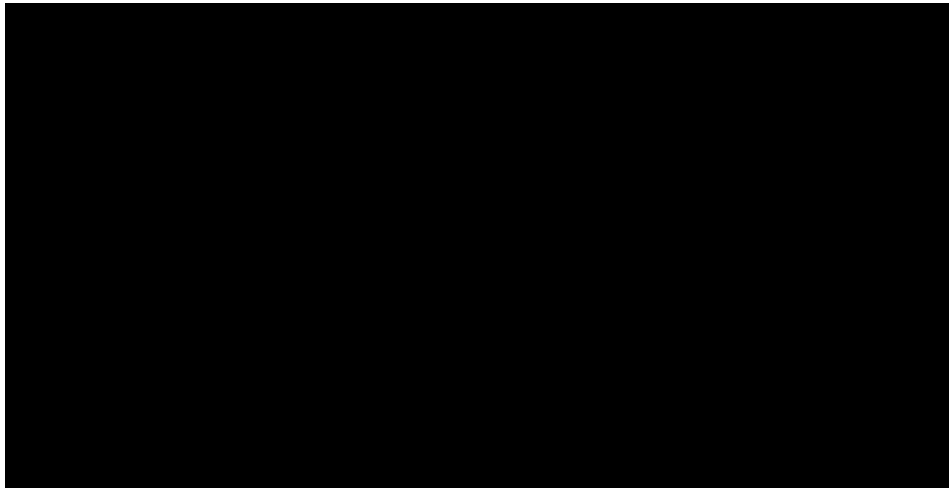
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Attention:

Fax number:


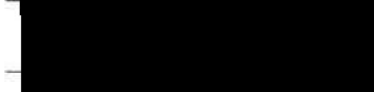
Email address:



PARENT

EXECUTED as a **DEED** by
ELEIA HOLDCO LIMITED acting by two directors

as Parent

 _____ Signature of director
 _____ Name of director

_____ Signature of director
_____ Name of director

Notice Details:

Address: C/O Ancala Partners LLP, King's House, 36-37 King Street, London, England,
EC2V 8BB

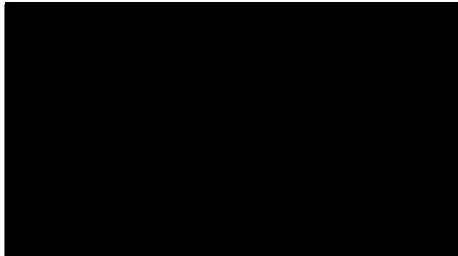
Attention: 

Email address: 

PARENT

EXECUTED as a **DEED** by
ELEIA HOLDCO LIMITED acting by two directors

as Parent



Signature of director

Name of director

Signature of director

Name of director

Notice Details:

Address: C/O Ancala Partners LLP, King's House, 36-37 King Street, London, England,
EC2V 8BB

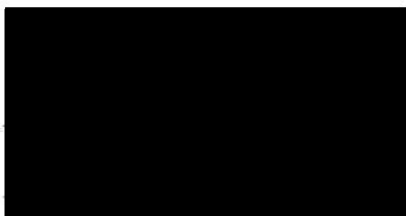
Attention:

Email address:

COMPANY

EXECUTED as a **DEED** by
ELEIA LIMITED acting by two directors

as **Company**



Signature of director

Name of director

Signature of director

Name of director

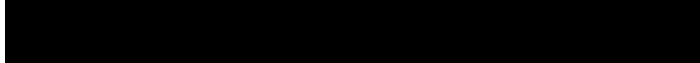
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EC2V 8BB

Attention:



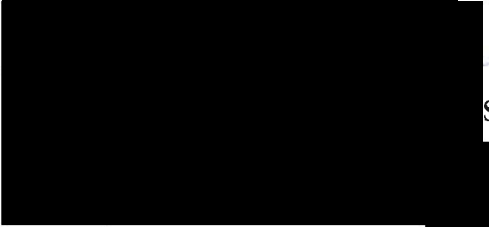
Email address:



COMPANY

EXECUTED as a **DEED** by
ELEIA LIMITED acting by two directors

as **Company**



Signature of director

Name of director

Signature of director

Name of director

Notice Details:

Address: C/O Ancala Partners LLP, King's House, 36-37 King Street, London, England,
EC2V 8BB

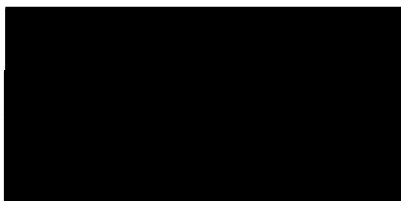
Attention:

Email address:

ORIGINAL INTRA-GROUP LENDERS

EXECUTED as a **DEED** by
ELEIA LIMITED acting by two directors

as Original Intra-Group Lender



Signature of director

Name of director

Signature of director

Name of director

Notice Details:

Address: C/O Ancala Partners LLP, King's House, 36-37 King Street, London, England,
EC2V 8BB

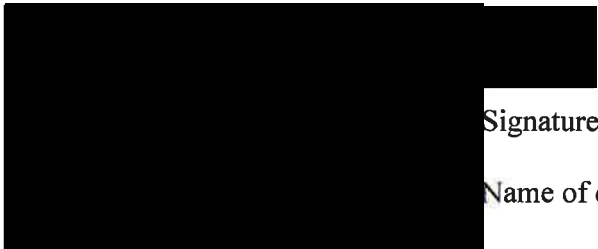
Attention: 

Email address: 

ORIGINAL INTRA-GROUP LENDERS

EXECUTED as a **DEED** by
ELEIA LIMITED acting by two directors

as **Original Intra-Group Lender**



Signature of director

Name of director

_____ Signature of director

_____ Name of director

Notice Details:

Address: C/O Ancala Partners LLP, King's House, 36-37 King Street, London, England,
EC2V 8BB

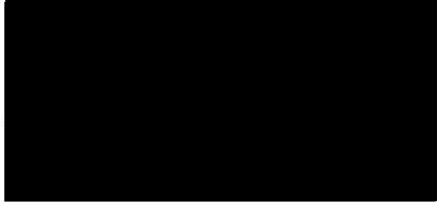
Attention:

Email address:

ORIGINAL GUARANTORS

EXECUTED as a **DEED** by
ELEIA LIMITED acting by two directors

as **Original Guarantor**



Signature of director

Name of director

_____ Signature of director

_____ Name of director

Notice Details:

Address: C/O Ancala Partners LLP, King's House, 36-37 King Street, London, England,
EC2V 8BB

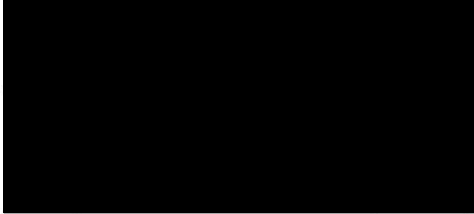
Attention: 

Email address: 

ORIGINAL GUARANTORS

EXECUTED as a **DEED** by
ELEIA LIMITED acting by two directors

as **Original Guarantor**



Signature of director

Name of director

_____ Signature of director

_____ Name of director

Notice Details:

Address: C/O Ancala Partners LLP, King's House, 36-37 King Street, London, England,
EC2V 8BB

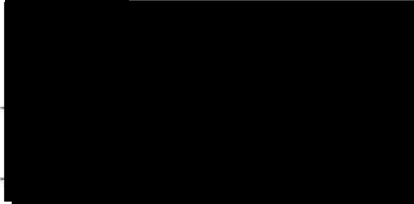
Attention:

Email address:

ORIGINAL DEBTORS

EXECUTED as a **DEED** by
ELEIA LIMITED acting by two directors

as Original Debtor



Signature of director

Name of director

Signature of director

Name of director

Notice Details:

Address: C/O Ancala Partners LLP, King's House, 36-37 King Street, London, England,
EC2V 8BB

Attention:



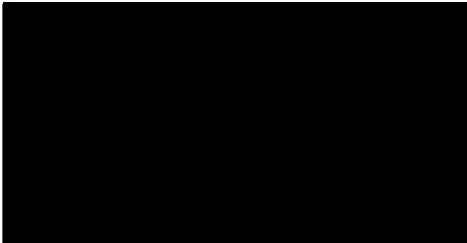
Email address:



ORIGINAL DEBTORS

EXECUTED as a **DEED** by
ELEIA LIMITED acting by two directors

as **Original Debtor**



Signature of director

Name of director

_____ Signature of director

_____ Name of director

Notice Details:

Address: C/O Ancala Partners LLP, King's House, 36-37 King Street, London, England,
EC2V 8BB

Attention:

Email address:

SECURITY AGENT

NATIONAL WESTMINSTER BANK PLC

By: _____

Name: _____

Title: _____

Notice Details:

Address: 250 Bishopsgate, London, EC2M 4AA

Attention: _____

Email: _____