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COMPANIES FORM No. 466(Scot)

466

Particulars of an instrument of alteration to a floating charge created by a company registered in Scotland

CHFP025

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write in this
margin

A fee of £13 is payable to Companies House in respect of each register entry for a mortgage or charge.

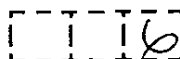
Pursuant to section 410 and 466 of the Companies Act 1985

To the Registrar of Companies
(Address overleaf - Note 6)

For official use

Company number

Please complete
legibly, preferably
in black type, or
bold block lettering



SC025020

Name of company

* GAS MEASUREMENT INSTRUMENTS LIMITED (the "Company")

* insert full name
of Company

Date of creation of the charge (note 1)

16 OCTOBER 2012

Description of the instrument creating or evidencing the charge or of any ancillary document which has been altered (note 1)

FLOATING CHARGE

Names of the persons entitled to charge

HSBC BANK PLC (as "Security Agent")

Short particulars of all the property charged

UNDERTAKING & ALL PROPERTY & ASSETS PRESENT & FUTURE, INCLUDING UNCALLED CAPITAL

Presentor's name address and
reference (if any):
Pinsent Masons LLP
Princes Exchange, 1 Earl Grey Street,
Edinburgh, EH3 9AQ,

DX ED 723301 EDINBURGH 43

For official use (06/2005)
Charges Section

Post room

FRIDAY



SCT

S2L6TOIP

15/11/2013

#509

COMPANIES HOUSE

Names, and addresses of the persons who have executed the instrument of alteration (note 2)

Amongst others:

HSBC Bank PLC, HSBC Southern Corporate, Banking Centre, Global House, High Street, Crawley,
RH10 1DL

GMI Group Holdings Limited, Block 2, Inchiman Business Park, Renfrew, Strathclyde, PA4 97G

together the "Parties" as defined by the "Agreement".

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write in
this margin*

*Please complete
legibly, preferably
in black type, or
bold block lettering*

Date(s) of execution of the instrument of alteration

31 October 2013

A statement of the provisions, if any, imposed by the instrument of alteration prohibiting or restricting the creation by the company of any fixed security or any other floating charge having, priority over, or ranking pari passu with the floating charge

N/A

Short particulars of any property released from the floating charge

N/A

The amount, if any, by which the amount secured by the floating charge has been increased

N/A

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write in
this margin

Please complete
legibly, preferably
in black type or
bold block lettering

A statement of the provisions, if any, imposed by the instrument of alteration varying or otherwise regulating the order of the ranking of the floating charge in relation to fixed securities or to other floating charges

Senior Creditor Liabilities

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

Transaction Security

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

Subordinated and Intra-Group Liabilities

(a) Each of the Parties agrees that the Subordinated Liabilities and the Intra-Group Liabilities are postponed and subordinated to the Liabilities owed by the Debtors to the Senior Creditors.

(b) The Agreement does not purport to rank any of the Subordinated Liabilities or the Intra-Group Liabilities as between themselves.

Terms are Defined in Paper Apart 1 as annexed hereto.

Continuation of the statement of the provisions, if any, imposed by the instrument of alteration varying or otherwise regulating the order of the ranking of the floating charge in relation to fixed securities or to other floating charges

*Please do not
write in
this margin*

*Please complete
legibly, preferably
in black type, or
bold block lettering*

Signed Pinsut Masso LLP Date 15.11.2013

On behalf of ~~[company]~~ [chargee] †

*A fee is payable to
Companies House
in respect of each
register entry for a
mortgage or
charge.
(See Note 5)*

Notes

1. A description of the instrument e.g. "Instrument of Charge" "Debenture" etc, as the case may be, should be given. For the date of creation of a charge see section 410(5) of the Companies Act.
2. In accordance with section 466(1) the instrument of alteration should be executed by the company, the holder of the charge and the holder of any other charge (including a fixed security) which would be adversely affected by the alteration.
3. A certified copy of the instrument of alteration, together with this form with the prescribed particulars correctly completed must be delivered to the Registrar of Companies within 21 days after the date of execution of that instrument.
4. A certified copy must be signed by or on behalf of the person giving the certification and where this is a body corporate it must be signed by an officer of that body.
5. A fee of £13 is payable to Companies House in respect of each register entry for a mortgage or charge. Cheques and Postal Orders are to be made payable to **Companies House**.
6. The address of the Registrar of Companies is: Companies House, 139 Fountainbridge, Edinburgh, EH3 9FF DX 235 Edinburgh or LP - 4 Edinburgh 2

† delete as
appropriate

Form 466 – Paper Apart 1

The following are the Definitions pursuant to the Intercreditor Agreement dated 31 October 2013 as annexed hereto:

"Affiliate" has the meaning given to that term in the Senior Facilities Agreement;

"Agreement" means the Intercreditor Agreement dated 31 October 2013 as referred to hereto;

"Ancillary Facility" has the meaning given to that term in the Senior Facilities Agreement;

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

"Arrangers" means HSBC Bank PLC, Intermediate Capital Managers Limited and MCG Capital Corporation;

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

"Creditor" means the Senior Lenders, the Hedge Counterparties and the Intra-Group Lenders;

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

"Debtors" means each Original Debtor and any person which becomes a Party as a Debtor in accordance with the terms of clause 16 of the Agreement;

"Delegate" means any delegate, agent, attorney, co-trustee, custodian or nominee appointed by the New Security Agent;

"Group" has the meaning given to that term in the Senior Facilities Agreement;

"Hedging Agreement" means any agreement entered into by a Hedge Counterparty and defined as such in the Senior Facilities Agreement;

"Hedge Counterparties" means any person named in part 2 of schedule 1 or any person pursuant to clause 16.9 of the Agreement;

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

"Intra-Group Lenders" means each member of the Group which has made a loan available to, granted credit to or made any other financial arrangement having similar effect with another member of the Group and which is listed in part 3 of schedule 1 of the Agreement or which becomes a party as an Intra-Group Lender in accordance with the terms of clause 16 of the Agreement;

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

"Investor" meaning each of the following persons and entities: Battery Ventures IX, LP; Battery Investment Partners IX, LLC; David Hunter; Martin Rennie; and, George McGregor;

"Liabilities" means all present and future liabilities and obligations at any time of any member of the Group to any Creditor or to any Investor under the Debt Documents or otherwise, both

actual and contingent and whether incurred solely or jointly or in any other capacity together with any of the following matters relating to or arising in respect of those liabilities and obligations:

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

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

"Original Debtor" means each of the following: Industrial Safety Technologies, LLC; GMI Holdco, Inc; GMI Group Holdings Limited; Gas Measurement Instruments Limited; Detcon, Inc; DSA Detection LLC; DSA Holdco, Inc; Detcon Holdco, Inc; Simtronics AS; and, Simtronics SAS;

"Parent" means Industrial Safety Technologies, LLC;

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

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

"New Security Agent" means HSBC Corporate Trustee Company (UK) Limited;

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

"Secured Parties" means the New Security Agent, any Receiver or Delegate, the Security Agent, the Arrangers and the Senior Creditors from time to time but, in the case of the Security Agent, an Arranger or a Senior Creditor, only if it is a party to this Agreement or (in the case of the Security Agent or a Senior Creditor) has acceded to the Agreement, in the appropriate capacity, pursuant to clause 16.9 of the Agreement;

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

"Security Documents" means:

- (a) each of the Transaction Security Documents;
- (b) any other document entered into at any time by any of the Debtors 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 set out in (a) and (b) above;

"Senior Creditors" means the Senior Lenders and the Hedge Counterparties;

"Senior Facilities Agreement" means the senior facilities agreement made between the Parent, the Senior Lenders and others dated 17 October 2012

"Senior Finance Documents" has the meaning given to the term "*Finance Documents*" in the Senior Facilities Agreement

"Senior Lenders" means each Lender (as defined in the Senior Facilities Agreement) and Ancillary Lender;

"Senior Lender Liabilities" means the Liabilities owed by the Debtors to the Senior Lenders under the Senior Finance Documents

"Subordinated Liabilities" means all Liabilities (including, for the avoidance of doubt, any dividends or distributions) owed to the Investors (or any of them) by the Parent or any other 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" has the meaning given to that term in the Senior Facilities Agreement



FILE COPY

**CERTIFICATE OF THE REGISTRATION
OF AN ALTERATION TO A FLOATING CHARGE**

COMPANY NO. 25020

CHARGE NO. 6

I HEREBY CERTIFY THAT PARTICULARS OF AN INSTRUMENT
OF ALTERATION DATED 31 OCTOBER 2013 WERE DELIVERED
PURSUANT TO SECTION 878 OF THE COMPANIES ACT 2006
ON 15 NOVEMBER 2013

THE INSTRUMENT RELATES TO A CHARGE CREATED ON 16
OCTOBER 2012

BY GAS MEASUREMENT INSTRUMENTS LIMITED

IN FAVOUR OF
HSBC BANK PLC

FOR SECURING ALL SUMS DUE OR TO BECOME DUE

GIVEN AT COMPANIES HOUSE, EDINBURGH 18 NOVEMBER 2013



Companies House



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES

EXECUTION VERSION

DATED

31 October

2013

- (1) HSBC BANK PLC
as Agent
- (2) THE FINANCIAL INSTITUTIONS LISTED IN PART 1 OF SCHEDULE 1
as Senior Lenders
- (3) HSBC BANK PLC, INTERMEDIATE CAPITAL MANAGERS LIMITED AND MCG
CAPITAL CORPORATION
as Arranger
- (4) THE FINANCIAL INSTITUTION LISTED IN PART 2 OF SCHEDULE 1
as Original Hedge Counterparty
- (5) THE PERSONS AND ENTITIES LISTED IN PART 3 OF SCHEDULE 1
as Investors
- (6) INDUSTRIAL SAFETY TECHNOLOGIES, LLC
as Parent
- (7) THE COMPANIES LISTED IN PART 4 OF SCHEDULE 1
as Intra-Group Lenders
- (8) THE COMPANIES LISTED IN PART 5 OF SCHEDULE 1
as Original Debtors
- (9) HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED
as Security Agent

INTERCREDITOR
AGREEMENT

CERTIFIED TO BE A TRUE AND COMPLETE
COPY OF THE ORIGINAL
DATED THIS 14 DAY OF November 2013

Pinsent Masons LLP

Pinsent Masons LLP


Pinsent Masons

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THIS AGREEMENT is made on

31 October

2013

BETWEEN:

- (1) HSBC BANK PLC as Agent (the "Agent");
- (2) THE FINANCIAL INSTITUTIONS listed in part 1 of schedule 1 as Senior Lenders (the "Senior Lenders");
- (3) HSBC BANK PLC, INTERMEDIATE CAPITAL MANAGERS LIMITED AND MCG CAPITAL CORPORATION as Arranger (whether acting collectively or individually the "Arranger");
- (4) THE FINANCIAL INSTITUTIONS listed in part 2 of schedule 1 as Original Hedge Counterparty (the "Original Hedge Counterparty");
- (5) THE PERSONS AND ENTITIES listed in part 3 of schedule 1 as the Investors (the "Investors");
- (6) INDUSTRIAL SAFETY TECHNOLOGIES, LLC as the Parent (the "Parent");
- (7) THE COMPANIES listed in part 4 of schedule 1 as Intra-Group Lenders (the "Intra-Group Lenders");
- (8) THE COMPANIES listed in part 5 of schedule 1 as Debtors (the "Original Debtors"); and
- (9) HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED as security agent for the Secured Parties (the "Security Agent").

IT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

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

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

"Acceleration Event" means the Agent exercising any of its rights under clause 26.21 (*Acceleration*) of the Senior Facilities Agreement;

"Affiliate" has the meaning given to that term in the Senior Facilities Agreement;

"Agent Liabilities" means all present and future liabilities and obligations, actual and contingent, of any Debtor to the Agent under the Senior Finance Documents;

"Aggregate Exchange Rate Hedged Amount" means, in relation to a Hedge Counterparty, the aggregate of the notional amounts denominated in a Hedged Currency hedged by the

relevant Debtors under each Hedging Agreement which is an exchange rate hedge transaction and to which that Hedge Counterparty is party;

"Aggregate Interest Rate Hedged Amount" means, in relation to a Hedge Counterparty, the aggregate of the notional amounts hedged by the relevant Debtors under each Hedging Agreement which is an interest rate hedge transaction and to which that Hedge Counterparty is party;

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

"Ancillary Document" has the meaning given to that term in the Senior Facilities Agreement;

"Ancillary Facility" has the meaning given to that term in the Senior Facilities Agreement;

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

"Arranger Liabilities" means all present and future liabilities and obligations, actual and contingent, of any Debtor to any Arranger under the Senior Finance Documents;

"Available Commitment" has the meaning given to that term in the Senior Facilities Agreement;

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

"Business Day" has the meaning given to that term in the Senior Facilities Agreement;

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

"Close-Out Netting" means:

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

Agreement which has a similar effect to either provision referenced in paragraph (a) and paragraph (b);

"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 US Dollars;

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

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

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

and which ranks in the order of priority contemplated in clause 2.2 (*Transaction Security*);

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

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

"Creditor/Agent Accession Undertaking" means:

- (a) an undertaking substantially in the form set out in schedule 3 (*Form of Creditor/Agent Accession Undertaking*);
- (b) a Transfer Certificate or an Assignment Agreement (each as defined in the Senior Facilities Agreement); or
- (c) an Increase Confirmation (as defined in the Senior Facilities Agreement);

as the context may require, or

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

"Creditors" means the Senior Lenders, the Hedge Counterparties and the Intra-Group Lenders;

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

"Debtor" means each Original Debtor and any person which becomes a Party as a Debtor in accordance with the terms of clause 16 (*Changes to the Parties*);

"Debtor Accession Deed" means:

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

"Debtor Liabilities" means, in relation to a member of the Group, any liabilities owed to any Debtor (whether actual or contingent and whether incurred solely or jointly) by that member of the Group;

"Debtor Resignation Request" means a notice substantially in the form set out in schedule 4 (*Form of Debtor Resignation Request*);

"Default" means a Default under, and as defined in, the Senior Facilities Agreement;

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

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

"Designated Gross Amount" means, in relation to a Multi-account Overdraft Facility, that Multi-account Overdraft Facility's maximum gross amount;

"Designated Net Amount" means, in relation to a Multi-account Overdraft Facility, that Multi-account Overdraft Facility's maximum net amount;

"Disposal Proceeds" has the meaning given to that term in clause 11 (*Proceeds of Disposals, Recoveries from Report Providers and Adjustment of senior Mandatory Prepayments*);

"Distress Event" means:

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

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

- (a) being effected at the request of the Majority Senior Creditors in circumstances where the Transaction Security has become enforceable;
- (b) being effected by enforcement of the Transaction Security; or

- (c) being effected, after the occurrence of a Distress Event, by a Debtor to a person or persons which is not a member of the Group;

"Enforcement Action" means:

- (a) in relation to any Liabilities:
 - (i) the acceleration of any Liabilities or the making of any declaration that any Liabilities are prematurely due and payable (other than as a result of it becoming unlawful for a Senior Lender to perform its obligations under, or of any voluntary or mandatory prepayment arising under, the Debt Documents);
 - (ii) the making of any declaration that any Liabilities are payable on demand;
 - (iii) the making of a demand in relation to a Liability that is payable on demand;
 - (iv) the making of any demand against any member of the Group in relation to any Guarantee Liabilities of that member of the Group;
 - (v) the exercise of any right to require any member of the Group to acquire any Liability (including exercising any put or call option against any member of the Group for the redemption or purchase of any Liability);
 - (vi) the exercise of any right of set-off, account combination or payment netting against any member of the Group in respect of any Liabilities other than the exercise of any such right:
 - (A) as Close-Out Netting by a Hedge Counterparty or by a Hedging Ancillary Lender;
 - (B) as Payment Netting by a Hedge Counterparty or by a Hedging Ancillary Lender;
 - (C) as Inter-Hedging Agreement Netting by a Hedge Counterparty;
 - (D) as Inter-Hedging Ancillary Document Netting by a Hedging Ancillary Lender; and
 - (E) which is otherwise expressly permitted under the Senior Facilities Agreement to the extent that the exercise of that right gives effect to a Permitted Payment; and
 - (vii) the suing for, commencing or joining of any legal or arbitration proceedings against any member of the Group to recover any Liabilities;
- (b) the premature termination or close-out of any hedging transaction under any Hedging Agreement;
- (c) the taking of any steps to enforce or require the enforcement of any Transaction Security (including the crystallisation of any floating charge forming part of the Transaction Security);
- (d) the entering into of any composition, compromise, assignment or arrangement with any member of the Group which owes any Liabilities, or has given any Security,

guarantee or indemnity or other assurance against loss in respect of the Liabilities (other than any action permitted under clause 16 (*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, administration or reorganisation of any member of the Group which owes any Liabilities, or has given any Security, guarantee, indemnity or other assurance against loss in respect of any of the Liabilities, or any of such member of the Group's assets or any suspension of payments or moratorium of any indebtedness of any such member of the Group, or any analogous procedure or step in any jurisdiction,

except that the following shall not constitute Enforcement Action:

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

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

"Exchange Rate Hedge Excess" means the amount by which the Total Exchange Rate Hedged Amount exceeds the Permitted Maximum Exchange Rate Hedged Amount;

"Exchange Rate Hedge Proportion" means, in relation to a Hedge Counterparty and that Hedge Counterparty's Aggregate Exchange Rate Hedged Amount, the proportion (expressed as a percentage) borne by that Hedge Counterparty's Aggregate Exchange Rate Hedged Amount to the Total Exchange Rate Hedged Amount;

"Exposure" has the meaning given to that term in clause 13.1 (*Equalisation Definitions*);

"Facility C Lender" means, a Senior Lender that has made available a Facility C Loan, in its capacity as a Lender under such Facility C Loans only;

"Facility C Liabilities" means, at any time, the Liabilities owing to a Facility C Lender in its capacity as a Facility C Lender only;

"Finance Party" has the meaning given to that term in the Senior Facilities Agreement;

"Financial Indebtedness" has the meaning given to that term in the Senior Facilities Agreement;

"Group" has the meaning given to that term in the Senior Facilities Agreement;

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

"Hedge Counterparty" means:

- (a) any person which is named in part 2 of schedule 1 (*Senior Lenders, Original Hedge Counterparties, Investors, intra-group lenders and original debtors*) as a Hedge Counterparty and;
- (b) any person which becomes Party as a Hedge Counterparty pursuant to clause 16.9 (*Creditor/Agent Accession Undertaking*),

which, in each case, is or has become party to the Senior Facilities Agreement as a Hedge Counterparty;

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

"Hedged Currency" means the currency in which a Term Loan (or part of a Term Loan) is denominated and which is required, under the terms of the Hedging Letter, to be hedged in respect of exchange rate risk;

"Hedging Agreement" means any agreement entered into by a Hedge Counterparty and defined as such in the Senior Facilities Agreement;

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

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

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

"Hedging Letter" has the meaning given to that term in the Senior Facilities Agreement;

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

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

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

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

"Holding Company" has the meaning given to that term in the Senior Facilities Agreement;

"Impaired Agent" means the Agent to the extent it is an Impaired Agent under, and as defined in, the Senior Facilities Agreement;

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

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

"Intercreditor Amendment" means any amendment or waiver which is subject to clause 22 (*Consents, Amendments and Override*);

"Interest Rate Hedge Excess" means the amount by which the Total Interest Rate Hedged Amount exceeds the Permitted Maximum Interest Rate Hedged Amount;

"Interest Rate Hedge Proportion" means, in relation to a Hedge Counterparty and that Hedge Counterparty's Aggregate Interest Rate Hedged Amount, the proportion (expressed as a percentage) borne by that Hedge Counterparty's Aggregate Interest Rate Hedged Amount to the Total Interest Rate Hedged 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 Senior 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 is listed in part 3 of schedule 1 (*Senior Lenders, Original Hedge Counterparties, Investors, intra-group lenders and original debtors*) or which becomes a party as an Intra-Group Lender in accordance with the terms of clause 16 (*Changes to the Parties*);

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

"ISDA Master Agreement" means a 1992 ISDA Master Agreement or a 2002 ISDA Master Agreement;

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

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

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

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

- (a) purchases by way of assignment or transfer;
- (b) enters into any sub-participation in respect of; or

- (c) enters into any other agreement or arrangement having an economic effect substantially similar to a sub-participation in respect of,

the rights and benefits in respect of those Liabilities;

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

"Majority Senior Lenders" has the meaning given to the term *"Majority Lenders"* in the Senior Facilities Agreement after the application of:

- (a) clause 28.2 (*Disenfranchisement on Debt Purchase Transactions entered into by Sponsor Affiliates*); and
- (b) clause 39.5 (*Disenfranchisement of Defaulting Lenders*),

of the Senior Facilities Agreement;

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

"Multi-account Overdraft Liabilities" means Liabilities arising under any Multi-account Overdraft Facility;

"Non-Credit Related Close-Out" means a Permitted Hedge Close-Out described in any of clauses 4.9(a)(i), 4.9(a)(iii) or 4.9(a)(vii);

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

"Party" means a party to this Agreement;

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

"Payment Netting" means:

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

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

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

"Permitted Hedge Payments" means the Payments permitted by clause 4.3 (*Permitted Payments: Hedging Liabilities*);

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

"Permitted Investor Payments" means the Payments permitted by clause 6.2 (*Permitted Payments: Subordinated Liabilities*);

"Permitted Maximum Exchange Rate Hedged Amount" means an amount equal to the Term Outstandings (or such greater amount as the Agent (acting on the instructions of the Majority Senior Lenders) otherwise agrees);

"Permitted Maximum Interest Rate Hedged Amount" means an amount equal to the Term Outstandings (or such greater amount as the Agent (acting on the instructions of the Majority Senior Lenders) otherwise agrees);

"Permitted Payment" means a Permitted Hedge Payment, a Permitted Intra-Group Payment, a Permitted Senior Lender Payment or a Permitted Investor Payment;

"Permitted Senior Lender Payments" means the Payments permitted by clause 3.1 (*Payment of Senior Lender Liabilities*);

"Priority Principal Increase" means any increase in the principal amount of the Priority Senior Lender Liabilities (as set out in the Senior Facilities Agreement as at the date of this Agreement)

"Priority Headroom" means, at any time and in relation to a Priority Principal Increase (the **"Relevant Priority Principal Increase"**), US\$9,000,000 less

(a) the Base Currency Amount of the aggregate amount of any Priority Principal Increases other than:

- (i) the Relevant Priority Principal Increase; and
- (ii) any Priority Principal Increase which has been agreed to by the Facility C Lenders

"Priority Senior Lender " means each Senior Lender other than a Facility C Lender

"Priority Senior Lender Liabilities" means the Senior Lender Liabilities other than the Facility C Liabilities;

"Priority Senior Lender Liabilities Transfer" means a transfer of the Senior Lender Liabilities to the Facility C Lenders described in Clause 3.9 (*Option to purchase: Facility C Lenders*)

"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 12.1 (*Order of application*);

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

"Relevant Liabilities" means:

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

"Report" has the meaning given to that term in the Senior Facilities Agreement;

"Retiring Security Agent" has the meaning given to that term in clause 15 (*Change of Security Agent and Delegation*);

"Revolving Facility" has the meaning given to that term in the Senior Facilities Agreement;

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

"Secured Parties" means the Security Agent, any Receiver or Delegate, the Agent, the Arrangers and the Senior Creditors from time to time but, in the case of the Agent, an Arranger or a Senior Creditor, only if it is a party to this Agreement or (in the case of the Agent or a Senior Creditor) has acceded to this Agreement, in the appropriate capacity, pursuant to clause 16.9 (*Creditor/Agent Accession Undertaking*);

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

"Security Documents" means:

- (a) each of the Transaction Security Documents;
- (b) any other document entered into at any time by any of the Debtors 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 set out in paragraphs (a) and (b);

"Security Property" means:

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

"Senior Borrower" has the meaning given to the term "*Borrower*" in the Senior Facilities Agreement;

"Senior Commitment" has the meaning given to the term "*Commitment*" in the Senior Facilities Agreement;

"Senior Creditors" means the Senior Lenders and the Hedge Counterparties;

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

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

- (ii) if the relevant Hedging Agreement is not based on an ISDA Master Agreement, the amount, if any, which would be payable to it under that Hedging Agreement in respect of that hedging transaction, if the date on which the calculation is made was deemed to be the date on which an event similar in meaning and effect (under that Hedging Agreement) to an Early Termination Date (as defined in any ISDA Master Agreement) occurred under that Hedging Agreement for which the relevant Debtor is in a position similar in meaning and effect (under that Hedging Agreement) to that of a Defaulting Party (under and as defined in the same ISDA Master Agreement),

that amount, in each case, to be certified by the relevant Senior Creditor and as calculated in accordance with the relevant Hedging Agreement;

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

"Senior Facility" has the meaning given to the term *"Facility"* in the Senior Facilities Agreement;

"Senior Facilities Agreement" means the senior facilities agreement made between the Parent, the Senior Lenders and others dated 17 October 2012;

"Senior Finance Documents" has the meaning given to the term *"Finance Documents"* in the Senior Facilities Agreement;

"Senior Guarantor" has the meaning given to the term *"Guarantor"* in the Senior Facilities Agreement;

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

"Senior Lender Liabilities" means the Liabilities owed by the Debtors to the Senior Lenders under the Senior Finance Documents;

"Senior Lenders" means each Lender (as defined in the Senior Facilities Agreement) and Ancillary Lender;

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

"Senior Liabilities" means the Senior Lender Liabilities and the Hedging Liabilities;

"Senior Mandatory Prepayment" means a mandatory prepayment of any of the Senior Lender Liabilities pursuant to clause 10.2 (*Disposal, Insurance and Acquisition Proceeds and Excess Cashflow*) of the Senior Facilities Agreement;

"Senior Term Facilities" means each term loan facility made available under the Senior Facilities Agreement;

"SFA Cash Cover" has the meaning given to the term *"cash cover"* in the Senior Facilities Agreement;

"SFA Cash Cover Document" means, in relation to any SFA Cash Cover, any Senior Finance Document which creates or evidences, or is expressed to create or evidence, the Security required to be provided over that SFA Cash Cover by paragraph (iii) of the term *"cash cover"* as used in the Senior Facilities Agreement;

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

"Subordinated Liabilities" means all Liabilities (including, for the avoidance of doubt, any dividends or distributions) owed to the Investors (or any of them) by the Parent or any other member of the Group;

"Subsidiary" has the meaning given to that term in the Senior Facilities Agreement;

"Taxes" has the meaning given to that term in the Senior Facilities Agreement;

"Term Loan" means any loan made under a Senior Term Facility;

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

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

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

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

"Transaction Security Documents" has the meaning given to that term in the Senior Facilities Agreement; and

"VAT" means value added tax as provided for in the Value Added Tax Act 1994 and any other tax of a similar nature.

1.2 Construction

(a) Unless a contrary indication appears, a reference in this Agreement to:

- (i) any **"Agent"**, **"Ancillary Lender"**, **"Arranger"**, **"Creditor"**, **"Debtor"**, **"Hedge Counterparty"**, **"Intra-Group Lender"**, **"Investor"**, **"Parent"**, **"Party"**, **"Security Agent"**, **"Senior Borrower"**, **"Senior Creditor"**, **"Senior Guarantor"** or **"Senior Lender"** shall be construed to be a reference to it in its capacity as such and not in any other capacity;
- (ii) any **"Agent"**, **"Ancillary Lender"**, **"Arranger"**, **"Creditor"**, **"Debtor"**, **"Hedge Counterparty"**, **"Investor"**, any **"Party"** or the **"Security Agent"** or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees and, in the case of the Security

Agent, any person for the time being appointed as Security Agent or Security Agents in accordance with this Agreement;

- (iii) "assets" includes present and future properties, revenues and rights of every description;
 - (iv) a "Debt Document" or any other agreement or instrument is (other than a reference to a "Debt Document" or any other agreement or instrument in "original form") a reference to that Debt Document, or other agreement or instrument, as amended, novated, supplemented, extended or restated as permitted by this Agreement;
 - (v) "enforcing" (or any derivation) the Transaction Security shall include the appointment of an administrator of a Debtor by the Security Agent;
 - (vi) "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;
 - (vii) 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;
 - (viii) a "person" includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
 - (ix) a "director" includes any person holding an equivalent office in any member of the Group;
 - (x) a "regulation" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation; and
 - (xi) a provision of law is a reference to that provision as amended or re-enacted.
- (b) Section, clause and schedule headings are for ease of reference only.
 - (c) A Default (other than an Event of Default) is "continuing" if it has not been remedied or waived and an Event of Default is "continuing" if it has not been waived.

1.3 Third Party Rights

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

- (c) Any Receiver, Delegate or any other person described in clause 14.9 (*No Proceedings*) may, subject to this clause 1.3 and the Third Parties Rights Act, rely on any clause of this Agreement which expressly confers rights on it.

1.4 Existing Intercreditor Agreement

The Parties confirm that this Agreement shall replace the existing security sharing agreement dated 8 December 2011 and made between certain of the Parties hereto

2. RANKING AND PRIORITY

2.1 Senior Creditor Liabilities

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

2.2 Transaction Security

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

2.3 Subordinated and Intra-Group Liabilities

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

3. SENIOR LENDERS AND SENIOR LENDER LIABILITIES

3.1 Payment of Senior Lender Liabilities

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

3.2 Amendments and Waivers: Senior Lenders

- (a) Subject to clause 3.2(b), the Senior Lenders may amend or waive the terms of the Senior Finance Documents (other than this Agreement or any Security Document) in accordance with their terms (and subject to any consent required under them) at any time.
- (b) Without prejudice to clause 11.2 (*Distressed Disposals*), the Senior Lenders may not:
- (i) amend or waive the terms of the Senior Finance Documents if the amendment or waiver:
- (A) would have the effect of changing, or relates to, the nature or scope of the guarantee and indemnity granted under clause 21 (*Guarantee and Indemnity*) of the Senior Facilities Agreement; or

- (B) relates to the release of any guarantee and indemnity granted under clause 21 (*Guarantee and Indemnity*) of the Senior Facilities Agreement unless expressly envisaged by the original form of a Senior Finance Document or relating to a sale or disposal of an asset which is a Non-Distressed Disposal; or
- (ii) consent to the resignation of a member of the Group which has granted a guarantee and indemnity under clause 21 (*Guarantee and Indemnity*) of the Senior Facilities Agreement unless each Hedge Counterparty has notified the Security Agent that no payment is due to it from that member of the Group under clause 21 (*Guarantee and Indemnity*) of the Senior Facilities Agreement,

unless the prior consent of the Hedge Counterparties is obtained.

3.3 Increase of Priority Senior Lender Liabilities

The Majority Lenders may from time to time, effect a Priority Principal Increase in an amount which does not exceed the Priority Headroom at that time, and the amount of that Priority Principal Increase (together with interest, fees and commission on that amount) shall be treated as being part of the Senior Liabilities and the Priority Senior Lender Liabilities.

3.4 Designation of Senior Finance Documents

The Agent and the Parent shall not designate a document a "*Finance Document*" for the purposes of the Senior Facilities Agreement without the prior consent of the Hedge Counterparties if the terms of that document effect a change which would otherwise require the consent of the Hedge Counterparties under clause 3.2 (*Amendments and Waivers: Senior Lenders*).

3.5 Security: Senior Lenders

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

- (a) any Security in respect of the Senior Lender Liabilities in addition to the Common Transaction Security if (except for any Security, permitted under clause 3.6 (*Security: Ancillary Lenders*)) and to the extent legally possible and subject to any Agreed Security Principles, at the same time it is also offered either:
 - (i) to the Security Agent as trustee for the other Secured Parties in respect of their Liabilities; or
 - (ii) in the case of any jurisdiction in which effective Security cannot be granted in favour of the Security Agent as trustee for the Secured Parties:
 - (A) to the other Secured Parties in respect of their Liabilities; or
 - (B) to the Security Agent under a parallel debt structure for the benefit of the other Secured Parties,

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

- (b) any guarantee, indemnity or other assurance against loss in respect of the Senior Lender Liabilities in addition to those in:

- (i) the original form of Senior Facilities Agreement;
- (ii) this Agreement; or
- (iii) any Common Assurance,

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

3.6 Security: Ancillary Lenders

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

- (a) the Common Transaction Security;
- (b) each guarantee, indemnity or other assurance against loss contained in:
 - (i) the original form of Senior Facilities Agreement;
 - (ii) this Agreement; or
 - (iii) any Common Assurance;
- (c) indemnities and assurances against loss contained in the Ancillary Documents no greater in extent than any of those referred to in clause 3.6(b);
- (d) any SFA Cash Cover permitted under the Senior Facilities Agreement relating to any Ancillary Facility;
- (e) the indemnities contained in an ISDA Master Agreement (in the case of a Hedging Ancillary Document which is based on an ISDA Master Agreement) or any indemnities which are similar in meaning and effect to those indemnities (in the case of a Hedging Ancillary Document which is not based on an ISDA Master Agreement); or
- (f) any Security, guarantee, indemnity or other assurance against loss giving effect to, or arising as a result of the effect of, any netting or set-off arrangement relating to the Ancillary Facilities for the purpose of netting debit and credit balances arising under the Ancillary Facilities.

3.7 Restriction on Enforcement: Ancillary Lenders

Subject to clause 3.8 (*Permitted Enforcement: Ancillary Lenders*), so long as any of the Senior Liabilities (other than any Liabilities owed to the Ancillary Lenders) are or may be

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

3.8 Permitted Enforcement: Ancillary Lenders

- (a) The Ancillary Lenders may take Enforcement Action if:
- (i) at the same time as, or prior to, that action, Enforcement Action has been taken in respect of the Senior Lender Liabilities (excluding the Liabilities owing to Ancillary Lenders), in which case the Ancillary Lenders may take the same Enforcement Action as has been taken in respect of those Senior Lender Liabilities;
 - (ii) that action is contemplated by the Senior Facilities Agreement or clause 3.6 (*Security: Ancillary Lenders*);
 - (iii) that Enforcement Action is taken in respect of SFA Cash Cover which has been provided in accordance with the Senior Facilities Agreement;
 - (iv) at the same time as or prior to, that action, the consent of the Majority Senior Creditors to that Enforcement Action is obtained; or
 - (v) an Insolvency Event has occurred in relation to 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 to:
 - (A) accelerate any of that member of the Group's Senior Lender Liabilities or declare them prematurely due and payable on demand;
 - (B) make a demand under any guarantee, indemnity or other assurance against loss given by that member of the Group in respect of any Senior Lender Liabilities;
 - (C) exercise any right of set-off or take or receive any Payment in respect of any Senior Lender Liabilities of that member of the Group; or
 - (D) claim and prove in the liquidation of that member of the Group for the Senior Lender Liabilities owing to it.
- (b) Clause 3.7 (*Restriction on Enforcement: Ancillary Lenders*) shall not restrict any right of an Ancillary Lender to net or set-off in relation to a Multi-account Overdraft Facility, in accordance with the terms of the Senior Facilities Agreement, to the extent that the netting or set-off represents a reduction from a Permitted Gross Amount of that Multi-account Overdraft Facility to or towards its Designated Net Amount.

3.9 Option to purchase: Facility C Lenders

- (a) Subject to paragraph (b) below, all the Facility C Lenders (acting as a whole) may at any time when an Event of Default is continuing by giving not less than ten days' notice to the Security Agent, require the transfer to them (or to a nominee or nominees), in accordance with Clause 16.3 (*Change of Senior Lender*), of all, but not

part, of the rights and obligations in respect of the Priority Senior Lender Liabilities if:

- (i) that transfer is lawful and subject to paragraph (ii) below, otherwise permitted by the terms of the Senior Facilities Agreement;
 - (ii) any conditions relating to such a transfer contained in the Senior Facilities Agreement are complied with, other than any requirement to obtain the consent of, or consult with, any Debtor or other member of the Group relating to such transfer, which consent or consultation shall not be required;
 - (iii) the Senior Agent, on behalf of the Priority Senior Lenders, is paid an amount equal to the aggregate of:
 - (A) all of the Priority Senior Lender Liabilities at that time (whether or not due), including all amounts that would have been payable under the Senior Facilities Agreement if the Senior Facilities (other than Facility C) were being prepaid by the relevant Debtors on the date of that payment; and
 - (B) all costs and expenses (including legal fees) incurred by the Senior Agent and/or the Priority Senior Lenders as a consequence of giving effect to that transfer;
 - (iv) as a result of that transfer the Priority Senior Lenders have no further actual or contingent liability to any Debtor under the relevant Debt Documents;
 - (v) an indemnity is provided from each Facility C Lender (or from another third party acceptable to all the Priority Senior Lenders) in a form satisfactory to each Priority Senior Lender in respect of all losses which may be sustained or incurred by any Priority Senior Lender in consequence of any sum received or recovered by any Priority Senior Lender from any person being required (or it being alleged that it is required) to be paid back by or clawed back from any Priority Senior Lender for any reason; and
 - (vi) the transfer is made without recourse to, or representation or warranty from, the Priority Senior Lenders, except that each Priority Senior Lender shall be deemed to have represented and warranted on the date of that transfer that it has the corporate power to effect that transfer and it has taken all necessary action to authorise the making by it of that transfer.
- (b) Subject to paragraph (b) of Clause 3.10 (*Hedge Transfer: Facility C Lenders*), all the Facility C Lenders (acting as a whole) may only require a Priority Senior Lender Liabilities Transfer if, at the same time, they require a Hedge Transfer in accordance with Clause 3.10 (*Hedge Transfer: Facility C Lenders*) and if, for any reason, a Hedge Transfer cannot be made in accordance with Clause 3.10 (*Hedge Transfer: Facility C Lenders*), no Priority Senior Lender Liabilities Transfer may be required to be made.

- (c) The Senior Agent shall, at the request of all the Facility C Lenders (acting as a whole) notify the Facility C Lenders of the sum of the amounts described in paragraph (a)(iii) above.

3.10 Hedge Transfer: Facility C Lenders

- (a) All the Facility C Lenders (acting as a whole) may, by giving not less than ten days' notice to the Security Agent, require a Hedge Transfer:
 - (i) If all the Facility C Lenders (acting as a whole) require, at the same time, a Priority Senior Lender Liabilities Transfer; and
 - (ii) if:
 - (A) that transfer is lawful and otherwise permitted by the terms of the Hedging Agreements in which case no Debtor or other member of the Group shall be entitled to withhold its consent to that transfer;
 - (B) any conditions (other than the consent of, or any consultation with, any Debtor or other member of the Group) relating to that transfer contained in the Hedging Agreements are complied with;
 - (C) each Hedge Counterparty is paid (in the case of a positive number) or pays (in the case of a negative number) an amount equal to the aggregate of (i) the Hedging Purchase Amount in respect of the hedging transactions under the relevant Hedging Agreement at that time and (ii) all costs and expenses (including legal fees) incurred as a consequence of giving effect to that transfer;
 - (D) as a result of that transfer, the Hedge Counterparties have no further actual or contingent liability to any Debtor under the Hedging Agreements;
 - (E) an indemnity is provided from each Facility C Lender which is receiving (or for which a nominee is receiving) that transfer (or from another third party acceptable to the relevant Hedge Counterparty) in a form satisfactory to the relevant Hedge Counterparty in respect of all losses which may be sustained or incurred by that Hedge Counterparty in consequence of any sum received or recovered by that Hedge Counterparty being required (or it being alleged that it is required) to be paid back by or clawed back from the Hedge Counterparty for any reason; and
 - (F) that transfer is made without recourse to, or representation or warranty from, the relevant Hedge Counterparty, except that the relevant Hedge Counterparty shall be deemed to have represented and warranted on the date of that transfer that it has the corporate power to effect that transfer and it has taken all necessary action to authorise the making by it of that transfer.

- (b) All the Facility C Lenders (acting as a whole) and any Hedge Counterparty may agree (in respect of the Hedging Agreements (or one or more of them) to which that Hedge Counterparty is a party) that a Hedge Transfer required by all the Facility C Lenders (acting as a whole) pursuant to paragraph (a) above shall not apply to that Hedging Agreement(s) or to the Hedging Liabilities and Hedge Counterparty Obligations under that Hedging Agreement(s).

4. HEDGE COUNTERPARTIES AND HEDGING LIABILITIES

4.1 Identity of Hedge Counterparties

- (a) Subject to clause 4.1(b), no person providing hedging arrangements to any Debtor shall be entitled to share in any of the Transaction Security or in the benefit of any guarantee or indemnity in respect of any of the liabilities arising in relation to those hedging arrangements nor shall those liabilities be treated as Hedging Liabilities unless that person is or becomes a party to:
 - (i) this Agreement as a Hedge Counterparty; and
 - (ii) the Senior Facilities Agreement as a Hedge Counterparty.
- (b) Clause 4.1(a) shall not apply to a Hedging Ancillary Lender.

4.2 Restriction on Payment: Hedging Liabilities

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

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

4.3 Permitted Payments: Hedging Liabilities

- (a) Subject to clause 4.3(b), 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:
 - (A) any of sections 2(d) (*Deduction or Withholding for Tax*), 2(e) (*Default Interest; Other Amounts*), 8(a) (*Payment in the Contractual Currency*), 8(b) (*Judgments*) and 11 (*Expenses*) of the 1992 ISDA Master Agreement (if the Hedging Agreement is based on a 1992 ISDA Master Agreement);

- (B) any of sections 2(d) (*Deduction or Withholding for Tax*), 8(a) (*Payment in the Contractual Currency*), 8(b) (*Judgments*), 9(h)(i) (*Prior to Early Termination*) and 11 (*Expenses*) of the 2002 ISDA Master Agreement of that Hedging Agreement (if the Hedging Agreement is based on a 2002 ISDA Master Agreement); or
 - (C) any provision of a Hedging Agreement which is similar in meaning and effect to any provision listed in clauses 4.3(a)(ii)(A) or 4.3(a)(ii)(B) (if the Hedging Agreement is not based on an ISDA Master Agreement);
 - (iii) to the extent that the relevant Debtor's obligation to make the Payment arises from a Non-Credit Related Close-Out;
 - (iv) to the extent that:
 - (A) the relevant Debtor's obligation to make the Payment arises from a Credit Related Close-Out in relation to that Hedging Agreement; and
 - (B) no Event of Default is continuing at the time of that Payment; or
 - (v) if the Majority Senior Creditors give prior consent to the Payment being made.
- (b) No Payment may be made to a Hedge Counterparty under clause 4.3(a) if any scheduled Payment due from that Hedge Counterparty to a Debtor under a Hedging Agreement to which they are both party is due and unpaid.
 - (c) Failure by a Debtor to make a Payment to a Hedge Counterparty which results solely from the operation of clause 4.3(b) 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.

4.4 Payment obligations continue

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

4.5 No acquisition of Hedging Liabilities

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

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

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

4.6 Amendments and Waivers: Hedging Agreements

- (a) Subject to clause 4.6(b), the Hedge Counterparties may not, at any time, amend or waive any term of the Hedging Agreements.
- (b) A Hedge Counterparty may amend or waive any term of a Hedging Agreement in accordance with the terms of that Hedging Agreement if:
 - (i) that amendment or waiver does not breach another term of this Agreement; and
 - (ii) that amendment or waiver would not result in a breach of clause 25.32 (*Compliance with Hedging Letter*) of the Senior Facilities Agreement.

4.7 Security: Hedge Counterparties

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

- (a) the Common Transaction Security;
- (b) any guarantee, indemnity or other assurance against loss contained in:
 - (i) the original form of Senior Facilities Agreement;
 - (ii) this Agreement;
 - (iii) any Common Assurance; or
 - (iv) the relevant Hedging Agreement no greater in extent than any of those referred to in clauses 4.7(b)(i) to 4.7(b)(iii);
- (c) as otherwise contemplated by clause 3.5 (*Security: Senior Lenders*); and
- (d) the indemnities contained in the ISDA Master Agreements (in the case of a Hedging Agreement which is based on an ISDA Master Agreement) or any indemnities which are similar in meaning and effect to those indemnities (in the case of a Hedging Agreement which is not based on an ISDA Master Agreement).

4.8 Restriction on Enforcement: Hedge Counterparties

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

4.9 Permitted Enforcement: Hedge Counterparties

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

- (i) if, prior to a Distress Event, the Parent has certified to that Hedge Counterparty that that termination or close-out would not result in a breach of clause 25.32 (*Compliance with Hedging Letter*) of the Senior Facilities Agreement;
 - (ii) if a Distress Event has occurred;
 - (iii) if:
 - (A) in relation to a Hedging Agreement which is based on the 1992 ISDA Master Agreement:
 - (1) an Illegality or Tax Event or Tax Event Upon Merger (each as defined in the 1992 ISDA Master Agreement); or
 - (2) an event similar in meaning and effect to a "Force Majeure Event" (as defined in clause 4.9(a)(iii)(B)),
 has occurred in respect of that Hedging Agreement;
 - (B) in relation to a Hedging Agreement which is based on the 2002 ISDA Master Agreement, an Illegality or Tax Event, Tax Event Upon Merger or a Force Majeure Event (each as defined in the 2002 ISDA Master Agreement) has occurred in respect of that Hedging Agreement; or
 - (C) in relation to a Hedging Agreement which is not based on an ISDA Master Agreement, any event similar in meaning and effect to an event described in clauses 4.9(a)(iii)(A) or 4.9(a)(iii)(B) has occurred under and in respect of that Hedging Agreement;
 - (iv) if an Event of Default has occurred under either clause 26.6 (*Insolvency*) or clause 26.7 (*Insolvency proceedings*) of the Senior Facilities Agreement in relation to a Debtor which is party to that Hedging Agreement;
 - (v) if the Majority Senior Creditors give prior consent to that termination or close-out being made;
 - (vi) following a Senior Lender Refinancing; or
 - (vii) to the extent that that termination or close-out is necessary to comply with clause 4.13(c).
- (b) If a Debtor has defaulted on any Payment due under a Hedging Agreement (after allowing any applicable notice or grace periods) and the default has continued unwaived for more than 30 days (or such shorter period as the Agent acting on the instructions of the Majority Senior Lenders may agree) after notice of that default has been given to the Security Agent pursuant to clause 19.3(e), the relevant Hedge Counterparty:
- (i) may, to the extent it is able to do so under the relevant Hedging Agreement, terminate or close-out in whole or in part any hedging transaction under that Hedging Agreement; and

- (ii) until such time as the Security Agent has given notice to that Hedge Counterparty that the Transaction Security is being enforced (or that any formal steps are being taken to enforce the Transaction Security), shall be entitled to exercise any right it might otherwise have to sue for, commence or join legal or arbitration proceedings against any Debtor to recover any Hedging Liabilities due under that Hedging Agreement.
- (c) After the occurrence of an Insolvency Event in relation to any member of the Group, each Hedge Counterparty shall be entitled to exercise any right it may otherwise have in respect of that member of the Group to:
 - (i) prematurely close-out or terminate any Hedging Liabilities of that member of the Group;
 - (ii) make a demand under any guarantee, indemnity or other assurance against loss given by that member of the Group in respect of any Hedging Liabilities;
 - (iii) exercise any right of set-off or take or receive any Payment in respect of any Hedging Liabilities of that member of the Group; or
 - (iv) claim and prove in the liquidation of that member of the Group for the Hedging Liabilities owing to it.

4.10 Required Enforcement: Hedge Counterparties

- (a) Subject to clause 4.10(b), a Hedge Counterparty shall promptly terminate or close-out in full any hedging transaction under all or any of the Hedging Agreements to which it is party prior to their stated maturity, following:
 - (i) the occurrence of an Acceleration Event and delivery to it of a notice from the Security Agent that that Acceleration Event has occurred; and
 - (ii) delivery to it of a subsequent notice from the Security Agent (acting on the instructions of the Majority Senior Creditors) instructing it to do so.
- (b) Clause 4.10(a) shall not apply to the extent that that Acceleration Event occurred as a result of an arrangement made between any Debtor and any Senior Creditor with the purpose of bringing about an Acceleration Event.
- (c) If a Hedge Counterparty is entitled to terminate or close-out any hedging transaction under clause 4.9(b) (or would have been able to if that Hedge Counterparty had given the notice referred to in that clause) but has not terminated or closed out each such hedging transaction, that Hedge Counterparty shall promptly terminate or close-out in full each such hedging transaction following a request to do so by the Security Agent (acting on the instructions of the Majority Senior Creditors).

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

- (a) If, on termination of any hedging transaction under any Hedging Agreement occurring after a Distress Event, a settlement amount or other amount (following the application of any Close-Out Netting, Payment Netting or Inter-Hedging Agreement Netting in respect of that Hedging Agreement) falls due from a Hedge Counterparty to the relevant Debtor then that amount shall be paid by that Hedge Counterparty to

the Security Agent, treated as the proceeds of enforcement of the Transaction Security and applied in accordance with the terms of this Agreement.

- (b) The payment of that amount by the Hedge Counterparty to the Security Agent in accordance with clause 4.11(a) shall discharge the Hedge Counterparty's obligation to pay that amount to that Debtor.

4.12 Terms of Hedging Agreements

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

- (a) each Hedging Agreement documents only hedging arrangements entered into for the purpose of hedging the types of liabilities described in the definition of "*Hedging Agreement*" and that no other hedging arrangements are carried out under or pursuant to a Hedging Agreement;
- (b) each Hedging Agreement is based either:
 - (i) on an ISDA Master Agreement; or
 - (ii) on another framework agreement which is similar in effect to an ISDA Master Agreement;
- (c) in the event of a termination of the hedging transaction entered into under a Hedging Agreement, whether as a result of:
 - (i) a Termination Event or an Event of Default, each as defined in the relevant Hedging Agreement (in the case of a Hedging Agreement which is based on an ISDA Master Agreement); or
 - (ii) an event similar in meaning and effect to either of those described in clause 4.12(c)(i) (in the case of a Hedging Agreement which is not based on an ISDA Master Agreement),

that Hedging Agreement will:

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

transaction under such Hedging Agreement if so required pursuant to clause 4.10 (*Required Enforcement: Hedge Counterparties*); and

- (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 4.13 (*Total Interest Rate Hedged Amount and Total Exchange Rate Hedged Amount*).

4.13 Total Interest Rate Hedged Amount and Total Exchange Rate Hedged Amount

- (a) the Parent shall procure that, at all times:
 - (i) the Total Interest Rate Hedged Amount does not exceed the Permitted Maximum Interest Rate Hedged Amount; and
 - (ii) the Total Exchange Rate Hedged Amount does not exceed the Permitted Maximum Exchange Rate Hedged Amount.
- (b) Subject to clause 4.13(a), if:
 - (i) the Total Interest Rate Hedged Amount is less than the Permitted Maximum Interest Rate Hedged Amount, a Debtor may (but, subject to clause 25.32 (*Compliance with Hedging Letter*) of the Senior Facilities Agreement, shall be under no obligation to) enter into additional hedging arrangements to increase the Total Interest Rate Hedged Amount; or
 - (ii) the Total Exchange Rate Hedged Amount is less than the Permitted Maximum Exchange Rate Hedged Amount, a Debtor may (but, subject to clause 25.32 (*Compliance with Hedging Letter*) of the Senior Facilities Agreement, shall be under no obligation to) enter into additional hedging arrangements to increase the Total Exchange Rate Hedged Amount.
- (c) If any reduction in the Term Outstandings results in:
 - (i) an Interest Rate Hedge Excess then, on the same day as that reduction becomes effective in accordance with the terms of the Senior Facilities Agreement, the relevant Debtor(s) shall, and the Parent shall procure that the relevant Debtor(s) shall, reduce each Hedge Counterparty's Aggregate Interest Rate Hedged Amount by that Hedge Counterparty's Interest Rate Hedge Proportion of that Interest Rate Hedge Excess by terminating or closing out any relevant hedging transaction(s) in full or in part, as may be necessary; or
 - (ii) an Exchange Rate Hedge Excess then, on the same day as that reduction becomes effective in accordance with the terms of the Senior Facilities Agreement, the relevant Debtor(s) shall, and the Parent shall procure that the relevant Debtor(s) shall, reduce each Hedge Counterparty's Aggregate Exchange Rate Hedged Amount by that Hedge Counterparty's Exchange Rate Hedge Proportion of that Exchange Rate Hedge Excess by terminating or closing out any relevant hedging transaction(s) in full or in part, as may be necessary.
- (d) The relevant Debtor(s) shall, and the Parent shall procure that the relevant Debtor(s) shall, pay to that Hedge Counterparty (in accordance with the relevant Hedging Agreement) an amount equal to the sum of all payments (if any) that become due

from each relevant Debtor to a Hedge Counterparty under the relevant Hedging Agreement(s) as a result of any action described in clause 4.13(c).

- (e) Each Hedge Counterparty shall co-operate in any process described in clause 4.13(d) and shall pay (in accordance with the relevant Hedging Agreement(s)) any amount that becomes due from it under the relevant Hedging Agreement(s) to a Debtor as a result of any action described in clause 4.13(c).

5. INTRA-GROUP LENDERS AND INTRA-GROUP LIABILITIES

5.1 Restriction on Payment: Intra-Group Liabilities

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

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

5.2 Permitted Payments: Intra-Group Liabilities

- (a) Subject to clause 5.2(b), 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 prior to the Senior Discharge Date pursuant to clause 5.2(a) if, at the time of the Payment, an Event of Default has occurred and is continuing or would occur under any of the Debt Documents unless:
 - (i) the Majority Senior Creditors consent to that Payment being made; or
 - (ii) that Payment is made to facilitate Payment of the Senior Liabilities.

5.3 Payment obligations continue

No Debtor shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Debt Document by the operation of clauses 5.1 (*Restriction on Payment: Intra-Group Liabilities*) and 5.2 (*Permitted Payments: Intra-Group Liabilities*) even if its obligation to make that Payment is restricted at any time by the terms of any of those clauses.

5.4 Acquisition of Intra-Group Liabilities

- (a) Subject to clause 5.4(b), each Debtor may, and may permit any other member of the Group to:
 - (i) enter into any Liabilities Acquisition; or
 - (ii) beneficially own all or any part of the share capital of a company that is party to a Liabilities Acquisition,

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

- (b) Subject to clause 5.4(c), no action described in clause 5.4(a) may take place prior to the Senior Discharge Date in respect of any Intra-Group Liabilities if:
 - (i) that action would result in a breach of the Senior Facilities Agreement; or
 - (ii) at the time of that action, an Event of Default has occurred and is continuing or would occur under any of the Debt Documents.
- (c) The restrictions in clause 5.4(b) shall not apply if:
 - (i) the Majority Senior Creditors consent to that action; or
 - (ii) that action is taken to facilitate Payment of the Senior Liabilities.

5.5 Security: Intra-Group Lenders

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

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

5.6 Restriction on enforcement: Intra-Group Lenders

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

5.7 Permitted Enforcement: Intra-Group Lenders

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

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

5.8 Representations: Intra-Group Lenders

Each Intra-Group Lender which is not a Debtor represents and warrants to the Senior Creditors, the Security Agent and the Agent that:

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

6. SUBORDINATED LIABILITIES

6.1 Restriction on Payment: Subordinated Liabilities

Prior to the Senior Discharge Date, neither the Parent nor any other Debtor shall, and the Parent shall procure that no other member of the Group will, make any Payment of the Subordinated Liabilities at any time unless:

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

6.2 Permitted Payments: Subordinated Liabilities

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

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

6.3 Payment obligations continue

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

6.4 No acquisition of Subordinated Liabilities

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

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

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

6.5 Amendments and Waivers: Investors

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

- (a) the prior consent of the Majority Senior Creditors is obtained; or
- (b) that amendment, waiver or agreement could not be reasonably expected to materially or adversely affect the interests of the Senior Creditors.

6.6 Security: Investors

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

6.7 Restriction on Enforcement: Investors

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

6.8 Permitted Enforcement: Investors

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

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

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

6.9 Representations: Investors

Each Investor represents and warrants to the Senior Creditors, the Security Agent and the Agent that:

- (a) to the extent it is not a natural person, it is a corporation, limited partnership or limited liability company duly incorporated or formed and validly existing under the laws of its jurisdiction of incorporation or formation;
- (b) the obligations expressed to be assumed by it in this Agreement are, subject to any general principles of law limiting its obligations which are applicable to creditors generally, legal, valid, binding and enforceable obligations; and
- (c) the entry into and performance by it of this Agreement does not and will not:
 - (i) conflict with any law or regulation applicable to it, its constitutional documents or any agreement or instrument binding upon it or any of its assets (if applicable); or
 - (ii) constitute a default or termination event (however described) under any agreement or instrument binding on it or any of its assets (if applicable).

7. EFFECT OF INSOLVENCY EVENT

7.1 SFA Cash Cover

This clause 7 is subject to clause 12.3 (*Treatment of SFA Cash Cover*).

7.2 Payment of distributions

- (a) After the occurrence of an Insolvency Event in relation to any member of the Group, any Party entitled to receive a distribution out of the assets of that member of the Group in respect of Liabilities owed to that Party shall, to the extent it is able to do so, direct the person responsible for the distribution of the assets of that member of the Group to pay that distribution to the Security Agent until the Liabilities owing to the Secured Parties have been paid in full.
- (b) The Security Agent shall apply distributions paid to it under clause 7.2(a) in accordance with clause 12 (*Application of Proceeds*).

7.3 Set-Off

- (a) Subject to clause 7.3(b), to the extent that any member of the Group's Liabilities are discharged by way of set-off (mandatory or otherwise) after the occurrence of an Insolvency Event in relation to that member of the Group, any Creditor and any Investor 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 12 (*Application of Proceeds*).

(b) Clause 7.3(a) shall not apply to:

- (i) any such discharge of the Multi-account Overdraft Liabilities to the extent that the relevant discharge represents a reduction from a Permitted Gross Amount of a Multi-account Overdraft Facility to or towards its Designated Net Amount;
- (ii) any Close-Out Netting by a Hedge Counterparty or a Hedging Ancillary Lender;
- (iii) any Payment Netting by a Hedge Counterparty or a Hedging Ancillary Lender;
- (iv) any Inter-Hedging Agreement Netting by a Hedge Counterparty; and
- (v) any Inter-Hedging Ancillary Document Netting by a Hedging Ancillary Lender.

7.4 Non-cash distributions

If the Security Agent or any other Secured Party receives a distribution in a form other than in cash in respect of any of the Liabilities, 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 Facility (to the extent that the netting or set-off represents a reduction from a Permitted Gross Amount of that Multi-account Overdraft Facility to or towards its Designated Net Amount), after the occurrence of an Insolvency Event in relation to any member of the Group, each Creditor and the Investors irrevocably authorises the Security Agent (acting in accordance with clause 7.7 (*Security Agent Instructions*)), on its behalf, to:

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

7.6 Creditors' and Investors' actions

Each Creditor and each Investor will:

- (a) do all things that the Security Agent (acting in accordance with clause 7.7 (*Security Agent Instructions*)) requests in order to give effect to this clause 7; and

- (b) if the Security Agent is not entitled to take any of the actions contemplated by this clause 7 or if the Security Agent (acting in accordance with clause 7.7 (*Security Agent Instructions*)) requests that a Creditor or an Investor take that action, undertake that action itself in accordance with the instructions of the Security Agent (acting in accordance with clause 7.7 (*Security Agent Instructions*)) or grant a power of attorney to the Security Agent (on such terms as the Security Agent (acting in accordance with clause 7.7 (*Security Agent Instructions*)) may reasonably require) to enable the Security Agent to take such action.

7.7 Security Agent Instructions

For the purposes of clause 7.5 (*Filing of Claims*) and clause 7.6 (*Creditors' and Investors' actions*) the Security Agent shall act:

- (a) on the instructions of the Majority Senior Creditors; or
- (b) in the absence of any such instructions, as the Security Agent sees fit.

8. TURNOVER OF RECEIPTS

8.1 SFA Cash Cover

This clause 8 is subject to clause 12.3 (*Treatment of SFA Cash Cover*).

8.2 Turnover by the Creditors and the Investors

Subject to clause 8.3 (*Exclusions*) and to clause 8.4 (*Permitted assurance and receipts*), if at any time prior to the Senior Discharge Date, any Creditor or any Investor 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 12 (*Application of Proceeds*);
- (b) other than where 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 clause 8.2(a) and 8.2(b), and other than where clause 7.3 (*Set-Off*) applies, any amount:
 - (i) on account of, or in relation to, any of the Liabilities:
 - (A) after the occurrence of a Distress Event; or
 - (B) as a result of any other litigation or proceedings against a member of the Group (other than after the occurrence of an Insolvency Event in respect of that member of the Group); or
 - (ii) by way of set-off in respect of any of the Liabilities owed to it after the occurrence of a Distress Event,

other than, in each case, any amount received or recovered in accordance with clause 12 (*Application of Proceeds*);

- (d) the proceeds of any enforcement of any Transaction Security except in accordance with clause 12 (*Application of Proceeds*); or
- (e) other than where clause 7.3 (*Set-Off*) applies, any distribution in cash or in kind or Payment of, or on account of or in relation to, any of the Liabilities owed by any member of the Group which is not in accordance with clause 12 (*Application of Proceeds*) and which is made as a result of, or after, the occurrence of an Insolvency Event in respect of that member of the Group,
- (f) that Creditor or Investor 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 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; 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 and the Investors*) shall not apply to any receipt or recovery:

- (a) by way of:
 - (i) Close-Out Netting by a Hedge Counterparty or a Hedging Ancillary Lender;
 - (ii) Payment Netting by a Hedge Counterparty or a Hedging Ancillary Lender;
 - (iii) Inter-Hedging Agreement Netting by a Hedge Counterparty; or
 - (iv) Inter-Hedging Ancillary Document Netting by a Hedging Ancillary Lender; or
- (b) by an Ancillary Lender by way of that Ancillary Lender's right of netting or set-off relating to a Multi-account Overdraft Facility (to the extent that that netting or set-off represents a reduction from a Permitted Gross Amount of that Multi-account Overdraft Facility to or towards its Designated Net Amount); or
- (c) made in accordance with clause 13 (*Equalisation*).

8.4 Permitted assurance and receipts

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

(a) arrange with any person which is not a member of the Group any assurance against loss in respect of, or reduction of its credit exposure to, a Debtor (including assurance by way of credit based derivative or sub-participation); or

(b) make any assignment or transfer permitted by clause 16 (*Changes to the Parties*),

which:

(i) is permitted by the Senior Facilities Agreement;

(ii) is not in breach of:

(A) clause 4.5 (*No acquisition of Hedging Liabilities*); or

(B) clause 6.4 (*No acquisition of Subordinated Liabilities*),

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

8.5 Sums received by Debtors

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

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

(b) promptly pay an amount equal to the amount (if any) by which the receipt or recovery exceeds the Relevant Liabilities to the Security Agent for application in accordance with the terms of this Agreement.

8.6 Saving provision

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

9. REDISTRIBUTION

9.1 Recovering Creditor's rights

(a) Any amount paid by a Creditor or Investor (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 by the relevant Debtor and distributed to the Security Agent, Agent, Arrangers and Senior Creditors (each a "**Sharing Creditor**") in accordance with the terms of this Agreement.

- (b) On a distribution by the Security Agent under clause 9.1(a) of a Payment received by a Recovering Creditor from a Debtor, as between the relevant Debtor and the Recovering Creditor an amount equal to the amount received or recovered by the Recovering Creditor and paid to the Security Agent (the "**Shared Amount**") will be treated as not having been paid by that Debtor.

9.2 Reversal of redistribution

- (a) If any part of the Shared Amount received or recovered by a Recovering Creditor becomes repayable to a Debtor and is repaid by that Recovering Creditor to that Debtor, then:
 - (i) each Sharing Creditor shall, upon request of the Security Agent, pay 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 by that Debtor.
- (b) The Security Agent shall not be obliged to pay any Redistributed Amount to a Recovering Creditor under clause 9.2(a)(i) until it has been able to establish to its satisfaction that it has actually received that Redistributed Amount from the relevant Sharing Creditor.

9.3 Deferral of Subrogation

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

10. ENFORCEMENT OF TRANSACTION SECURITY

10.1 SFA Cash Cover

This clause 10 is subject to clause 12.3 (*Treatment of SFA Cash Cover*).

10.2 Enforcement Instructions

- (a) The Security Agent may refrain from enforcing the Transaction Security unless instructed otherwise by the Majority Senior Creditors.

- (b) Subject to the Transaction Security having become enforceable in accordance with its terms the Majority Senior Creditors may give or refrain from giving instructions to the Security Agent to enforce or refrain from enforcing the Transaction Security as they see fit.
- (c) The Security Agent is entitled to rely on and comply with instructions given in accordance with this clause 10.2.
- (d) The Security Agent may, subject to any contrary instructions from the Majority Senior Creditors, cease enforcement at any time.

10.3 Manner of Enforcement

If the Transaction Security is being enforced pursuant to clause 10.2 (*Enforcement Instructions*), the Security Agent shall enforce the Transaction Security in such manner (including, without limitation, the selection of any administrator of any Debtor to be appointed by the Security Agent) as the Majority Senior Creditors shall instruct or, in the absence of any such instructions, as the Security Agent sees fit.

10.4 Exercise of voting rights

- (a) Each Creditor and each Investor agrees with the Security Agent that it will cast its vote in any proposal put to the vote by or under the supervision of any judicial or supervisory authority in respect of any insolvency, pre-insolvency or rehabilitation or similar proceedings relating to any member of the Group as instructed by the Security Agent.
- (b) The Security Agent shall give instructions for the purposes of clause 10.4(a) as directed by the Majority Senior Creditors.

10.5 Waiver of rights

To the extent permitted under applicable law and subject to clause 10.2 (*Enforcement Instructions*), clause 10.3 (*Manner of Enforcement*), clause 12 (*Application of Proceeds*) and clause 11.2(c), each of the Secured Parties and the Debtors waives all rights it may otherwise have to require that the Transaction Security be enforced in any particular order or manner or at any particular time or that any sum received or recovered from any person, or by virtue of the enforcement of any of the Transaction Security or of any other security interest, which is capable of being applied in or towards discharge of any of the Secured Obligations is so applied.

11. PROCEEDS OF DISPOSALS, RECOVERIES FROM REPORT PROVIDERS AND ADJUSTMENT OF SENIOR MANDATORY PREPAYMENTS

11.1 Non-Distressed Disposals

- (a) In this clause 11.1:

"Disposal Proceeds" means the proceeds of a Non-Distressed Disposal (as defined in clause 11.1(b)).
- (b) If, in respect of a disposal of:
 - (i) an asset by a Debtor; or

(ii) an asset which is subject to the Transaction Security,

to a person or persons outside the Group:

(A) (prior to the Senior Lender Discharge Date) the Agent notifies the Security Agent that that disposal is permitted under the Senior Finance Documents; and

(B) that disposal is not a Distressed Disposal,

(a "Non-Distressed Disposal"),

the Security Agent is irrevocably authorised (at the cost of the relevant Debtor or the Parent and without any consent, sanction, authority or further confirmation from any Creditor, Investor or Debtor) but subject to clause 11.1(c):

(iii) to release the Transaction Security or any other claim (relating to a Debt Document) over that asset;

(iv) where that asset consists of shares in the capital of a Debtor, to release the Transaction Security or any other claim (relating to a Debt Document) over that Debtor's assets;

(v) to execute and deliver or enter into any release of the Transaction Security or any claim described in clauses 11.1(b)(iii) and 11.1(b)(iv) and issue any certificates of non-crystallisation of any floating charge or any consent to dealing that may, in the discretion of the Security Agent, be considered necessary or desirable.

(c) If that Non-Distressed Disposal is not made, each release of Transaction Security or any claim described in clause 11.1(b) shall have no effect and the Transaction Security or claim subject to that release shall continue in such force and effect as if that release had not been effected.

(d) If any Disposal Proceeds are required to be applied in mandatory prepayment of the Senior Lender Liabilities then, subject to clause 11.6 (*Adjustment of Senior Mandatory Prepayments*), the Disposal Proceeds shall be applied in or towards Payment of the Senior Lender Liabilities in accordance with the terms of the Senior Facilities Agreement and the consent of any other Party shall not be required for that application.

11.2 Distressed Disposals

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

(i) *release of Transaction Security/non-crystallisation certificates*: to release the Transaction Security or any other claim over that asset and execute and deliver or enter into any release of that Transaction Security or claim and issue any letters of non-crystallisation of any floating charge or any consent to dealing that may, in the discretion of the Security Agent, be considered necessary or desirable;

(ii) *release of liabilities and Transaction Security on a share sale (Debtor):* if the asset which is disposed of consists of shares in the capital of a Debtor, to release:

- (A) that Debtor and any Subsidiary of that Debtor from all or any part of:
 - (1) its Borrowing Liabilities;
 - (2) its Guarantee Liabilities; and
 - (3) its Other Liabilities;
- (B) any Transaction Security granted by that Debtor or any Subsidiary of that Debtor over any of its assets; and
- (C) any other claim of a Investor, 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, Investors and Debtors;

(iii) *release of liabilities and Transaction Security on a share sale (Holding Company):* if the asset which is disposed of consists of shares in the capital of any Holding Company of a Debtor, to release:

- (A) that Holding Company and any Subsidiary of that Holding Company from all or any part of:
 - (1) its Borrowing Liabilities;
 - (2) its Guarantee Liabilities; and
 - (3) its Other Liabilities;
- (B) any Transaction Security granted by any Subsidiary of that Holding Company over any of its assets; and
- (C) any other claim of a Investor, an Intra-Group Lender or another Debtor over the assets of any Subsidiary of that Holding Company,

on behalf of the relevant Creditors, Investors and Debtors;

(iv) *disposal of liabilities on a share sale:* if the asset which is disposed of 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 11.2(d)) decides to dispose of all or any part of:

- (A) the Liabilities; or
- (B) the Debtor Liabilities,

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

(C) (if the Security Agent (acting in accordance with clause 11.2(d)) does not intend that any transferee of those Liabilities or Debtor Liabilities (the "**Transferee**") will be treated as a Senior Creditor or a Secured Party for the purposes of this Agreement), to execute and deliver or enter into any agreement to dispose of all or part of those Liabilities or Debtor Liabilities **provided that** notwithstanding any other provision of any Debt Document the Transferee shall not be treated as a Senior Creditor or a Secured Party for the purposes of this Agreement; and

(D) (if the Security Agent (acting in accordance with clause 11.2(d)) does intend that any Transferee will be treated as a Senior Creditor or a Secured Party for the purposes of this Agreement), to execute and deliver or enter into any agreement to dispose of:

(1) all (and not part only) of the Liabilities owed to the Senior Creditors; and

(2) all or part of any other Liabilities and the Debtor Liabilities,

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

(v) *transfer of obligations in respect of liabilities on a share sale*: if the asset which is disposed of consists of shares in the capital of a Debtor or the Holding Company of a Debtor (the "**Disposed Entity**") and the Security Agent (acting in accordance with clause 11.2(d)) decides to transfer to another Debtor (the "**Receiving Entity**") all or any part of the Disposed Entity's obligations or any obligations of any Subsidiary of that Disposed Entity in respect of:

(A) the Intra-Group Liabilities; or

(B) the Debtor Liabilities,

to execute and deliver or enter into any agreement to:

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

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

(b) The net proceeds of each Distressed Disposal (and the net proceeds of any disposal of Liabilities or Debtor Liabilities pursuant to clause 11.2(a)(iv)) shall be paid to the Security Agent for application in accordance with clause 12 (*Application of*

Proceeds) as if those proceeds were the proceeds of an enforcement of the Transaction Security and, to the extent that any disposal of Liabilities or Debtor Liabilities has occurred pursuant to clause 11.2(a)(iv)(D)), as if that disposal of Liabilities or Debtor Liabilities had not occurred.

- (c) In the case of a Distressed Disposal (or a disposal of Liabilities pursuant to clause 11.2(a)(iv)(D)) effected by or at the request of the Security Agent (acting in accordance with clause 11.2(d)), the Security Agent shall take reasonable care to obtain a fair market price in the prevailing market conditions (though the Security Agent shall have no obligation to postpone any such Distressed Disposal or disposal of Liabilities in order to achieve a higher price).
- (d) For the purposes of clauses 11.2(a)(ii), 11.2(a)(iii), 11.2(a)(iv), 11.2(a)(v) and 11.2(c), the Security Agent shall act:
 - (i) 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
 - (ii) in any other case:
 - (A) on the instructions of the Majority Senior Creditors; or
 - (B) in the absence of any such instructions, as the Security Agent sees fit.

11.3 Release of Transaction Security

- (a) Where the Security Agent is acting on the instructions of the Majority Lenders in connection with a Distressed Disposal, the Security Agent may only release security and guarantees, pursuant to 11.2 if:
 - (i) the Distressed Disposal is made for cash; and
 - (ii) one of the following requirements is satisfied:
 - (A) the Distressed Disposal is by way of a process supervised by a court; or
 - (B) the Distressed Disposal is made pursuant to a public auction or other competitive bid process administered by an independent investment bank (an "**Investment Bank**") or any one of PwC, KPMG, Deloitte or Ernst & Young (an "**Accountant**"), in each case with a view to obtaining a fair market price in the then prevailing market conditions in which the Facility C Lenders are entitled to participate as bidders or financiers to the potential purchaser; or
 - (C) the Security Agent has:
 - (1) consulted with an Investment Bank or an Accountant with respect to recommended procedures to be used for obtaining a fair market price in the then prevailing market conditions;
 - (2) considered such procedures in good faith; and

- (3) if the Security Agent considers in its discretion to be appropriate, used its reasonable endeavours to implement such procedures (in which the Facility C lenders shall be entitled to participate) in relation to such Distressed Disposal; or
- (D) the Distressed Disposal is made pursuant to a process in respect of which the Security Agent has received an opinion (including an enterprise valuation of the Obligor/assets being disposed of) from an Investment Bank or Accountant selected by the Security Agent confirming that the sale or disposal price is fair from a financial point of view taking into account all relevant circumstances
- (b) In the case of a Distressed Disposal the Security Agent shall take reasonable care to obtain the best price reasonably obtainable taking into account all relevant circumstances but shall have no obligation to postpone any such Distressed Disposal in order to achieve a higher price.
- (c) This Clause 11.3 is for the benefit of the Senior Lenders only.

11.4 Acquisition Proceeds and Insurance Proceeds (before Distress Event)

- (a) In this clause 11.3:

"Acquisition Document" has the meaning given to that term in the Senior Facilities Agreement;

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

"Insurance Proceeds" has the meaning given to that term in the Senior Facilities Agreement; and

"Recovery Claim" has the meaning given to that term in the Senior Facilities Agreement.
- (b) So long as the requirements of clause 11.3(c) and, in the case of a claim against the provider of any Report, the requirements of clause 11.5 (*Recoveries from Report Providers*) are met, if any Recovery Claim or insurance claim is to be made, or is made, by a Debtor prior to a Distress Event and that Recovery Claim or that insurance claim (or the Acquisition Proceeds of that Recovery Claim or the Insurance Proceeds of that insurance claim) is or are expressed to be subject to the Transaction Security, the Security Agent is irrevocably authorised (at the cost of the relevant Debtor or the Parent and without need of any letter of authority or further confirmation from any Creditor, Investor or Debtor) to:
 - (i) give a consent under or release the Transaction Security, or any other claim, over the relevant Acquisition Document or insurance policy solely to the extent necessary to allow that Debtor to make that Recovery Claim or that insurance claim and to comply with that Debtor's obligations in respect of that Recovery Claim and those Acquisition Proceeds or that insurance claim and those Insurance Proceeds under clause 10.2 (*Disposal, Insurance and Acquisition Proceeds and Excess Cashflow*) of the Senior Facilities Agreement; and

- (ii) execute and deliver or enter into any such consent under or release of that Transaction Security, or claim, that may, in the discretion of the Security Agent, be considered necessary or desirable.
- (c) If any Acquisition Proceeds or Insurance Proceeds are required to be applied in mandatory prepayment of the Senior Lender Liabilities then, subject to clause 11.6 (*Adjustment of Senior Mandatory Prepayments*), those Acquisition Proceeds or Insurance Proceeds shall be applied in or towards Payment of the Senior Lender Liabilities in accordance with the terms of the Senior Facilities Agreement and the consent of any other Party shall not be required for that application.

11.5 Recoveries from Report Providers

- (a) In this clause 11.5:

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

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

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

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

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

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

- (c) Notwithstanding any other provision in the Debt Documents, no Debtor or Investor may initiate Proceedings unless and until the Security Agent has given its prior written consent.
- (d) If no Distress Event has occurred at the time of receipt of a Net Award, the recipient of that Net Award (if not the Parent) shall pay the Award Proceeds to the Parent for application in accordance, subject to clause 11.6 (*Adjustment of Senior Mandatory Prepayments*), with the terms of the Senior Facilities Agreement.

(e) If a Distress Event has occurred at the time of receipt of a Net Award, the recipient of that Net Award shall pay the Award Proceeds to the Security Agent and the Security Agent shall apply those Award Proceeds in accordance with the terms of clause 12 (*Application of Proceeds*).

(f) The provisions of this clause 11.5 shall apply until the Senior Discharge Date.

11.6 Adjustment of Senior Mandatory Prepayments

If the making of any Senior Mandatory Prepayment (an "**Original Senior Mandatory Prepayment**") would result in a payment (a "**Hedge Reduction Payment**") becoming due to any Hedge Counterparty pursuant to clause 4.13(d), the amount of that Senior Mandatory Prepayment will be reduced so that the aggregate of:

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

is equal to the amount of the Original Senior Mandatory Prepayment.

11.7 Creditors', Investors' and Debtors' actions

Each Creditor, Investor and Debtor will:

- (a) do all things that the Security Agent requests in order to give effect to this clause 11 (which shall include, without limitation, the execution of any assignments, transfers, releases or other documents that the Security Agent may consider to be necessary to give effect to the releases or disposals contemplated by this clause 11); and
- (b) if the Security Agent is not entitled to take any of the actions contemplated by this clause 11 or if the Security Agent requests that any Creditor, Investor 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 11.1 (*Non-Distressed Disposals*) or clause 11.2 (*Distressed Disposals*) as the case may be.

12. APPLICATION OF PROCEEDS

12.1 Order of application

Subject to clause 12.2 (*Prospective liabilities*) and clause 12.3 (*Treatment of SFA Cash Cover*), all amounts from time to time received or recovered by the Security Agent pursuant to the terms of any Debt Document or in connection with the realisation or enforcement of all or any part of the Transaction Security (for the purposes of this clause 12, 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 12), in the following order of priority:

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

accordance with the terms of this Agreement or any action taken at the request of the Security Agent under clause 7.6 (*Creditors' and Investors' actions*);

(c) in payment to:

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

for application towards the discharge of:

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

on a *pro rata* basis between clause 12.1(c)(ii)(A) and clause 12.1(c)(ii)(B);

- (d) following payment of all amounts due under (c) above, in payment to the Agent on behalf the Senior Lenders for application towards the outstanding Senior Lender Liabilities;
- (e) if none of the Debtors is under any further actual or contingent liability under any Senior Finance Document or Hedging Agreement, in payment to any person to whom the Security Agent is obliged to pay in priority to any Debtor; and
- (f) the balance, if any, in payment to the relevant Debtor.

12.2 Prospective liabilities

Following a Distress Event the Security Agent may, in its discretion, hold any amount of the Recoveries in an interest bearing suspense or impersonal account(s) in the name of the Security Agent with such financial institution (including itself) and for so long as the Security Agent shall think fit (the interest being credited to the relevant account) for later application under clause 12.1 (*Order of application*) in respect of:

- (a) any sum to any Security Agent, any Receiver or any Delegate; and
- (b) any part of the Liabilities, the Agent Liabilities or the Arranger Liabilities,

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

12.3 Treatment of SFA Cash Cover

- (a) Nothing in this Agreement shall prevent any Ancillary Lender taking any Enforcement Action in respect of any SFA Cash Cover which has been provided for it in accordance with the Senior Facilities Agreement.
- (b) To the extent that any SFA Cash Cover is not held with the Relevant Ancillary Lender, all amounts from time to time received or recovered in connection with the

realisation or enforcement of that SFA Cash Cover shall be paid to the Security Agent and shall be held by the Security Agent on trust to apply them at any time as the Security Agent (in its discretion) sees fit, to the extent permitted by applicable law, in the following order of priority:

- (i) to the Relevant Ancillary Lender towards the discharge of the Senior Lender Liabilities for which that SFA Cash Cover was provided; and
 - (ii) the balance, if any, in accordance with clause 12.1 (*Order of application*).
- (c) To the extent that any SFA Cash Cover is held with the Relevant Ancillary Lender, nothing in this Agreement shall prevent that Relevant Ancillary Lender receiving and retaining any amount in respect of that SFA Cash Cover.

12.4 Investment of proceeds

Prior to the application of the proceeds of the Security Property in accordance with clause 12.1 (*Order of application*) the Security Agent may, in its discretion, hold all or part of those proceeds in an interest bearing suspense or impersonal account(s) in the name of the Security Agent with such financial institution (including itself) and for so long as the Security Agent shall think fit (the interest being credited to the relevant account) pending the application from time to time of those monies in the Security Agent's discretion in accordance with the provisions of this clause 12.

12.5 Currency Conversion

- (a) For the purpose of, or pending the discharge of, any of the Secured Obligations the Security Agent may convert any moneys received or recovered by the Security Agent from one currency to another, at the Agent's Spot Rate of Exchange.
- (b) The obligations of any Debtor to pay in the due currency shall only be satisfied to the extent of the amount of the due currency purchased after deducting the costs of conversion.

12.6 Permitted Deductions

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

12.7 Good Discharge

- (a) Any payment to be made in respect of the Secured Obligations by the Security Agent:
 - (i) may be made to the relevant Agent on behalf of its Creditors;
 - (ii) may be made to the Relevant Ancillary Lender in accordance with clause 12.3(b)(i); or

(iii) shall be made directly to the Hedge Counterparties,

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

- (b) The Security Agent is under no obligation to make the payments to the Agent or the Hedge Counterparties under clause 12.7(a) in the same currency as that in which the Liabilities owing to the relevant Creditor are denominated.

12.8 Calculation of Amounts

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

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

13. EQUALISATION

13.1 Equalisation Definitions

For the purposes of this clause 13:

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

"**Exposure**" means:

- (a) in relation to a Senior Lender, the aggregate amount of its participation (if any, and without double counting) in all Utilisations outstanding under the Senior Facilities Agreement at the Enforcement Date (assuming all contingent liabilities which have become actual liabilities since the Enforcement Date to have been actual liabilities at the Enforcement Date (but not including, for these purposes only, any interest that would have accrued from the Enforcement Date to the date of actual maturity in respect of those liabilities) and assuming any transfer of claims in respect of amounts outstanding under the Revolving Facility and each Ancillary Facility in accordance with clause 7.6 (*Adjustment for Ancillary Facilities upon acceleration*) of the Senior Facilities Agreement which has taken place since the Enforcement Date to have taken place at the Enforcement Date) together with the aggregate amount of all accrued interest, fees and commission owed to it under the Senior Facilities Agreement and amounts owed to it by a Debtor in respect of any Ancillary Facility but excluding:
- (i) any amount owed to it by a Debtor in respect of any Ancillary Facility to the extent that that amount would not be outstanding but for a breach by that

Senior Lender of any provision of clause 7 (*Ancillary Facilities*) of the Senior Facilities Agreement; and

- (ii) any amount owed to it by a Debtor in respect of any Ancillary Facility to the extent (and in the amount) that SFA Cash Cover has been provided by a Debtor in respect of that amount and is available to that Senior Lender pursuant to the relevant SFA Cash Cover Document;
- (b) in relation to a Hedge Counterparty:
- (i) if that Hedge Counterparty has terminated or closed out any hedging transaction under any Hedging Agreement in accordance with the terms of this Agreement on or prior to the Enforcement Date, the amount, if any, payable to it under that Hedging Agreement in respect of that termination or close-out as of the date of termination or close-out (taking into account any interest accrued on that amount) to the extent that amount is unpaid at the Enforcement Date (that amount to be certified by the relevant Hedging Counterparty and as calculated in accordance with the relevant Hedging Agreement); and
 - (ii) if that Hedge Counterparty has not terminated or closed out any hedging transaction under any Hedging Agreement on or prior to the Enforcement Date:
 - (A) if the relevant Hedging Agreement is based on an ISDA Master Agreement the amount, if any, which would be payable to it under that Hedging Agreement in respect of that hedging transaction if the Enforcement Date was deemed to be an Early Termination Date (as defined in the relevant ISDA Master Agreement) for which the relevant Debtor is the Defaulting Party (as defined in the relevant ISDA Master Agreement); or
 - (B) if the relevant Hedging Agreement is not based on an ISDA Master Agreement, the amount, if any, which would be payable to it under that Hedging Agreement in respect of that hedging transaction if the Enforcement Date was deemed to be the date on which an event similar in meaning and effect (under that Hedging Agreement) to an Early Termination Date (as defined in any ISDA Master Agreement) occurred under that Hedging Agreement for which the relevant Debtor is in a position similar in meaning and effect (under that Hedging Agreement) to that of a Defaulting Party (under and as defined in the same ISDA Master Agreement),

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

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

13.2 Implementation of equalisation

The provisions of this clause 13 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 13 have been applied before all the Liabilities have matured and/or been finally quantified, the Security Agent may elect to re-apply those provisions on the basis of revised Exposures and the Senior Creditors shall make appropriate adjustment payments amongst themselves.

13.3 Equalisation

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

13.4 Turnover of enforcement proceeds

If:

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

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

13.5 Notification of Exposure

Before each occasion on which it intends to implement the provisions of this clause 13, the Security Agent shall send notice to each Hedge Counterparty and the Agent (on behalf of the Senior Lenders) requesting that it notify it of, respectively, its Exposure and that of each Senior Lender (if any).

13.6 Default in payment

If a Creditor fails to make a payment due from it under this clause 13, the Security Agent shall be entitled (but not obliged) to take action on behalf of the Senior Creditor(s) to whom such payment was to be redistributed (subject to being indemnified to its satisfaction by such Senior Creditor(s) in respect of costs) but shall have no liability or obligation towards such Senior Creditor(s), any other Senior Creditor or Creditor as regards such default in payment and any loss suffered as a result of such default shall lie where it falls.

14. THE SECURITY AGENT

14.1 Trust

- (a) The Security Agent declares that it shall hold the Security Property on trust for the Secured Parties on the terms contained in this Agreement.
- (b) Each of the parties to this Agreement agrees that the Security Agent shall have only those duties, obligations and responsibilities expressly specified in this Agreement or in the Security Documents to which the Security Agent is expressed to be a party (and no others shall be implied).

14.2 No independent power

Subject to clause 12.3 (*Treatment of SFA Cash Cover*), the Secured Parties shall not have any independent power to enforce, or have recourse to, any of the Transaction Security or to exercise any rights or powers arising under the Security Documents (other than the Senior Facilities Agreements) except through the Security Agent.

14.3 Instructions to Security Agent and exercise of discretion

- (a) Subject to clauses 14.3(d) and 14.3(e), the Security Agent shall act in accordance with any instructions given to it by the Majority Senior Creditors or, if so instructed by the Majority Senior Creditors, refrain from exercising any right, power, authority or discretion vested in it as Security Agent and shall be entitled to assume that (i) any instructions received by it from the Agent, the Creditors or a group of Creditors are duly given in accordance with the terms of the Debt Documents and (ii) unless it has received actual notice of revocation, that those instructions or directions have not been revoked. The Security Agent shall not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with any instructions given to it by the Majority Senior Creditors (or, if this Agreement stipulates that 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 direction, from the Majority Senior Creditors (or, if this Agreement stipulates that 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 rights, powers, authorities and discretions and the Security Agent may refrain from acting unless and until those instructions or clarification are received by it.
- (c) Save as provided in clause 10 (*Enforcement of Transaction Security*), any instructions given to the Security Agent by the Majority Senior Creditors shall override any conflicting instructions given by any other Parties.
- (d) Clause 14.3(a) shall not apply:
 - (i) where a contrary indication appears in this Agreement;
 - (ii) where this Agreement requires the Security Agent to act in a specified manner or to take a specified action;

- (iii) in respect of any provision which protects the Security Agent's own position in its personal capacity as opposed to its role of Security Agent for the Secured Parties including, without limitation, the provisions set out in clauses 14.5 (*Security Agent's discretions*) to clause 14.20 (*Disapplication*);
- (iv) in respect of the exercise of the Security Agent's discretion to exercise a right, power or authority under any of:
 - (A) clause 11.1 (*Non-Distressed Disposals*);
 - (B) clause 12.1 (*Order of application*);
 - (C) clause 12.2 (*Prospective liabilities*);
 - (D) clause 12.3 (*Treatment of SFA Cash Cover*); and
 - (E) clause 12.6 (*Permitted Deductions*).
- (e) If giving effect to instructions given by the Majority Senior Creditors would (in the Security Agent's opinion) have an effect equivalent to an Intercreditor Amendment, the Security Agent shall not act in accordance with those instructions unless consent to it so acting is obtained from each Party (other than the Security Agent) whose consent would have been required in respect of that Intercreditor Amendment.
- (f) In exercising any discretion to exercise a right, power or authority under this Agreement where either:
 - (i) it has not received any instructions from the Majority Senior Creditors as to the exercise of that discretion; or
 - (ii) the exercise of that discretion is subject to clause 14.3(d)(iv),

the Security Agent shall do so as it considers in its discretion to be appropriate.

14.4 Security Agent's Actions

Without prejudice to the provisions of clause 10 (*Enforcement of Transaction Security*) and clause 14.3 (*Instructions to Security Agent and exercise of discretion*), the Security Agent may (but shall not be obliged to), in the absence of any instructions to the contrary, take such action in the exercise of any of its powers and duties under the Debt Documents as it considers in its discretion to be appropriate.

14.5 Security Agent's discretions

The Security Agent may:

- (a) assume (unless it has received actual notice to the contrary from a Hedge Counterparty or from the Agent) that (i) no Default has occurred and no Debtor or other person is in breach of or default under its obligations under any of the Debt Documents and (ii) any right, power, authority or discretion vested by any Debt Document in any person has not been exercised;
- (b) if it receives any instructions or directions under clause 10 (*Enforcement of Transaction Security*) to take any action in relation to the Transaction Security,

assume that all applicable conditions under the Debt Documents for taking that action have been satisfied;

- (c) engage, pay for and rely on the advice or services of any legal advisers, accountants, tax advisers, surveyors or other experts (whether reasonably obtained by the Security Agent or by any other Secured Party) whose advice or services may at any time seem necessary, expedient or desirable and shall not be liable for any damage, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying;
- (d) rely upon any communication or document believed by it to be genuine and, as to any matters of fact which might reasonably be expected to be within the knowledge of a Secured Party, any Creditor, Investor or a Debtor, upon a certificate signed by or on behalf of that person;
- (e) refrain from acting in accordance with the instructions of any Party (including bringing any legal action or proceeding arising out of or in connection with the Debt Documents) until it has received any indemnification and/or security that it may in its discretion require (whether by way of payment in advance or otherwise and which may be greater in extent than that contained in the Debt Documents) for all costs, losses and liabilities which it may incur in so acting; and
- (f) carry out what in its discretion it considers to be administrative acts, or acts which are incidental to any instruction, without any instructions (though not contrary to any such instruction), but so that no such instruction shall have any effect in relation to any administrative or incidental act performed prior to actual receipt of such instruction by the Security Agent.

14.6 Security Agent's obligations

The Security Agent shall promptly:

- (a) copy to (i) the Agent and (ii) each Hedge Counterparty the contents of any notice or document received by it from any Debtor under any Debt Document;
- (b) 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 **provided that**, the Security Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party;
- (c) inform (i) the Agent and (ii) each Hedge Counterparty of the occurrence of any Default or any default by a Debtor in the due performance of or compliance with its obligations under any Debt Document of which the Security Agent has received notice from any other party to this Agreement; and
- (d) to the extent that a Party (other than the Security Agent) is required to calculate a Common Currency Amount, and upon a request by that Party, notify that Party of the relevant Agent's Spot Rate of Exchange.

14.7 Excluded obligations

The Security Agent shall not:

- (a) be bound to enquire as to (i) whether or not any Default has occurred or (ii) the performance, default or any breach by any Party of its obligations under any of the Debt Documents;
- (b) be bound to account to any other Party for any sum or the profit element of any sum received by it for its own account;
- (c) be bound to disclose to any other person (including but not limited to any Secured Party) (i) any confidential information or (ii) any other information if disclosure would, or might in its reasonable opinion, constitute a breach of any law or regulation or be a breach of fiduciary duty or confidentiality;
- (d) have or be deemed to have any relationship of trust or agency with, any Debtor or any Investor;
- (e) be 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 assured to it.

14.8 Exclusion of liability

- (a) None of the Security Agent, any Receiver nor any Delegate shall accept responsibility or be liable for:
 - (i) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Security Agent 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;
 - (ii) 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;
 - (iii) any damages, costs or losses to any person, any diminution in value, or any liability arising as a result of taking or refraining from taking or not taking any action in relation to any of the Debt Documents, the Security Property or otherwise, whether in accordance with an instruction from the Agent or otherwise unless directly caused by its gross negligence or wilful misconduct;
 - (iv) the exercise of, or the failure to exercise, any judgment, discretion or power given to it by or in connection with any of the Debt Documents, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, the Debt Documents or the Security Property; or

- (v) any shortfall which arises on the enforcement or realisation of the Security Property.
- (b) 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 judicially determined to have been suffered (such loss shall be determined as at the date of default of the Security Agent, Receiver or Delegate 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 might be) at the time of entering into this agreement, or at the time of accepting any relevant instructions, which increase the amount of the 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 or consequential damages, whether or not the Security Agent has been advised of the possibility of such loss or damages. This clause shall not apply in the event that a court with jurisdiction determines that the Security Agent acted fraudulently.

14.9 No Proceedings

No Party (other than the Security Agent, that Receiver or that Delegate) may take any proceedings against any officer, employee or agent of the Security Agent, a Receiver or a Delegate in respect of any claim it might have against the Security Agent, a Receiver or a Delegate or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Debt Document or any Security Property and any officer, employee or agent of the Security Agent, a Receiver or a Delegate may rely on this clause subject to clause 1.3 (*Third Party Rights*) and the provisions of the Third Parties Rights Act.

14.10 Own responsibility

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

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

agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Debt Document; and

- (e) the right or title of any person in or to, or the value or sufficiency of any part of the Charged Property, the priority of any of the Transaction Security or the existence of any Security affecting the Charged Property,

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

14.11 No responsibility to perfect Transaction Security

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

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

14.12 Insurance by Security Agent

- (a) The Security Agent shall not be under any obligation to insure any of the Charged Property, to require any other person to maintain any insurance or to verify any obligation to arrange or maintain insurance contained in the Debt Documents. The Security Agent shall not be responsible for any loss which may be suffered by any person as a result of the lack of or inadequacy of any such insurance.
- (b) Where the Security Agent is named on any insurance policy as an insured party, it shall not be responsible for any loss which may be suffered by reason of, directly or indirectly, its failure to notify the insurers of any material fact relating to the risk assumed by such insurers or any other information of any kind, unless the Agent shall have requested it to do so in writing and the Security Agent shall have failed to do so within fourteen days after receipt of that request.

14.13 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 assets 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.

14.14 Acceptance of title

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

14.15 Refrain from illegality

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

14.16 Confidential information

Notwithstanding any other provision of this Agreement:

- (a) the Security Agent may collect, use and disclose personal data about the Senior Lenders and/or the other Parties (if any are an individual) or individuals associated with the Senior Lenders and/or other Parties, to the extent necessary to permit that the Security Agent to carry out its obligations to the Senior Lenders and the other Parties and for other related purposes, including auditing, monitoring and analysis of its business, fraud and crime prevention, money laundering, legal and regulatory compliance and the marketing by the Security Agent or members of the Security Agent's corporate group of other services, and the Security Agent will keep the personal data up to date; and
- (b) the Security Agent may also transfer the personal data to any country (including countries outside the European Economic Area where there may be less stringent data protection laws) to process information on the Security Agent's behalf. Wherever it is processed, the personal data will be protected by a strict code of secrecy and security to which all members of the Security Agent's corporate group, their staff and any third parties are subject, and will only be used in accordance with the Security Agent's instruction.

14.17 Winding up of trust

If the Security Agent, with the approval of the Agent and each Hedge Counterparty, determines that (a) all of the Secured Obligations and all other obligations secured by the Security Documents have been fully and finally discharged and (b) none of the Secured Parties is under any commitment, obligation or liability (actual or contingent) to make advances or provide other financial accommodation to any Debtor pursuant to the Debt Documents:

- (a) the trusts set out in this Agreement shall be wound up and the Security Agent shall release, without recourse or warranty, all of the Transaction Security and the rights of the Security Agent under each of the Security Documents; and

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

14.18 Powers supplemental

The rights, powers and discretions conferred upon the Security Agent by this Agreement shall be supplemental to the Trustee Act 1925 and the Trustee Act 2000 and in addition to any which may be vested in the Security Agent by general law or otherwise.

14.19 Trustee division separate

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

14.20 Disapplication

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

14.21 Intra-Group Lenders and Debtors: Power of Attorney

Each Intra-Group Lender and Debtor by way of security for its obligations under this Agreement irrevocably appoints the Security Agent to be its attorney to do anything which that Intra-Group Lender or Debtor has authorised the Security Agent or any other Party to do under this Agreement 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).

14.22 Financial Services and Markets Act 2000

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

14.23 Merger and transfer

If the Security Agent:

- (a) merges or consolidates with any person; or
- (b) transfers to any person all or substantially all of its assets or all or substantially all of its corporate trust and loan agency business,

that person (or, in the case of any merger or consolidation, any person which results from the merger or consolidation) shall be a Party and shall be the Security Agent without that person or any Party doing anything (including executing or registering any document).

15. CHANGE OF SECURITY AGENT AND DELEGATION

15.1 Resignation of the Security Agent

- (a) The Security Agent may resign and appoint one of its affiliates as successor by giving notice to the Parent and the Senior Creditors.
- (b) Alternatively the Security Agent may resign by giving notice to the other Parties in which case the Majority Senior Creditors may appoint a successor Security Agent.
- (c) If the Majority Senior Creditors have not appointed a successor Security Agent in accordance with clause 15.10 within 30 days after the notice of resignation was given, the Security Agent (after consultation with the Agent) may appoint a successor Security Agent.
- (d) The retiring Security Agent (the "**Retiring Security Agent**") shall, make available to the successor Security Agent such documents and records and provide such assistance as the successor Security Agent may reasonably request for the purposes of performing its functions as Security Agent under the Debt Documents.
- (e) The Security Agent's resignation notice shall only take effect upon (i) the appointment of a successor and (ii) the transfer of all of 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 clause 14.16(b) and under clause 15.1(d)) but shall, in respect of any act or omission by it whilst it was the Security Agent, remain entitled to the benefit of clauses 14 (*The Security Agent*), 18.1 (*Debtors' indemnity*) and 18.3 (*Senior Creditors' indemnity*). Its successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if that successor had been an original Party.
- (g) The Majority Senior Creditors may, by notice to the Security Agent, require it to resign in accordance with clause 15.1(b). In this event, the Security Agent shall resign in accordance with clause 15.1(b) but the cost referred to in clause 15.1(d) shall be for the account of the Parent.

15.2 Delegation

- (a) Each of the Security Agent, any Receiver and any Delegate may, at any time, delegate by power of attorney or otherwise to any person for any period, all or any of the rights, powers and discretions vested in it by any of the Debt Documents.
- (b) That delegation may be made upon any terms and conditions (including the power to sub-delegate) and subject to any restrictions that the Security Agent, that Receiver or that Delegate (as the case may be) considers in its discretion to be appropriate may, in its discretion, think fit and it shall not be bound to supervise, or be in any way responsible for any loss incurred by reason of any act, misconduct or default on the part of any such delegate or sub-delegate.

15.3 Additional Security Agents

- (a) The Security Agent may at any time appoint (and subsequently remove) any person to act as a separate trustee or as a co-trustee jointly with it (i) if it considers that appointment to be appropriate or (ii) for the purposes of conforming to any legal requirements, restrictions or conditions which the Security Agent deems to be relevant or (iii) for obtaining or enforcing any judgment in any jurisdiction, and the Security Agent shall give prior notice to the Parent and the Agent of that appointment.
- (b) Any person so appointed shall have the rights, powers and discretions (not exceeding those conferred on the Security Agent by this Agreement) and the duties and obligations that are conferred or imposed by the instrument of appointment.
- (c) The remuneration that the Security Agent may pay to that person, and any costs and expenses (together with any applicable VAT) incurred by that person in performing its functions pursuant to that appointment shall, for the purposes of this Agreement, be treated as costs and expenses incurred by the Security Agent.

16. CHANGES TO THE PARTIES

16.1 Assignments and transfers

No Party may assign any of its rights and benefits or transfer any of its rights, benefits and obligations in respect of any Debt Documents or the Liabilities except as permitted by this clause 16.

16.2 Change of Investor

Subject to clause 6.4 (*No acquisition of Subordinated Liabilities*), an Investor may assign any of its rights and benefits or transfer any of its rights, benefits and obligations in respect of the Subordinated Liabilities owed to it if any assignee or transferee has (if not already party to this Agreement as an Investor) acceded to this Agreement, as an Investor, pursuant to clause 16.9 (*Creditor/Agent Accession Undertaking*).

16.3 Change of Senior Lender

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

- (i) that assignment or transfer is in accordance with the terms of the Senior Facilities Agreement; and
- (ii) any assignee or transferee has (if not already party to this Agreement as a Senior Lender) acceded to this Agreement, as a Senior Lender, pursuant to clause 16.9 (*Creditor/Agent Accession Undertaking*).

16.4 Change of Hedge Counterparty

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

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

as a Hedge Counterparty pursuant to clause 16.9 (*Creditor/Agent Accession Undertaking*).

16.5 Change of Agent

No person shall become the Agent unless at the same time it accedes to this Agreement as the Agent pursuant to clause 16.9 (*Creditor/Agent Accession Undertaking*).

16.6 Change of Intra-Group Lender

Subject to clause 5.4 (*Acquisition of Intra-Group Liabilities*) and to the terms of the other Debt Documents, any Intra-Group Lender may assign any of its rights and benefits or transfer any of its rights, benefits and obligations in respect of the Intra-Group Liabilities to another member of the Group if that member of the Group has (if not already party to this Agreement as an Intra-Group Lender) acceded to this Agreement as an Intra-Group Lender, pursuant to clause 16.9 (*Creditor/Agent Accession Undertaking*).

16.7 New Intra-Group Lender

If any Intra-Group Lender or any member of the Group (other than the Parent) makes any loan to or grants any credit to or makes any other financial arrangement having similar effect with any Debtor, in an aggregate amount of \$50,000 or more, the Parent will procure that the person giving that loan, granting that credit or making that other financial arrangement (if not already party to this Agreement as an Intra-Group Lender) accedes to this Agreement, as an Intra-Group Lender pursuant to clause 16.9 (*Creditor/Agent Accession Undertaking*).

16.8 New Ancillary Lender

If any Affiliate of a Senior Lender becomes an Ancillary Lender in accordance with clause 7.8 (*Affiliates of Lenders as Ancillary Lenders*) of the Senior Facilities Agreement, it shall not be entitled to share in any of the Transaction Security or in the benefit of any guarantee or indemnity in respect of any of the liabilities arising in relation to its Ancillary Facilities unless it has (if not already party to this Agreement as a Senior Lender) acceded to this Agreement as a Senior Lender and to the Senior Facilities Agreement as an Ancillary Lender pursuant to clause 16.9 (*Creditor/Agent Accession Undertaking*).

16.9 Creditor/Agent Accession Undertaking

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

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

16.10 New Debtor

- (a) If any member of the Group:
 - (i) incurs any Liabilities in an aggregate amount of \$50,000 or more; or
 - (ii) gives any security, guarantee, indemnity or other assurance against loss in respect of any of the Liabilities,

the Debtors will procure that the person incurring those Liabilities or giving that assurance accedes to this Agreement as a Debtor, in accordance with clause 16.10(b), no later than contemporaneously with the incurrance of those Liabilities or the giving of that assurance.

- (b) With effect from the date of acceptance by the Security Agent of a Debtor Accession Deed duly executed and delivered to the Security Agent by the new Debtor or, if later, the date specified in the Debtor Accession Deed, the new Debtor shall assume the same obligations and become entitled to the same rights as if it had been an original Party to this Agreement as a Debtor.

16.11 Additional parties

- (a) Each of the Parties appoints the Security Agent to receive on its behalf each Debtor Accession Deed and Creditor/Agent Accession Undertaking delivered to the Security Agent and the Security Agent shall, as soon as reasonably practicable after receipt by it, sign and accept the same if it appears on its face to have been completed, executed and, where applicable, delivered in the form contemplated by this Agreement or, where applicable, by the relevant Senior Facilities Agreement.

- (b) In the case of a Creditor/Agent Accession Undertaking delivered to the Security Agent by any new Ancillary Lender (which is an Affiliate of a Senior Lender) or any party acceding to this Agreement as a Hedge Counterparty:
 - (i) the Security Agent shall, as soon as practicable after signing and accepting that Creditor/Agent Accession Undertaking in accordance with 16.11(a), deliver that Creditor/Agent Accession Undertaking to the Agent; and
 - (ii) the Agent shall, as soon as practicable after receipt by it, sign and accept that Creditor/Agent Accession Undertaking if it appears on its face to have been completed, executed and delivered in the form contemplated by this Agreement.

16.12 Resignation of a Debtor

- (a) The Agent shall not accept a Resignation Letter (as defined in the Senior Facilities Agreement) from a Senior Guarantor under clause 29.5 (*Resignation of a Guarantor*) of the Senior Facilities Agreement unless each Hedge Counterparty has notified the Security Agent that no payment is due from that Guarantor to that Hedge Counterparty under clause 21.1 (*Guarantee and indemnity*) of the Senior Facilities Agreement. The Security Agent shall, upon receiving that notification, notify the Agent.
- (b) The Parent may request that a Debtor ceases to be a Debtor by delivering to the Security Agent a Debtor Resignation Request.
- (c) The Security Agent shall accept a Debtor Resignation Request and notify the Parent and each other Party of its acceptance if:
 - (i) the Parent has confirmed that no Default is continuing or would result from the acceptance of the Debtor Resignation Request;
 - (ii) to the extent that the Senior Lender Discharge Date has not occurred, the Agent notifies the Security Agent that that Debtor is not, or has ceased to be, a Senior Borrower or a Senior Guarantor;
 - (iii) each Hedge Counterparty notifies the Security Agent that that Debtor is under no actual or contingent obligations to that Hedge Counterparty in respect of the Hedging Liabilities; and
 - (iv) the Parent confirms that that Debtor is under no actual or contingent obligations in respect of the Intra-Group Liabilities.
- (d) Upon notification by the Security Agent to the Parent of its acceptance of the resignation of a Debtor, that member of the Group shall cease to be a Debtor and shall have no further rights or obligations under this Agreement as a Debtor.

17. COSTS AND EXPENSES

17.1 Security Agent's ongoing costs

- (a) In the event of (i) a Default or (ii) the Security Agent considering it necessary or expedient or (iii) the Security Agent being requested by a Debtor or the Majority Senior Creditors to undertake duties which the Security Agent and the Parent agree to

be of an exceptional nature and/or outside the scope of the normal duties of the Security Agent under the Debt Documents, the Parent shall pay to the Security Agent any additional remuneration (together with any applicable VAT) that may be agreed between them.

- (b) If the Security Agent and the Parent fail to agree upon the nature of those duties or upon any additional remuneration, that dispute shall be determined by an investment bank (acting as an expert and not as an arbitrator) selected by the Security Agent and approved by the Parent or, failing approval, nominated (on the application of the Security Agent) by the President for the time being of the Law Society of England and Wales (the costs of the nomination and of the investment bank being payable by the Parent) and the determination of any investment bank shall be final and binding upon the parties to this Agreement.

17.2 Transaction expenses

The Parent shall, promptly on demand, procure the payment to the Security Agent of the amount of all costs and expenses (including legal fees) (together with any applicable VAT) reasonably incurred by the Security Agent and any Receiver or Delegate in connection with the negotiation, preparation, printing, execution, syndication and perfection of:

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

17.3 Stamp taxes

The Parent shall pay and, within three Business Days of demand, indemnify the Security Agent against any cost, loss or liability the Security Agent incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Debt Document.

17.4 Interest on demand

If any Creditor, Investor or Debtor fails to pay any amount payable by it under this Agreement on its due date, interest shall accrue on the overdue amount (and be compounded with it) from the due date up to the date of actual payment (both before and after judgment and to the extent interest at a default rate is not otherwise being paid on that sum) at the rate which is one per cent per annum over the rate at which the Security Agent 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.

17.5 Enforcement and preservation costs

The Parent shall, within three Business Days of demand, pay to the Security Agent the amount of all costs and expenses (including legal fees and together with any applicable VAT) incurred by it in connection with the enforcement 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.

18. INDEMNITIES

18.1 Debtors' indemnity

Each Debtor shall promptly indemnify the Security Agent and every Receiver and Delegate against any cost, loss or liability (together with any applicable VAT) incurred by any of them:

- (a) in relation to or as a result of:
 - (i) any failure by the Parent to comply with obligations under clause 17 (*Costs and Expenses*);
 - (ii) the taking, holding, protection or enforcement of the Transaction Security;
 - (iii) the exercise of any of the rights, powers, discretions and remedies vested in the Security Agent, each Receiver and each Delegate by the Debt Documents or by law; or
 - (iv) any default by any Debtor in the performance of any of the obligations expressed to be assumed by it in the Debt Documents; or
- (b) which otherwise relates to any of the Security Property or in acting as Security Agent, Receiver or Delegate under the terms of the Debt Documents (otherwise than as a direct result of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct).

Each Debtor expressly acknowledges and agrees that the continuation of its indemnity obligations under this clause 18.1 will not be prejudiced by any release or disposal under clause 11.2 (*Distressed Disposals*) taking into account the operation of that clause 11.2 (*Distressed Disposals*).

18.2 Priority of indemnity

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 clause 18.1 (*Debtors' indemnity*) 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.

18.3 Senior Creditors' indemnity

- (a) Each Senior Creditor shall (in the proportion that the Liabilities due to it bears to the aggregate of the Liabilities due to all the Senior Creditors for the time being (or, if the Liabilities due to each of those Senior Creditors is zero, immediately prior to their being reduced to zero)), indemnify the Security Agent and every Receiver and every Delegate, within three Business Days of demand, against any cost, loss or liability incurred by any of them (otherwise than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct) in acting as Security Agent, Receiver or Delegate under the Debt Documents (unless the relevant Security Agent, Receiver or Delegate has been reimbursed by a Debtor pursuant to a Debt Document) and the Debtors shall jointly and severally indemnify each Senior Creditor against any payment made by it under this clause 18.

(b) For the purposes only of clause 18.3(a), to the extent that any hedging transaction under a Hedging Agreement has not been terminated or closed-out, the Hedging Liabilities due to any Hedge Counterparty in respect of that hedging transaction will be deemed to be:

- (i) if the relevant Hedging Agreement is based on an ISDA Master Agreement, the amount, if any, which would be payable to it under that Hedging Agreement in respect of those hedging transactions, if the date on which the calculation is made was deemed to be an Early Termination Date (as defined in the relevant ISDA Master Agreement) for which the relevant Debtor is the Defaulting Party (as defined in the relevant ISDA Master Agreement); or
- (ii) if the relevant Hedging Agreement is not based on an ISDA Master Agreement, the amount, if any, which would be payable to it under that Hedging Agreement in respect of that hedging transaction, if the date on which the calculation is made was deemed to be the date on which an event similar in meaning and effect (under that Hedging Agreement) to an Early Termination Date (as defined in any ISDA Master Agreement) occurred under that Hedging Agreement for which the relevant Debtor is in a position similar in meaning and effect (under that Hedging Agreement) to that of a Defaulting Party (under and as defined in the same ISDA Master Agreement),

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

18.4 Parent's indemnity to Senior Creditors

The Parent shall promptly and as principal obligor indemnify each Senior Creditor against any cost, loss or liability (together with any applicable VAT), whether or not reasonably foreseeable, incurred by any of them in relation to or arising out of the operation of clause 11.2 (*Distressed Disposals*).

18.5 Continuing obligations

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

19. INFORMATION

19.1 Information and dealing

- (a) The Creditors and the Investors shall provide to the Security Agent from time to time (through the Agent in the case of a Senior Lender) any information that the Security Agent may reasonably specify as being necessary or desirable to enable the Security Agent to perform its functions as trustee.
- (b) Subject to clause 35.5 (*Communication when Agent is Impaired Agent*) of the Senior Facilities Agreement, each Senior Lender shall deal with the Security Agent exclusively through the Agent and the Hedge Counterparties shall deal directly with the Security Agent and shall not deal through the Agent.

- (c) The Agent shall not be under any obligation to act as agent or otherwise on behalf of any Hedge Counterparty except as expressly provided for in, and for the purposes of, this Agreement.

19.2 Disclosure

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

19.3 Notification of prescribed events

- (a) If an Event of Default or Default either occurs or ceases to be continuing the Agent shall, upon becoming aware of that occurrence or cessation, notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each Hedge Counterparty.
- (b) If an Acceleration Event occurs the Agent shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each other Party.
- (c) If the Security Agent enforces, or takes formal steps to enforce, any of the Transaction Security it shall notify each Party of that action.
- (d) If any Senior Creditor exercises any right it may have to enforce, or to take formal steps to enforce, any of the Transaction Security it shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each Party of that action.
- (e) If a Debtor defaults on any Payment due under a Hedging Agreement, the Hedge Counterparty which is party to that Hedging Agreement shall, upon becoming aware of that default, notify the Security Agent and the Security Agent shall, upon receiving that notification, notify the Agent and each other Hedge Counterparty.
- (f) If a Hedge Counterparty terminates or closes-out, in whole or in part, any hedging transaction under any Hedging Agreement under clause 4.9 (*Permitted Enforcement: Hedge Counterparties*) it shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify the Agent and each other Hedge Counterparty.
- (g) If a Senior Mandatory Prepayment is waived the Agent shall notify the Security Agent of the amount of the Senior Mandatory Prepayment waived and the Security Agent shall, upon receiving that notification, notify each Hedge Counterparty.
- (h) If any of the Term Outstandings are to be reduced (whether by way of repayment, prepayment, cancellation or otherwise) the Parent shall notify each Hedge Counterparty of:
 - (i) the date and amount of that proposed reduction;
 - (ii) any Interest Rate Hedge Excess that would result from that proposed reduction and that Hedge Counterparty's Interest Rate Hedge Proportion (if any) of that Interest Rate Hedge Excess; and

- (iii) any Exchange Rate Hedge Excess that would result from that proposed reduction and that Hedge Counterparty's Exchange Rate Hedge Proportion (if any) of that Exchange Rate Hedge Excess.

20. NOTICES

20.1 Communications in writing

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

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

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

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

20.3 Addresses

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

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

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

20.4 Delivery

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

and, if a particular department or officer is specified as part of its address details provided under clause 20.3 (*Addresses*), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to the Security Agent will be effective only when actually received by the Security Agent and then only if it is

expressly marked for the attention of the department or officer identified with the Security Agent's signature below (or any substitute department or officer as the Security Agent shall specify for this purpose).

- (c) Any communication or document made or delivered to the Parent in accordance with this clause 20.4 will be deemed to have been made or delivered to each of the Debtors.

20.5 Notification of address and fax number

Promptly upon receipt of notification of an address and fax number or change of address or fax number pursuant to clause 20.3 (*Addresses*) or changing its own address or fax number, the Security Agent shall notify the other Parties.

20.6 Electronic communication

- (a) Any communication to be made between the Security Agent and the Agent, an Arranger, a Senior Lender or a Hedge Counterparty under or in connection with this Agreement may be made by electronic mail or other electronic means, if the Security Agent and the Agent or the relevant Arranger, Senior Lender or Hedge Counterparty:
 - (i) agree that, unless and until notified to the contrary, this is to be an accepted form of communication;
 - (ii) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
 - (iii) notify each other of any change to their address or any other such information supplied by them.
- (b) Any electronic communication made between the Security Agent and the Agent, an Arranger, a Senior Lender or a Hedge Counterparty will be effective only when actually received in readable form and in the case of any electronic communication made by a Senior Lender, Hedge Counterparty, Arranger or the Agent to the Security Agent only if it is addressed in such a manner as the Security Agent shall specify for this purpose.

20.7 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.

21. PRESERVATION

21.1 Partial invalidity

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

21.2 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.

21.3 Remedies and waivers

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

21.4 Waiver of defences

The provisions of this Agreement will not be affected by an act, omission, matter or thing which, but for this clause 21.4, would reduce, release or prejudice the subordination and priorities expressed to be created by this Agreement including (without limitation and whether or not known to any Party):

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

- (g) any intermediate Payment of any of the Liabilities owing to the Senior Creditors in whole or in part; or
- (h) any insolvency or similar proceedings.

21.5 Priorities not affected

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

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

22. CONSENTS, AMENDMENTS AND OVERRIDE

22.1 Required consents

- (a) Subject to clause 22.1(b), to clause 22.4 (*Exceptions*) and to clause 22.5 (*Disenfranchisement of Sponsor Affiliates*), this Agreement may be amended or waived only with the consent of the Agent, the Majority Senior Lenders and the Security Agent.
- (b) An amendment or waiver that has the effect of changing or which relates to:
 - (i) clause 9 (*Redistribution*), clause 12 (*Application of Proceeds*) or this clause 22;
 - (ii) clauses 14.3(d)(iii), 14.3(e) and 14.3(f);
 - (iii) clause 3.3 (*Increase of Priority Senior Liabilities*);
 - (iv) the order of priority or subordination under this Agreement,
 shall not be made without the consent of:
 - (A) the Agent;
 - (B) the Senior Lenders;
 - (C) each Hedge Counterparty (to the extent that the amendment or waiver would adversely affect the Hedge Counterparty); and
 - (D) the Security Agent.

22.2 Amendments and Waivers: Transaction Security Documents

- (a) Subject to clause 22.2(b) and to clause 22.4 (*Exceptions*) and unless the provisions of any Debt Document expressly provide otherwise, the Security Agent may, if authorised by the Majority Senior Creditors, and if the Parent consents, amend the terms of, waive any of the requirements of or grant consents under, any of the Transaction Security Documents which shall be binding on each Party.
- (b) Subject to clause 22.4(c), the prior consent of the Senior Creditors is required to authorise any amendment or waiver of, or consent under, any Transaction Security Document which would affect the nature or scope of the Charged Property or the manner in which the proceeds of enforcement of the Transaction Security are distributed.

22.3 Effectiveness

Any amendment, waiver or consent given in accordance with this clause 22 will be binding on all Parties and the Security Agent may effect, on behalf of the Agent or any Arranger or Creditor, any amendment, waiver or consent permitted by this clause 22.

22.4 Exceptions

- (a) Subject to clauses 22.4(c) and 22.4(d), if the amendment, waiver or consent may impose new or additional obligations on or withdraw or reduce the rights of any Party other than:
 - (i) in the case of a Senior Creditor, in a way which affects or would affect Senior Creditors of that Party's class generally; or
 - (ii) in the case of a Debtor, to the extent consented to by the Parent under clause 22.2(a) (*Amendments and Waivers: Transaction Security Documents*), the consent of that Party is required.
- (b) Subject to clauses 22.4(c) and 22.4(d), an amendment, waiver or consent which relates to the rights or obligations of the Agent, an Arranger, the Security Agent (including, without limitation, any ability of the Security Agent to act in its discretion under this Agreement) or a Hedge Counterparty may not be effected without the consent of the Agent or, as the case may be, that Arranger, the Security Agent or that Hedge Counterparty.
- (c) Neither clause 22.4(a) nor 22.4(b), nor clause 22.2(b) 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 (*Proceeds of Disposals, Recoveries from Report Providers and Adjustment of senior Mandatory Prepayments*).
- (d) Clauses 22.4(a) and 22.4(b) shall apply to an Arranger only to the extent that Arranger Liabilities are then owed to that Arranger.

22.5 Disenfranchisement of Sponsor Affiliates

- (a) For so long as a Sponsor Affiliate (i) beneficially owns a Senior Commitment or (ii) has entered into a sub-participation agreement relating to a Senior Commitment or other agreement or arrangement having a substantially similar economic effect and such agreement or arrangement has not been terminated:
 - (i) in ascertaining:
 - (A) the Majority Senior Creditors; or
 - (B) whether:
 - (1) any relevant percentage (including, for the avoidance of doubt, unanimity) of Senior Credit Participations; or
 - (2) the agreement of any specified group of Senior Creditors,has been obtained to approve any request for a Consent or to carry any other vote or approve any action under this Agreement,
 - (ii) that Senior Commitment shall be deemed to be zero and, subject to clause 22.5(a)(ii), that Sponsor Affiliate (or the person with whom it has entered into that sub-participation, other agreement or arrangement (a "Counterparty")) shall be deemed not to be a Senior Lender save to the extent that a Counterparty is a Senior Lender by virtue otherwise than by beneficially owning the relevant Senior Commitment.
- (b) Each Sponsor Affiliate that is a Senior Lender agrees that:
 - (i) in relation to any meeting or conference call to which all the Senior Creditors, or any combination of those groups of Senior Creditors are invited to attend or participate, it shall not attend or participate in the same if so requested by the Security Agent or, unless the Security Agent otherwise agrees, be entitled to receive the agenda or any minutes of the same; and
 - (ii) it shall not, unless the Security Agent otherwise agrees, be entitled to receive any report or other document prepared at the behest of, or on the instructions of, the Security Agent or one or more of the Senior Creditors.

22.6 Disenfranchisement of Defaulting Lenders

- (a) For so long as a Defaulting Lender has any Available Commitment:
 - (i) in ascertaining:
 - (A) the Majority Senior Creditors; or
 - (B) whether:
 - (1) any relevant percentage (including, for the avoidance of doubt, unanimity) of Senior Credit Participations; or
 - (2) the agreement of any specified group of Senior Creditors,

has been obtained to approve any request for a Consent or to carry any other vote or approve any action under this Agreement,

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

(b) For the purposes of this clause 22.6, the Security Agent may assume that the following Creditors are Defaulting Lenders:

- (i) any Senior Lender which has notified the Security Agent that it has become a Defaulting Lender;
- (ii) any Senior Lender to the extent that the Agent has notified the Security Agent that that Senior Lender is a Defaulting Lender; and
- (iii) any Senior Lender in relation to which it is aware that any of the events or circumstances referred to in paragraphs (a), (b) or (c) of the definition of "Defaulting Lender" in the Senior Facilities Agreement has occurred,

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

(c) Clauses 22.6(a) and 22.6(b) shall not apply to HSBC Bank plc for so long as it is a party to this Agreement.

22.7 Calculation of Senior Credit Participations

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

22.8 Deemed consent

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

- (a) give a corresponding Consent in equivalent terms in relation to each of the Debt Documents to which they are a party; and
- (b) do anything (including executing any document) that the Senior Lenders may reasonably require to give effect to clause 22.8.

22.9 Excluded consents

Clause 22.8 (*Deemed consent*) does not apply to any Consent which has the effect of:

- (a) increasing or decreasing the Liabilities;

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

22.10 No liability

None of the Senior Lenders or the Agent will be liable to any other Creditor, Investor, Agent or Debtor for any Consent given or deemed to be given under this clause 22.

22.11 Agreement to override

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

23. 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.

24. GOVERNING LAW

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

25. ENFORCEMENT

25.1 Jurisdiction

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a "**Dispute**").
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) This clause 25.1 is for the benefit of the Secured Parties only. As a result, no Secured Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Secured Parties may take concurrent proceedings in any number of jurisdictions.

25.2 Service of process

- (a) Without prejudice to any other mode of service allowed under any relevant law:
 - (i) each Debtor (unless incorporated in England and Wales):
 - (A) irrevocably appoints Rickerbys LLP as its agent for service of process in relation to any proceedings before the English courts in connection with this Agreement and the Parent, by its execution of this Agreement, accepts that appointment; and

- (B) agrees that failure by a process agent to notify the relevant Debtor of the process will not invalidate the proceedings concerned;
- (ii) each Investor (unless incorporated in England and Wales):
 - (A) irrevocably appoints the Rickerbys LLP as its agent for service of process in relation to any proceedings before the English courts in connection with this Agreement; and
 - (B) agrees that failure by a process agent to notify the relevant Investor of the process will not invalidate the proceedings concerned.
- (b) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Parent (in the case of an agent for service of process for a Debtor), the relevant Investor must immediately (and in any event within five days of such event taking place) appoint another agent on terms acceptable to the Agent. Failing this, the Agent may appoint another agent for this purpose.
- (c) Each Debtor and Investor expressly agrees and consents to the provisions of this clause 25 and clause 24 (*Governing Law*).

This Agreement has been entered into on the date stated at the beginning of this Agreement and executed as a deed by the Intra-Group Lenders, the Debtors and the Investors and is intended to be and is delivered by them as a deed on the date specified above.

**SCHEDULE 1: SENIOR LENDERS, ORIGINAL HEDGE COUNTERPARTIES,
INVESTORS, INTRA-GROUP LENDERS AND ORIGINAL DEBTORS**

Part 1: Senior Lenders

HSBC Bank plc

ICG Senior Debt Partners SV 1 SA

Intermediate Capital Group PLC

MCG Capital Corporation

Part 2: Original Hedge Counterparty

HSBC Bank plc

Part 3: Investors

Name	Registration number (or equivalent, if any) and Jurisdiction
Battery Ventures IX, LP	4792030
Battery Investment Partners IX, LLC	4807209
David Hunter	n/a
Martin Rennie	n/a
George McGregor	n/a

Part 4: Intra Group Lenders

Name	Registration number (or equivalent, if any) and Jurisdiction
Parent	45-2805704, Delaware, USA
GMI Holdco, Inc	45-3250473, Delaware, USA
GMI Group Holdings Limited	SC352822, Scotland
Gas Measurement Instruments Limited	SC025020, Scotland
Detcon, Inc	76-0164396, Texas, USA
DSA Detection LLC	20-3506093, Delaware, USA
DSA Holdco, Inc	46-1117860, Delaware, USA

Detcon Holdco, Inc	45-3250671, Delaware, USA
--------------------	---------------------------

Part 5: Original Debtors

Name	Registration number (or equivalent, if any) and Jurisdiction
Parent	45-2805704, Delaware, USA
GMI Holdco, Inc	45-3250473, Delaware, USA
GMI Group Holdings Limited	SC352822, Scotland
Gas Measurement Instruments Limited	SC025020, Scotland
Detcon, Inc	76-0164396, Texas, USA
DSA Detection LLC	20-3506093, Delaware, USA
DSA Holdco, Inc	46-1117860, Delaware, USA
Detcon Holdco, Inc	45-3250671, Delaware, USA
Simtronics AS	
Simtronics SAS	

SCHEDULE 2: FORM OF DEBTOR ACCESSION DEED

THIS AGREEMENT is made on [◆]] 20[◆] and made between:

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

This agreement is made on [◆]] 20[◆] by the Acceding Debtor in relation to an intercreditor agreement (the "Intercreditor Agreement") dated [◆]] 20[◆] between, amongst others, [◆]] as parent, [◆]] as company, [◆]] as security agent, [◆]] as agent, the other Creditors and the other Debtors (each as defined in the Intercreditor Agreement).

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

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

(the "Relevant Documents").

IT IS AGREED as follows:

1. Terms defined in the Intercreditor Agreement shall, unless otherwise defined in this Agreement, bear the same meaning when used in this Agreement.
2. The Acceding Debtor and the Security Agent agree that the Security Agent shall hold:
 - (a) [any Security in respect of Liabilities created or expressed to be created pursuant to the Relevant Documents;
 - (b) all proceeds of that Security; and]
 - (c) all obligations expressed to be undertaken by the Acceding Debtor to pay amounts in respect of the Liabilities to the Security Agent as trustee for the Secured Parties (in the Relevant Documents or otherwise) and secured by the Transaction Security together with all representations and warranties expressed to be given by the Acceding Debtor (in the Relevant Documents or otherwise) in favour of the Security Agent as trustee for the Secured Parties,
 - (d) on trust for the Secured Parties on the terms and conditions contained in the Intercreditor Agreement.
3. The Acceding Debtor confirms that it intends to be party to the Intercreditor Agreement as a Debtor, undertakes to perform all the obligations expressed to be assumed by a Debtor under the Intercreditor Agreement and agrees that it shall be bound by all the provisions of the Intercreditor Agreement as if it had been an original party to the Intercreditor Agreement.
4. [In consideration of the Acceding Debtor being accepted as an Intra-Group Lender for the purposes of the Intercreditor Agreement, the Acceding Debtor also confirms that it intends to be party to the Intercreditor Agreement as an Intra-Group Lender, and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by an Intra-Group

Lender and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement].

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

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

The Acceding Debtor

[EXECUTED AS A DEED

By: [*Full Name of Acceding Debtor*]

)

)

Director

Director/Secretary

OR

[EXECUTED AS A DEED

By: [*Full Name of Acceding Debtor*]

)

)

Signature of Director

Name of Director

in the presence of

Signature of witness

Name of witness

Address of witness

Occupation of witness]

Address for notices:

Address: [◆]

Fax: [◆]

The Security Agent

[Full Name of Current Security Agent]

By: [◆]

Date: [◆] 20[◆]

SCHEDULE 3: FORM OF CREDITOR/AGENT ACCESSION UNDERTAKING

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

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

From: *[Acceding Creditor/Agent]*

THIS UNDERTAKING is made on [♦] 20[♦] by *[insert full name of new Senior Lender/Hedge Counterparty/Agent/Intra-Group Lender/[Investor]]* (the "Acceding *[Senior Lender/Counterparty/Agent/Intra-Group Lender/[Investor]]*") in relation to the intercreditor agreement (the "Intercreditor Agreement") dated [♦] 20[♦] between, among others, *[insert name of Parent]* as parent, *[insert name of company]* as company, *[insert name of security agent]* as security agent, *[insert name of agent]* as agent, the other Creditors and the other Debtors (each as defined in the Intercreditor Agreement). Terms defined in the Intercreditor Agreement shall, unless otherwise defined in this Undertaking, bear the same meanings when used in this Undertaking.

In consideration of the Acceding *[Senior Lender/Hedge Counterparty /Agent/Intra-Group Lender/[Investor]]* being accepted as a *[Senior Lender/Hedge Counterparty/ Intra-Group Lender/Agent/[Investor]]* for the purposes of the Intercreditor Agreement, the Acceding *[Senior Lender/Hedge Counterparty/Agent/Intra-Group Lender/[Investor]]* confirms that, as from [♦] 20[♦], it intends to be party to the Intercreditor Agreement as a *[Senior Lender/Hedge Counterparty/Agent/Intra-Group Lender/[Investor]]* and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a *[Senior Lender/Hedge Counterparty/Agent/Intra-Group Lender/ [Investor]]* and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement.

[The Acceding Lender is an Affiliate of a Senior Lender and has become a provider of an Ancillary Facility. In consideration of the Acceding Lender being accepted as an Ancillary Lender for the purposes of the Senior Facilities Agreement, the Acceding Lender confirms, for the benefit of the parties to the Senior Facilities Agreement, that, as from [♦] 20[♦], it intends to be party to the Senior Facilities Agreement as an Ancillary Lender, and undertakes to perform all the obligations expressed in the Senior Facilities Agreement to be assumed by a Finance Party and agrees that it shall be bound by all the provisions of the Senior Facilities Agreement, as if it had been an original party to the Senior Facilities Agreement as an Ancillary Lender.]

[The Acceding Hedge Counterparty has become a provider of hedging arrangements to the *[Company]*. In consideration of the Acceding Hedge Counterparty being accepted as a Hedge Counterparty for the purposes of the Senior Facilities Agreement, the Acceding Hedge Counterparty confirms, for the benefit of the parties to the Senior Facilities Agreement, that, as from [♦] 20[♦], it intends to be party to the Senior Facilities Agreement as a Hedge Counterparty, and undertakes to perform all the obligations expressed in the Senior Facilities Agreement to be assumed by a Hedge Counterparty and agrees that it shall be bound by all the provisions of the Senior Facilities Agreement, as if it had been an original party to the Senior Facilities Agreement as a Hedge Counterparty.]

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

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

Acceding [Creditor/Agent]

[EXECUTED as a DEED]

[insert full name of Acceding Creditor/Agent]

By: [◆]

Address: [◆]

Fax: [◆]

Accepted by the Security Agent

[Accepted by the Agent]

for and on behalf of

for and on behalf of

[Insert full name of current Security Agent]

[Insert full name of Agent]

Date: [◆] 20[◆]

Date: [◆] 20[◆]

SCHEDULE 4: FORM OF DEBTOR RESIGNATION REQUEST

To: [◆] as Security Agent

From: [*resigning Debtor*] and [*Parent*]

Dated: [◆] 20[◆]

Dear Sirs

[PARENT] - [◆] INTERCREDITOR AGREEMENT DATED [◆] 20[◆] (THE "INTERCREDITOR AGREEMENT")

1. We refer to the Intercreditor Agreement. This is a Debtor Resignation Request. Terms defined in the Intercreditor Agreement have the same meaning in this Debtor Resignation Request unless given a different meaning in this Debtor Resignation Request.
2. Pursuant to clause [16.12] (*Resignation of a Debtor*) of the Intercreditor Agreement we request that [*resigning Debtor*] be released from its obligations as a Debtor under the Intercreditor Agreement.
3. We confirm that:
 - (a) no Default is continuing or would result from the acceptance of this request; and
 - (b) [*resigning Debtor*] is under no actual or contingent obligations in respect of the Intra-Group Liabilities.
4. This letter and any non-contractual obligations arising out of or in connection with it are governed by English law.

[*Parent*]

[*resigning Debtor*]

By: _____

By: _____

EXECUTION PAGES

THE PARENT

EXECUTED AS A DEED)
By: **INDUSTRIAL SAFETY**)
TECHNOLOGIES, LLC

Signature of Director

Name of Director

in the presence of:

Signature of witness

Name of witness

Address of witness

Occupation of witness

Address: 3200 Research Forest Drive
A-1 The Woodlands
Texas 77381

and

Rickerbys LLP
Ellenborough House
Wellington Street
Cheltenham
Gloucestershire
England GL50 1YD
United Kingdom

Fax: (281) 298-2868

Attention: Jesse Feldman and Rickerbys
LLP Managing Partner

THE ORIGINAL DEBTORS

EXECUTED AS A DEED

By: **INDUSTRIAL SAFETY**)
TECHNOLOGIES, LLC)

Signature of Director

Name of Director

in the presence of:

Signature of witness

Name of witness

Address of witness

Occupation of witness

Address: 3200 Research Forest Drive
A-1 The Woodlands
Texas 77381

and

Rickerbys LLP
Ellenborough House
Wellington Street
Cheltenham
Gloucestershire
England GL50 1YD
United Kingdom

Fax: (281) 298-2868

Attention: Jesse Feldman and Rickerbys
LLP Managing Partner

EXECUTED AS A DEED

By: **GMI HOLDCO, INC**

)

)

Signature of Director

Name of Director

in the presence of:

Signature of witness

Name of witness

Address of witness

Occupation of witness

Address: 3200 Research Forest Drive
A-1 The Woodlands
Texas 77381

and

Rickerbys LLP
Ellenborough House
Wellington Street
Cheltenham
Gloucestershire
England GL50 1YD
United Kingdom

Fax: (281) 298-2868

Attention: Jesse Feldman and Rickerbys
LLP Managing Partner

EXECUTED AS A DEED)
By: GMI GROUP HOLDINGS)
LIMITED

Signature of Director

Name of Director _____

in the presence of:

Signature of witness

Name of witness

Address of witness

Occupation of witness

Address: Block 2, Inchiman Business
Park,
Renfrew,
Strathclyde,
Scotland
PA4 9TG

and

Rickerbys LLP
Ellenborough House
Wellington Street
Cheltenham
Gloucestershire
England GL50 1YD
United Kingdom

Fax: 0141 302 8210

Attention: David Hunter and Rickerbys
LLP Managing Partner

EXECUTED AS A DEED)
By: GAS MEASUREMENT)
INSTRUMENTS LIMITED

_____ Signature of Director

_____ Name of Director

in the presence of:

_____ Signature of witness

_____ Name of witness

_____ Address of witness

_____ Occupation of witness

Address: Block 2, Inchiman Business
Park,
Renfrew,
Strathclyde,
Scotland
PA4 97G

and

Rickerbys LLP
Ellenborough House
Wellington Street
Cheltenham
Gloucestershire
England GL50 1YD
United Kingdom

Fax: 0141 302 8210

Attention: David Hunter and Rickerbys
LLP Managing Partner

EXECUTED AS A DEED
By: DSA DETECTION LLC

)
)

Signature of Director

Name of Director

in the presence of:

Signature of witness

Name of witness

Address of witness

Occupation of witness

Address: 3200 Research Forest Drive
A-1 The Woodlands
Texas 77381

and

Rickerbys LLP
Ellenborough House
Wellington Street
Cheltenham
Gloucestershire
England GL50 1YD
United Kingdom

Fax: (281) 298-2868

Attention: Jesse Feldman and Rickerbys
LLP Managing Partner

EXECUTED AS A DEED

By: DSA HOLDCO, INC

)

)

Signature of Director

Name of Director

in the presence of:

Signature of witness

Name of witness

Address of witness

Occupation of witness

Address: 3200 Research Forest Drive
A-1 The Woodlands
Texas 77381

and

Rickerbys LLP
Ellenborough House
Wellington Street
Cheltenham
Gloucestershire
England GL50 1YD
United Kingdom

Fax: (281) 298-2868

Attention: Jesse Feldman and Rickerbys
LLP Managing Partner

EXECUTED AS A DEED
By: DETCON HOLDCO, INC

)
)

Signature of Director

Name of Director

in the presence of:

Signature of witness

Name of witness

Address of witness

Occupation of witness

Address: 3200 Research Forest Drive
A-1 The Woodlands
Texas 77381

and

Rickerbys LLP
Ellenborough House
Wellington Street
Cheltenham
Gloucestershire
England GL50 1YD
United Kingdom

Fax: (281) 298-2868

Attention: Jesse Feldman and Rickerbys
LLP Managing Partner

EXECUTED AS A DEED

By: **DETCO, INC**

)
)

Signature of Director

Name of Director

in the presence of:

Signature of witness

Name of witness

Address of witness

Occupation of witness

Address: 3200 Research Forest Drive
A-1 The Woodlands
Texas 77381

and

Rickerbys LLP
Ellenborough House
Wellington Street
Cheltenham
Gloucestershire
England GL50 1YD
United Kingdom

Fax: (281) 298-2868

Attention: Jesse Feldman and Rickerbys
LLP Managing Partner

THE SECURITY AGENT

HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED

By:



Ryan O'Rourke
Authorised Signatory

Address: HSBC Corporate Trustee
Company (UK) Limited
8 Canada Square
Level 27
London
E14 5HQ
United Kingdom

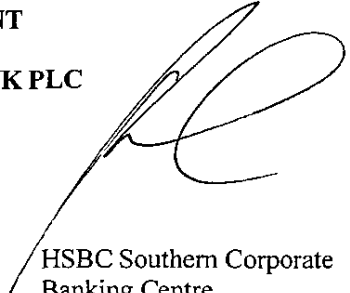
Facsimile No: +44 (0)20 7991 4350

Attention: CTLA Trustee Services
Administration

THE AGENT

HSBC BANK PLC

By:



Ryan O'Rourke
Authorised Signatory

Address: HSBC Southern Corporate
Banking Centre
Global House
High Street
Crawley RH10 1DL

Facsimile No: +44 (0)8455 854 145

Attention: David Sales

THE SENIOR LENDERS

HSBC BANK PLC

By:

Address: HSBC Southern Corporate
Banking Centre
Global House
High Street
Crawley RH10 1DL

Facsimile No: +44 (0)8455 854 145

Attention: David Sales

ICG SENIOR DEBT PARTNERS SV 1 SA

By:

Address: 33, rue de Gasperich
L-5826 Hesperange
Grand Duchy of Luxembourg

Fax: +44(0)1534 849 327

Attention: Michele Foley & Peter Goddard

INTERMEDIATE CAPITAL GROUP PLC

By:

Address: Juxon House
100 St Paul's Churchyard
London
EC4M 8BU

Fax: +44 (0)20 3201 7906

Attention: Kate Pocock

MCG CAPITAL CORPORATION

By:

Address: 1001 19th Street N
10th Floor
Arlington
VA 22209

Fax: (703) 247-7505

Attention: Steve Diverio

THE ARRANGER

HSBC BANK PLC

By:

Address: HSBC Southern Corporate
Banking Centre
Global House
High Street
Crawley RH10 1DL

Facsimile No: +44 (0)8455 854 145

Attention: David Sales

INTERMEDIATE CAPITAL MANAGERS LIMITED

By:

Address: Juxon House
100 St Paul's Churchyard
London
EC4M 8BU

Fax: +44 (0)20 3201 7906

Attention: Kate Pocock

MCG CAPITAL CORPORATION

By:

Address: 1001 19th Street N
10th Floor
Arlington
VA 22209

Fax: (703) 247-7505

Attention: Steve Diverio

THE ORIGINAL HEDGE COUNTERPARTY

HSBC BANK PLC

By:

Address: HSBC Southern Corporate
Banking Centre
Global House
High Street
Crawley RH10 1DL

Facsimile No: +44 (0)8455 854 145

Attention: David Sales

THE INTRA-GROUP LENDERS

EXECUTED AS A DEED)
By: **INDUSTRIAL SAFETY**)
TECHNOLOGIES, LLC

Signature of Director

Name of Director

in the presence of:

Signature of witness

Name of witness

Address of witness

Occupation of witness

Address: 3200 Research Forest Drive
A-1 The Woodlands
Texas 77381

and

Rickerbys LLP
Ellenborough House
Wellington Street
Cheltenham
Gloucestershire
England GL50 1YD
United Kingdom

Fax: (281) 298-2868

Attention: Jesse Feldman and Rickerbys
LLP Managing Partner

EXECUTED AS A DEED

By: **GMI HOLDCO, INC**

)

)

Signature of Director

Name of Director

in the presence of:

Signature of witness

Name of witness

Address of witness

Occupation of witness

Address: 3200 Research Forest Drive
A-1 The Woodlands
Texas 77381

and

Rickerbys LLP
Ellenborough House
Wellington Street
Cheltenham
Gloucestershire
England GL50 1YD
United Kingdom

Fax: (281) 298-2868

Attention: Jesse Feldman and Rickerbys
LLP Managing Partner

EXECUTED AS A DEED)
By: GMI GROUP HOLDINGS)
LIMITED

Signature of Director

Name of Director

in the presence of:

Signature of witness

Name of witness

Address of witness

Occupation of witness

Address: Block 2, Inchiman Business
Park,
Renfrew,
Strathclyde,
Scotland
PA4 97G

and

Rickerbys LLP
Ellenborough House
Wellington Street
Cheltenham
Gloucestershire
England GL50 1YD
United Kingdom

Fax: 0141 302 8210

Attention: David Hunter and Rickerbys
LLP Managing Partner

EXECUTED AS A DEED)
By: GAS MEASUREMENT)
INSTRUMENTS LIMITED

_____ Signature of Director

_____ Name of Director

in the presence of:

_____ Signature of witness

_____ Name of witness

_____ Address of witness

_____ Occupation of witness

Address: Block 2, Inchiman Business
Park,
Renfrew,
Strathclyde,
Scotland
PA4 97G

and

Rickerbys LLP
Ellenborough House
Wellington Street
Cheltenham
Gloucestershire
England GL50 1YD
United Kingdom

Fax: 0141 302 8210

Attention: David Hunter and Rickerbys
LLP Managing Partner

EXECUTED AS A DEED
By: DSA DETECTION LLC

)
)

Signature of Director

Name of Director

in the presence of:

Signature of witness

Name of witness

Address of witness

Occupation of witness

Address: 3200 Research Forest Drive
A-1 The Woodlands
Texas 77381

and

Rickerbys LLP
Ellenborough House
Wellington Street
Cheltenham
Gloucestershire
England GL50 1YD
United Kingdom

Fax: (281) 298-2868

Attention: Jesse Feldman and Rickerbys
LLP Managing Partner

EXECUTED AS A DEED

By: DSA HOLDCO, INC

)

)

Signature of Director

Name of Director

in the presence of:

Signature of witness

Name of witness

Address of witness

Occupation of witness

Address: 3200 Research Forest Drive
A-1 The Woodlands
Texas 77381

and

Rickerbys LLP
Ellenborough House
Wellington Street
Cheltenham
Gloucestershire
England GL50 1YD
United Kingdom

Fax: (281) 298-2868

Attention: Jesse Feldman and Rickerbys
LLP Managing Partner

EXECUTED AS A DEED
By: DETCON HOLDCO, INC

)
)

Signature of Director

Name of Director

in the presence of:

Signature of witness

Name of witness

Address of witness

Occupation of witness

Address: 3200 Research Forest Drive
A-1 The Woodlands
Texas 77381

and

Rickerbys LLP
Ellenborough House
Wellington Street
Cheltenham
Gloucestershire
England GL50 1YD
United Kingdom

Fax: (281) 298-2868

Attention: Jesse Feldman and Rickerbys
LLP Managing Partner

EXECUTED AS A DEED

By: **DETCO, INC**

)
)

Signature of Director

Name of Director

in the presence of:

Signature of witness

Name of witness

Address of witness

Occupation of witness

Address: 3200 Research Forest Drive
A-1 The Woodlands
Texas 77381

and

Rickerbys LLP
Ellenborough House
Wellington Street
Cheltenham
Gloucestershire
England GL50 1YD
United Kingdom

Fax: (281) 298-2868

Attention: Jesse Feldman and Rickerbys
LLP Managing Partner

THE INVESTORS

EXECUTED AS A DEED

By: **BATTERY VENTURES IX, LP**

)

)

Signature of Director

Name of Director

in the presence of:

Signature of witness

Name of witness

Address of witness

Occupation of witness

Address: [◆]

Fax: [◆]

Attention: [◆]

EXECUTED AS A DEED)
BY: BATTERY INVESTMENT)
PARTNERS IX, LLC

Signature of Director

Name of Director

in the presence of:

Signature of witness

Name of witness

Address of witness

Occupation of witness

Address: [◆]

Fax: [◆]

Attention: [◆]

EXECUTED AS A DEED
BY: DAVID HUNTER

)
)

Signature

in the presence of:

Signature of witness

Name of witness

Address of witness

Occupation of witness

Address: Block 2, Inchiman Business
Park,
Renfrew,
Strathclyde,
Scotland
PA4 97G

and

Rickerbys LLP
Ellenborough House
Wellington Street
Cheltenham
Gloucestershire
England GL50 1YD
United Kingdom

Fax: 0141 302 8210

Attention: David Hunter and Rickerbys
LLP Managing Partner

EXECUTED AS A DEED

BY: MARTIN RENNIE

)

)

Signature

in the presence of:

Signature of witness

Name of witness

Address of witness

Occupation of witness

Address: Block 2, Inchiman Business
Park,
Renfrew,
Strathclyde,
Scotland
PA4 97G

and

Rickerbys LLP
Ellenborough House
Wellington Street
Cheltenham
Gloucestershire
England GL50 1YD
United Kingdom

Fax: 0141 302 8210

Attention: Martin Rennie and Rickerbys
LLP Managing Partner

EXECUTED AS A DEED)
BY: GEORGE MCGREGOR)

Signature

in the presence of:

Signature of witness

Name of witness

Address of witness

Occupation of witness

Address: Block 2, Inchiman Business
Park,
Renfrew,
Strathclyde,
Scotland
PA4 97G

and

Rickerbys LLP
Ellenborough House
Wellington Street
Cheltenham
Gloucestershire
England GL50 1YD
United Kingdom

Fax: 0141 302 8210

Attention: George McGregor and
Rickerbys LLP

EXECUTION VERSION

DATED

31 October

2013

- (1) HSBC BANK PLC
as Agent
- (2) THE FINANCIAL INSTITUTIONS LISTED IN PART 1 OF SCHEDULE 1
as Senior Lenders
- (3) HSBC BANK PLC, INTERMEDIATE CAPITAL MANAGERS LIMITED AND MCG
CAPITAL CORPORATION
as Arranger
- (4) THE FINANCIAL INSTITUTION LISTED IN PART 2 OF SCHEDULE 1
as Original Hedge Counterparty
- (5) THE PERSONS AND ENTITIES LISTED IN PART 3 OF SCHEDULE 1
as Investors
- (6) INDUSTRIAL SAFETY TECHNOLOGIES, LLC
as Parent
- (7) THE COMPANIES LISTED IN PART 4 OF SCHEDULE 1
as Intra-Group Lenders
- (8) THE COMPANIES LISTED IN PART 5 OF SCHEDULE 1
as Original Debtors
- (9) HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED
as Security Agent

INTERCREDITOR
AGREEMENT

CERTIFIED TO BE A TRUE AND COMPLETE
COPY OF THE ORIGINAL
DATED THIS 14 DAY OF November 2013

Pinsent Masons LLP

Pinsent Masons LLP


Pinsent Masons

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THIS AGREEMENT is made on

31 October

2013

BETWEEN:

- (1) HSBC BANK PLC as Agent (the "Agent");
- (2) THE FINANCIAL INSTITUTIONS listed in part 1 of schedule 1 as Senior Lenders (the "Senior Lenders");
- (3) HSBC BANK PLC, INTERMEDIATE CAPITAL MANAGERS LIMITED AND MCG CAPITAL CORPORATION as Arranger (whether acting collectively or individually the "Arranger");
- (4) THE FINANCIAL INSTITUTIONS listed in part 2 of schedule 1 as Original Hedge Counterparty (the "Original Hedge Counterparty");
- (5) THE PERSONS AND ENTITIES listed in part 3 of schedule 1 as the Investors (the "Investors");
- (6) INDUSTRIAL SAFETY TECHNOLOGIES, LLC as the Parent (the "Parent");
- (7) THE COMPANIES listed in part 4 of schedule 1 as Intra-Group Lenders (the "Intra-Group Lenders");
- (8) THE COMPANIES listed in part 5 of schedule 1 as Debtors (the "Original Debtors"); and
- (9) HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED as security agent for the Secured Parties (the "Security Agent").

IT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

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

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

"Acceleration Event" means the Agent exercising any of its rights under clause 26.21 (*Acceleration*) of the Senior Facilities Agreement;

"Affiliate" has the meaning given to that term in the Senior Facilities Agreement;

"Agent Liabilities" means all present and future liabilities and obligations, actual and contingent, of any Debtor to the Agent under the Senior Finance Documents;

"Aggregate Exchange Rate Hedged Amount" means, in relation to a Hedge Counterparty, the aggregate of the notional amounts denominated in a Hedged Currency hedged by the

relevant Debtors under each Hedging Agreement which is an exchange rate hedge transaction and to which that Hedge Counterparty is party;

"Aggregate Interest Rate Hedged Amount" means, in relation to a Hedge Counterparty, the aggregate of the notional amounts hedged by the relevant Debtors under each Hedging Agreement which is an interest rate hedge transaction and to which that Hedge Counterparty is party;

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

"Ancillary Document" has the meaning given to that term in the Senior Facilities Agreement;

"Ancillary Facility" has the meaning given to that term in the Senior Facilities Agreement;

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

"Arranger Liabilities" means all present and future liabilities and obligations, actual and contingent, of any Debtor to any Arranger under the Senior Finance Documents;

"Available Commitment" has the meaning given to that term in the Senior Facilities Agreement;

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

"Business Day" has the meaning given to that term in the Senior Facilities Agreement;

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

"Close-Out Netting" means:

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

Agreement which has a similar effect to either provision referenced in paragraph (a) and paragraph (b);

"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 US Dollars;

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

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

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

and which ranks in the order of priority contemplated in clause 2.2 (*Transaction Security*);

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

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

"Creditor/Agent Accession Undertaking" means:

- (a) an undertaking substantially in the form set out in schedule 3 (*Form of Creditor/Agent Accession Undertaking*);
- (b) a Transfer Certificate or an Assignment Agreement (each as defined in the Senior Facilities Agreement); or
- (c) an Increase Confirmation (as defined in the Senior Facilities Agreement);

as the context may require, or

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

"Creditors" means the Senior Lenders, the Hedge Counterparties and the Intra-Group Lenders;

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

"Debtor" means each Original Debtor and any person which becomes a Party as a Debtor in accordance with the terms of clause 16 (*Changes to the Parties*);

"Debtor Accession Deed" means:

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

"Debtor Liabilities" means, in relation to a member of the Group, any liabilities owed to any Debtor (whether actual or contingent and whether incurred solely or jointly) by that member of the Group;

"Debtor Resignation Request" means a notice substantially in the form set out in schedule 4 (*Form of Debtor Resignation Request*);

"Default" means a Default under, and as defined in, the Senior Facilities Agreement;

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

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

"Designated Gross Amount" means, in relation to a Multi-account Overdraft Facility, that Multi-account Overdraft Facility's maximum gross amount;

"Designated Net Amount" means, in relation to a Multi-account Overdraft Facility, that Multi-account Overdraft Facility's maximum net amount;

"Disposal Proceeds" has the meaning given to that term in clause 11 (*Proceeds of Disposals, Recoveries from Report Providers and Adjustment of senior Mandatory Prepayments*);

"Distress Event" means:

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

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

- (a) being effected at the request of the Majority Senior Creditors in circumstances where the Transaction Security has become enforceable;
- (b) being effected by enforcement of the Transaction Security; or

- (c) being effected, after the occurrence of a Distress Event, by a Debtor to a person or persons which is not a member of the Group;

"Enforcement Action" means:

- (a) in relation to any Liabilities:
 - (i) the acceleration of any Liabilities or the making of any declaration that any Liabilities are prematurely due and payable (other than as a result of it becoming unlawful for a Senior Lender to perform its obligations under, or of any voluntary or mandatory prepayment arising under, the Debt Documents);
 - (ii) the making of any declaration that any Liabilities are payable on demand;
 - (iii) the making of a demand in relation to a Liability that is payable on demand;
 - (iv) the making of any demand against any member of the Group in relation to any Guarantee Liabilities of that member of the Group;
 - (v) the exercise of any right to require any member of the Group to acquire any Liability (including exercising any put or call option against any member of the Group for the redemption or purchase of any Liability);
 - (vi) the exercise of any right of set-off, account combination or payment netting against any member of the Group in respect of any Liabilities other than the exercise of any such right:
 - (A) as Close-Out Netting by a Hedge Counterparty or by a Hedging Ancillary Lender;
 - (B) as Payment Netting by a Hedge Counterparty or by a Hedging Ancillary Lender;
 - (C) as Inter-Hedging Agreement Netting by a Hedge Counterparty;
 - (D) as Inter-Hedging Ancillary Document Netting by a Hedging Ancillary Lender; and
 - (E) which is otherwise expressly permitted under the Senior Facilities Agreement to the extent that the exercise of that right gives effect to a Permitted Payment; and
 - (vii) the suing for, commencing or joining of any legal or arbitration proceedings against any member of the Group to recover any Liabilities;
- (b) the premature termination or close-out of any hedging transaction under any Hedging Agreement;
- (c) the taking of any steps to enforce or require the enforcement of any Transaction Security (including the crystallisation of any floating charge forming part of the Transaction Security);
- (d) the entering into of any composition, compromise, assignment or arrangement with any member of the Group which owes any Liabilities, or has given any Security,

guarantee or indemnity or other assurance against loss in respect of the Liabilities (other than any action permitted under clause 16 (*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, administration or reorganisation of any member of the Group which owes any Liabilities, or has given any Security, guarantee, indemnity or other assurance against loss in respect of any of the Liabilities, or any of such member of the Group's assets or any suspension of payments or moratorium of any indebtedness of any such member of the Group, or any analogous procedure or step in any jurisdiction,

except that the following shall not constitute Enforcement Action:

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

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

"Exchange Rate Hedge Excess" means the amount by which the Total Exchange Rate Hedged Amount exceeds the Permitted Maximum Exchange Rate Hedged Amount;

"Exchange Rate Hedge Proportion" means, in relation to a Hedge Counterparty and that Hedge Counterparty's Aggregate Exchange Rate Hedged Amount, the proportion (expressed as a percentage) borne by that Hedge Counterparty's Aggregate Exchange Rate Hedged Amount to the Total Exchange Rate Hedged Amount;

"Exposure" has the meaning given to that term in clause 13.1 (*Equalisation Definitions*);

"Facility C Lender" means, a Senior Lender that has made available a Facility C Loan, in its capacity as a Lender under such Facility C Loans only;

"Facility C Liabilities" means, at any time, the Liabilities owing to a Facility C Lender in its capacity as a Facility C Lender only;

"Finance Party" has the meaning given to that term in the Senior Facilities Agreement;

"Financial Indebtedness" has the meaning given to that term in the Senior Facilities Agreement;

"Group" has the meaning given to that term in the Senior Facilities Agreement;

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

"Hedge Counterparty" means:

- (a) any person which is named in part 2 of schedule 1 (*Senior Lenders, Original Hedge Counterparties, Investors, intra-group lenders and original debtors*) as a Hedge Counterparty and;
- (b) any person which becomes Party as a Hedge Counterparty pursuant to clause 16.9 (*Creditor/Agent Accession Undertaking*),

which, in each case, is or has become party to the Senior Facilities Agreement as a Hedge Counterparty;

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

"Hedged Currency" means the currency in which a Term Loan (or part of a Term Loan) is denominated and which is required, under the terms of the Hedging Letter, to be hedged in respect of exchange rate risk;

"Hedging Agreement" means any agreement entered into by a Hedge Counterparty and defined as such in the Senior Facilities Agreement;

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

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

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

"Hedging Letter" has the meaning given to that term in the Senior Facilities Agreement;

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

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

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

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

"Holding Company" has the meaning given to that term in the Senior Facilities Agreement;

"Impaired Agent" means the Agent to the extent it is an Impaired Agent under, and as defined in, the Senior Facilities Agreement;

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

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

"Intercreditor Amendment" means any amendment or waiver which is subject to clause 22 (*Consents, Amendments and Override*);

"Interest Rate Hedge Excess" means the amount by which the Total Interest Rate Hedged Amount exceeds the Permitted Maximum Interest Rate Hedged Amount;

"Interest Rate Hedge Proportion" means, in relation to a Hedge Counterparty and that Hedge Counterparty's Aggregate Interest Rate Hedged Amount, the proportion (expressed as a percentage) borne by that Hedge Counterparty's Aggregate Interest Rate Hedged Amount to the Total Interest Rate Hedged 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 Senior 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 is listed in part 3 of schedule 1 (*Senior Lenders, Original Hedge Counterparties, Investors, intra-group lenders and original debtors*) or which becomes a party as an Intra-Group Lender in accordance with the terms of clause 16 (*Changes to the Parties*);

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

"ISDA Master Agreement" means a 1992 ISDA Master Agreement or a 2002 ISDA Master Agreement;

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

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

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

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

- (a) purchases by way of assignment or transfer;
- (b) enters into any sub-participation in respect of; or

- (c) enters into any other agreement or arrangement having an economic effect substantially similar to a sub-participation in respect of,

the rights and benefits in respect of those Liabilities;

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

"Majority Senior Lenders" has the meaning given to the term *"Majority Lenders"* in the Senior Facilities Agreement after the application of:

- (a) clause 28.2 (*Disenfranchisement on Debt Purchase Transactions entered into by Sponsor Affiliates*); and
- (b) clause 39.5 (*Disenfranchisement of Defaulting Lenders*),

of the Senior Facilities Agreement;

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

"Multi-account Overdraft Liabilities" means Liabilities arising under any Multi-account Overdraft Facility;

"Non-Credit Related Close-Out" means a Permitted Hedge Close-Out described in any of clauses 4.9(a)(i), 4.9(a)(iii) or 4.9(a)(vii);

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

"Party" means a party to this Agreement;

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

"Payment Netting" means:

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

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

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

"Permitted Hedge Payments" means the Payments permitted by clause 4.3 (*Permitted Payments: Hedging Liabilities*);

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

"Permitted Investor Payments" means the Payments permitted by clause 6.2 (*Permitted Payments: Subordinated Liabilities*);

"Permitted Maximum Exchange Rate Hedged Amount" means an amount equal to the Term Outstandings (or such greater amount as the Agent (acting on the instructions of the Majority Senior Lenders) otherwise agrees);

"Permitted Maximum Interest Rate Hedged Amount" means an amount equal to the Term Outstandings (or such greater amount as the Agent (acting on the instructions of the Majority Senior Lenders) otherwise agrees);

"Permitted Payment" means a Permitted Hedge Payment, a Permitted Intra-Group Payment, a Permitted Senior Lender Payment or a Permitted Investor Payment;

"Permitted Senior Lender Payments" means the Payments permitted by clause 3.1 (*Payment of Senior Lender Liabilities*);

"Priority Principal Increase" means any increase in the principal amount of the Priority Senior Lender Liabilities (as set out in the Senior Facilities Agreement as at the date of this Agreement)

"Priority Headroom" means, at any time and in relation to a Priority Principal Increase (the **"Relevant Priority Principal Increase"**), US\$9,000,000 less

- (a) the Base Currency Amount of the aggregate amount of any Priority Principal Increases other than:
 - (i) the Relevant Priority Principal Increase; and
 - (ii) any Priority Principal Increase which has been agreed to by the Facility C Lenders

"Priority Senior Lender " means each Senior Lender other than a Facility C Lender

"Priority Senior Lender Liabilities" means the Senior Lender Liabilities other than the Facility C Liabilities;

"Priority Senior Lender Liabilities Transfer" means a transfer of the Senior Lender Liabilities to the Facility C Lenders described in Clause 3.9 (*Option to purchase: Facility C Lenders*)

"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 12.1 (*Order of application*);

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

"Relevant Liabilities" means:

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

"Report" has the meaning given to that term in the Senior Facilities Agreement;

"Retiring Security Agent" has the meaning given to that term in clause 15 (*Change of Security Agent and Delegation*);

"Revolving Facility" has the meaning given to that term in the Senior Facilities Agreement;

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

"Secured Parties" means the Security Agent, any Receiver or Delegate, the Agent, the Arrangers and the Senior Creditors from time to time but, in the case of the Agent, an Arranger or a Senior Creditor, only if it is a party to this Agreement or (in the case of the Agent or a Senior Creditor) has acceded to this Agreement, in the appropriate capacity, pursuant to clause 16.9 (*Creditor/Agent Accession Undertaking*);

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

"Security Documents" means:

- (a) each of the Transaction Security Documents;
- (b) any other document entered into at any time by any of the Debtors 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 set out in paragraphs (a) and (b);

"Security Property" means:

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

"Senior Borrower" has the meaning given to the term "*Borrower*" in the Senior Facilities Agreement;

"Senior Commitment" has the meaning given to the term "*Commitment*" in the Senior Facilities Agreement;

"Senior Creditors" means the Senior Lenders and the Hedge Counterparties;

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

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

- (ii) if the relevant Hedging Agreement is not based on an ISDA Master Agreement, the amount, if any, which would be payable to it under that Hedging Agreement in respect of that hedging transaction, if the date on which the calculation is made was deemed to be the date on which an event similar in meaning and effect (under that Hedging Agreement) to an Early Termination Date (as defined in any ISDA Master Agreement) occurred under that Hedging Agreement for which the relevant Debtor is in a position similar in meaning and effect (under that Hedging Agreement) to that of a Defaulting Party (under and as defined in the same ISDA Master Agreement),

that amount, in each case, to be certified by the relevant Senior Creditor and as calculated in accordance with the relevant Hedging Agreement;

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

"Senior Facility" has the meaning given to the term "*Facility*" in the Senior Facilities Agreement;

"Senior Facilities Agreement" means the senior facilities agreement made between the Parent, the Senior Lenders and others dated 17 October 2012;

"Senior Finance Documents" has the meaning given to the term "*Finance Documents*" in the Senior Facilities Agreement;

"Senior Guarantor" has the meaning given to the term "*Guarantor*" in the Senior Facilities Agreement;

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

"Senior Lender Liabilities" means the Liabilities owed by the Debtors to the Senior Lenders under the Senior Finance Documents;

"Senior Lenders" means each Lender (as defined in the Senior Facilities Agreement) and Ancillary Lender;

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

"Senior Liabilities" means the Senior Lender Liabilities and the Hedging Liabilities;

"Senior Mandatory Prepayment" means a mandatory prepayment of any of the Senior Lender Liabilities pursuant to clause 10.2 (*Disposal, Insurance and Acquisition Proceeds and Excess Cashflow*) of the Senior Facilities Agreement;

"Senior Term Facilities" means each term loan facility made available under the Senior Facilities Agreement;

"SFA Cash Cover" has the meaning given to the term *"cash cover"* in the Senior Facilities Agreement;

"SFA Cash Cover Document" means, in relation to any SFA Cash Cover, any Senior Finance Document which creates or evidences, or is expressed to create or evidence, the Security required to be provided over that SFA Cash Cover by paragraph (iii) of the term *"cash cover"* as used in the Senior Facilities Agreement;

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

"Subordinated Liabilities" means all Liabilities (including, for the avoidance of doubt, any dividends or distributions) owed to the Investors (or any of them) by the Parent or any other member of the Group;

"Subsidiary" has the meaning given to that term in the Senior Facilities Agreement;

"Taxes" has the meaning given to that term in the Senior Facilities Agreement;

"Term Loan" means any loan made under a Senior Term Facility;

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

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

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

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

"Transaction Security Documents" has the meaning given to that term in the Senior Facilities Agreement; and

"VAT" means value added tax as provided for in the Value Added Tax Act 1994 and any other tax of a similar nature.

1.2 Construction

(a) Unless a contrary indication appears, a reference in this Agreement to:

- (i) any **"Agent"**, **"Ancillary Lender"**, **"Arranger"**, **"Creditor"**, **"Debtor"**, **"Hedge Counterparty"**, **"Intra-Group Lender"**, **"Investor"**, **"Parent"**, **"Party"**, **"Security Agent"**, **"Senior Borrower"**, **"Senior Creditor"**, **"Senior Guarantor"** or **"Senior Lender"** shall be construed to be a reference to it in its capacity as such and not in any other capacity;
- (ii) any **"Agent"**, **"Ancillary Lender"**, **"Arranger"**, **"Creditor"**, **"Debtor"**, **"Hedge Counterparty"**, **"Investor"**, any **"Party"** or the **"Security Agent"** or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees and, in the case of the Security

Agent, any person for the time being appointed as Security Agent or Security Agents in accordance with this Agreement;

- (iii) **"assets"** includes present and future properties, revenues and rights of every description;
 - (iv) a **"Debt Document"** or any other agreement or instrument is (other than a reference to a **"Debt Document"** or any other agreement or instrument in **"original form"**) a reference to that Debt Document, or other agreement or instrument, as amended, novated, supplemented, extended or restated as permitted by this Agreement;
 - (v) **"enforcing"** (or any derivation) the Transaction Security shall include the appointment of an administrator of a Debtor by the Security Agent;
 - (vi) **"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;
 - (vii) 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;
 - (viii) a **"person"** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
 - (ix) a **"director"** includes any person holding an equivalent office in any member of the Group;
 - (x) a **"regulation"** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation; and
 - (xi) a provision of law is a reference to that provision as amended or re-enacted.
- (b) Section, clause and schedule headings are for ease of reference only.
 - (c) A Default (other than an Event of Default) is *"continuing"* if it has not been remedied or waived and an Event of Default is *"continuing"* if it has not been waived.

1.3 Third Party Rights

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

- (c) Any Receiver, Delegate or any other person described in clause 14.9 (*No Proceedings*) may, subject to this clause 1.3 and the Third Parties Rights Act, rely on any clause of this Agreement which expressly confers rights on it.

1.4 Existing Intercreditor Agreement

The Parties confirm that this Agreement shall replace the existing security sharing agreement dated 8 December 2011 and made between certain of the Parties hereto

2. RANKING AND PRIORITY

2.1 Senior Creditor Liabilities

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

2.2 Transaction Security

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

2.3 Subordinated and Intra-Group Liabilities

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

3. SENIOR LENDERS AND SENIOR LENDER LIABILITIES

3.1 Payment of Senior Lender Liabilities

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

3.2 Amendments and Waivers: Senior Lenders

- (a) Subject to clause 3.2(b), the Senior Lenders may amend or waive the terms of the Senior Finance Documents (other than this Agreement or any Security Document) in accordance with their terms (and subject to any consent required under them) at any time.
- (b) Without prejudice to clause 11.2 (*Distressed Disposals*), the Senior Lenders may not:
 - (i) amend or waive the terms of the Senior Finance Documents if the amendment or waiver:
 - (A) would have the effect of changing, or relates to, the nature or scope of the guarantee and indemnity granted under clause 21 (*Guarantee and Indemnity*) of the Senior Facilities Agreement; or

- (B) relates to the release of any guarantee and indemnity granted under clause 21 (*Guarantee and Indemnity*) of the Senior Facilities Agreement unless expressly envisaged by the original form of a Senior Finance Document or relating to a sale or disposal of an asset which is a Non-Distressed Disposal; or
- (ii) consent to the resignation of a member of the Group which has granted a guarantee and indemnity under clause 21 (*Guarantee and Indemnity*) of the Senior Facilities Agreement unless each Hedge Counterparty has notified the Security Agent that no payment is due to it from that member of the Group under clause 21 (*Guarantee and Indemnity*) of the Senior Facilities Agreement,

unless the prior consent of the Hedge Counterparties is obtained.

3.3 Increase of Priority Senior Lender Liabilities

The Majority Lenders may from time to time, effect a Priority Principal Increase in an amount which does not exceed the Priority Headroom at that time, and the amount of that Priority Principal Increase (together with interest, fees and commission on that amount) shall be treated as being part of the Senior Liabilities and the Priority Senior Lender Liabilities.

3.4 Designation of Senior Finance Documents

The Agent and the Parent shall not designate a document a "*Finance Document*" for the purposes of the Senior Facilities Agreement without the prior consent of the Hedge Counterparties if the terms of that document effect a change which would otherwise require the consent of the Hedge Counterparties under clause 3.2 (*Amendments and Waivers: Senior Lenders*).

3.5 Security: Senior Lenders

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

- (a) any Security in respect of the Senior Lender Liabilities in addition to the Common Transaction Security if (except for any Security, permitted under clause 3.6 (*Security: Ancillary Lenders*)) and to the extent legally possible and subject to any Agreed Security Principles, at the same time it is also offered either:
 - (i) to the Security Agent as trustee for the other Secured Parties in respect of their Liabilities; or
 - (ii) in the case of any jurisdiction in which effective Security cannot be granted in favour of the Security Agent as trustee for the Secured Parties:
 - (A) to the other Secured Parties in respect of their Liabilities; or
 - (B) to the Security Agent under a parallel debt structure for the benefit of the other Secured Parties,

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

- (b) any guarantee, indemnity or other assurance against loss in respect of the Senior Lender Liabilities in addition to those in:

- (i) the original form of Senior Facilities Agreement;
- (ii) this Agreement; or
- (iii) any Common Assurance,

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

3.6 Security: Ancillary Lenders

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

- (a) the Common Transaction Security;
- (b) each guarantee, indemnity or other assurance against loss contained in:
 - (i) the original form of Senior Facilities Agreement;
 - (ii) this Agreement; or
 - (iii) any Common Assurance;
- (c) indemnities and assurances against loss contained in the Ancillary Documents no greater in extent than any of those referred to in clause 3.6(b);
- (d) any SFA Cash Cover permitted under the Senior Facilities Agreement relating to any Ancillary Facility;
- (e) the indemnities contained in an ISDA Master Agreement (in the case of a Hedging Ancillary Document which is based on an ISDA Master Agreement) or any indemnities which are similar in meaning and effect to those indemnities (in the case of a Hedging Ancillary Document which is not based on an ISDA Master Agreement); or
- (f) any Security, guarantee, indemnity or other assurance against loss giving effect to, or arising as a result of the effect of, any netting or set-off arrangement relating to the Ancillary Facilities for the purpose of netting debit and credit balances arising under the Ancillary Facilities.

3.7 Restriction on Enforcement: Ancillary Lenders

Subject to clause 3.8 (*Permitted Enforcement: Ancillary Lenders*), so long as any of the Senior Liabilities (other than any Liabilities owed to the Ancillary Lenders) are or may be

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

3.8 Permitted Enforcement: Ancillary Lenders

- (a) The Ancillary Lenders may take Enforcement Action if:
 - (i) at the same time as, or prior to, that action, Enforcement Action has been taken in respect of the Senior Lender Liabilities (excluding the Liabilities owing to Ancillary Lenders), in which case the Ancillary Lenders may take the same Enforcement Action as has been taken in respect of those Senior Lender Liabilities;
 - (ii) that action is contemplated by the Senior Facilities Agreement or clause 3.6 (*Security: Ancillary Lenders*);
 - (iii) that Enforcement Action is taken in respect of SFA Cash Cover which has been provided in accordance with the Senior Facilities Agreement;
 - (iv) at the same time as or prior to, that action, the consent of the Majority Senior Creditors to that Enforcement Action is obtained; or
 - (v) an Insolvency Event has occurred in relation to 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 to:
 - (A) accelerate any of that member of the Group's Senior Lender Liabilities or declare them prematurely due and payable on demand;
 - (B) make a demand under any guarantee, indemnity or other assurance against loss given by that member of the Group in respect of any Senior Lender Liabilities;
 - (C) exercise any right of set-off or take or receive any Payment in respect of any Senior Lender Liabilities of that member of the Group; or
 - (D) claim and prove in the liquidation of that member of the Group for the Senior Lender Liabilities owing to it.
- (b) Clause 3.7 (*Restriction on Enforcement: Ancillary Lenders*) shall not restrict any right of an Ancillary Lender to net or set-off in relation to a Multi-account Overdraft Facility, in accordance with the terms of the Senior Facilities Agreement, to the extent that the netting or set-off represents a reduction from a Permitted Gross Amount of that Multi-account Overdraft Facility to or towards its Designated Net Amount.

3.9 Option to purchase: Facility C Lenders

- (a) Subject to paragraph (b) below, all the Facility C Lenders (acting as a whole) may at any time when an Event of Default is continuing by giving not less than ten days' notice to the Security Agent, require the transfer to them (or to a nominee or nominees), in accordance with Clause 16.3 (*Change of Senior Lender*), of all, but not

part, of the rights and obligations in respect of the Priority Senior Lender Liabilities if:

- (i) that transfer is lawful and subject to paragraph (ii) below, otherwise permitted by the terms of the Senior Facilities Agreement;
 - (ii) any conditions relating to such a transfer contained in the Senior Facilities Agreement are complied with, other than any requirement to obtain the consent of, or consult with, any Debtor or other member of the Group relating to such transfer, which consent or consultation shall not be required;
 - (iii) the Senior Agent, on behalf of the Priority Senior Lenders, is paid an amount equal to the aggregate of:
 - (A) all of the Priority Senior Lender Liabilities at that time (whether or not due), including all amounts that would have been payable under the Senior Facilities Agreement if the Senior Facilities (other than Facility C) were being prepaid by the relevant Debtors on the date of that payment; and
 - (B) all costs and expenses (including legal fees) incurred by the Senior Agent and/or the Priority Senior Lenders as a consequence of giving effect to that transfer;
 - (iv) as a result of that transfer the Priority Senior Lenders have no further actual or contingent liability to any Debtor under the relevant Debt Documents;
 - (v) an indemnity is provided from each Facility C Lender (or from another third party acceptable to all the Priority Senior Lenders) in a form satisfactory to each Priority Senior Lender in respect of all losses which may be sustained or incurred by any Priority Senior Lender in consequence of any sum received or recovered by any Priority Senior Lender from any person being required (or it being alleged that it is required) to be paid back by or clawed back from any Priority Senior Lender for any reason; and
 - (vi) the transfer is made without recourse to, or representation or warranty from, the Priority Senior Lenders, except that each Priority Senior Lender shall be deemed to have represented and warranted on the date of that transfer that it has the corporate power to effect that transfer and it has taken all necessary action to authorise the making by it of that transfer.
- (b) Subject to paragraph (b) of Clause 3.10 (*Hedge Transfer: Facility C Lenders*), all the Facility C Lenders (acting as a whole) may only require a Priority Senior Lender Liabilities Transfer if, at the same time, they require a Hedge Transfer in accordance with Clause 3.10 (*Hedge Transfer: Facility C Lenders*) and if, for any reason, a Hedge Transfer cannot be made in accordance with Clause 3.10 (*Hedge Transfer: Facility C Lenders*), no Priority Senior Lender Liabilities Transfer may be required to be made.

- (c) The Senior Agent shall, at the request of all the Facility C Lenders (acting as a whole) notify the Facility C Lenders of the sum of the amounts described in paragraph (a)(iii) above.

3.10 Hedge Transfer: Facility C Lenders

- (a) All the Facility C Lenders (acting as a whole) may, by giving not less than ten days' notice to the Security Agent, require a Hedge Transfer:
 - (i) If all the Facility C Lenders (acting as a whole) require, at the same time, a Priority Senior Lender Liabilities Transfer; and
 - (ii) if:
 - (A) that transfer is lawful and otherwise permitted by the terms of the Hedging Agreements in which case no Debtor or other member of the Group shall be entitled to withhold its consent to that transfer;
 - (B) any conditions (other than the consent of, or any consultation with, any Debtor or other member of the Group) relating to that transfer contained in the Hedging Agreements are complied with;
 - (C) each Hedge Counterparty is paid (in the case of a positive number) or pays (in the case of a negative number) an amount equal to the aggregate of (i) the Hedging Purchase Amount in respect of the hedging transactions under the relevant Hedging Agreement at that time and (ii) all costs and expenses (including legal fees) incurred as a consequence of giving effect to that transfer;
 - (D) as a result of that transfer, the Hedge Counterparties have no further actual or contingent liability to any Debtor under the Hedging Agreements;
 - (E) an indemnity is provided from each Facility C Lender which is receiving (or for which a nominee is receiving) that transfer (or from another third party acceptable to the relevant Hedge Counterparty) in a form satisfactory to the relevant Hedge Counterparty in respect of all losses which may be sustained or incurred by that Hedge Counterparty in consequence of any sum received or recovered by that Hedge Counterparty being required (or it being alleged that it is required) to be paid back by or clawed back from the Hedge Counterparty for any reason; and
 - (F) that transfer is made without recourse to, or representation or warranty from, the relevant Hedge Counterparty, except that the relevant Hedge Counterparty shall be deemed to have represented and warranted on the date of that transfer that it has the corporate power to effect that transfer and it has taken all necessary action to authorise the making by it of that transfer.

- (b) All the Facility C Lenders (acting as a whole) and any Hedge Counterparty may agree (in respect of the Hedging Agreements (or one or more of them) to which that Hedge Counterparty is a party) that a Hedge Transfer required by all the Facility C Lenders (acting as a whole) pursuant to paragraph (a) above shall not apply to that Hedging Agreement(s) or to the Hedging Liabilities and Hedge Counterparty Obligations under that Hedging Agreement(s).

4. HEDGE COUNTERPARTIES AND HEDGING LIABILITIES

4.1 Identity of Hedge Counterparties

- (a) Subject to clause 4.1(b), no person providing hedging arrangements to any Debtor shall be entitled to share in any of the Transaction Security or in the benefit of any guarantee or indemnity in respect of any of the liabilities arising in relation to those hedging arrangements nor shall those liabilities be treated as Hedging Liabilities unless that person is or becomes a party to:
 - (i) this Agreement as a Hedge Counterparty; and
 - (ii) the Senior Facilities Agreement as a Hedge Counterparty.
- (b) Clause 4.1(a) shall not apply to a Hedging Ancillary Lender.

4.2 Restriction on Payment: Hedging Liabilities

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

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

4.3 Permitted Payments: Hedging Liabilities

- (a) Subject to clause 4.3(b), 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:
 - (A) any of sections 2(d) (*Deduction or Withholding for Tax*), 2(e) (*Default Interest; Other Amounts*), 8(a) (*Payment in the Contractual Currency*), 8(b) (*Judgments*) and 11 (*Expenses*) of the 1992 ISDA Master Agreement (if the Hedging Agreement is based on a 1992 ISDA Master Agreement);

- (B) any of sections 2(d) (*Deduction or Withholding for Tax*), 8(a) (*Payment in the Contractual Currency*), 8(b) (*Judgments*), 9(h)(i) (*Prior to Early Termination*) and 11 (*Expenses*) of the 2002 ISDA Master Agreement of that Hedging Agreement (if the Hedging Agreement is based on a 2002 ISDA Master Agreement); or
 - (C) any provision of a Hedging Agreement which is similar in meaning and effect to any provision listed in clauses 4.3(a)(ii)(A) or 4.3(a)(ii)(B) (if the Hedging Agreement is not based on an ISDA Master Agreement);
- (iii) to the extent that the relevant Debtor's obligation to make the Payment arises from a Non-Credit Related Close-Out;
- (iv) to the extent that:
 - (A) the relevant Debtor's obligation to make the Payment arises from a Credit Related Close-Out in relation to that Hedging Agreement; and
 - (B) no Event of Default is continuing at the time of that Payment; or
- (v) if the Majority Senior Creditors give prior consent to the Payment being made.
- (b) No Payment may be made to a Hedge Counterparty under clause 4.3(a) if any scheduled Payment due from that Hedge Counterparty to a Debtor under a Hedging Agreement to which they are both party is due and unpaid.
- (c) Failure by a Debtor to make a Payment to a Hedge Counterparty which results solely from the operation of clause 4.3(b) 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.

4.4 Payment obligations continue

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

4.5 No acquisition of Hedging Liabilities

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

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

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

4.6 Amendments and Waivers: Hedging Agreements

- (a) Subject to clause 4.6(b), the Hedge Counterparties may not, at any time, amend or waive any term of the Hedging Agreements.
- (b) A Hedge Counterparty may amend or waive any term of a Hedging Agreement in accordance with the terms of that Hedging Agreement if:
 - (i) that amendment or waiver does not breach another term of this Agreement; and
 - (ii) that amendment or waiver would not result in a breach of clause 25.32 (*Compliance with Hedging Letter*) of the Senior Facilities Agreement.

4.7 Security: Hedge Counterparties

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

- (a) the Common Transaction Security;
- (b) any guarantee, indemnity or other assurance against loss contained in:
 - (i) the original form of Senior Facilities Agreement;
 - (ii) this Agreement;
 - (iii) any Common Assurance; or
 - (iv) the relevant Hedging Agreement no greater in extent than any of those referred to in clauses 4.7(b)(i) to 4.7(b)(iii);
- (c) as otherwise contemplated by clause 3.5 (*Security: Senior Lenders*); and
- (d) the indemnities contained in the ISDA Master Agreements (in the case of a Hedging Agreement which is based on an ISDA Master Agreement) or any indemnities which are similar in meaning and effect to those indemnities (in the case of a Hedging Agreement which is not based on an ISDA Master Agreement).

4.8 Restriction on Enforcement: Hedge Counterparties

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

4.9 Permitted Enforcement: Hedge Counterparties

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

- (i) if, prior to a Distress Event, the Parent has certified to that Hedge Counterparty that that termination or close-out would not result in a breach of clause 25.32 (*Compliance with Hedging Letter*) of the Senior Facilities Agreement;
 - (ii) if a Distress Event has occurred;
 - (iii) if:
 - (A) in relation to a Hedging Agreement which is based on the 1992 ISDA Master Agreement:
 - (1) an Illegality or Tax Event or Tax Event Upon Merger (each as defined in the 1992 ISDA Master Agreement); or
 - (2) an event similar in meaning and effect to a "Force Majeure Event" (as defined in clause 4.9(a)(iii)(B)),
 has occurred in respect of that Hedging Agreement;
 - (B) in relation to a Hedging Agreement which is based on the 2002 ISDA Master Agreement, an Illegality or Tax Event, Tax Event Upon Merger or a Force Majeure Event (each as defined in the 2002 ISDA Master Agreement) has occurred in respect of that Hedging Agreement; or
 - (C) in relation to a Hedging Agreement which is not based on an ISDA Master Agreement, any event similar in meaning and effect to an event described in clauses 4.9(a)(iii)(A) or 4.9(a)(iii)(B) has occurred under and in respect of that Hedging Agreement;
 - (iv) if an Event of Default has occurred under either clause 26.6 (*Insolvency*) or clause 26.7 (*Insolvency proceedings*) of the Senior Facilities Agreement in relation to a Debtor which is party to that Hedging Agreement;
 - (v) if the Majority Senior Creditors give prior consent to that termination or close-out being made;
 - (vi) following a Senior Lender Refinancing; or
 - (vii) to the extent that that termination or close-out is necessary to comply with clause 4.13(c).
- (b) If a Debtor has defaulted on any Payment due under a Hedging Agreement (after allowing any applicable notice or grace periods) and the default has continued unwaived for more than 30 days (or such shorter period as the Agent acting on the instructions of the Majority Senior Lenders may agree) after notice of that default has been given to the Security Agent pursuant to clause 19.3(e), the relevant Hedge Counterparty:
- (i) may, to the extent it is able to do so under the relevant Hedging Agreement, terminate or close-out in whole or in part any hedging transaction under that Hedging Agreement; and

- (ii) until such time as the Security Agent has given notice to that Hedge Counterparty that the Transaction Security is being enforced (or that any formal steps are being taken to enforce the Transaction Security), shall be entitled to exercise any right it might otherwise have to sue for, commence or join legal or arbitration proceedings against any Debtor to recover any Hedging Liabilities due under that Hedging Agreement.
- (c) After the occurrence of an Insolvency Event in relation to any member of the Group, each Hedge Counterparty shall be entitled to exercise any right it may otherwise have in respect of that member of the Group to:
 - (i) prematurely close-out or terminate any Hedging Liabilities of that member of the Group;
 - (ii) make a demand under any guarantee, indemnity or other assurance against loss given by that member of the Group in respect of any Hedging Liabilities;
 - (iii) exercise any right of set-off or take or receive any Payment in respect of any Hedging Liabilities of that member of the Group; or
 - (iv) claim and prove in the liquidation of that member of the Group for the Hedging Liabilities owing to it.

4.10 Required Enforcement: Hedge Counterparties

- (a) Subject to clause 4.10(b), a Hedge Counterparty shall promptly terminate or close-out in full any hedging transaction under all or any of the Hedging Agreements to which it is party prior to their stated maturity, following:
 - (i) the occurrence of an Acceleration Event and delivery to it of a notice from the Security Agent that that Acceleration Event has occurred; and
 - (ii) delivery to it of a subsequent notice from the Security Agent (acting on the instructions of the Majority Senior Creditors) instructing it to do so.
- (b) Clause 4.10(a) shall not apply to the extent that that Acceleration Event occurred as a result of an arrangement made between any Debtor and any Senior Creditor with the purpose of bringing about an Acceleration Event.
- (c) If a Hedge Counterparty is entitled to terminate or close-out any hedging transaction under clause 4.9(b) (or would have been able to if that Hedge Counterparty had given the notice referred to in that clause) but has not terminated or closed out each such hedging transaction, that Hedge Counterparty shall promptly terminate or close-out in full each such hedging transaction following a request to do so by the Security Agent (acting on the instructions of the Majority Senior Creditors).

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

- (a) If, on termination of any hedging transaction under any Hedging Agreement occurring after a Distress Event, a settlement amount or other amount (following the application of any Close-Out Netting, Payment Netting or Inter-Hedging Agreement Netting in respect of that Hedging Agreement) falls due from a Hedge Counterparty to the relevant Debtor then that amount shall be paid by that Hedge Counterparty to

the Security Agent, treated as the proceeds of enforcement of the Transaction Security and applied in accordance with the terms of this Agreement.

- (b) The payment of that amount by the Hedge Counterparty to the Security Agent in accordance with clause 4.11(a) shall discharge the Hedge Counterparty's obligation to pay that amount to that Debtor.

4.12 Terms of Hedging Agreements

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

- (a) each Hedging Agreement documents only hedging arrangements entered into for the purpose of hedging the types of liabilities described in the definition of "*Hedging Agreement*" and that no other hedging arrangements are carried out under or pursuant to a Hedging Agreement;
- (b) each Hedging Agreement is based either:
 - (i) on an ISDA Master Agreement; or
 - (ii) on another framework agreement which is similar in effect to an ISDA Master Agreement;
- (c) in the event of a termination of the hedging transaction entered into under a Hedging Agreement, whether as a result of:
 - (i) a Termination Event or an Event of Default, each as defined in the relevant Hedging Agreement (in the case of a Hedging Agreement which is based on an ISDA Master Agreement); or
 - (ii) an event similar in meaning and effect to either of those described in clause 4.12(c)(i) (in the case of a Hedging Agreement which is not based on an ISDA Master Agreement),

that Hedging Agreement will:

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

transaction under such Hedging Agreement if so required pursuant to clause 4.10 (*Required Enforcement: Hedge Counterparties*); and

- (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 4.13 (*Total Interest Rate Hedged Amount and Total Exchange Rate Hedged Amount*).

4.13 Total Interest Rate Hedged Amount and Total Exchange Rate Hedged Amount

- (a) the Parent shall procure that, at all times:
 - (i) the Total Interest Rate Hedged Amount does not exceed the Permitted Maximum Interest Rate Hedged Amount; and
 - (ii) the Total Exchange Rate Hedged Amount does not exceed the Permitted Maximum Exchange Rate Hedged Amount.
- (b) Subject to clause 4.13(a), if:
 - (i) the Total Interest Rate Hedged Amount is less than the Permitted Maximum Interest Rate Hedged Amount, a Debtor may (but, subject to clause 25.32 (*Compliance with Hedging Letter*) of the Senior Facilities Agreement, shall be under no obligation to) enter into additional hedging arrangements to increase the Total Interest Rate Hedged Amount; or
 - (ii) the Total Exchange Rate Hedged Amount is less than the Permitted Maximum Exchange Rate Hedged Amount, a Debtor may (but, subject to clause 25.32 (*Compliance with Hedging Letter*) of the Senior Facilities Agreement, shall be under no obligation to) enter into additional hedging arrangements to increase the Total Exchange Rate Hedged Amount.
- (c) If any reduction in the Term Outstandings results in:
 - (i) an Interest Rate Hedge Excess then, on the same day as that reduction becomes effective in accordance with the terms of the Senior Facilities Agreement, the relevant Debtor(s) shall, and the Parent shall procure that the relevant Debtor(s) shall, reduce each Hedge Counterparty's Aggregate Interest Rate Hedged Amount by that Hedge Counterparty's Interest Rate Hedge Proportion of that Interest Rate Hedge Excess by terminating or closing out any relevant hedging transaction(s) in full or in part, as may be necessary; or
 - (ii) an Exchange Rate Hedge Excess then, on the same day as that reduction becomes effective in accordance with the terms of the Senior Facilities Agreement, the relevant Debtor(s) shall, and the Parent shall procure that the relevant Debtor(s) shall, reduce each Hedge Counterparty's Aggregate Exchange Rate Hedged Amount by that Hedge Counterparty's Exchange Rate Hedge Proportion of that Exchange Rate Hedge Excess by terminating or closing out any relevant hedging transaction(s) in full or in part, as may be necessary.
- (d) The relevant Debtor(s) shall, and the Parent shall procure that the relevant Debtor(s) shall, pay to that Hedge Counterparty (in accordance with the relevant Hedging Agreement) an amount equal to the sum of all payments (if any) that become due

from each relevant Debtor to a Hedge Counterparty under the relevant Hedging Agreement(s) as a result of any action described in clause 4.13(c).

- (e) Each Hedge Counterparty shall co-operate in any process described in clause 4.13(d) and shall pay (in accordance with the relevant Hedging Agreement(s)) any amount that becomes due from it under the relevant Hedging Agreement(s) to a Debtor as a result of any action described in clause 4.13(c).

5. INTRA-GROUP LENDERS AND INTRA-GROUP LIABILITIES

5.1 Restriction on Payment: Intra-Group Liabilities

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

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

5.2 Permitted Payments: Intra-Group Liabilities

- (a) Subject to clause 5.2(b), 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 prior to the Senior Discharge Date pursuant to clause 5.2(a) if, at the time of the Payment, an Event of Default has occurred and is continuing or would occur under any of the Debt Documents unless:
 - (i) the Majority Senior Creditors consent to that Payment being made; or
 - (ii) that Payment is made to facilitate Payment of the Senior Liabilities.

5.3 Payment obligations continue

No Debtor shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Debt Document by the operation of clauses 5.1 (*Restriction on Payment: Intra-Group Liabilities*) and 5.2 (*Permitted Payments: Intra-Group Liabilities*) even if its obligation to make that Payment is restricted at any time by the terms of any of those clauses.

5.4 Acquisition of Intra-Group Liabilities

- (a) Subject to clause 5.4(b), each Debtor may, and may permit any other member of the Group to:
 - (i) enter into any Liabilities Acquisition; or
 - (ii) beneficially own all or any part of the share capital of a company that is party to a Liabilities Acquisition,

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

- (b) Subject to clause 5.4(c), no action described in clause 5.4(a) may take place prior to the Senior Discharge Date in respect of any Intra-Group Liabilities if:
 - (i) that action would result in a breach of the Senior Facilities Agreement; or
 - (ii) at the time of that action, an Event of Default has occurred and is continuing or would occur under any of the Debt Documents.
- (c) The restrictions in clause 5.4(b) shall not apply if:
 - (i) the Majority Senior Creditors consent to that action; or
 - (ii) that action is taken to facilitate Payment of the Senior Liabilities.

5.5 Security: Intra-Group Lenders

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

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

5.6 Restriction on enforcement: Intra-Group Lenders

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

5.7 Permitted Enforcement: Intra-Group Lenders

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

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

5.8 Representations: Intra-Group Lenders

Each Intra-Group Lender which is not a Debtor represents and warrants to the Senior Creditors, the Security Agent and the Agent that:

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

6. SUBORDINATED LIABILITIES

6.1 Restriction on Payment: Subordinated Liabilities

Prior to the Senior Discharge Date, neither the Parent nor any other Debtor shall, and the Parent shall procure that no other member of the Group will, make any Payment of the Subordinated Liabilities at any time unless:

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

6.2 Permitted Payments: Subordinated Liabilities

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

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

6.3 Payment obligations continue

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

6.4 No acquisition of Subordinated Liabilities

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

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

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

6.5 Amendments and Waivers: Investors

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

- (a) the prior consent of the Majority Senior Creditors is obtained; or
- (b) that amendment, waiver or agreement could not be reasonably expected to materially or adversely affect the interests of the Senior Creditors.

6.6 Security: Investors

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

6.7 Restriction on Enforcement: Investors

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

6.8 Permitted Enforcement: Investors

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

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

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

6.9 Representations: Investors

Each Investor represents and warrants to the Senior Creditors, the Security Agent and the Agent that:

- (a) to the extent it is not a natural person, it is a corporation, limited partnership or limited liability company duly incorporated or formed and validly existing under the laws of its jurisdiction of incorporation or formation;
- (b) the obligations expressed to be assumed by it in this Agreement are, subject to any general principles of law limiting its obligations which are applicable to creditors generally, legal, valid, binding and enforceable obligations; and
- (c) the entry into and performance by it of this Agreement does not and will not:
 - (i) conflict with any law or regulation applicable to it, its constitutional documents or any agreement or instrument binding upon it or any of its assets (if applicable); or
 - (ii) constitute a default or termination event (however described) under any agreement or instrument binding on it or any of its assets (if applicable).

7. EFFECT OF INSOLVENCY EVENT

7.1 SFA Cash Cover

This clause 7 is subject to clause 12.3 (*Treatment of SFA Cash Cover*).

7.2 Payment of distributions

- (a) After the occurrence of an Insolvency Event in relation to any member of the Group, any Party entitled to receive a distribution out of the assets of that member of the Group in respect of Liabilities owed to that Party shall, to the extent it is able to do so, direct the person responsible for the distribution of the assets of that member of the Group to pay that distribution to the Security Agent until the Liabilities owing to the Secured Parties have been paid in full.
- (b) The Security Agent shall apply distributions paid to it under clause 7.2(a) in accordance with clause 12 (*Application of Proceeds*).

7.3 Set-Off

- (a) Subject to clause 7.3(b), to the extent that any member of the Group's Liabilities are discharged by way of set-off (mandatory or otherwise) after the occurrence of an Insolvency Event in relation to that member of the Group, any Creditor and any Investor 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 12 (*Application of Proceeds*).

(b) Clause 7.3(a) shall not apply to:

- (i) any such discharge of the Multi-account Overdraft Liabilities to the extent that the relevant discharge represents a reduction from a Permitted Gross Amount of a Multi-account Overdraft Facility to or towards its Designated Net Amount;
- (ii) any Close-Out Netting by a Hedge Counterparty or a Hedging Ancillary Lender;
- (iii) any Payment Netting by a Hedge Counterparty or a Hedging Ancillary Lender;
- (iv) any Inter-Hedging Agreement Netting by a Hedge Counterparty; and
- (v) any Inter-Hedging Ancillary Document Netting by a Hedging Ancillary Lender.

7.4 Non-cash distributions

If the Security Agent or any other Secured Party receives a distribution in a form other than in cash in respect of any of the Liabilities, 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 Facility (to the extent that the netting or set-off represents a reduction from a Permitted Gross Amount of that Multi-account Overdraft Facility to or towards its Designated Net Amount), after the occurrence of an Insolvency Event in relation to any member of the Group, each Creditor and the Investors irrevocably authorises the Security Agent (acting in accordance with clause 7.7 (*Security Agent Instructions*)), on its behalf, to:

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

7.6 Creditors' and Investors' actions

Each Creditor and each Investor will:

- (a) do all things that the Security Agent (acting in accordance with clause 7.7 (*Security Agent Instructions*)) requests in order to give effect to this clause 7; and

- (b) if the Security Agent is not entitled to take any of the actions contemplated by this clause 7 or if the Security Agent (acting in accordance with clause 7.7 (*Security Agent Instructions*)) requests that a Creditor or an Investor take that action, undertake that action itself in accordance with the instructions of the Security Agent (acting in accordance with clause 7.7 (*Security Agent Instructions*)) or grant a power of attorney to the Security Agent (on such terms as the Security Agent (acting in accordance with clause 7.7 (*Security Agent Instructions*)) may reasonably require) to enable the Security Agent to take such action.

7.7 Security Agent Instructions

For the purposes of clause 7.5 (*Filing of Claims*) and clause 7.6 (*Creditors' and Investors' actions*) the Security Agent shall act:

- (a) on the instructions of the Majority Senior Creditors; or
- (b) in the absence of any such instructions, as the Security Agent sees fit.

8. TURNOVER OF RECEIPTS

8.1 SFA Cash Cover

This clause 8 is subject to clause 12.3 (*Treatment of SFA Cash Cover*).

8.2 Turnover by the Creditors and the Investors

Subject to clause 8.3 (*Exclusions*) and to clause 8.4 (*Permitted assurance and receipts*), if at any time prior to the Senior Discharge Date, any Creditor or any Investor 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 12 (*Application of Proceeds*);
- (b) other than where 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 clause 8.2(a) and 8.2(b), and other than where clause 7.3 (*Set-Off*) applies, any amount:
 - (i) on account of, or in relation to, any of the Liabilities:
 - (A) after the occurrence of a Distress Event; or
 - (B) as a result of any other litigation or proceedings against a member of the Group (other than after the occurrence of an Insolvency Event in respect of that member of the Group); or
 - (ii) by way of set-off in respect of any of the Liabilities owed to it after the occurrence of a Distress Event,

other than, in each case, any amount received or recovered in accordance with clause 12 (*Application of Proceeds*);

- (d) the proceeds of any enforcement of any Transaction Security except in accordance with clause 12 (*Application of Proceeds*); or
- (e) other than where clause 7.3 (*Set-Off*) applies, any distribution in cash or in kind or Payment of, or on account of or in relation to, any of the Liabilities owed by any member of the Group which is not in accordance with clause 12 (*Application of Proceeds*) and which is made as a result of, or after, the occurrence of an Insolvency Event in respect of that member of the Group,
- (f) that Creditor or Investor 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 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; 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 and the Investors*) shall not apply to any receipt or recovery:

- (a) by way of:
 - (i) Close-Out Netting by a Hedge Counterparty or a Hedging Ancillary Lender;
 - (ii) Payment Netting by a Hedge Counterparty or a Hedging Ancillary Lender;
 - (iii) Inter-Hedging Agreement Netting by a Hedge Counterparty; or
 - (iv) Inter-Hedging Ancillary Document Netting by a Hedging Ancillary Lender; or
- (b) by an Ancillary Lender by way of that Ancillary Lender's right of netting or set-off relating to a Multi-account Overdraft Facility (to the extent that that netting or set-off represents a reduction from a Permitted Gross Amount of that Multi-account Overdraft Facility to or towards its Designated Net Amount); or
- (c) made in accordance with clause 13 (*Equalisation*).

8.4 Permitted assurance and receipts

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

(a) arrange with any person which is not a member of the Group any assurance against loss in respect of, or reduction of its credit exposure to, a Debtor (including assurance by way of credit based derivative or sub-participation); or

(b) make any assignment or transfer permitted by clause 16 (*Changes to the Parties*),

which:

(i) is permitted by the Senior Facilities Agreement;

(ii) is not in breach of:

(A) clause 4.5 (*No acquisition of Hedging Liabilities*); or

(B) clause 6.4 (*No acquisition of Subordinated Liabilities*),

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

8.5 Sums received by Debtors

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

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

(b) promptly pay an amount equal to the amount (if any) by which the receipt or recovery exceeds the Relevant Liabilities to the Security Agent for application in accordance with the terms of this Agreement.

8.6 Saving provision

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

9. REDISTRIBUTION

9.1 Recovering Creditor's rights

(a) Any amount paid by a Creditor or Investor (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 by the relevant Debtor and distributed to the Security Agent, Agent, Arrangers and Senior Creditors (each a "**Sharing Creditor**") in accordance with the terms of this Agreement.

- (b) On a distribution by the Security Agent under clause 9.1(a) of a Payment received by a Recovering Creditor from a Debtor, as between the relevant Debtor and the Recovering Creditor an amount equal to the amount received or recovered by the Recovering Creditor and paid to the Security Agent (the "Shared Amount") will be treated as not having been paid by that Debtor.

9.2 Reversal of redistribution

- (a) If any part of the Shared Amount received or recovered by a Recovering Creditor becomes repayable to a Debtor and is repaid by that Recovering Creditor to that Debtor, then:
 - (i) each Sharing Creditor shall, upon request of the Security Agent, pay 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 by that Debtor.
- (b) The Security Agent shall not be obliged to pay any Redistributed Amount to a Recovering Creditor under clause 9.2(a)(i) until it has been able to establish to its satisfaction that it has actually received that Redistributed Amount from the relevant Sharing Creditor.

9.3 Deferral of Subrogation

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

10. ENFORCEMENT OF TRANSACTION SECURITY

10.1 SFA Cash Cover

This clause 10 is subject to clause 12.3 (*Treatment of SFA Cash Cover*).

10.2 Enforcement Instructions

- (a) The Security Agent may refrain from enforcing the Transaction Security unless instructed otherwise by the Majority Senior Creditors.

- (b) Subject to the Transaction Security having become enforceable in accordance with its terms the Majority Senior Creditors may give or refrain from giving instructions to the Security Agent to enforce or refrain from enforcing the Transaction Security as they see fit.
- (c) The Security Agent is entitled to rely on and comply with instructions given in accordance with this clause 10.2.
- (d) The Security Agent may, subject to any contrary instructions from the Majority Senior Creditors, cease enforcement at any time.

10.3 Manner of Enforcement

If the Transaction Security is being enforced pursuant to clause 10.2 (*Enforcement Instructions*), the Security Agent shall enforce the Transaction Security in such manner (including, without limitation, the selection of any administrator of any Debtor to be appointed by the Security Agent) as the Majority Senior Creditors shall instruct or, in the absence of any such instructions, as the Security Agent sees fit.

10.4 Exercise of voting rights

- (a) Each Creditor and each Investor agrees with the Security Agent that it will cast its vote in any proposal put to the vote by or under the supervision of any judicial or supervisory authority in respect of any insolvency, pre-insolvency or rehabilitation or similar proceedings relating to any member of the Group as instructed by the Security Agent.
- (b) The Security Agent shall give instructions for the purposes of clause 10.4(a) as directed by the Majority Senior Creditors.

10.5 Waiver of rights

To the extent permitted under applicable law and subject to clause 10.2 (*Enforcement Instructions*), clause 10.3 (*Manner of Enforcement*), clause 12 (*Application of Proceeds*) and clause 11.2(c), each of the Secured Parties and the Debtors waives all rights it may otherwise have to require that the Transaction Security be enforced in any particular order or manner or at any particular time or that any sum received or recovered from any person, or by virtue of the enforcement of any of the Transaction Security or of any other security interest, which is capable of being applied in or towards discharge of any of the Secured Obligations is so applied.

11. PROCEEDS OF DISPOSALS, RECOVERIES FROM REPORT PROVIDERS AND ADJUSTMENT OF SENIOR MANDATORY PREPAYMENTS

11.1 Non-Distressed Disposals

- (a) In this clause 11.1:

"Disposal Proceeds" means the proceeds of a Non-Distressed Disposal (as defined in clause 11.1(b)).
- (b) If, in respect of a disposal of:
 - (i) an asset by a Debtor; or

(ii) an asset which is subject to the Transaction Security,

to a person or persons outside the Group:

(A) (prior to the Senior Lender Discharge Date) the Agent notifies the Security Agent that that disposal is permitted under the Senior Finance Documents; and

(B) that disposal is not a Distressed Disposal,

(a "Non-Distressed Disposal"),

the Security Agent is irrevocably authorised (at the cost of the relevant Debtor or the Parent and without any consent, sanction, authority or further confirmation from any Creditor, Investor or Debtor) but subject to clause 11.1(c):

(iii) to release the Transaction Security or any other claim (relating to a Debt Document) over that asset;

(iv) where that asset consists of shares in the capital of a Debtor, to release the Transaction Security or any other claim (relating to a Debt Document) over that Debtor's assets;

(v) to execute and deliver or enter into any release of the Transaction Security or any claim described in clauses 11.1(b)(iii) and 11.1(b)(iv) and issue any certificates of non-crystallisation of any floating charge or any consent to dealing that may, in the discretion of the Security Agent, be considered necessary or desirable.

(c) If that Non-Distressed Disposal is not made, each release of Transaction Security or any claim described in clause 11.1(b) shall have no effect and the Transaction Security or claim subject to that release shall continue in such force and effect as if that release had not been effected.

(d) If any Disposal Proceeds are required to be applied in mandatory prepayment of the Senior Lender Liabilities then, subject to clause 11.6 (*Adjustment of Senior Mandatory Prepayments*), the Disposal Proceeds shall be applied in or towards Payment of the Senior Lender Liabilities in accordance with the terms of the Senior Facilities Agreement and the consent of any other Party shall not be required for that application.

11.2 Distressed Disposals

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

(i) *release of Transaction Security/non-crystallisation certificates*: to release the Transaction Security or any other claim over that asset and execute and deliver or enter into any release of that Transaction Security or claim and issue any letters of non-crystallisation of any floating charge or any consent to dealing that may, in the discretion of the Security Agent, be considered necessary or desirable;

(ii) *release of liabilities and Transaction Security on a share sale (Debtor)*: if the asset which is disposed of consists of shares in the capital of a Debtor, to release:

- (A) that Debtor and any Subsidiary of that Debtor from all or any part of:
 - (1) its Borrowing Liabilities;
 - (2) its Guarantee Liabilities; and
 - (3) its Other Liabilities;
- (B) any Transaction Security granted by that Debtor or any Subsidiary of that Debtor over any of its assets; and
- (C) any other claim of a Investor, 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, Investors and Debtors;

(iii) *release of liabilities and Transaction Security on a share sale (Holding Company)*: if the asset which is disposed of consists of shares in the capital of any Holding Company of a Debtor, to release:

- (A) that Holding Company and any Subsidiary of that Holding Company from all or any part of:
 - (1) its Borrowing Liabilities;
 - (2) its Guarantee Liabilities; and
 - (3) its Other Liabilities;
- (B) any Transaction Security granted by any Subsidiary of that Holding Company over any of its assets; and
- (C) any other claim of a Investor, an Intra-Group Lender or another Debtor over the assets of any Subsidiary of that Holding Company,

on behalf of the relevant Creditors, Investors and Debtors;

(iv) *disposal of liabilities on a share sale*: if the asset which is disposed of 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 11.2(d)) decides to dispose of all or any part of:

- (A) the Liabilities; or
- (B) the Debtor Liabilities,

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

(C) (if the Security Agent (acting in accordance with clause 11.2(d)) does not intend that any transferee of those Liabilities or Debtor Liabilities (the "Transferee") will be treated as a Senior Creditor or a Secured Party for the purposes of this Agreement), to execute and deliver or enter into any agreement to dispose of all or part of those Liabilities or Debtor Liabilities **provided that** notwithstanding any other provision of any Debt Document the Transferee shall not be treated as a Senior Creditor or a Secured Party for the purposes of this Agreement; and

(D) (if the Security Agent (acting in accordance with clause 11.2(d)) does intend that any Transferee will be treated as a Senior Creditor or a Secured Party for the purposes of this Agreement), to execute and deliver or enter into any agreement to dispose of:

- (1) all (and not part only) of the Liabilities owed to the Senior Creditors; and
- (2) all or part of any other Liabilities and the Debtor Liabilities,

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

(v) *transfer of obligations in respect of liabilities on a share sale*: if the asset which is disposed of consists of shares in the capital of a Debtor or the Holding Company of a Debtor (the "Disposed Entity") and the Security Agent (acting in accordance with clause 11.2(d)) decides to transfer to another Debtor (the "Receiving Entity") all or any part of the Disposed Entity's obligations or any obligations of any Subsidiary of that Disposed Entity in respect of:

- (A) the Intra-Group Liabilities; or
- (B) the Debtor Liabilities,

to execute and deliver or enter into any agreement to:

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

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

(b) The net proceeds of each Distressed Disposal (and the net proceeds of any disposal of Liabilities or Debtor Liabilities pursuant to clause 11.2(a)(iv)) shall be paid to the Security Agent for application in accordance with clause 12 (*Application of*

Proceeds) as if those proceeds were the proceeds of an enforcement of the Transaction Security and, to the extent that any disposal of Liabilities or Debtor Liabilities has occurred pursuant to clause 11.2(a)(iv)(D)), as if that disposal of Liabilities or Debtor Liabilities had not occurred.

- (c) In the case of a Distressed Disposal (or a disposal of Liabilities pursuant to clause 11.2(a)(iv)(D)) effected by or at the request of the Security Agent (acting in accordance with clause 11.2(d)), the Security Agent shall take reasonable care to obtain a fair market price in the prevailing market conditions (though the Security Agent shall have no obligation to postpone any such Distressed Disposal or disposal of Liabilities in order to achieve a higher price).
- (d) For the purposes of clauses 11.2(a)(ii), 11.2(a)(iii), 11.2(a)(iv), 11.2(a)(v) and 11.2(c), the Security Agent shall act:
 - (i) 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
 - (ii) in any other case:
 - (A) on the instructions of the Majority Senior Creditors; or
 - (B) in the absence of any such instructions, as the Security Agent sees fit.

11.3 Release of Transaction Security

- (a) Where the Security Agent is acting on the instructions of the Majority Lenders in connection with a Distressed Disposal, the Security Agent may only release security and guarantees, pursuant to 11.2 if:
 - (i) the Distressed Disposal is made for cash; and
 - (ii) one of the following requirements is satisfied:
 - (A) the Distressed Disposal is by way of a process supervised by a court; or
 - (B) the Distressed Disposal is made pursuant to a public auction or other competitive bid process administered by an independent investment bank (an "**Investment Bank**") or any one of PwC, KPMG, Deloitte or Ernst & Young (an "**Accountant**"), in each case with a view to obtaining a fair market price in the then prevailing market conditions in which the Facility C Lenders are entitled to participate as bidders or financiers to the potential purchaser; or
 - (C) the Security Agent has:
 - (1) consulted with an Investment Bank or an Accountant with respect to recommended procedures to be used for obtaining a fair market price in the then prevailing market conditions;
 - (2) considered such procedures in good faith; and

- (3) if the Security Agent considers in its discretion to be appropriate, used its reasonable endeavours to implement such procedures (in which the Facility C lenders shall be entitled to participate) in relation to such Distressed Disposal; or
 - (D) the Distressed Disposal is made pursuant to a process in respect of which the Security Agent has received an opinion (including an enterprise valuation of the Obligor/assets being disposed of) from an Investment Bank or Accountant selected by the Security Agent confirming that the sale or disposal price is fair from a financial point of view taking into account all relevant circumstances
- (b) In the case of a Distressed Disposal the Security Agent shall take reasonable care to obtain the best price reasonably obtainable taking into account all relevant circumstances but shall have no obligation to postpone any such Distressed Disposal in order to achieve a higher price.
- (c) This Clause 11.3 is for the benefit of the Senior Lenders only.

11.4 Acquisition Proceeds and Insurance Proceeds (before Distress Event)

- (a) In this clause 11.3:

"Acquisition Document" has the meaning given to that term in the Senior Facilities Agreement;

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

"Insurance Proceeds" has the meaning given to that term in the Senior Facilities Agreement; and

"Recovery Claim" has the meaning given to that term in the Senior Facilities Agreement.
- (b) So long as the requirements of clause 11.3(c) and, in the case of a claim against the provider of any Report, the requirements of clause 11.5 (*Recoveries from Report Providers*) are met, if any Recovery Claim or insurance claim is to be made, or is made, by a Debtor prior to a Distress Event and that Recovery Claim or that insurance claim (or the Acquisition Proceeds of that Recovery Claim or the Insurance Proceeds of that insurance claim) is or are expressed to be subject to the Transaction Security, the Security Agent is irrevocably authorised (at the cost of the relevant Debtor or the Parent and without need of any letter of authority or further confirmation from any Creditor, Investor or Debtor) to:
 - (i) give a consent under or release the Transaction Security, or any other claim, over the relevant Acquisition Document or insurance policy solely to the extent necessary to allow that Debtor to make that Recovery Claim or that insurance claim and to comply with that Debtor's obligations in respect of that Recovery Claim and those Acquisition Proceeds or that insurance claim and those Insurance Proceeds under clause 10.2 (*Disposal, Insurance and Acquisition Proceeds and Excess Cashflow*) of the Senior Facilities Agreement; and

- (ii) execute and deliver or enter into any such consent under or release of that Transaction Security, or claim, that may, in the discretion of the Security Agent, be considered necessary or desirable.
- (c) If any Acquisition Proceeds or Insurance Proceeds are required to be applied in mandatory prepayment of the Senior Lender Liabilities then, subject to clause 11.6 (*Adjustment of Senior Mandatory Prepayments*), those Acquisition Proceeds or Insurance Proceeds shall be applied in or towards Payment of the Senior Lender Liabilities in accordance with the terms of the Senior Facilities Agreement and the consent of any other Party shall not be required for that application.

11.5 Recoveries from Report Providers

- (a) In this clause 11.5:

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

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

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

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

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

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

- (c) Notwithstanding any other provision in the Debt Documents, no Debtor or Investor may initiate Proceedings unless and until the Security Agent has given its prior written consent.
- (d) If no Distress Event has occurred at the time of receipt of a Net Award, the recipient of that Net Award (if not the Parent) shall pay the Award Proceeds to the Parent for application in accordance, subject to clause 11.6 (*Adjustment of Senior Mandatory Prepayments*), with the terms of the Senior Facilities Agreement.

- (e) If a Distress Event has occurred at the time of receipt of a Net Award, the recipient of that Net Award shall pay the Award Proceeds to the Security Agent and the Security Agent shall apply those Award Proceeds in accordance with the terms of clause 12 (*Application of Proceeds*).
- (f) The provisions of this clause 11.5 shall apply until the Senior Discharge Date.

11.6 Adjustment of Senior Mandatory Prepayments

If the making of any Senior Mandatory Prepayment (an "**Original Senior Mandatory Prepayment**") would result in a payment (a "**Hedge Reduction Payment**") becoming due to any Hedge Counterparty pursuant to clause 4.13(d), the amount of that Senior Mandatory Prepayment will be reduced so that the aggregate of:

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

is equal to the amount of the Original Senior Mandatory Prepayment.

11.7 Creditors', Investors' and Debtors' actions

Each Creditor, Investor and Debtor will:

- (a) do all things that the Security Agent requests in order to give effect to this clause 11 (which shall include, without limitation, the execution of any assignments, transfers, releases or other documents that the Security Agent may consider to be necessary to give effect to the releases or disposals contemplated by this clause 11); and
- (b) if the Security Agent is not entitled to take any of the actions contemplated by this clause 11 or if the Security Agent requests that any Creditor, Investor 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 11.1 (*Non-Distressed Disposals*) or clause 11.2 (*Distressed Disposals*) as the case may be.

12. APPLICATION OF PROCEEDS

12.1 Order of application

Subject to clause 12.2 (*Prospective liabilities*) and clause 12.3 (*Treatment of SFA Cash Cover*), all amounts from time to time received or recovered by the Security Agent pursuant to the terms of any Debt Document or in connection with the realisation or enforcement of all or any part of the Transaction Security (for the purposes of this clause 12, 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 12), in the following order of priority:

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

accordance with the terms of this Agreement or any action taken at the request of the Security Agent under clause 7.6 (*Creditors' and Investors' actions*);

(c) in payment to:

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

for application towards the discharge of:

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

on a *pro rata* basis between clause 12.1(c)(ii)(A) and clause 12.1(c)(ii)(B);

- (d) following payment of all amounts due under (c) above, in payment to the Agent on behalf the Senior Lenders for application towards the outstanding Senior Lender Liabilities;
- (e) if none of the Debtors is under any further actual or contingent liability under any Senior Finance Document or Hedging Agreement, in payment to any person to whom the Security Agent is obliged to pay in priority to any Debtor; and
- (f) the balance, if any, in payment to the relevant Debtor.

12.2 Prospective liabilities

Following a Distress Event the Security Agent may, in its discretion, hold any amount of the Recoveries in an interest bearing suspense or impersonal account(s) in the name of the Security Agent with such financial institution (including itself) and for so long as the Security Agent shall think fit (the interest being credited to the relevant account) for later application under clause 12.1 (*Order of application*) in respect of:

- (a) any sum to any Security Agent, any Receiver or any Delegate; and
- (b) any part of the Liabilities, the Agent Liabilities or the Arranger Liabilities,

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

12.3 Treatment of SFA Cash Cover

- (a) Nothing in this Agreement shall prevent any Ancillary Lender taking any Enforcement Action in respect of any SFA Cash Cover which has been provided for it in accordance with the Senior Facilities Agreement.
- (b) To the extent that any SFA Cash Cover is not held with the Relevant Ancillary Lender, all amounts from time to time received or recovered in connection with the

realisation or enforcement of that SFA Cash Cover shall be paid to the Security Agent and shall be held by the Security Agent on trust to apply them at any time as the Security Agent (in its discretion) sees fit, to the extent permitted by applicable law, in the following order of priority:

- (i) to the Relevant Ancillary Lender towards the discharge of the Senior Lender Liabilities for which that SFA Cash Cover was provided; and
 - (ii) the balance, if any, in accordance with clause 12.1 (*Order of application*).
- (c) To the extent that any SFA Cash Cover is held with the Relevant Ancillary Lender, nothing in this Agreement shall prevent that Relevant Ancillary Lender receiving and retaining any amount in respect of that SFA Cash Cover.

12.4 Investment of proceeds

Prior to the application of the proceeds of the Security Property in accordance with clause 12.1 (*Order of application*) the Security Agent may, in its discretion, hold all or part of those proceeds in an interest bearing suspense or impersonal account(s) in the name of the Security Agent with such financial institution (including itself) and for so long as the Security Agent shall think fit (the interest being credited to the relevant account) pending the application from time to time of those monies in the Security Agent's discretion in accordance with the provisions of this clause 12.

12.5 Currency Conversion

- (a) For the purpose of, or pending the discharge of, any of the Secured Obligations the Security Agent may convert any moneys received or recovered by the Security Agent from one currency to another, at the Agent's Spot Rate of Exchange.
- (b) The obligations of any Debtor to pay in the due currency shall only be satisfied to the extent of the amount of the due currency purchased after deducting the costs of conversion.

12.6 Permitted Deductions

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

12.7 Good Discharge

- (a) Any payment to be made in respect of the Secured Obligations by the Security Agent:
 - (i) may be made to the relevant Agent on behalf of its Creditors;
 - (ii) may be made to the Relevant Ancillary Lender in accordance with clause 12.3(b)(i); or

(iii) shall be made directly to the Hedge Counterparties,

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

- (b) The Security Agent is under no obligation to make the payments to the Agent or the Hedge Counterparties under clause 12.7(a) in the same currency as that in which the Liabilities owing to the relevant Creditor are denominated.

12.8 Calculation of Amounts

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

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

13. EQUALISATION

13.1 Equalisation Definitions

For the purposes of this clause 13:

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

"**Exposure**" means:

- (a) in relation to a Senior Lender, the aggregate amount of its participation (if any, and without double counting) in all Utilisations outstanding under the Senior Facilities Agreement at the Enforcement Date (assuming all contingent liabilities which have become actual liabilities since the Enforcement Date to have been actual liabilities at the Enforcement Date (but not including, for these purposes only, any interest that would have accrued from the Enforcement Date to the date of actual maturity in respect of those liabilities) and assuming any transfer of claims in respect of amounts outstanding under the Revolving Facility and each Ancillary Facility in accordance with clause 7.6 (*Adjustment for Ancillary Facilities upon acceleration*) of the Senior Facilities Agreement which has taken place since the Enforcement Date to have taken place at the Enforcement Date) together with the aggregate amount of all accrued interest, fees and commission owed to it under the Senior Facilities Agreement and amounts owed to it by a Debtor in respect of any Ancillary Facility but excluding:
- (i) any amount owed to it by a Debtor in respect of any Ancillary Facility to the extent that that amount would not be outstanding but for a breach by that

Senior Lender of any provision of clause 7 (*Ancillary Facilities*) of the Senior Facilities Agreement; and

- (ii) any amount owed to it by a Debtor in respect of any Ancillary Facility to the extent (and in the amount) that SFA Cash Cover has been provided by a Debtor in respect of that amount and is available to that Senior Lender pursuant to the relevant SFA Cash Cover Document;
- (b) in relation to a Hedge Counterparty:
- (i) if that Hedge Counterparty has terminated or closed out any hedging transaction under any Hedging Agreement in accordance with the terms of this Agreement on or prior to the Enforcement Date, the amount, if any, payable to it under that Hedging Agreement in respect of that termination or close-out as of the date of termination or close-out (taking into account any interest accrued on that amount) to the extent that amount is unpaid at the Enforcement Date (that amount to be certified by the relevant Hedging Counterparty and as calculated in accordance with the relevant Hedging Agreement); and
 - (ii) if that Hedge Counterparty has not terminated or closed out any hedging transaction under any Hedging Agreement on or prior to the Enforcement Date:
 - (A) if the relevant Hedging Agreement is based on an ISDA Master Agreement the amount, if any, which would be payable to it under that Hedging Agreement in respect of that hedging transaction if the Enforcement Date was deemed to be an Early Termination Date (as defined in the relevant ISDA Master Agreement) for which the relevant Debtor is the Defaulting Party (as defined in the relevant ISDA Master Agreement); or
 - (B) if the relevant Hedging Agreement is not based on an ISDA Master Agreement, the amount, if any, which would be payable to it under that Hedging Agreement in respect of that hedging transaction if the Enforcement Date was deemed to be the date on which an event similar in meaning and effect (under that Hedging Agreement) to an Early Termination Date (as defined in any ISDA Master Agreement) occurred under that Hedging Agreement for which the relevant Debtor is in a position similar in meaning and effect (under that Hedging Agreement) to that of a Defaulting Party (under and as defined in the same ISDA Master Agreement),

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

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

13.2 Implementation of equalisation

The provisions of this clause 13 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 13 have been applied before all the Liabilities have matured and/or been finally quantified, the Security Agent may elect to re-apply those provisions on the basis of revised Exposures and the Senior Creditors shall make appropriate adjustment payments amongst themselves.

13.3 Equalisation

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

13.4 Turnover of enforcement proceeds

If:

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

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

13.5 Notification of Exposure

Before each occasion on which it intends to implement the provisions of this clause 13, the Security Agent shall send notice to each Hedge Counterparty and the Agent (on behalf of the Senior Lenders) requesting that it notify it of, respectively, its Exposure and that of each Senior Lender (if any).

13.6 Default in payment

If a Creditor fails to make a payment due from it under this clause 13, the Security Agent shall be entitled (but not obliged) to take action on behalf of the Senior Creditor(s) to whom such payment was to be redistributed (subject to being indemnified to its satisfaction by such Senior Creditor(s) in respect of costs) but shall have no liability or obligation towards such Senior Creditor(s), any other Senior Creditor or Creditor as regards such default in payment and any loss suffered as a result of such default shall lie where it falls.

14. THE SECURITY AGENT

14.1 Trust

- (a) The Security Agent declares that it shall hold the Security Property on trust for the Secured Parties on the terms contained in this Agreement.
- (b) Each of the parties to this Agreement agrees that the Security Agent shall have only those duties, obligations and responsibilities expressly specified in this Agreement or in the Security Documents to which the Security Agent is expressed to be a party (and no others shall be implied).

14.2 No independent power

Subject to clause 12.3 (*Treatment of SFA Cash Cover*), the Secured Parties shall not have any independent power to enforce, or have recourse to, any of the Transaction Security or to exercise any rights or powers arising under the Security Documents (other than the Senior Facilities Agreements) except through the Security Agent.

14.3 Instructions to Security Agent and exercise of discretion

- (a) Subject to clauses 14.3(d) and 14.3(e), the Security Agent shall act in accordance with any instructions given to it by the Majority Senior Creditors or, if so instructed by the Majority Senior Creditors, refrain from exercising any right, power, authority or discretion vested in it as Security Agent and shall be entitled to assume that (i) any instructions received by it from the Agent, the Creditors or a group of Creditors are duly given in accordance with the terms of the Debt Documents and (ii) unless it has received actual notice of revocation, that those instructions or directions have not been revoked. The Security Agent shall not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with any instructions given to it by the Majority Senior Creditors (or, if this Agreement stipulates that 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 direction, from the Majority Senior Creditors (or, if this Agreement stipulates that 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 rights, powers, authorities and discretions and the Security Agent may refrain from acting unless and until those instructions or clarification are received by it.
- (c) Save as provided in clause 10 (*Enforcement of Transaction Security*), any instructions given to the Security Agent by the Majority Senior Creditors shall override any conflicting instructions given by any other Parties.
- (d) Clause 14.3(a) shall not apply:
 - (i) where a contrary indication appears in this Agreement;
 - (ii) where this Agreement requires the Security Agent to act in a specified manner or to take a specified action;

- (iii) in respect of any provision which protects the Security Agent's own position in its personal capacity as opposed to its role of Security Agent for the Secured Parties including, without limitation, the provisions set out in clauses 14.5 (*Security Agent's discretions*) to clause 14.20 (*Disapplication*);
- (iv) in respect of the exercise of the Security Agent's discretion to exercise a right, power or authority under any of:
 - (A) clause 11.1 (*Non-Distressed Disposals*);
 - (B) clause 12.1 (*Order of application*);
 - (C) clause 12.2 (*Prospective liabilities*);
 - (D) clause 12.3 (*Treatment of SFA Cash Cover*); and
 - (E) clause 12.6 (*Permitted Deductions*).
- (e) If giving effect to instructions given by the Majority Senior Creditors would (in the Security Agent's opinion) have an effect equivalent to an Intercreditor Amendment, the Security Agent shall not act in accordance with those instructions unless consent to it so acting is obtained from each Party (other than the Security Agent) whose consent would have been required in respect of that Intercreditor Amendment.
- (f) In exercising any discretion to exercise a right, power or authority under this Agreement where either:
 - (i) it has not received any instructions from the Majority Senior Creditors as to the exercise of that discretion; or
 - (ii) the exercise of that discretion is subject to clause 14.3(d)(iv),

the Security Agent shall do so as it considers in its discretion to be appropriate.

14.4 Security Agent's Actions

Without prejudice to the provisions of clause 10 (*Enforcement of Transaction Security*) and clause 14.3 (*Instructions to Security Agent and exercise of discretion*), the Security Agent may (but shall not be obliged to), in the absence of any instructions to the contrary, take such action in the exercise of any of its powers and duties under the Debt Documents as it considers in its discretion to be appropriate.

14.5 Security Agent's discretions

The Security Agent may:

- (a) assume (unless it has received actual notice to the contrary from a Hedge Counterparty or from the Agent) that (i) no Default has occurred and no Debtor or other person is in breach of or default under its obligations under any of the Debt Documents and (ii) any right, power, authority or discretion vested by any Debt Document in any person has not been exercised;
- (b) if it receives any instructions or directions under clause 10 (*Enforcement of Transaction Security*) to take any action in relation to the Transaction Security,

assume that all applicable conditions under the Debt Documents for taking that action have been satisfied;

- (c) engage, pay for and rely on the advice or services of any legal advisers, accountants, tax advisers, surveyors or other experts (whether reasonably obtained by the Security Agent or by any other Secured Party) whose advice or services may at any time seem necessary, expedient or desirable and shall not be liable for any damage, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying;
- (d) rely upon any communication or document believed by it to be genuine and, as to any matters of fact which might reasonably be expected to be within the knowledge of a Secured Party, any Creditor, Investor or a Debtor, upon a certificate signed by or on behalf of that person;
- (e) refrain from acting in accordance with the instructions of any Party (including bringing any legal action or proceeding arising out of or in connection with the Debt Documents) until it has received any indemnification and/or security that it may in its discretion require (whether by way of payment in advance or otherwise and which may be greater in extent than that contained in the Debt Documents) for all costs, losses and liabilities which it may incur in so acting; and
- (f) carry out what in its discretion it considers to be administrative acts, or acts which are incidental to any instruction, without any instructions (though not contrary to any such instruction), but so that no such instruction shall have any effect in relation to any administrative or incidental act performed prior to actual receipt of such instruction by the Security Agent.

14.6 Security Agent's obligations

The Security Agent shall promptly:

- (a) copy to (i) the Agent and (ii) each Hedge Counterparty the contents of any notice or document received by it from any Debtor under any Debt Document;
- (b) 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 **provided that**, the Security Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party;
- (c) inform (i) the Agent and (ii) each Hedge Counterparty of the occurrence of any Default or any default by a Debtor in the due performance of or compliance with its obligations under any Debt Document of which the Security Agent has received notice from any other party to this Agreement; and
- (d) to the extent that a Party (other than the Security Agent) is required to calculate a Common Currency Amount, and upon a request by that Party, notify that Party of the relevant Agent's Spot Rate of Exchange.

14.7 Excluded obligations

The Security Agent shall not:

- (a) be bound to enquire as to (i) whether or not any Default has occurred or (ii) the performance, default or any breach by any Party of its obligations under any of the Debt Documents;
- (b) be bound to account to any other Party for any sum or the profit element of any sum received by it for its own account;
- (c) be bound to disclose to any other person (including but not limited to any Secured Party) (i) any confidential information or (ii) any other information if disclosure would, or might in its reasonable opinion, constitute a breach of any law or regulation or be a breach of fiduciary duty or confidentiality;
- (d) have or be deemed to have any relationship of trust or agency with, any Debtor or any Investor;
- (e) be 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 assured to it.

14.8 Exclusion of liability

- (a) None of the Security Agent, any Receiver nor any Delegate shall accept responsibility or be liable for:
 - (i) the adequacy, accuracy or completeness of any information (whether oral or written) supplied by the Security Agent 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;
 - (ii) 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;
 - (iii) any damages, costs or losses to any person, any diminution in value, or any liability arising as a result of taking or refraining from taking or not taking any action in relation to any of the Debt Documents, the Security Property or otherwise, whether in accordance with an instruction from the Agent or otherwise unless directly caused by its gross negligence or wilful misconduct;
 - (iv) the exercise of, or the failure to exercise, any judgment, discretion or power given to it by or in connection with any of the Debt Documents, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, the Debt Documents or the Security Property; or

- (v) any shortfall which arises on the enforcement or realisation of the Security Property.
- (b) 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 judicially determined to have been suffered (such loss shall be determined as at the date of default of the Security Agent, Receiver or Delegate 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 might be) at the time of entering into this agreement, or at the time of accepting any relevant instructions, which increase the amount of the 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 or consequential damages, whether or not the Security Agent has been advised of the possibility of such loss or damages. This clause shall not apply in the event that a court with jurisdiction determines that the Security Agent acted fraudulently.

14.9 No Proceedings

No Party (other than the Security Agent, that Receiver or that Delegate) may take any proceedings against any officer, employee or agent of the Security Agent, a Receiver or a Delegate in respect of any claim it might have against the Security Agent, a Receiver or a Delegate or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Debt Document or any Security Property and any officer, employee or agent of the Security Agent, a Receiver or a Delegate may rely on this clause subject to clause 1.3 (*Third Party Rights*) and the provisions of the Third Parties Rights Act.

14.10 Own responsibility

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

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

agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Debt Document; and

- (e) the right or title of any person in or to, or the value or sufficiency of any part of the Charged Property, the priority of any of the Transaction Security or the existence of any Security affecting the Charged Property,

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

14.11 No responsibility to perfect Transaction Security

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

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

14.12 Insurance by Security Agent

- (a) The Security Agent shall not be under any obligation to insure any of the Charged Property, to require any other person to maintain any insurance or to verify any obligation to arrange or maintain insurance contained in the Debt Documents. The Security Agent shall not be responsible for any loss which may be suffered by any person as a result of the lack of or inadequacy of any such insurance.
- (b) Where the Security Agent is named on any insurance policy as an insured party, it shall not be responsible for any loss which may be suffered by reason of, directly or indirectly, its failure to notify the insurers of any material fact relating to the risk assumed by such insurers or any other information of any kind, unless the Agent shall have requested it to do so in writing and the Security Agent shall have failed to do so within fourteen days after receipt of that request.

14.13 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 assets 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.

14.14 Acceptance of title

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

14.15 Refrain from illegality

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

14.16 Confidential information

Notwithstanding any other provision of this Agreement:

- (a) the Security Agent may collect, use and disclose personal data about the Senior Lenders and/or the other Parties (if any are an individual) or individuals associated with the Senior Lenders and/or other Parties, to the extent necessary to permit that the Security Agent to carry out its obligations to the Senior Lenders and the other Parties and for other related purposes, including auditing, monitoring and analysis of its business, fraud and crime prevention, money laundering, legal and regulatory compliance and the marketing by the Security Agent or members of the Security Agent's corporate group of other services, and the Security Agent will keep the personal data up to date; and
- (b) the Security Agent may also transfer the personal data to any country (including countries outside the European Economic Area where there may be less stringent data protection laws) to process information on the Security Agent's behalf. Wherever it is processed, the personal data will be protected by a strict code of secrecy and security to which all members of the Security Agent's corporate group, their staff and any third parties are subject, and will only be used in accordance with the Security Agent's instruction.

14.17 Winding up of trust

If the Security Agent, with the approval of the Agent and each Hedge Counterparty, determines that (a) all of the Secured Obligations and all other obligations secured by the Security Documents have been fully and finally discharged and (b) none of the Secured Parties is under any commitment, obligation or liability (actual or contingent) to make advances or provide other financial accommodation to any Debtor pursuant to the Debt Documents:

- (a) the trusts set out in this Agreement shall be wound up and the Security Agent shall release, without recourse or warranty, all of the Transaction Security and the rights of the Security Agent under each of the Security Documents; and

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

14.18 Powers supplemental

The rights, powers and discretions conferred upon the Security Agent by this Agreement shall be supplemental to the Trustee Act 1925 and the Trustee Act 2000 and in addition to any which may be vested in the Security Agent by general law or otherwise.

14.19 Trustee division separate

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

14.20 Disapplication

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

14.21 Intra-Group Lenders and Debtors: Power of Attorney

Each Intra-Group Lender and Debtor by way of security for its obligations under this Agreement irrevocably appoints the Security Agent to be its attorney to do anything which that Intra-Group Lender or Debtor has authorised the Security Agent or any other Party to do under this Agreement 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).

14.22 Financial Services and Markets Act 2000

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

14.23 Merger and transfer

If the Security Agent:

- (a) merges or consolidates with any person; or
- (b) transfers to any person all or substantially all of its assets or all or substantially all of its corporate trust and loan agency business,

that person (or, in the case of any merger or consolidation, any person which results from the merger or consolidation) shall be a Party and shall be the Security Agent without that person or any Party doing anything (including executing or registering any document).

15. CHANGE OF SECURITY AGENT AND DELEGATION

15.1 Resignation of the Security Agent

- (a) The Security Agent may resign and appoint one of its affiliates as successor by giving notice to the Parent and the Senior Creditors.
- (b) Alternatively the Security Agent may resign by giving notice to the other Parties in which case the Majority Senior Creditors may appoint a successor Security Agent.
- (c) If the Majority Senior Creditors have not appointed a successor Security Agent in accordance with clause 15.10 within 30 days after the notice of resignation was given, the Security Agent (after consultation with the Agent) may appoint a successor Security Agent.
- (d) The retiring Security Agent (the "**Retiring Security Agent**") shall, make available to the successor Security Agent such documents and records and provide such assistance as the successor Security Agent may reasonably request for the purposes of performing its functions as Security Agent under the Debt Documents.
- (e) The Security Agent's resignation notice shall only take effect upon (i) the appointment of a successor and (ii) the transfer of all of 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 clause 14.16(b) and under clause 15.1(d)) but shall, in respect of any act or omission by it whilst it was the Security Agent, remain entitled to the benefit of clauses 14 (*The Security Agent*), 18.1 (*Debtors' indemnity*) and 18.3 (*Senior Creditors' indemnity*). Its successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if that successor had been an original Party.
- (g) The Majority Senior Creditors may, by notice to the Security Agent, require it to resign in accordance with clause 15.1(b). In this event, the Security Agent shall resign in accordance with clause 15.1(b) but the cost referred to in clause 15.1(d) shall be for the account of the Parent.

15.2 Delegation

- (a) Each of the Security Agent, any Receiver and any Delegate may, at any time, delegate by power of attorney or otherwise to any person for any period, all or any of the rights, powers and discretions vested in it by any of the Debt Documents.
- (b) That delegation may be made upon any terms and conditions (including the power to sub-delegate) and subject to any restrictions that the Security Agent, that Receiver or that Delegate (as the case may be) considers in its discretion to be appropriate may, in its discretion, think fit and it shall not be bound to supervise, or be in any way responsible for any loss incurred by reason of any act, misconduct or default on the part of any such delegate or sub-delegate.

15.3 Additional Security Agents

- (a) The Security Agent may at any time appoint (and subsequently remove) any person to act as a separate trustee or as a co-trustee jointly with it (i) if it considers that appointment to be appropriate or (ii) for the purposes of conforming to any legal requirements, restrictions or conditions which the Security Agent deems to be relevant or (iii) for obtaining or enforcing any judgment in any jurisdiction, and the Security Agent shall give prior notice to the Parent and the Agent of that appointment.
- (b) Any person so appointed shall have the rights, powers and discretions (not exceeding those conferred on the Security Agent by this Agreement) and the duties and obligations that are conferred or imposed by the instrument of appointment.
- (c) The remuneration that the Security Agent may pay to that person, and any costs and expenses (together with any applicable VAT) incurred by that person in performing its functions pursuant to that appointment shall, for the purposes of this Agreement, be treated as costs and expenses incurred by the Security Agent.

16. CHANGES TO THE PARTIES

16.1 Assignments and transfers

No Party may assign any of its rights and benefits or transfer any of its rights, benefits and obligations in respect of any Debt Documents or the Liabilities except as permitted by this clause 16.

16.2 Change of Investor

Subject to clause 6.4 (*No acquisition of Subordinated Liabilities*), an Investor may assign any of its rights and benefits or transfer any of its rights, benefits and obligations in respect of the Subordinated Liabilities owed to it if any assignee or transferee has (if not already party to this Agreement as an Investor) acceded to this Agreement, as an Investor, pursuant to clause 16.9 (*Creditor/Agent Accession Undertaking*).

16.3 Change of Senior Lender

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

- (i) that assignment or transfer is in accordance with the terms of the Senior Facilities Agreement; and
- (ii) any assignee or transferee has (if not already party to this Agreement as a Senior Lender) acceded to this Agreement, as a Senior Lender, pursuant to clause 16.9 (*Creditor/Agent Accession Undertaking*).

16.4 Change of Hedge Counterparty

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

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

as a Hedge Counterparty pursuant to clause 16.9 (*Creditor/Agent Accession Undertaking*).

16.5 Change of Agent

No person shall become the Agent unless at the same time it accedes to this Agreement as the Agent pursuant to clause 16.9 (*Creditor/Agent Accession Undertaking*).

16.6 Change of Intra-Group Lender

Subject to clause 5.4 (*Acquisition of Intra-Group Liabilities*) and to the terms of the other Debt Documents, any Intra-Group Lender may assign any of its rights and benefits or transfer any of its rights, benefits and obligations in respect of the Intra-Group Liabilities to another member of the Group if that member of the Group has (if not already party to this Agreement as an Intra-Group Lender) acceded to this Agreement as an Intra-Group Lender, pursuant to clause 16.9 (*Creditor/Agent Accession Undertaking*).

16.7 New Intra-Group Lender

If any Intra-Group Lender or any member of the Group (other than the Parent) makes any loan to or grants any credit to or makes any other financial arrangement having similar effect with any Debtor, in an aggregate amount of \$50,000 or more, the Parent will procure that the person giving that loan, granting that credit or making that other financial arrangement (if not already party to this Agreement as an Intra-Group Lender) accedes to this Agreement, as an Intra-Group Lender pursuant to clause 16.9 (*Creditor/Agent Accession Undertaking*).

16.8 New Ancillary Lender

If any Affiliate of a Senior Lender becomes an Ancillary Lender in accordance with clause 7.8 (*Affiliates of Lenders as Ancillary Lenders*) of the Senior Facilities Agreement, it shall not be entitled to share in any of the Transaction Security or in the benefit of any guarantee or indemnity in respect of any of the liabilities arising in relation to its Ancillary Facilities unless it has (if not already party to this Agreement as a Senior Lender) acceded to this Agreement as a Senior Lender and to the Senior Facilities Agreement as an Ancillary Lender pursuant to clause 16.9 (*Creditor/Agent Accession Undertaking*).

16.9 Creditor/Agent Accession Undertaking

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

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

16.10 New Debtor

- (a) If any member of the Group:
 - (i) incurs any Liabilities in an aggregate amount of \$50,000 or more; or
 - (ii) gives any security, guarantee, indemnity or other assurance against loss in respect of any of the Liabilities,

the Debtors will procure that the person incurring those Liabilities or giving that assurance accedes to this Agreement as a Debtor, in accordance with clause 16.10(b), no later than contemporaneously with the incurrance of those Liabilities or the giving of that assurance.

- (b) With effect from the date of acceptance by the Security Agent of a Debtor Accession Deed duly executed and delivered to the Security Agent by the new Debtor or, if later, the date specified in the Debtor Accession Deed, the new Debtor shall assume the same obligations and become entitled to the same rights as if it had been an original Party to this Agreement as a Debtor.

16.11 Additional parties

- (a) Each of the Parties appoints the Security Agent to receive on its behalf each Debtor Accession Deed and Creditor/Agent Accession Undertaking delivered to the Security Agent and the Security Agent shall, as soon as reasonably practicable after receipt by it, sign and accept the same if it appears on its face to have been completed, executed and, where applicable, delivered in the form contemplated by this Agreement or, where applicable, by the relevant Senior Facilities Agreement.

- (b) In the case of a Creditor/Agent Accession Undertaking delivered to the Security Agent by any new Ancillary Lender (which is an Affiliate of a Senior Lender) or any party acceding to this Agreement as a Hedge Counterparty:
 - (i) the Security Agent shall, as soon as practicable after signing and accepting that Creditor/Agent Accession Undertaking in accordance with 16.11(a), deliver that Creditor/Agent Accession Undertaking to the Agent; and
 - (ii) the Agent shall, as soon as practicable after receipt by it, sign and accept that Creditor/Agent Accession Undertaking if it appears on its face to have been completed, executed and delivered in the form contemplated by this Agreement.

16.12 Resignation of a Debtor

- (a) The Agent shall not accept a Resignation Letter (as defined in the Senior Facilities Agreement) from a Senior Guarantor under clause 29.5 (*Resignation of a Guarantor*) of the Senior Facilities Agreement unless each Hedge Counterparty has notified the Security Agent that no payment is due from that Guarantor to that Hedge Counterparty under clause 21.1 (*Guarantee and indemnity*) of the Senior Facilities Agreement. The Security Agent shall, upon receiving that notification, notify the Agent.
- (b) The Parent may request that a Debtor ceases to be a Debtor by delivering to the Security Agent a Debtor Resignation Request.
- (c) The Security Agent shall accept a Debtor Resignation Request and notify the Parent and each other Party of its acceptance if:
 - (i) the Parent has confirmed that no Default is continuing or would result from the acceptance of the Debtor Resignation Request;
 - (ii) to the extent that the Senior Lender Discharge Date has not occurred, the Agent notifies the Security Agent that that Debtor is not, or has ceased to be, a Senior Borrower or a Senior Guarantor;
 - (iii) each Hedge Counterparty notifies the Security Agent that that Debtor is under no actual or contingent obligations to that Hedge Counterparty in respect of the Hedging Liabilities; and
 - (iv) the Parent confirms that that Debtor is under no actual or contingent obligations in respect of the Intra-Group Liabilities.
- (d) Upon notification by the Security Agent to the Parent of its acceptance of the resignation of a Debtor, that member of the Group shall cease to be a Debtor and shall have no further rights or obligations under this Agreement as a Debtor.

17. COSTS AND EXPENSES

17.1 Security Agent's ongoing costs

- (a) In the event of (i) a Default or (ii) the Security Agent considering it necessary or expedient or (iii) the Security Agent being requested by a Debtor or the Majority Senior Creditors to undertake duties which the Security Agent and the Parent agree to

be of an exceptional nature and/or outside the scope of the normal duties of the Security Agent under the Debt Documents, the Parent shall pay to the Security Agent any additional remuneration (together with any applicable VAT) that may be agreed between them.

- (b) If the Security Agent and the Parent fail to agree upon the nature of those duties or upon any additional remuneration, that dispute shall be determined by an investment bank (acting as an expert and not as an arbitrator) selected by the Security Agent and approved by the Parent or, failing approval, nominated (on the application of the Security Agent) by the President for the time being of the Law Society of England and Wales (the costs of the nomination and of the investment bank being payable by the Parent) and the determination of any investment bank shall be final and binding upon the parties to this Agreement.

17.2 Transaction expenses

The Parent shall, promptly on demand, procure the payment to the Security Agent of the amount of all costs and expenses (including legal fees) (together with any applicable VAT) reasonably incurred by the Security Agent and any Receiver or Delegate in connection with the negotiation, preparation, printing, execution, syndication and perfection of:

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

17.3 Stamp taxes

The Parent shall pay and, within three Business Days of demand, indemnify the Security Agent against any cost, loss or liability the Security Agent incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Debt Document.

17.4 Interest on demand

If any Creditor, Investor or Debtor fails to pay any amount payable by it under this Agreement on its due date, interest shall accrue on the overdue amount (and be compounded with it) from the due date up to the date of actual payment (both before and after judgment and to the extent interest at a default rate is not otherwise being paid on that sum) at the rate which is one per cent per annum over the rate at which the Security Agent 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.

17.5 Enforcement and preservation costs

The Parent shall, within three Business Days of demand, pay to the Security Agent the amount of all costs and expenses (including legal fees and together with any applicable VAT) incurred by it in connection with the enforcement 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.

18. INDEMNITIES

18.1 Debtors' indemnity

Each Debtor shall promptly indemnify the Security Agent and every Receiver and Delegate against any cost, loss or liability (together with any applicable VAT) incurred by any of them:

- (a) in relation to or as a result of:
 - (i) any failure by the Parent to comply with obligations under clause 17 (*Costs and Expenses*);
 - (ii) the taking, holding, protection or enforcement of the Transaction Security;
 - (iii) the exercise of any of the rights, powers, discretions and remedies vested in the Security Agent, each Receiver and each Delegate by the Debt Documents or by law; or
 - (iv) any default by any Debtor in the performance of any of the obligations expressed to be assumed by it in the Debt Documents; or
- (b) which otherwise relates to any of the Security Property or in acting as Security Agent, Receiver or Delegate under the terms of the Debt Documents (otherwise than as a direct result of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct).

Each Debtor expressly acknowledges and agrees that the continuation of its indemnity obligations under this clause 18.1 will not be prejudiced by any release or disposal under clause 11.2 (*Distressed Disposals*) taking into account the operation of that clause 11.2 (*Distressed Disposals*).

18.2 Priority of indemnity

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 clause 18.1 (*Debtors' indemnity*) 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.

18.3 Senior Creditors' indemnity

- (a) Each Senior Creditor shall (in the proportion that the Liabilities due to it bears to the aggregate of the Liabilities due to all the Senior Creditors for the time being (or, if the Liabilities due to each of those Senior Creditors is zero, immediately prior to their being reduced to zero)), indemnify the Security Agent and every Receiver and every Delegate, within three Business Days of demand, against any cost, loss or liability incurred by any of them (otherwise than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct) in acting as Security Agent, Receiver or Delegate under the Debt Documents (unless the relevant Security Agent, Receiver or Delegate has been reimbursed by a Debtor pursuant to a Debt Document) and the Debtors shall jointly and severally indemnify each Senior Creditor against any payment made by it under this clause 18.

- (b) For the purposes only of clause 18.3(a), to the extent that any hedging transaction under a Hedging Agreement has not been terminated or closed-out, the Hedging Liabilities due to any Hedge Counterparty in respect of that hedging transaction will be deemed to be:
- (i) if the relevant Hedging Agreement is based on an ISDA Master Agreement, the amount, if any, which would be payable to it under that Hedging Agreement in respect of those hedging transactions, if the date on which the calculation is made was deemed to be an Early Termination Date (as defined in the relevant ISDA Master Agreement) for which the relevant Debtor is the Defaulting Party (as defined in the relevant ISDA Master Agreement); or
 - (ii) if the relevant Hedging Agreement is not based on an ISDA Master Agreement, the amount, if any, which would be payable to it under that Hedging Agreement in respect of that hedging transaction, if the date on which the calculation is made was deemed to be the date on which an event similar in meaning and effect (under that Hedging Agreement) to an Early Termination Date (as defined in any ISDA Master Agreement) occurred under that Hedging Agreement for which the relevant Debtor is in a position similar in meaning and effect (under that Hedging Agreement) to that of a Defaulting Party (under and as defined in the same ISDA Master Agreement),

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

18.4 Parent's indemnity to Senior Creditors

The Parent shall promptly and as principal obligor indemnify each Senior Creditor against any cost, loss or liability (together with any applicable VAT), whether or not reasonably foreseeable, incurred by any of them in relation to or arising out of the operation of clause 11.2 (*Distressed Disposals*).

18.5 Continuing obligations

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

19. INFORMATION

19.1 Information and dealing

- (a) The Creditors and the Investors shall provide to the Security Agent from time to time (through the Agent in the case of a Senior Lender) any information that the Security Agent may reasonably specify as being necessary or desirable to enable the Security Agent to perform its functions as trustee.
- (b) Subject to clause 35.5 (*Communication when Agent is Impaired Agent*) of the Senior Facilities Agreement, each Senior Lender shall deal with the Security Agent exclusively through the Agent and the Hedge Counterparties shall deal directly with the Security Agent and shall not deal through the Agent.

- (c) The Agent shall not be under any obligation to act as agent or otherwise on behalf of any Hedge Counterparty except as expressly provided for in, and for the purposes of, this Agreement.

19.2 Disclosure

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

19.3 Notification of prescribed events

- (a) If an Event of Default or Default either occurs or ceases to be continuing the Agent shall, upon becoming aware of that occurrence or cessation, notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each Hedge Counterparty.
- (b) If an Acceleration Event occurs the Agent shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each other Party.
- (c) If the Security Agent enforces, or takes formal steps to enforce, any of the Transaction Security it shall notify each Party of that action.
- (d) If any Senior Creditor exercises any right it may have to enforce, or to take formal steps to enforce, any of the Transaction Security it shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each Party of that action.
- (e) If a Debtor defaults on any Payment due under a Hedging Agreement, the Hedge Counterparty which is party to that Hedging Agreement shall, upon becoming aware of that default, notify the Security Agent and the Security Agent shall, upon receiving that notification, notify the Agent and each other Hedge Counterparty.
- (f) If a Hedge Counterparty terminates or closes-out, in whole or in part, any hedging transaction under any Hedging Agreement under clause 4.9 (*Permitted Enforcement: Hedge Counterparties*) it shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify the Agent and each other Hedge Counterparty.
- (g) If a Senior Mandatory Prepayment is waived the Agent shall notify the Security Agent of the amount of the Senior Mandatory Prepayment waived and the Security Agent shall, upon receiving that notification, notify each Hedge Counterparty.
- (h) If any of the Term Outstandings are to be reduced (whether by way of repayment, prepayment, cancellation or otherwise) the Parent shall notify each Hedge Counterparty of:
 - (i) the date and amount of that proposed reduction;
 - (ii) any Interest Rate Hedge Excess that would result from that proposed reduction and that Hedge Counterparty's Interest Rate Hedge Proportion (if any) of that Interest Rate Hedge Excess; and

- (iii) any Exchange Rate Hedge Excess that would result from that proposed reduction and that Hedge Counterparty's Exchange Rate Hedge Proportion (if any) of that Exchange Rate Hedge Excess.

20. NOTICES

20.1 Communications in writing

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

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

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

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

20.3 Addresses

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

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

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

20.4 Delivery

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

and, if a particular department or officer is specified as part of its address details provided under clause 20.3 (*Addresses*), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to the Security Agent will be effective only when actually received by the Security Agent and then only if it is

expressly marked for the attention of the department or officer identified with the Security Agent's signature below (or any substitute department or officer as the Security Agent shall specify for this purpose).

- (c) Any communication or document made or delivered to the Parent in accordance with this clause 20.4 will be deemed to have been made or delivered to each of the Debtors.

20.5 Notification of address and fax number

Promptly upon receipt of notification of an address and fax number or change of address or fax number pursuant to clause 20.3 (*Addresses*) or changing its own address or fax number, the Security Agent shall notify the other Parties.

20.6 Electronic communication

- (a) Any communication to be made between the Security Agent and the Agent, an Arranger, a Senior Lender or a Hedge Counterparty under or in connection with this Agreement may be made by electronic mail or other electronic means, if the Security Agent and the Agent or the relevant Arranger, Senior Lender or Hedge Counterparty:
 - (i) agree that, unless and until notified to the contrary, this is to be an accepted form of communication;
 - (ii) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
 - (iii) notify each other of any change to their address or any other such information supplied by them.
- (b) Any electronic communication made between the Security Agent and the Agent, an Arranger, a Senior Lender or a Hedge Counterparty will be effective only when actually received in readable form and in the case of any electronic communication made by a Senior Lender, Hedge Counterparty, Arranger or the Agent to the Security Agent only if it is addressed in such a manner as the Security Agent shall specify for this purpose.

20.7 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.

21. PRESERVATION

21.1 Partial invalidity

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

21.2 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.

21.3 Remedies and waivers

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

21.4 Waiver of defences

The provisions of this Agreement will not be affected by an act, omission, matter or thing which, but for this clause 21.4, would reduce, release or prejudice the subordination and priorities expressed to be created by this Agreement including (without limitation and whether or not known to any Party):

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

- (g) any intermediate Payment of any of the Liabilities owing to the Senior Creditors in whole or in part; or
- (h) any insolvency or similar proceedings.

21.5 Priorities not affected

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

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

22. CONSENTS, AMENDMENTS AND OVERRIDE

22.1 Required consents

- (a) Subject to clause 22.1(b), to clause 22.4 (*Exceptions*) and to clause 22.5 (*Disenfranchisement of Sponsor Affiliates*), this Agreement may be amended or waived only with the consent of the Agent, the Majority Senior Lenders and the Security Agent.
- (b) An amendment or waiver that has the effect of changing or which relates to:
 - (i) clause 9 (*Redistribution*), clause 12 (*Application of Proceeds*) or this clause 22;
 - (ii) clauses 14.3(d)(iii), 14.3(e) and 14.3(f);
 - (iii) clause 3.3 (*Increase of Priority Senior Liabilities*);
 - (iv) the order of priority or subordination under this Agreement,
 shall not be made without the consent of:
 - (A) the Agent;
 - (B) the Senior Lenders;
 - (C) each Hedge Counterparty (to the extent that the amendment or waiver would adversely affect the Hedge Counterparty); and
 - (D) the Security Agent.

22.2 Amendments and Waivers: Transaction Security Documents

- (a) Subject to clause 22.2(b) and to clause 22.4 (*Exceptions*) and unless the provisions of any Debt Document expressly provide otherwise, the Security Agent may, if authorised by the Majority Senior Creditors, and if the Parent consents, amend the terms of, waive any of the requirements of or grant consents under, any of the Transaction Security Documents which shall be binding on each Party.
- (b) Subject to clause 22.4(c), the prior consent of the Senior Creditors is required to authorise any amendment or waiver of, or consent under, any Transaction Security Document which would affect the nature or scope of the Charged Property or the manner in which the proceeds of enforcement of the Transaction Security are distributed.

22.3 Effectiveness

Any amendment, waiver or consent given in accordance with this clause 22 will be binding on all Parties and the Security Agent may effect, on behalf of the Agent or any Arranger or Creditor, any amendment, waiver or consent permitted by this clause 22.

22.4 Exceptions

- (a) Subject to clauses 22.4(c) and 22.4(d), if the amendment, waiver or consent may impose new or additional obligations on or withdraw or reduce the rights of any Party other than:
 - (i) in the case of a Senior Creditor, in a way which affects or would affect Senior Creditors of that Party's class generally; or
 - (ii) in the case of a Debtor, to the extent consented to by the Parent under clause 22.2(a) (*Amendments and Waivers: Transaction Security Documents*),the consent of that Party is required.
- (b) Subject to clauses 22.4(c) and 22.4(d), an amendment, waiver or consent which relates to the rights or obligations of the Agent, an Arranger, the Security Agent (including, without limitation, any ability of the Security Agent to act in its discretion under this Agreement) or a Hedge Counterparty may not be effected without the consent of the Agent or, as the case may be, that Arranger, the Security Agent or that Hedge Counterparty.
- (c) Neither clause 22.4(a) nor 22.4(b), nor clause 22.2(b) 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 (*Proceeds of Disposals, Recoveries from Report Providers and Adjustment of senior Mandatory Prepayments*).
- (d) Clauses 22.4(a) and 22.4(b) shall apply to an Arranger only to the extent that Arranger Liabilities are then owed to that Arranger.

22.5 Disenfranchisement of Sponsor Affiliates

- (a) For so long as a Sponsor Affiliate (i) beneficially owns a Senior Commitment or (ii) has entered into a sub-participation agreement relating to a Senior Commitment or other agreement or arrangement having a substantially similar economic effect and such agreement or arrangement has not been terminated:
 - (i) in ascertaining:
 - (A) the Majority Senior Creditors; or
 - (B) whether:
 - (1) any relevant percentage (including, for the avoidance of doubt, unanimity) of Senior Credit Participations; or
 - (2) the agreement of any specified group of Senior Creditors,has been obtained to approve any request for a Consent or to carry any other vote or approve any action under this Agreement,
 - (ii) that Senior Commitment shall be deemed to be zero and, subject to clause 22.5(a)(ii), that Sponsor Affiliate (or the person with whom it has entered into that sub-participation, other agreement or arrangement (a "Counterparty")) shall be deemed not to be a Senior Lender save to the extent that a Counterparty is a Senior Lender by virtue otherwise than by beneficially owning the relevant Senior Commitment.
- (b) Each Sponsor Affiliate that is a Senior Lender agrees that:
 - (i) in relation to any meeting or conference call to which all the Senior Creditors, or any combination of those groups of Senior Creditors are invited to attend or participate, it shall not attend or participate in the same if so requested by the Security Agent or, unless the Security Agent otherwise agrees, be entitled to receive the agenda or any minutes of the same; and
 - (ii) it shall not, unless the Security Agent otherwise agrees, be entitled to receive any report or other document prepared at the behest of, or on the instructions of, the Security Agent or one or more of the Senior Creditors.

22.6 Disenfranchisement of Defaulting Lenders

- (a) For so long as a Defaulting Lender has any Available Commitment:
 - (i) in ascertaining:
 - (A) the Majority Senior Creditors; or
 - (B) whether:
 - (1) any relevant percentage (including, for the avoidance of doubt, unanimity) of Senior Credit Participations; or
 - (2) the agreement of any specified group of Senior Creditors,

has been obtained to approve any request for a Consent or to carry any other vote or approve any action under this Agreement,

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

(b) For the purposes of this clause 22.6, the Security Agent may assume that the following Creditors are Defaulting Lenders:

- (i) any Senior Lender which has notified the Security Agent that it has become a Defaulting Lender;
- (ii) any Senior Lender to the extent that the Agent has notified the Security Agent that that Senior Lender is a Defaulting Lender; and
- (iii) any Senior Lender in relation to which it is aware that any of the events or circumstances referred to in paragraphs (a), (b) or (c) of the definition of "Defaulting Lender" in the Senior Facilities Agreement has occurred,

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

(c) Clauses 22.6(a) and 22.6(b) shall not apply to HSBC Bank plc for so long as it is a party to this Agreement.

22.7 Calculation of Senior Credit Participations

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

22.8 Deemed consent

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

- (a) give a corresponding Consent in equivalent terms in relation to each of the Debt Documents to which they are a party; and
- (b) do anything (including executing any document) that the Senior Lenders may reasonably require to give effect to clause 22.8.

22.9 Excluded consents

Clause 22.8 (*Deemed consent*) does not apply to any Consent which has the effect of:

- (a) increasing or decreasing the Liabilities;

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

22.10 No liability

None of the Senior Lenders or the Agent will be liable to any other Creditor, Investor, Agent or Debtor for any Consent given or deemed to be given under this clause 22.

22.11 Agreement to override

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

23. 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.

24. GOVERNING LAW

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

25. ENFORCEMENT

25.1 Jurisdiction

- (a) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a "**Dispute**").
- (b) The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.
- (c) This clause 25.1 is for the benefit of the Secured Parties only. As a result, no Secured Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Secured Parties may take concurrent proceedings in any number of jurisdictions.

25.2 Service of process

- (a) Without prejudice to any other mode of service allowed under any relevant law:
 - (i) each Debtor (unless incorporated in England and Wales):
 - (A) irrevocably appoints Rickerbys LLP as its agent for service of process in relation to any proceedings before the English courts in connection with this Agreement and the Parent, by its execution of this Agreement, accepts that appointment; and

- (B) agrees that failure by a process agent to notify the relevant Debtor of the process will not invalidate the proceedings concerned;
- (ii) each Investor (unless incorporated in England and Wales):
 - (A) irrevocably appoints the Rickerbys LLP as its agent for service of process in relation to any proceedings before the English courts in connection with this Agreement; and
 - (B) agrees that failure by a process agent to notify the relevant Investor of the process will not invalidate the proceedings concerned.
- (b) If any person appointed as an agent for service of process is unable for any reason to act as agent for service of process, the Parent (in the case of an agent for service of process for a Debtor), the relevant Investor must immediately (and in any event within five days of such event taking place) appoint another agent on terms acceptable to the Agent. Failing this, the Agent may appoint another agent for this purpose.
- (c) Each Debtor and Investor expressly agrees and consents to the provisions of this clause 25 and clause 24 (*Governing Law*).

This Agreement has been entered into on the date stated at the beginning of this Agreement and executed as a deed by the Intra-Group Lenders, the Debtors and the Investors and is intended to be and is delivered by them as a deed on the date specified above.

**SCHEDULE 1: SENIOR LENDERS, ORIGINAL HEDGE COUNTERPARTIES,
INVESTORS, INTRA-GROUP LENDERS AND ORIGINAL DEBTORS**

Part 1: Senior Lenders

HSBC Bank plc

ICG Senior Debt Partners SV 1 SA

Intermediate Capital Group PLC

MCG Capital Corporation

Part 2: Original Hedge Counterparty

HSBC Bank plc

Part 3: Investors

Name	Registration number (or equivalent, if any) and Jurisdiction
Battery Ventures IX, LP	4792030
Battery Investment Partners IX, LLC	4807209
David Hunter	n/a
Martin Rennie	n/a
George McGregor	n/a

Part 4: Intra Group Lenders

Name	Registration number (or equivalent, if any) and Jurisdiction
Parent	45-2805704, Delaware, USA
GMI Holdco, Inc	45-3250473, Delaware, USA
GMI Group Holdings Limited	SC352822, Scotland
Gas Measurement Instruments Limited	SC025020, Scotland
Detcon, Inc	76-0164396, Texas, USA
DSA Detection LLC	20-3506093, Delaware, USA
DSA Holdco, Inc	46-1117860, Delaware, USA

Detcon Holdco, Inc	45-3250671, Delaware, USA
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Part 5: Original Debtors

Name	Registration number (or equivalent, if any) and Jurisdiction
Parent	45-2805704, Delaware, USA
GMI Holdco, Inc	45-3250473, Delaware, USA
GMI Group Holdings Limited	SC352822, Scotland
Gas Measurement Instruments Limited	SC025020, Scotland
Detcon, Inc	76-0164396, Texas, USA
DSA Detection LLC	20-3506093, Delaware, USA
DSA Holdco, Inc	46-1117860, Delaware, USA
Detcon Holdco, Inc	45-3250671, Delaware, USA
Simtronics AS	
Simtronics SAS	

SCHEDULE 2: FORM OF DEBTOR ACCESSION DEED

THIS AGREEMENT is made on [♦] 20[♦] and made between:

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

This agreement is made on [♦] 20[♦] by the Acceding Debtor in relation to an intercreditor agreement (the "Intercreditor Agreement") dated [♦] 20[♦] between, amongst others, [♦] as parent, [♦] as company, [♦] as security agent, [♦] as agent, the other Creditors and the other Debtors (each as defined in the Intercreditor Agreement).

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

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

(the "Relevant Documents").

IT IS AGREED as follows:

1. Terms defined in the Intercreditor Agreement shall, unless otherwise defined in this Agreement, bear the same meaning when used in this Agreement.
2. The Acceding Debtor and the Security Agent agree that the Security Agent shall hold:
 - (a) [any Security in respect of Liabilities created or expressed to be created pursuant to the Relevant Documents;
 - (b) all proceeds of that Security; and]
 - (c) all obligations expressed to be undertaken by the Acceding Debtor to pay amounts in respect of the Liabilities to the Security Agent as trustee for the Secured Parties (in the Relevant Documents or otherwise) and secured by the Transaction Security together with all representations and warranties expressed to be given by the Acceding Debtor (in the Relevant Documents or otherwise) in favour of the Security Agent as trustee for the Secured Parties,
 - (d) on trust for the Secured Parties on the terms and conditions contained in the Intercreditor Agreement.
3. The Acceding Debtor confirms that it intends to be party to the Intercreditor Agreement as a Debtor, undertakes to perform all the obligations expressed to be assumed by a Debtor under the Intercreditor Agreement and agrees that it shall be bound by all the provisions of the Intercreditor Agreement as if it had been an original party to the Intercreditor Agreement.
4. [In consideration of the Acceding Debtor being accepted as an Intra-Group Lender for the purposes of the Intercreditor Agreement, the Acceding Debtor also confirms that it intends to be party to the Intercreditor Agreement as an Intra-Group Lender, and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by an Intra-Group

Lender and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement].

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

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

The Acceding Debtor

[EXECUTED AS A DEED

By: *[Full Name of Acceding Debtor]*

)

)

Director

Director/Secretary

OR

[EXECUTED AS A DEED

By: *[Full Name of Acceding Debtor]*

)

)

Signature of Director

Name of Director

in the presence of

Signature of witness

Name of witness

Address of witness

Occupation of witness]

Address for notices:

Address: [◆]

Fax: [◆]

The Security Agent

[Full Name of Current Security Agent]

By: [◆]

Date: [◆] 20[◆]

SCHEDULE 3: FORM OF CREDITOR/AGENT ACCESSION UNDERTAKING

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

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

From: *[Acceding Creditor/Agent]*

THIS UNDERTAKING is made on [♦] 20[♦] by *[insert full name of new Senior Lender/Hedge Counterparty/Agent/Intra-Group Lender/[Investor]]* (the "Acceding [Senior Lender/Counterparty/Agent/Intra-Group Lender/[Investor]]") in relation to the intercreditor agreement (the "Intercreditor Agreement") dated [♦] 20[♦] between, among others, *[insert name of Parent]* as parent, *[insert name of company]* as company, *[insert name of security agent]* as security agent, *[insert name of agent]* as agent, the other Creditors and the other Debtors (each as defined in the Intercreditor Agreement). Terms defined in the Intercreditor Agreement shall, unless otherwise defined in this Undertaking, bear the same meanings when used in this Undertaking.

In consideration of the Acceding [Senior Lender/Hedge Counterparty /Agent/Intra-Group Lender/[Investor]] being accepted as a [Senior Lender/Hedge Counterparty/ Intra-Group Lender/Agent/[Investor]] for the purposes of the Intercreditor Agreement, the Acceding [Senior Lender/Hedge Counterparty/Agent/Intra-Group Lender/[Investor]] confirms that, as from [♦] 20[♦], it intends to be party to the Intercreditor Agreement as a [Senior Lender/Hedge Counterparty/Agent/Intra-Group Lender/[Investor]] and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a [Senior Lender/Hedge Counterparty/Agent/Intra-Group Lender/ [Investor]] and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original party to the Intercreditor Agreement.

[The Acceding Lender is an Affiliate of a Senior Lender and has become a provider of an Ancillary Facility. In consideration of the Acceding Lender being accepted as an Ancillary Lender for the purposes of the Senior Facilities Agreement, the Acceding Lender confirms, for the benefit of the parties to the Senior Facilities Agreement, that, as from [♦] 20[♦], it intends to be party to the Senior Facilities Agreement as an Ancillary Lender, and undertakes to perform all the obligations expressed in the Senior Facilities Agreement to be assumed by a Finance Party and agrees that it shall be bound by all the provisions of the Senior Facilities Agreement, as if it had been an original party to the Senior Facilities Agreement as an Ancillary Lender.]

[The Acceding Hedge Counterparty has become a provider of hedging arrangements to the [Company]. In consideration of the Acceding Hedge Counterparty being accepted as a Hedge Counterparty for the purposes of the Senior Facilities Agreement, the Acceding Hedge Counterparty confirms, for the benefit of the parties to the Senior Facilities Agreement, that, as from [♦] 20[♦], it intends to be party to the Senior Facilities Agreement as a Hedge Counterparty, and undertakes to perform all the obligations expressed in the Senior Facilities Agreement to be assumed by a Hedge Counterparty and agrees that it shall be bound by all the provisions of the Senior Facilities Agreement, as if it had been an original party to the Senior Facilities Agreement as a Hedge Counterparty.]

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

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

Acceding [Creditor/Agent]

[EXECUTED as a DEED]

[insert full name of Acceding Creditor/Agent]

By: {◆ }

Address: {◆ }

Fax: {◆ }

Accepted by the Security Agent

[Accepted by the Agent]

for and on behalf of

for and on behalf of

[Insert full name of current Security Agent]

[Insert full name of Agent]

Date: [◆] 20[◆]

Date: [◆] 20[◆]

SCHEDULE 4: FORM OF DEBTOR RESIGNATION REQUEST

To: [◆] as Security Agent

From: [resigning Debtor] and [Parent]

Dated: [◆] 20[◆]

Dear Sirs

[PARENT] - [◆] INTERCREDITOR AGREEMENT DATED [◆]
20[◆] (THE "INTERCREDITOR AGREEMENT")

1. We refer to the Intercreditor Agreement. This is a Debtor Resignation Request. Terms defined in the Intercreditor Agreement have the same meaning in this Debtor Resignation Request unless given a different meaning in this Debtor Resignation Request.
2. Pursuant to clause [16.12] (*Resignation of a Debtor*) of the Intercreditor Agreement we request that [resigning Debtor] be released from its obligations as a Debtor under the Intercreditor Agreement.
3. We confirm that:
 - (a) no Default is continuing or would result from the acceptance of this request; and
 - (b) [resigning Debtor] is under no actual or contingent obligations in respect of the Intra-Group Liabilities.
4. This letter and any non-contractual obligations arising out of or in connection with it are governed by English law.

[Parent]

[resigning Debtor]

By: _____

By: _____

EXECUTION PAGES

THE PARENT

EXECUTED AS A DEED)
By: **INDUSTRIAL SAFETY**)
TECHNOLOGIES, LLC

Signature of Director

Name of Director

in the presence of:

Signature of witness

Name of witness

Address of witness

Occupation of witness

Address: 3200 Research Forest Drive
A-1 The Woodlands
Texas 77381

and

Rickerbys LLP
Ellenborough House
Wellington Street
Cheltenham
Gloucestershire
England GL50 1YD
United Kingdom

Fax: (281) 298-2868

Attention: Jesse Feldman and Rickerbys
LLP Managing Partner

THE ORIGINAL DEBTORS

EXECUTED AS A DEED

By: **INDUSTRIAL SAFETY**)
TECHNOLOGIES, LLC)

Signature of Director

Name of Director

in the presence of:

Signature of witness

Name of witness

Address of witness

Occupation of witness

Address: 3200 Research Forest Drive
A-1 The Woodlands
Texas 77381

and

Rickerbys LLP
Ellenborough House
Wellington Street
Cheltenham
Gloucestershire
England GL50 1YD
United Kingdom

Fax: (281) 298-2868

Attention: Jesse Feldman and Rickerbys
LLP Managing Partner

EXECUTED AS A DEED
By: GMI HOLDCO, INC

)
)

Signature of Director

Name of Director

in the presence of:

Signature of witness

Name of witness

Address of witness

Occupation of witness

Address: 3200 Research Forest Drive
A-1 The Woodlands
Texas 77381

and

Rickerbys LLP
Ellenborough House
Wellington Street
Cheltenham
Gloucestershire
England GL50 1YD
United Kingdom

Fax: (281) 298-2868

Attention: Jesse Feldman and Rickerbys
LLP Managing Partner

EXECUTED AS A DEED

**By: GMI GROUP HOLDINGS)
LIMITED)**

Jesse Feldman

Signature of Director

in the presence of:

Valerie Walker

Signature of witness

Valerie Walker

Name of witness

930 Winter St, Suite 2500

Address of witness

Waltham, MA 02451

Executive Assistant

Occupation of witness

Address: Block 2, Inchiman Business
Park,
Renfrew,
Strathclyde,
Scotland
PA4 97G

and

Rickerbys LLP
Ellenborough House
Wellington Street
Cheltenham
Gloucestershire
England GL50 1YD
United Kingdom

Fax: 0141 302 8210

Attention: David Hunter and Rickerbys
LLP Managing Partner

EXECUTED AS A DEED)
By: GAS MEASUREMENT)
INSTRUMENTS LIMITED

Jesse Feldman

Signature of Director

in the presence of:

Val Walker

Signature of witness

Valerie Walker

Name of witness

930 Winter St. Suite 2500

Address of witness

Waltham, MA 02451

Executive Assistant

Occupation of witness

Address: Block 2, Inchiman Business
Park,
Renfrew,
Strathclyde,
Scotland
PA4 97G

and

Rickerbys LLP
Ellenborough House
Wellington Street
Cheltenham
Gloucestershire
England GL50 1YD
United Kingdom

Fax: 0141 302 8210

Attention: David Hunter and Rickerbys
LLP Managing Partner

EXECUTED AS A DEED
By: DSA DETECTION LLC

)
)

Signature of Director

Name of Director

in the presence of:

Signature of witness

Name of witness

Address of witness

Occupation of witness

Address: 3200 Research Forest Drive
A-1 The Woodlands
Texas 77381

and

Rickerbys LLP
Ellenborough House
Wellington Street
Cheltenham
Gloucestershire
England GL50 1YD
United Kingdom

Fax: (281) 298-2868

Attention: Jesse Feldman and Rickerbys
LLP Managing Partner

EXECUTED AS A DEED
By: DSA HOLDCO, INC

)
)

Signature of Director

Name of Director

in the presence of:

Signature of witness

Name of witness

Address of witness

Occupation of witness

Address: 3200 Research Forest Drive
A-1 The Woodlands
Texas 77381

and

Rickerbys LLP
Ellenborough House
Wellington Street
Cheltenham
Gloucestershire
England GL50 1YD
United Kingdom

Fax: (281) 298-2868

Attention: Jesse Feldman and Rickerbys
LLP Managing Partner

EXECUTED AS A DEED
By: DETCON HOLDCO, INC

)
)

Signature of Director

Name of Director

in the presence of:

Signature of witness

Name of witness

Address of witness

Occupation of witness

Address: 3200 Research Forest Drive
A-1 The Woodlands
Texas 77381

and

Rickerbys LLP
Ellenborough House
Wellington Street
Cheltenham
Gloucestershire
England GL50 1YD
United Kingdom

Fax: (281) 298-2868

Attention: Jesse Feldman and Rickerbys
LLP Managing Partner

EXECUTED AS A DEED

By: **DETCO, INC**

)
)

Signature of Director

Name of Director

in the presence of:

Signature of witness

Name of witness

Address of witness

Occupation of witness

Address: 3200 Research Forest Drive
A-1 The Woodlands
Texas 77381

and

Rickerbys LLP
Ellenborough House
Wellington Street
Cheltenham
Gloucestershire
England GL50 1YD
United Kingdom

Fax: (281) 298-2868

Attention: Jesse Feldman and Rickerbys
LLP Managing Partner

THE SECURITY AGENT

HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED

By:

Address: HSBC Corporate Trustee
Company (UK) Limited
8 Canada Square
Level 27
London
E14 5HQ
United Kingdom

Facsimile No: +44 (0)20 7991 4350

Attention: CTLA Trustee Services
Administration

THE AGENT

HSBC BANK PLC

By:

Address: HSBC Southern Corporate
Banking Centre
Global House
High Street
Crawley RH10 1DL

Facsimile No: +44 (0)8455 854 145

Attention: David Sales

THE SENIOR LENDERS

HSBC BANK PLC

By:

Address: HSBC Southern Corporate
Banking Centre
Global House
High Street
Crawley RH10 1DL

Facsimile No: +44 (0)8455 854 145

Attention: David Sales

ICG SENIOR DEBT PARTNERS SV 1 SA

By:

Address: 33, rue de Gasperich
L-5826 Hesperange
Grand Duchy of Luxembourg

Fax: +44(0)1534 849 327

Attention: Michele Foley & Peter Goddard

INTERMEDIATE CAPITAL GROUP PLC

By:

Address: Juxon House
100 St Paul's Churchyard
London
EC4M 8BU

Fax: +44 (0)20 3201 7906

Attention: Kate Pocock

MCG CAPITAL CORPORATION

By:

Address: 1001 19th Street N
10th Floor
Arlington
VA 22209

Fax: (703) 247-7505

Attention: Steve Diverio

THE ARRANGER

HSBC BANK PLC

By:

Address: HSBC Southern Corporate
Banking Centre
Global House
High Street
Crawley RH10 1DL

Facsimile No: +44 (0)8455 854 145

Attention: David Sales

INTERMEDIATE CAPITAL MANAGERS LIMITED

By:

Address: Juxon House
100 St Paul's Churchyard
London
EC4M 8BU

Fax: +44 (0)20 3201 7906

Attention: Kate Pocock

MCG CAPITAL CORPORATION

By:

Address: 1001 19th Street N
10th Floor
Arlington
VA 22209

Fax: (703) 247-7505

Attention: Steve Diverio

THE ORIGINAL HEDGE COUNTERPARTY

HSBC BANK PLC

By:

Address: HSBC Southern Corporate
Banking Centre
Global House
High Street
Crawley RH10 1DL

Facsimile No: +44 (0)8455 854 145

Attention: David Sales

THE INTRA-GROUP LENDERS

EXECUTED AS A DEED)
By: **INDUSTRIAL SAFETY**)
TECHNOLOGIES, LLC

Signature of Director

Name of Director

in the presence of:

Signature of witness

Name of witness

Address of witness

Occupation of witness

Address: 3200 Research Forest Drive
A-1 The Woodlands
Texas 77381

and

Rickerbys LLP
Ellenborough House
Wellington Street
Cheltenham
Gloucestershire
England GL50 1YD
United Kingdom

Fax: (281) 298-2868

Attention: Jesse Feldman and Rickerbys
LLP Managing Partner

EXECUTED AS A DEED

By: **GMI HOLDCO, INC**

)
)

Signature of Director

Name of Director

in the presence of:

Signature of witness

Name of witness

Address of witness

Occupation of witness

Address: 3200 Research Forest Drive
A-1 The Woodlands
Texas 77381

and

Rickerbys LLP
Ellenborough House
Wellington Street
Cheltenham
Gloucestershire
England GL50 1YD
United Kingdom

Fax: (281) 298-2868

Attention: Jesse Feldman and Rickerbys
LLP Managing Partner

EXECUTED AS A DEED

**By: GMI GROUP HOLDINGS)
LIMITED**

Jesse Feldman

Signature of Director

in the presence of:

Valerie Walker

Signature of witness

Valerie Walker

Name of witness

930 Winter St, Suite 2500

Address of witness

Waltham, MA 02451

Executive Assistant

Occupation of witness

Address: Block 2, Inchiman Business
Park,
Renfrew,
Strathclyde,
Scotland
PA4 97G

and

Rickerbys LLP
Ellenborough House
Wellington Street
Cheltenham
Gloucestershire
England GL50 1YD
United Kingdom

Fax: 0141 302 8210

Attention: David Hunter and Rickerbys
LLP Managing Partner

EXECUTED AS A DEED)
By: GAS MEASUREMENT)
INSTRUMENTS LIMITED

Jesse Feldman

Signature of Director

in the presence of:

Val Walker

Signature of witness

Valerie Walker

Name of witness

930 Winter St, Suite 2500

Address of witness

Waltham, MA 02451

Executive Assistant

Occupation of witness

Address: Block 2, Inchiman Business
Park,
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PA4 97G

and

Rickerbys LLP
Ellenborough House
Wellington Street
Cheltenham
Gloucestershire
England GL50 1YD
United Kingdom

Fax: 0141 302 8210

Attention: David Hunter and Rickerbys
LLP Managing Partner

EXECUTED AS A DEED
By: DSA DETECTION LLC

)
)

Signature of Director

Name of Director

in the presence of:

Signature of witness

Name of witness

Address of witness

Occupation of witness

Address: 3200 Research Forest Drive
A-1 The Woodlands
Texas 77381

and

Rickerbys LLP
Ellenborough House
Wellington Street
Cheltenham
Gloucestershire
England GL50 1YD
United Kingdom

Fax: (281) 298-2868

Attention: Jesse Feldman and Rickerbys
LLP Managing Partner

EXECUTED AS A DEED

By: **DSA HOLDCO, INC**

)
)

Signature of Director

Name of Director

in the presence of:

Signature of witness

Name of witness

Address of witness

Occupation of witness

Address: 3200 Research Forest Drive
A-1 The Woodlands
Texas 77381

and

Rickerbys LLP
Ellenborough House
Wellington Street
Cheltenham
Gloucestershire
England GL50 1YD
United Kingdom

Fax: (281) 298-2868

Attention: Jesse Feldman and Rickerbys
LLP Managing Partner

EXECUTED AS A DEED
By: DETCON HOLDCO, INC

)
)

Signature of Director

Name of Director

in the presence of:

Signature of witness

Name of witness

Address of witness

Occupation of witness

Address: 3200 Research Forest Drive
A-1 The Woodlands
Texas 77381

and

Rickerbys LLP
Ellenborough House
Wellington Street
Cheltenham
Gloucestershire
England GL50 1YD
United Kingdom

Fax: (281) 298-2868

Attention: Jesse Feldman and Rickerbys
LLP Managing Partner

EXECUTED AS A DEED

By: **DETCO, INC**

)
)

Signature of Director

Name of Director

in the presence of:

Signature of witness

Name of witness

Address of witness

Occupation of witness

Address: 3200 Research Forest Drive
A-1 The Woodlands
Texas 77381

and

Rickerbys LLP
Ellenborough House
Wellington Street
Cheltenham
Gloucestershire
England GL50 1YD
United Kingdom

Fax: (281) 298-2868

Attention: Jesse Feldman and Rickerbys
LLP Managing Partner

THE INVESTORS

EXECUTED AS A DEED

By: **BATTERY VENTURES IX, LP**

)
)

Signature of Director

Name of Director

in the presence of:

Signature of witness

Name of witness

Address of witness

Occupation of witness

Address: [◆]

Fax: [◆]

Attention: [◆]

EXECUTED AS A DEED)
BY: BATTERY INVESTMENT)
PARTNERS IX, LLC

Signature of Director

Name of Director

in the presence of:

Signature of witness

Name of witness

Address of witness

Occupation of witness

Address: [◆]

Fax: [◆]

Attention: [◆]

EXECUTED AS A DEED
BY: DAVID HUNTER

)
)

Signature

in the presence of:

Signature of witness

Name of witness

Address of witness

Occupation of witness

Address: Block 2, Inchiman Business
Park,
Renfrew,
Strathclyde,
Scotland
PA4 97G

and

Rickerbys LLP
Ellenborough House
Wellington Street
Cheltenham
Gloucestershire
England GL50 1YD
United Kingdom

Fax: 0141 302 8210

Attention: David Hunter and Rickerbys
LLP Managing Partner

EXECUTED AS A DEED
BY: MARTIN RENNIE

)
)

Signature

in the presence of:

Signature of witness

Name of witness

Address of witness

Occupation of witness

Address: Block 2, Inchiman Business
Park,
Renfrew,
Strathclyde,
Scotland
PA4 97G

and

Rickerbys LLP
Ellenborough House
Wellington Street
Cheltenham
Gloucestershire
England GL50 1YD
United Kingdom

Fax: 0141 302 8210

Attention: Martin Rennie and Rickerbys
LLP Managing Partner

EXECUTED AS A DEED
BY: GEORGE MCGREGOR

)
)

Signature

in the presence of:

Signature of witness

Name of witness

Address of witness

Occupation of witness

Address: Block 2, Inchiman Business
Park,
Renfrew,
Strathclyde,
Scotland
PA4 97G

and

Rickerbys LLP
Ellenborough House
Wellington Street
Cheltenham
Gloucestershire
England GL50 1YD
United Kingdom

Fax: 0141 302 8210

Attention: George McGregor and
Rickerbys LLP