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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

[1119]

SC026184

Name of company

* United Biscuits (Holdings) Limited (the "Company")

* insert full name
of Company

Date of creation of the charge (note 1)

15 December 2014

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

Floating charge (the "Floating Charge")

Names of the persons entitled to charge

HSBC Corporate Trustee Company (UK) (the "Security Agent")

Short particulars of all the property charged

the whole of the property (including uncalled capital) which is or may from time to time, while the Floating Charge is in force, be comprised in the property and undertaking of the Company.

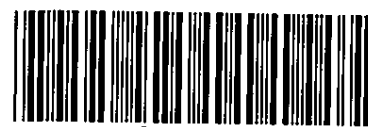
Presentor's name address and
reference (if any):
Pinsent Masons LLP
Princes Exchange, 1 Earl Grey Street,
Edinburgh, EH3 9AQ,

File reference 658172.07000
DX ED 723301 EDINBURGH 43
Kirstyn Gleeson 0131 225 0126

For official use (06/2005)
Charges Section

Post room

WEDNESDAY



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24/12/2014

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COMPANIES HOUSE

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

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this margin*

1. UMV Global Foods Company Ltd, Berger House 36 - 38 Berkeley Square, Mayfair, London, W1J 5AE ("UMV Global");
2. UMV Global Foods Holding Company Ltd, Berger House 36 - 38 Berkeley Square, Mayfair, London, W1J 5AE (the "Parent");
3. UMV Developments Limited, Berger House 36 - 38 Berkeley Square, Mayfair, London, W1J 5AE ("UMV Developments")
(please see paper apart, paragraph 1, for further parties)

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

Date(s) of execution of the instrument of alteration

20 November 2014 in respect of the Intercreditor Agreement and 19 December 2014 in respect of the Accession Deed entered into by the Company and *inter alios* the Security Agent (the "Accession Deed")

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

Please see paper apart, paragraph 2, for details

Short particulars of any property released from the floating charge

Not applicable

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

Please see paper apart, paragraph 3, for details

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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

The Transaction Security shall rank and secure the following Liabilities irrespective of when such Transaction Security was granted or of the date of occurrence of any of the Liabilities (but only to the extent that such Transaction Security is expressed to secure those Liabilities) in the following order:

- (a) first, the Liabilities owed to the Security Agent and the Agent Liabilities owed to each Agent *pari passu* and without any preference between them; and
- (b) second, the Senior Facilities Liabilities, the Permitted Senior Secured Debt Liabilities and the Hedging Liabilities, *pari passu* and without any preference between them.

Please see paper apart, paragraph 4, for definitions.

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

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legibly, preferably
in black type, or
bold block lettering

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

Signed Plaint Maasus LLP Date 24/12/14

On behalf of ~~company~~ [chargee] †

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

Paper Apart to Form 466 in respect of an Intercreditor Agreement between the Security Agent, the Company and others

UNITED BISCUITS (HOLDINGS) LIMITED

(Company Number SC026184)

Terms defined in this Form 466 have the same meaning in this Paper Apart.

1. Names and addresses of the persons who have executed the instrument of alteration continued:
 4. HSBC Bank plc, 8 Canada Square, London, E14 5HQ (the "**Senior Facilities Agent**")
 5. HSBC Bank plc, 8 Canada Square, London, E14 5HQ
 6. Cooperative Centrale Raiffeisen-Boerenleenbank B.A. (trading as Rabobank International), Thames Court, 1 Queenhithe, London EC4V 3RL
 7. ING Bank N.V., London Branch, 60 London Wall, London, EC2M 5TQ
 8. ING European Financial Services plc, Block 4, Dundrum Town Centre, Sandyford Road, Dundrum, Dublin 16, Ireland
 9. Bank of America Merrill Lynch International Limited, 2 King Edward Street, London EC1A 1HQ
 10. J.P. Morgan Limited, 25 Bank Street, Canary Wharf, London, E14 5JP
 11. JP Morgan Chase Bank, N.A., London Branch, 25 Bank Street, Canary Wharf, London, E14 5JP
 12. HSBC Corporate Trustee Company (UK) Ltd, 8 Canada Square, London, E14 5HQ
 13. The Company, 50 Lothian Road, Festival Square, Edinburgh, EH3 9BY pursuant to an accession document dated 19 December 2014 between the Company and the Senior Facilities Agent

2. **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:**

Security: Ancillary Lenders and Issuing Banks

No Ancillary Lender or Issuing Bank will, unless the prior consent of the Majority Senior Facilities Lenders (in the case of any Ancillary Lender or Issuing Bank under the Senior Facilities Agreement) or the Majority Permitted Senior Secured Debt Facilities Lenders (in the case of any Ancillary Lender or Issuing Bank under any Permitted Senior Secured Debt Facilities Agreement) is obtained, take, accept or receive from any member of the Group the benefit of any Security, guarantee, indemnity or other assurance against loss in respect of any of the Liabilities owed to it other than:

- (a) the Transaction Security;
- (b) each guarantee, indemnity or other assurance against loss contained in:
 - (i) the original form of the Senior Facilities Agreement and any Permitted Senior Secured Debt Facilities Agreement;
 - (ii) the Agreement; and
 - (iii) any Common Assurance;
- (c) indemnities and assurances against loss contained in the Ancillary Documents no greater in extent than any of those referred to in paragraph (b) above;
- (d) any Cash Cover permitted under the Senior Facilities Agreement or any Permitted Senior Secured Debt Facilities Agreement relating to any Ancillary Document or for any Letter of Credit issued by the Issuing Bank;
- (e) the indemnities contained in an ISDA Master Agreement (in the case of a Hedging Ancillary Document which is based on an ISDA Master Agreement) or any indemnities which are similar in meaning and effect to those indemnities (in the case of a Hedging Ancillary Document which is not based on an ISDA Master Agreement); and
- (f) any Security, guarantee 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 The amount, if any, by which the amount secured by the floating charge has been increased:

The Creditors acknowledge that the Debtors (or any of them) may, in accordance with the terms of the Debt Documents, wish to:

- (i) incur incremental Borrowing Liabilities and/or Guarantee Liabilities in respect of incremental Borrowing Liabilities; or
- (ii) refinance or replace Borrowing Liabilities and/or incur Guarantee Liabilities in respect of any such refinancing or replacement of Borrowing Liabilities,

which in any such case is intended to rank *pari passu* with any other Liabilities and/or share *pari passu* in any Transaction Security and/or to rank behind any other Liabilities and/or to share in any Transaction Security behind any such other Liabilities.

4 Definitions

"Additional Senior Facilities"	<p>has the meaning given to:</p> <p>(a) the term "Additional Debt Financing" in the Senior Facilities Agreement; and</p> <p>(b) any substantially equivalent term to that referred to in paragraph (a) above in each relevant Permitted Senior Secured Debt Facilities Agreement.</p>
"Affiliate"	<p>means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.</p>
"Agent Liabilities"	<p>means all present and future liabilities and obligations, actual and contingent owed by any Debtor to any Agent (in its capacity as agent or, as applicable, trustee for certain Senior Secured Creditors) under the Debt Documents including Permitted Senior Secured Debt Notes Trustee Amounts.</p>
"Agent"	<p>means:</p> <p>(a) in relation to the Senior Facilities Lenders, the Senior Facilities Agent; and</p> <p>(b) in relation to any Permitted Senior Secured Debt Creditors, the applicable Permitted Senior Secured Debt Representative.</p>
"Agreement"	<p>means the intercreditor agreement dated 20 November 2014 and made between the Security Agent, GMV Global Foods Company Ltd and the other parties specified in the paper apart, paragraph 1, to this Form 466.</p>
"Ancillary Document"	<p>means each document relating to or evidencing the terms of an Ancillary Facility.</p>
"Ancillary Facility"	<p>means:</p> <p>(a) any ancillary facility made available by an Ancillary Lender in accordance with clause 6 (<i>Ancillary Facilities and Fronted Ancillary Facilities</i>) of the Senior Facilities Agreement; and</p> <p>(b) any ancillary facility substantially equivalent to that referred to in paragraph (a) above and made available by an Ancillary Lender under and in accordance with a Permitted Senior Secured Debt Facilities Agreement.</p>

"Ancillary Lender"	<p>means:</p> <p>(a) each Senior Facilities Lender (or Affiliate of a Senior Facilities Lender) which makes an Ancillary Facility available pursuant to the terms of the Senior Facilities Agreement; and</p> <p>(b) each Permitted Senior Secured Debt Facilities Lender (or Affiliate of a Permitted Senior Secured Debt Facilities Lender) which makes an Ancillary Facility available pursuant to the terms of a Permitted Senior Secured Debt Facilities Agreement.</p>
"Arranger Liabilities"	means all present and future liabilities and obligations, actual and contingent, of any Debtor to any Arranger under the Debt Documents.
"Arranger"	means a Senior Facilities Arranger and/or a Permitted Senior Secured Debt Arranger, as the case may be.
"Borrowing Liabilities"	means, in relation to a member of the Group, the liabilities and obligations (not being Guarantee Liabilities) it may have as a principal debtor to a Creditor (other than to an Arranger or an Agent) or Debtor in respect of Liabilities arising under the Debt Documents (whether incurred solely or jointly and including, without limitation, liabilities and obligations as a "Borrower" under, and as defined in, the Senior Facilities Finance Documents and liabilities and obligations as a "Borrower" or "Issuer", as the case may be, under the Permitted Senior Secured Debt Documents).
"Cash Cover"	<p>(a) has the meaning given to the term "cash cover" in the Senior Facilities Agreement; and</p> <p>(b) has the meaning given to any substantially equivalent term to that referred to in paragraph (a) above in each relevant Permitted Senior Secured Debt Facilities Agreement.</p>
"Charged Property"	means all of the assets which from time to time are, or are expressed to be, the subject of the Transaction Security.
"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 (as defined in the Agreement), given to all the Secured Parties in respect of their Liabilities.
"Creditors"	means the Senior Secured Creditors, the Security Agent (including any Receiver or Delegate appointed by it), the Agents, the Arrangers, the Intra-Group Lenders and the Subordinated Creditors.
"Debt Document"	means each of this Agreement, the Senior Secured Finance Documents, the Security Documents, any agreement evidencing

	the terms of the Intra-Group Liabilities or the Subordinated Liabilities and any other document designated as such by the Security Agent and the Parent.
"Debtor"	means each Original Debtor and any person which becomes a Party as a Debtor in accordance with the terms of Clause 16 (<i>Changes to the Parties</i>) of the Agreement and the term "Debtor" shall include the Company by virtue of them entering into the Accession Deed.
"Group"	means the Parent and its Subsidiaries for the time being.
"Guarantee Liabilities"	means, in relation to a member of the Group, the liabilities and obligations under the Debt Documents (present or future, actual or contingent and whether incurred solely or jointly) it may have to a Creditor (other than to an Arranger or an Agent) or Debtor as or as a result of it being a guarantor or surety (including, without limitation, liabilities and obligations arising by way of guarantee, indemnity, contribution or subrogation and in particular any guarantee or indemnity arising under or in respect of the Senior Secured Finance Documents).
"Guarantor"	means any Senior Facilities Guarantor and any Permitted Senior Secured Debt Guarantor.
"Hedge Counterparty"	means: (a) any person which is named on the signing pages of the Agreement as a Hedge Counterparty (if any); and (b) any person which becomes a Party as a Hedge Counterparty pursuant to Clause 16.10 (<i>Creditor Accession Undertaking</i>) of the Agreement, provided that such person has not ceased to be a Hedge Counterparty pursuant to Clause 16.5 (<i>Change of Hedge Counterparty</i>) of the Agreement.
"Hedging Agreement"	means any master agreement, confirmation, schedule or other agreement entered into between a member of a Group and a Hedge Counterparty which, at the time such Hedging Agreement is entered into, is not prohibited under the terms of the Debt Documents to share in the Transaction Security.
"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 Liabilities"	means the Liabilities owed by any Debtor to the Hedge Counterparties under or in connection with the Hedging Agreements.
"Holding Company"	means, in relation to a company or corporation, any other company or corporation in respect of which it is a Subsidiary.
"Intra-Group Lenders"	means: (a) each Debtor; and (b) each member of the Group which has made a loan available to, granted credit to or made any other financial arrangement having similar effect with another member of the Group and which is named on the signing pages of the Agreement as an Intra-Group Lender or which becomes a party as an Intra-Group Lender in accordance with the terms of Clause 16 (<i>Changes to the Parties</i>) of the Agreement.
"Intra-Group Liabilities"	means the Liabilities owed by any member of the Group to any of the Intra-Group Lenders in its capacity as such (and excluding any Senior Secured Creditor Liabilities).
"ISDA Master Agreement"	means a 1992 ISDA Master Agreement or a 2002 ISDA Master Agreement.
"Issuing Bank"	means: (a) any "Issuing Bank" under, and as defined in, the Senior Facilities Agreement; and (b) any party to a Permitted Senior Secured Debt Facilities Agreement which, if applicable, is an "Issuing Bank" under, and as defined in, each relevant Permitted Senior Secured Debt Facilities Agreement.
"Letter of Credit"	has the meaning given to the term "Letter of Credit" in the Senior Facilities Agreement and any substantially similar equivalent term in the relevant Permitted Senior Secured Debt Facilities Agreement.

"Liabilities"	<p>means all present and future liabilities and obligations at any time of any member of the Group to any Creditor under the Debt Documents, both actual and contingent and whether incurred solely or jointly or as principal or surety or in any other capacity, together with any of the following matters relating to or arising in respect of those liabilities and obligations:</p> <p>(a) any refinancing, novation, deferral or extension;</p> <p>(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;</p> <p>(c) any claim for damages or restitution; and</p> <p>(d) any claim as a result of any recovery by any Debtor of a Payment on the grounds of preference or otherwise,</p> <p>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.</p>
"Majority Permitted Senior Secured Debt Facilities Lenders"	has the meaning given to the term "Majority Lenders" or any substantially equivalent term in each Permitted Senior Secured Debt Facilities Agreement.
"Original Debtor"	means the companies named on the signing pages of the Agreement as Debtors, being UMV Global Foods Holding Company Ltd and UMV Global Foods Company Ltd.
"Original Subordinated Creditor"	means UMV Developments Limited (Company Number 09295357).
"Party"	means a party to the Agreement.
"Payment"	means, in respect of any Liabilities (or any other liabilities or obligations), a payment, prepayment, repayment, redemption, repurchase, defeasance or discharge of those Liabilities (or other liabilities or obligations).
"Permitted Senior Secured Debt Arranger"	means an arranger of any new Permitted Senior Secured Debt which has acceded to this Agreement pursuant to Clause 16.10 (<i>Creditor Accession Undertaking</i>) of the Agreement.

"Permitted Senior Secured Debt Creditors"	means each holder, lender or other creditor of Permitted Senior Secured Debt Liabilities including any Issuing Bank and each Ancillary Lender under any Permitted Senior Secured Debt Facilities Agreement but excluding each Permitted Senior Secured Debt Representative.
"Permitted Senior Secured Debt Documents"	means each document or instrument entered into between any member of the Group and a Permitted Senior Secured Debt Creditor and/or a Permitted Senior Secured Debt Representative setting out the terms of any loan, credit or debt facility, notes, indenture or security which creates or evidences any Permitted Senior Secured Debt, each guarantee granted by a member of the Group in respect of any Permitted Senior Secured Debt, this Agreement, the Security Documents, and any other document entered into in connection with the aforementioned instruments creating or evidencing Permitted Senior Secured Debt and designated a Permitted Senior Secured Debt Document by the issuer or borrower of the Permitted Senior Secured Debt, as the case may be, and relevant Permitted Senior Secured Debt Representative (which for the purposes of determining the Arranger Liabilities, includes any document to the extent it sets out rights of any initial purchasers of any Permitted Senior Secured Debt issued by way of notes or securities (in their capacity as initial purchasers) against any member of the Group).
"Permitted Senior Secured Debt Facilities Agreement"	means, subject to compliance with the requirements of Clause 5.1 (<i>New Debt Financing</i>) of the Agreement, each facility agreement evidencing the terms of any Permitted Senior Secured Debt made by way of loan, credit or debt facility.
"Permitted Senior Secured Debt Facilities Discharge Date"	means the date on which all the Permitted Senior Secured Debt Facilities Liabilities have been fully and finally discharged, whether or not as a result of an enforcement, and the Permitted Senior Secured Debt Facilities Lenders are under no further obligation to provide financial accommodation to any Debtors under any Permitted Senior Secured Debt Facilities Agreement.
"Permitted Senior Secured Debt Facilities Lender"	means, where the Permitted Senior Secured Debt has been made available by way of loan, credit or debt facility, a "Lender" under, and as defined in, the relevant Permitted Senior Secured Debt Facilities Agreement.
"Permitted Senior Secured Debt Facilities Liabilities"	means, where the Permitted Senior Secured Debt has been made available by way of loan, credit or debt facility, Liabilities owed by the Debtors to the Permitted Senior Secured Debt Facilities Lenders under the relevant Permitted Senior Secured Debt

	Facilities Agreement.
"Permitted Senior Secured Debt Guarantor"	means an entity which has acceded to a Permitted Senior Secured Debt Document as a guarantor in respect of any Permitted Senior Secured Debt Liabilities.
"Permitted Senior Secured Debt Liabilities"	means the Liabilities owed by the Debtors to the Permitted Senior Secured Debt Creditors under the Permitted Senior Secured Debt Documents.
"Permitted Senior Secured Debt Noteholder"	means, where the Permitted Senior Secured Debt has been made available by way of notes, indenture or securities, the holder of any such notes, indenture or securities.
"Permitted Senior Secured Debt Notes"	means, where the Permitted Senior Secured Debt has been made available by way of notes, indenture or securities, subject to compliance with the requirements of Clause 5.1 (<i>New Debt Financing</i>) of the Agreement, any notes, exchange notes, securities or other debt instruments issued or to be issued by the Permitted Senior Secured Debt Notes Issuer.
"Permitted Senior Secured Debt Notes Issuer"	means, where the Permitted Senior Secured Debt has been made available by way of notes, indenture or securities: <ul style="list-style-type: none"> (a) the Company; or (b) a special purpose vehicle which is a direct subsidiary of the Company incorporated solely for the purpose of issuing Permitted Senior Secured Debt Notes and which has granted a guarantee in respect of the Senior Secured Creditor Liabilities; or (c) a special purpose vehicle which is a Subsidiary of the Parent and which is a Holding Company of the Company incorporated solely for the purpose of issuing Permitted Senior Secured Debt Notes and which has granted a guarantee in respect of the Senior Secured Creditor Liabilities.
"Permitted Senior Secured Debt Notes Trustee"	means, where the Permitted Senior Secured Debt has been made available by way of notes, indenture or securities, any entity acting as trustee under such notes, indenture or securities.

<p>"Permitted Senior Secured Debt Notes Trustee Amounts"</p>	<p>means, in relation to a Permitted Senior Secured Debt Notes Trustee, the fees, costs and expenses payable to that Permitted Senior Secured Debt Notes Trustee (or any adviser, receiver, delegate, attorney, agent or appointee thereof) pursuant to the terms of the Permitted Senior Secured Debt Documents, including:</p> <p>(a) any amounts payable to that Permitted Senior Secured Debt Notes Trustee (or any adviser, receiver, delegate, attorney, agent or appointee thereof) by way of indemnity;</p> <p>(b) all compensation for services provided by that Permitted Senior Secured Debt Notes Trustee (or any adviser, receiver, delegate, attorney, agent or appointee thereof) payable pursuant to the terms of the Permitted Senior Secured Debt Documents; and</p> <p>(c) all out-of-pocket costs and expenses properly incurred by that Permitted Senior Secured Debt Notes Trustee (or any adviser, receiver, delegate, attorney, agent or appointee thereof) in carrying out its duties or performing any service pursuant to the terms of the Permitted Senior Secured Debt Documents, including, without limitation, the costs and expenses of the collection by that Permitted Senior Secured Debt Notes Trustee (or any adviser, receiver, delegate, attorney, agent or appointee thereof) of any amount payable to that Permitted Senior Secured Debt Notes Trustee for the benefit of the Permitted Senior Secured Debt Noteholders, including any VAT where applicable, provided that "Permitted Senior Secured Debt Notes Trustee Amounts" shall not include:</p> <p>(i) any payment in relation to any unpaid costs and expenses incurred in respect of any litigation initiated by that Permitted Senior Secured Debt Notes Trustee (or any adviser, receiver, delegate, attorney, agent or appointee thereof) against any of the Senior Secured Creditors; or</p> <p>(ii) any payment made, directly or indirectly, on or in respect of any amounts owing under any Permitted Senior Secured Debt Notes (including principal, interest, premium or any other amounts to any of the Permitted Senior Secured Debt Noteholders).</p>
<p>"Permitted Senior Secured Debt"</p>	<p>means, subject to compliance with the requirements of Clause 5.1 (<i>New Debt Financing</i>) of the Agreement, any loan, credit or debt facility, notes, indenture or securities which are permitted, under the terms of the Senior Secured Finance Documents, to rank <i>pari passu</i> with the Senior Secured Creditor Liabilities including any refinancing of the Senior Facilities Liabilities and of any such loan, credit or debt facility, notes, indenture or securities but excluding</p>

	any Senior Facilities or Additional Senior Facilities.
"Permitted Senior Secured Debt Representative"	means, in relation to any Permitted Senior Secured Debt, any agent or trustee for the relevant Permitted Senior Secured Debt Creditors of that Permitted Senior Secured Debt which has acceded to this Agreement pursuant to Clause 16.10 (<i>Creditor Accession Undertaking</i>) of the Agreement.
"Receiver"	means a receiver or receiver and manager or administrative receiver of the whole or any part of the Charged Property.
"Secured Obligations"	means, to the extent legally possible, all the Liabilities and all other present and future obligations at any time due, owing or incurred by any Debtor to any Secured Party (in its capacity as such) 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 Agents, the Arrangers and the Senior Secured Creditors from time to time, but, in the case of such Agents, the Arrangers and the Senior Secured Creditors, only if it or, in the case of Permitted Senior Secured Debt Creditors (other than any Permitted Senior Secured Debt Facilities Lender which shall be required to accede to this Agreement in its capacity as such to constitute a Secured Party), its Agent is a party to this Agreement or has acceded to this Agreement, in the appropriate capacity, pursuant to Clause 16.10 (<i>Creditor Accession Undertaking</i>) of the Agreement.
"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) above.
"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.
"Senior Facilities Acceleration Event"	means the Senior Facilities Agent giving notice of acceleration of any outstanding indebtedness under clause 25.18 (<i>Cancellation and repayment</i>) of the Senior Facilities Agreement.

"Senior Facilities Agent"	means the Agent under and as defined in the Senior Facilities Agreement.
"Senior Facilities Agreement"	means the senior facilities agreement dated 20 November 2014 as amended and restated on 17 December 2014 between, among others, the Parent, the Company, the Senior Facilities Agent, the Security Agent, the Senior Facilities Arrangers and the Senior Facilities Lenders as amended and restated from time to time.
"Senior Facilities Arranger Liabilities"	means the Arranger Liabilities owed by the Debtors to any arranger of the Senior Facilities under or in connection with the Senior Facilities Finance Documents.
"Senior Facilities Arranger"	means the Arrangers under and as defined in the Senior Facilities Agreement.
"Senior Facilities Finance Document"	has the meaning given to the term "Finance Document" in the Senior Facilities Agreement.
"Senior Facilities Guarantor"	means a Guarantor as defined in the Senior Facilities Agreement.
"Senior Facilities Lenders"	means each "Lender" (as defined in the Senior Facilities Agreement), each Issuing Bank and each Ancillary Lender.
"Senior Facilities Liabilities"	means the Liabilities owed by the Debtors to the Senior Facilities Lenders under the Senior Facilities Agreement.
"Senior Facilities"	has the meaning given to the term "Facilities" in the Senior Facilities Agreement.
"Senior Secured Creditor Liabilities"	means the Senior Facilities Liabilities, the Hedging Liabilities and the Permitted Senior Secured Debt Liabilities.
"Senior Secured Creditors"	means the Senior Facilities Lenders, the Hedge Counterparties and the Permitted Senior Secured Debt Creditors.
"Senior Secured Finance Documents"	means the Senior Facilities Finance Documents, the Hedging Agreements and the Permitted Senior Secured Debt Documents.
"Subordinated Creditors"	means the Original Subordinated Creditor and each person which becomes a Party as a Subordinated Creditor in accordance with the terms of Clause 16 (<i>Changes to the Parties</i>) of the Agreement.
"Subordinated Liabilities"	means the Liabilities owed by any member of the Group to a Subordinated Creditor.

"Subsidiary"	<p>means in relation to any company or corporation, a company or corporation:</p> <p>(a) which is controlled, directly or indirectly, by the first mentioned company or corporation;</p> <p>(b) more than half the issued share capital of which is beneficially owned, directly or indirectly, by the first mentioned company or corporation; or</p> <p>(c) which is a Subsidiary of another Subsidiary of the first mentioned company or corporation,</p> <p>and for this purpose, a company or corporation shall be treated as being controlled by another if that other company or corporation is able to direct its affairs and/or to control the composition of its board of directors or equivalent body provided that, notwithstanding anything to the contrary:</p> <p>(i) no person shall be deemed to be a Subsidiary of a member of the Group unless another member of the Group holds shares or an equivalent ownership interest in that person;</p> <p>(ii) no person shall be treated as having ceased to be a Subsidiary of a member of the Group as a result of its shares being registered in the name of (A) another person (or its nominee) by way of Security or otherwise directly or indirectly in connection with the taking of any Security or (B) its nominee; and</p> <p>(iii) no Joint Venture shall be deemed to be a Subsidiary of a member of the Group.</p>
"Transaction Security Documents"	<p>means any document entered into by any Debtor creating or expressed to create any Security over all or any part of its assets in respect of the Secured Obligations.</p>
"Transaction Security"	<p>means the Security created or evidenced or expressed to be created or evidenced under or pursuant to the Transaction Security Documents.</p>



FILE COPY

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

COMPANY NO. 26184
CHARGE CODE SC02 6184 0019

I HEREBY CERTIFY THAT PARTICULARS OF AN INSTRUMENT
OF ALTERATION DATED 19 DECEMBER 2014 WERE
DELIVERED PURSUANT TO SECTION 466 OF THE COMPANIES
ACT 1985
ON 24 DECEMBER 2014

THE INSTRUMENT RELATES TO A CHARGE CREATED ON 15
DECEMBER 2014

BY UNITED BISCUITS (HOLDINGS) LIMITED

IN FAVOUR OF
HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED

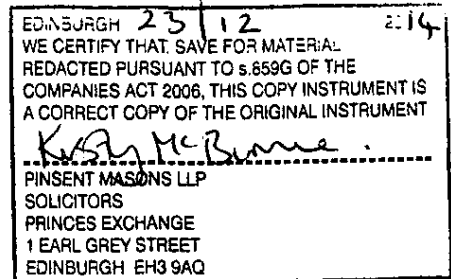
GIVEN AT COMPANIES HOUSE, EDINBURGH 30 DECEMBER 2014



Companies House



THE OFFICIAL SEAL OF THE
REGISTRAR OF COMPANIES



Accession Deed

This Deed is made on 19 December 2014

between:

- (1) United Biscuits (Holdings) Limited (No. SC026184) (the "Additional Guarantor"); and
- (2) HSBC Bank plc as Agent and HSBC Corporate Trustee Company (UK) Limited as Security Agent under the Senior Facilities Agreement.

Whereas:

- (A) This Deed is entered into in connection with a Senior Facilities Agreement dated 20 November 2014 between, among others, UMV Global Foods Holding Company Ltd. and HSBC Bank plc as Agent as amended and restated from time to time (the "Senior Facilities Agreement") pursuant to which the Lenders made available term loan and revolving credit facilities to the Borrowers.
- (B) This Deed has been entered into to record the admission of the Additional Guarantor as a Guarantor under the Senior Facilities Agreement and Intercreditor Agreement and is an Accession Document.
- (C) The Additional Guarantor intends to give a guarantee, indemnity or other assurance against loss in respect of Liabilities (as defined in the Intercreditor Agreement) under the following documents:
 - i. Senior Facilities Agreement;
 - ii. Intercreditor Agreement; and
 - iii. Scots law floating charge to be granted by the Additional Guarantor in favour of HSBC Corporate Trustee Company (UK) Limited as Security Agent to be dated on or about the date of this Deed;
 - iv. Scots law share pledge to be granted by the Additional Guarantor in respect of its shares in McVitie & Price Limited in favour of HSBC Corporate Trustee Company (UK) Limited as Security Agent to be dated on or about the date of this Deed;
 - v. English law share charge to be granted by the Company in respect of its shares in UB Foods US Limited in favour of HSBC Corporate Trustee Company (UK) Limited as Security Agent to be dated on or about the date of this Deed; and
 - vi. English law share charge to be granted by the Company in respect of its shares in UB Overseas Limited in favour of HSBC Corporate Trustee Company (UK) Limited as Security Agent to be dated on or about the date of this Deed

(together, the "Relevant Documents")

Now it is hereby agreed as follows:

1. Definitions

Unless stated otherwise, terms defined in the Senior Facilities Agreement shall have the same meaning when used in this Deed.

2. **Admission of New Guarantor**

- (a) The Additional Guarantor agrees to become a Guarantor under the Senior Facilities Agreement and a Debtor under the Intercreditor Agreement and agrees to be bound by the terms of the Facilities Agreement, the Intercreditor Agreement and the other Senior Finance Documents as an Additional Guarantor pursuant to Clause 21.13 of the Senior Facilities Agreement and as an Obligor pursuant to Clause 16.12 of the Intercreditor Agreement.
- (b) The Additional Guarantor hereby confirms the appointment of the Parent as its agent in the terms of Clause 31.7 (*The Parent as Obligors' Agent*) of the Senior Facilities Agreement and as its process agent for the purposes of Clause 39.3 (*Service of process*) of the Senior Facilities Agreement.
- (c) The Additional Guarantor confirms that its address details for notices in relation to Clause 31 (*Notices and Obligors' Agent*) of the Senior Facilities Agreement are as follows:

Address: United Biscuits (Holdings) Limited, Hayes Park, Hayes End Road, Hayes,
Middlesex, UB4 8EE

Facsimile: +44 (0)20 8734 5263

Electronic mail: Helen_McCarthy@unitedbiscuits.com

Attention of: The Directors

- (d) By its signature below the Agent confirms the acceptance of the Additional Guarantor as a Guarantor for all purposes of the Senior Finance Documents.

3. The Additional Guarantor and the Security Agent agree that the Security Agent shall hold:

- (a) any Security in respect of Liabilities (as defined in the Intercreditor Agreement) 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 Additional Guarantor to pay amounts in respect of the Liabilities (as defined in the Intercreditor Agreement) to the Security Agent as trustee or otherwise for the benefit of the Secured Parties and secured by the Transaction Security together with all representations and warranties expressed to be given by the Additional Guarantor in favour of the Security Agent as trustee or otherwise for the benefit of the Secured Parties,

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

4. The Additional Guarantor confirms that it intends to be party to the Intercreditor Agreement as a Debtor (as defined in the Intercreditor Agreement pursuant to Clause 16.12 of the Intercreditor Agreement), 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.

5. In consideration of the Additional Guarantor being accepted as an Intra-Group Lender (as defined in the Intercreditor Agreement) for the purposes of the Intercreditor Agreement, the Additional Guarantor also confirms that it intends to be party to the Intercreditor Agreement as an Intra-Group Lender (as defined in the Intercreditor Agreement), and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by an Intra-Group Lender (as defined in 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.

6. **Counterparts**

This Deed 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 Deed.

7. **Governing Law and Submission to Jurisdiction**

The provisions of Clause 39 (*Governing Law and Submission to Jurisdiction*) of the Facilities Agreement shall apply to this Deed as though set out in full herein.

8. **Third Parties**

A person who is not a Party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any terms of this Deed save as expressly contemplated in the Senior Facilities Agreement.

THIS DEED has been signed on behalf of the Security Agent and Agent and executed as a deed by the Additional Guarantor and is delivered on the date stated above.

EXECUTED AS A DEED

for and on behalf of

UNITED BISCUITS (HOLDINGS) LIMITED

as Additional Guarantor

By: HELEN MCCARTHY

Helen McCarthy

Title: DIRECTOR

in the presence of

Kashif Quraishi

Witness

Name: KASHIF QURAISHI

Address: UNITED BISCUITS, HAYES, MIDDLESEX

Occupation TAX & TREASURY CONTROLLER.

HSBC BANK PLC

as Agent

By: _____

Date: _____

HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED

as Security Agent

By: _____

Date: _____



LATHAM & WATKINS (London) LLP *CLISA LAW*

Accession Deed

This Deed is made on 19 December 2014

between:

- (1) United Biscuits (Holdings) Limited (No. SC026184) (the "Additional Guarantor"); and
- (2) HSBC Bank plc as Agent and HSBC Corporate Trustee Company (UK) Limited as Security Agent under the Senior Facilities Agreement.

Whereas:

- (A) This Deed is entered into in connection with a Senior Facilities Agreement dated 20 November 2014 between, among others, UMV Global Foods Holding Company Ltd. and HSBC Bank plc as Agent as amended and restated from time to time (the "Senior Facilities Agreement") pursuant to which the Lenders made available term loan and revolving credit facilities to the Borrowers.
- (B) This Deed has been entered into to record the admission of the Additional Guarantor as a Guarantor under the Senior Facilities Agreement and Intercreditor Agreement and is an Accession Document.
- (C) The Additional Guarantor intends to give a guarantee, indemnity or other assurance against loss in respect of Liabilities (as defined in the Intercreditor Agreement) under the following documents:
 - i. Senior Facilities Agreement;
 - ii. Intercreditor Agreement; and
 - iii. Scots law floating charge to be granted by the Additional Guarantor in favour of HSBC Corporate Trustee Company (UK) Limited as Security Agent to be dated on or about the date of this Deed;
 - iv. Scots law share pledge to be granted by the Additional Guarantor in respect of its shares in McVitie & Price Limited in favour of HSBC Corporate Trustee Company (UK) Limited as Security Agent to be dated on or about the date of this Deed;
 - v. English law share charge to be granted by the Company in respect of its shares in UB Foods US Limited in favour of HSBC Corporate Trustee Company (UK) Limited as Security Agent to be dated on or about the date of this Deed; and
 - vi. English law share charge to be granted by the Company in respect of its shares in UB Overseas Limited in favour of HSBC Corporate Trustee Company (UK) Limited as Security Agent to be dated on or about the date of this Deed

(together, the "Relevant Documents")

Now it is hereby agreed as follows:

1. Definitions

Unless stated otherwise, terms defined in the Senior Facilities Agreement shall have the same meaning when used in this Deed.

2. Admission of New Guarantor

- (a) The Additional Guarantor agrees to become a Guarantor under the Senior Facilities Agreement and a Debtor under the Intercreditor Agreement and agrees to be bound by the terms of the Facilities Agreement, the Intercreditor Agreement and the other Senior Finance Documents as an Additional Guarantor pursuant to Clause 21.13 of the Senior Facilities Agreement and as an Obligor pursuant to Clause 16.12 of the Intercreditor Agreement.
- (b) The Additional Guarantor hereby confirms the appointment of the Parent as its agent in the terms of Clause 31.7 (*The Parent as Obligors' Agent*) of the Senior Facilities Agreement and as its process agent for the purposes of Clause 39.3 (*Service of process*) of the Senior Facilities Agreement.

- (c) The Additional Guarantor confirms that its address details for notices in relation to Clause 31 (*Notices and Obligors' Agent*) of the Senior Facilities Agreement are as follows:

Address: United Biscuits (Holdings) Limited, Hayes Park, Hayes End Road, Hayes,
Middlesex, UB4 8EE

Facsimile: +44 (0)20 8734 5263

Electronic mail: Helen_McCarthy@unitedbiscuits.com

Attention of: The Directors

- (d) By its signature below the Agent confirms the acceptance of the Additional Guarantor as a Guarantor for all purposes of the Senior Finance Documents.

3. The Additional Guarantor and the Security Agent agree that the Security Agent shall hold:

- (a) any Security in respect of Liabilities (as defined in the Intercreditor Agreement) 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 Additional Guarantor to pay amounts in respect of the Liabilities (as defined in the Intercreditor Agreement) to the Security Agent as trustee or otherwise for the benefit of the Secured Parties and secured by the Transaction Security together with all representations and warranties expressed to be given by the Additional Guarantor in favour of the Security Agent as trustee or otherwise for the benefit of the Secured Parties,

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

- 4. The Additional Guarantor confirms that it intends to be party to the Intercreditor Agreement as a Debtor (as defined in the Intercreditor Agreement pursuant to Clause 16.12 of the Intercreditor Agreement), 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.

5. In consideration of the Additional Guarantor being accepted as an Intra-Group Lender (as defined in the Intercreditor Agreement) for the purposes of the Intercreditor Agreement, the Additional Guarantor also confirms that it intends to be party to the Intercreditor Agreement as an Intra-Group Lender (as defined in the Intercreditor Agreement), and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by an Intra-Group Lender (as defined in 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.

6. **Counterparts**

This Deed 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 Deed.

7. **Governing Law and Submission to Jurisdiction**

The provisions of Clause 39 (*Governing Law and Submission to Jurisdiction*) of the Facilities Agreement shall apply to this Deed as though set out in full herein.

8. **Third Parties**

A person who is not a Party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any terms of this Deed save as expressly contemplated in the Senior Facilities Agreement.

THIS DEED has been signed on behalf of the Security Agent and Agent and executed as a deed by the Additional Guarantor and is delivered on the date stated above.

EXECUTED AS A DEED

for and on behalf of

UNITED BISCUITS (HOLDINGS) LIMITED

as Additional Guarantor

By: _____

Title: _____

in the presence of

Witness

Name:

Address:

Occupation

HSBC BANK PLC

as Agent

By: N CL

Date: _____

HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED

as Security Agent

By: [Signature]

Date: _____

INTERCREDITOR AGREEMENT

dated 20 November 2014

between

HSBC BANK PLC
as Senior Facilities Agent

THE SENIOR FACILITIES LENDERS

UMV GLOBAL FOODS COMPANY LTD.
as Company

UMV GLOBAL FOODS HOLDING COMPANY LTD.
as Parent

UMV DEVELOPMENTS LIMITED
as Subordinated Creditor

HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED
acting as Security Agent

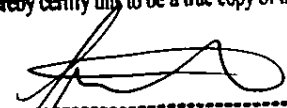
and others

Linklaters

Ref: L-230118

Linklaters LLP

We hereby certify this to be a true copy of the original


LATHAM & WATKINS (London) LLP (USA CAN)

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THIS AGREEMENT is dated **20** November 2014 and is made between:

- (1) **HSBC BANK PLC** as Senior Facilities Agent;
- (2) **THE FINANCIAL INSTITUTIONS** named on the signing pages as Senior Facilities Lenders;
- (3) **HSBC BANK PLC, COÖPERATIEVE CENTRALE RAIFFEISEN-BOERENLEENBANK B.A (TRADING AS RABOBANK INTERNATIONAL), LONDON BRANCH, ING BANK N.V., LONDON BRANCH, BANK OF AMERICA MERRILL LYNCH INTERNATIONAL LIMITED and J.P. MORGAN LIMITED** as Senior Facilities Arrangers;
- (4) **UPON ACCESSION** each Hedge Counterparty;
- (5) **UMV GLOBAL FOODS COMPANY LTD.** a company incorporated in the United Kingdom with company registration number 09289049 and having its registered office at Berger House, 36-38 Berkeley Square, Mayfair, London W1J 5AE (the "**Company**");
- (6) **UMV GLOBAL FOODS HOLDING COMPANY LTD.** a company incorporated in the United Kingdom with company registration number 09289015 and having its registered office at Berger House, 36-38 Berkeley Square, Mayfair, London W1J 5AE (the "**Parent**");
- (7) **UMV DEVELOPMENTS LIMITED** a company incorporated in the United Kingdom with company registration number 09295357 and having its registered office at Berger House, 36-38 Berkeley Square, Mayfair, London W1J 5AE (the "**Original Subordinated Creditor**");
- (8) **THE COMPANIES** named on the signing pages as Intra-Group Lenders;
- (9) **THE COMPANIES** named on the signing pages as Debtors (the "**Original Debtors**"); and
- (10) **HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED** as security agent for the Secured Parties (the "**Security Agent**").

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

"1992 ISDA Master Agreement" means the 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 a Senior Facilities Acceleration Event and/or a Permitted Senior Secured Debt Acceleration Event (as the context requires).

"Accession Document" has the meaning given to the term "Accession Document" in the Senior Facilities Agreement.

"Acquisition Documents" has the meaning given to the term "Acquisition Documents" in the Senior Facilities Agreement.

"Additional Senior Facilities" has the meaning given to:

- (a) the term "Additional Debt Financing" in the Senior Facilities Agreement; and

- (b) any substantially equivalent term to that referred to in paragraph (a) above in each relevant Permitted Senior Secured Debt Facilities Agreement.

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

"Agent" means:

- (a) in relation to the Senior Facilities Lenders, the Senior Facilities Agent; and
- (b) in relation to any Permitted Senior Secured Debt Creditors, the applicable Permitted Senior Secured Debt Representative.

"Agent Liabilities" means all present and future liabilities and obligations, actual and contingent owed by any Debtor to any Agent (in its capacity as agent or, as applicable, trustee for certain Senior Secured Creditors) under the Debt Documents including Permitted Senior Secured Debt Notes Trustee Amounts.

"Agent's Spot Rate of Exchange" means, in respect of the conversion of one currency (the **"First Currency"**) into another currency (the **"Second Currency"**) the Senior Facilities Agent's (or, after the Senior Facilities Discharge Date the Permitted Senior Secured Debt Representative's) spot rate of exchange for the purchase of the Second Currency with the First Currency in the London foreign exchange market at or about 11:00 a.m. (London time) on a particular day, which shall be notified by the Senior Facilities Agent (or, after the Senior Facilities Discharge Date, the Permitted Senior Secured Debt Representative) in accordance with paragraph (e) of Clause 15.5 (*Duties of the Senior Facilities Agent, Permitted Senior Secured Debt Representative and the Security Agent*).

"Agreed Security Principles" means:

- (a) prior to the Senior Facilities Discharge Date, has the meaning given to the term "Security/Guarantee Principles" in the Senior Facilities Agreement; and
- (b) on or after the Senior Facilities Discharge Date, has the meaning given to any substantially equivalent term to that referred to in paragraph (a) above in each relevant Permitted Senior Secured Debt Facilities Agreement.

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

"Ancillary Facility" means:

- (a) any ancillary facility made available by an Ancillary Lender in accordance with clause 6 (*Ancillary Facilities and Fronted Ancillary Facilities*) of the Senior Facilities Agreement; and
- (b) any ancillary facility substantially equivalent to that referred to in paragraph (a) above and made available by an Ancillary Lender under and in accordance with a Permitted Senior Secured Debt Facilities Agreement.

"Ancillary Lender" means:

- (a) each Senior Facilities Lender (or Affiliate of a Senior Facilities Lender) which makes an Ancillary Facility available pursuant to the terms of the Senior Facilities Agreement; and
- (b) each Permitted Senior Secured Debt Facilities Lender (or Affiliate of a Permitted Senior Secured Debt Facilities Lender) which makes an Ancillary Facility available pursuant to the terms of a Permitted Senior Secured Debt Facilities Agreement.

"Appropriation" means the appropriation (or similar process) of the shares in the capital of a member of the Group (other than the Parent) by the Security Agent (or any Receiver or Delegate) which is effected (to the extent permitted under the relevant Security Document and applicable law) by enforcement of the Transaction Security.

"Arranger" means a Senior Facilities Arranger and/or a Permitted Senior Secured Debt Arranger, as the case may be.

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

"Available Commitment":

- (a) in relation to a Senior Facilities Lender, has the meaning given to the term "Available Commitment" in the Senior Facilities Agreement; and
- (b) in relation to a Permitted Senior Secured Debt Facilities Lender, has the meaning given to any substantially equivalent term to that referred to in paragraph (a) above in each relevant Permitted Senior Secured Debt Facilities Agreement.

"Borrowing Liabilities" means, in relation to a member of the Group, the liabilities and obligations (not being Guarantee Liabilities) it may have as a principal debtor to a Creditor (other than to an Arranger or an Agent) or Debtor in respect of Liabilities arising under the Debt Documents (whether incurred solely or jointly and including, without limitation, liabilities and obligations as a "Borrower" under, and as defined in, the Senior Facilities Finance Documents and liabilities and obligations as a "Borrower" or "Issuer", as the case may be, under the Permitted Senior Secured Debt Documents).

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

"Cash Cover":

- (a) has the meaning given to the term "cash cover" in the Senior Facilities Agreement; and
- (b) has the meaning given to any substantially equivalent term to that referred to in paragraph (a) above in each relevant Permitted Senior Secured Debt Facilities Agreement.

"Cash Cover Document" means, in relation to any Cash Cover, any Debt Document which creates or evidences, or is expressed to create or evidence, the Security required to be provided over that Cash Cover by the relevant Debtor.

"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 referred to in paragraph (a) and paragraph (b) above.

"Commitment" means a Senior Facilities Commitment or a Permitted Senior Secured Debt Commitment.

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

"Common Currency":

- (a) prior to the Senior Facilities Discharge Date, has the meaning given to the term "Sterling" in the Senior Facilities Agreement; or
- (b) on or after the Senior Facilities Discharge Date, has the meaning given to any substantially equivalent term to that referred to in paragraph (a) above in each relevant Permitted Senior Secured Debt Facilities Agreement.

"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.

"Completion Date" has the meaning given to that term in the original form of the Senior Facilities Agreement.

"Connected Person" means, if applicable, any person which constitutes a "Connected Person" as such term is defined in any relevant Permitted Senior Secured Debt Document, but excluding any member of the Group.

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

"Corresponding Debt" has the meaning given to that term in paragraph (b) of Clause 15.3 (*Parallel Debt (covenant to pay the Security Agent)*).

"Creditor Accession Undertaking" means:

- (a) an undertaking substantially in the form set out in Schedule 2 (*Form of Creditor Accession Undertaking*);
- (b) a Transfer Certificate or an Assignment Agreement (each as defined in the relevant Facility Agreement) (provided that it contains an accession to this Agreement which is substantially in the form set out in Schedule 2 (*Form of Creditor Accession Undertaking*)); or
- (c) an Increase Confirmation (as defined, if applicable, in the relevant Facility Agreement) (provided that it contains an accession to this Agreement which is substantially in the form set out in Schedule 2 (*Form of Creditor Accession Undertaking*)),

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 Secured Creditors, the Security Agent (including any Receiver or Delegate appointed by it), the Agents, the Arrangers, the Intra-Group Lenders and the Subordinated Creditors.

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

"Debt Disposal" means any disposal of any Liabilities or Debtors' Intra-Group Receivables pursuant to paragraph (a)(iv) or (a)(v) of Clause 12.2 (*Distressed Disposals and Appropriation*).

"Debt Document" means each of this Agreement, the Senior Secured Finance Documents, the Security Documents, any agreement evidencing the terms of the Intra-Group Liabilities or the Subordinated Liabilities and any other document designated as such by the Security Agent and the 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 or a Permitted Senior Secured Debt Facilities Agreement), an Accession Document or any substantially equivalent accession provision in a Permitted Senior Secured Debt Facilities Agreement (in the case of and as defined in the relevant Senior Facilities Agreement or Permitted Senior Secured Debt Facilities Agreement) (provided that it contains an accession to this Agreement which is substantially in the form set out in Schedule 1 (*Form of Debtor Accession Deed*)).

"Debtor Guarantor" means a Debtor which is a Senior Facilities Guarantor and/or a Permitted Senior Secured Debt Guarantor.

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

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

"Default" means an Event of Default or any event or circumstance specified in the Senior Facilities Agreement and/or any Permitted Senior Secured Debt Document which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Debt Documents or any combination of any of the foregoing) be an Event of Default, **provided that** any such event or circumstance which requires the satisfaction of a condition as to materiality before it becomes an Event of Default shall not be a Default unless that condition is satisfied.

"Defaulting Lender" means:

- (a) in relation to a Senior Facilities Lender, a Senior Facilities Lender which is a "Defaulting Lender" under, and as defined in, the Senior Facilities Agreement; and
- (b) in relation to a Permitted Senior Secured Debt Facilities Lender, a Permitted Senior Secured Debt Facilities Lender which is a "Defaulting Lender" (or any substantially equivalent term) under, and as defined in, each relevant Permitted Senior Secured Debt Facilities Agreement.

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

"Discharge Date" means the Hedging Liabilities Discharge Date, the Senior Facilities Discharge Date, the Permitted Senior Secured Debt Discharge Date or the Final Discharge Date, as the context requires.

"Distressed Disposal" means a disposal of an asset of a member of the Group which, in each case, is:

- (a) being effected at the request of the Majority Senior Secured Creditors in circumstances where the Transaction Security has become enforceable;
- (b) being effected by enforcement of the Transaction Security (including the disposal of any Property of a member of the Group, the shares in which have been subject to an Appropriation); or
- (c) being effected, after the occurrence of a Distress Event, by a Debtor to a person or persons which is, or are, not a member, or members, of the Group.

"Distress Event" means any of:

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

"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 Facilities Lender or a Permitted Senior Secured Debt Creditor to perform its obligations under, or of any voluntary or mandatory prepayment or tender offer arising under, the Debt Documents);
- (ii) the making of any declaration that any Liabilities are payable on demand;
- (iii) the making of a demand in relation to a Liability that is payable on demand (other than a demand made by an Intra-Group Lender in relation to any Intra-Group Liabilities which are on-demand Liabilities to the extent:
 - (A) that the demand is made in the ordinary course of dealings between the relevant Debtor and Intra-Group Lender; and
 - (B) that any resulting Payment would be a Permitted Intra-Group Payment);
- (iv) the making of any demand against any member of the Group in relation to any Guarantee Liabilities of that member of the Group;
- (v) the exercise of any right to require any member of the Group to acquire any Liability, including exercising any put or call option against any member of the Group for the redemption or purchase of any Liability but excluding any such right which arises:
 - (A) as a result of clause 36.1 (*Permitted Debt Purchase Transactions*) of the Senior Facilities Agreement;
 - (B) as a result of any substantially equivalent provision in any Permitted Senior Secured Debt Facilities Agreement to that referred to in paragraph (a)(v)(A) above; or
 - (C) in connection with any Mandatory Prepayment;
- (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 not prohibited under the Senior Secured Finance Documents to the extent that the exercise of that right gives effect to a Permitted Payment; and
- (vii) the suing for, commencing or joining of any legal or arbitration proceedings against any member of the Group to recover any Liabilities;
- (b) the premature termination or close-out of any hedging transaction under any Hedging Agreement (except as otherwise permitted by this Agreement);
- (c) the taking of any steps to enforce or require the enforcement of any Transaction Security (including the crystallisation of any floating charge forming part of the Transaction Security);
- (d) the entering into of any composition, compromise, assignment or arrangement with any member of the Group 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 pursuant to any debt buy-back, tender offer, exchange offer or similar or equivalent arrangement not otherwise prohibited by the Debt Documents); 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 paragraph (a)(vii) or (e) above which is necessary (but only to the extent necessary) to preserve the validity, existence or priority of claims in respect of Liabilities, including the registration of such claims before any court or governmental authority and the bringing, supporting or joining of proceedings to prevent any loss of the right to bring, support or join proceedings by reason of applicable limitation periods;
- (ii) a Senior Secured Creditor bringing legal proceedings against any person solely for the purpose of:
 - (A) obtaining injunctive relief (or any analogous remedy outside England and Wales) to restrain any actual or putative breach of any Debt Document to which it is party;
 - (B) obtaining specific performance (other than specific performance of an obligation to make a payment) with no claim for damages;
 - (C) requesting judicial interpretation of any provision of any Debt Document to which it is party with no claim for damages; or

- (D) defending or taking any action with regards to a securities violation, breach or alleged breach of any securities or listing regulations or common law fraud; or
- (iii) bringing legal proceedings against any person in connection with any securities violation, securities or listing regulations or common law fraud.

"Event of Default" means any event or circumstance specified as such in:

- (a) the Senior Facilities Agreement; and/or
- (b) any Permitted Senior Secured Debt Document.

"Facility Agreement" means the Senior Facilities Agreement and each Permitted Senior Secured Debt Facilities Agreement.

"Fairness Opinion" means an opinion of a Financial Adviser that the consideration for a disposal is fair from a financial point of view taking into account all relevant circumstances including the method of enforcement.

"Final Discharge Date" means the later to occur of the Hedging Liabilities Discharge Date, the Senior Facilities Discharge Date and the Permitted Senior Secured Debt Discharge Date.

"Financial Adviser" means an internationally recognised investment bank or any one of BDO, Deloitte & Touche, Ernst & Young, Grant Thornton, KPMG or PricewaterhouseCoopers or, if it is not practicable for the Security Agent to appoint any such bank or firm on commercially reasonable terms (including for reasons of conflicts of interest) as determined by the Security Agent (acting in good faith), another third party professional firm which is regularly engaged in providing valuations of businesses or assets similar or comparable to those the subject of the relevant Distressed Disposal (in each case not being the firm appointed as the relevant Debtor's administrator or other relevant office holder) in each case as appointed by the Security Agent.

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

"Group" means the Parent and its Subsidiaries for the time being.

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

"Guarantor" means any Senior Facilities Guarantor and any Permitted Senior Secured Debt Guarantor.

"Hedge Counterparty" means:

- (a) any person which is named on the signing pages as a Hedge Counterparty (if any); and

- (b) any person which becomes a Party as a Hedge Counterparty pursuant to Clause 16.10 (*Creditor Accession Undertaking*),

provided that such person has not ceased to be a Hedge Counterparty pursuant to Clause 16.5 (*Change of Hedge Counterparty*).

"Hedging Agreement" means any master agreement, confirmation, schedule or other agreement entered into between a member of a Group and a Hedge Counterparty which, at the time such Hedging Agreement is entered into, is not prohibited under the terms of the Debt Documents to share in the Transaction Security.

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

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

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

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

"Hedging Liabilities Discharge Date" means the date on which all the Hedging Liabilities have been fully and finally discharged, whether or not as the result of an enforcement, and the Hedge Counterparties are under no further obligation to provide financial accommodation to any Debtors under any Hedging Agreement.

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

"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 or an administrator is appointed to that member of the Group;
- (b) 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
- (c) any analogous procedure or step is taken in any jurisdiction,

excluding any Permitted Reorganisation or any solvent winding up, dissolution or reorganisation and any resolution, order, appointment or action in relation thereto.

"Insolvent Debtor" has the meaning given to that term in paragraph (c) of Clause 3.7 (*Restriction on Enforcement: Senior Secured Creditors*).

"Intercreditor Amendment" means any amendment or waiver which is subject to Clause 22 (*Consents, amendments and override*).

"Inter-Hedging Agreement Netting" means the exercise of any right of set-off, account combination, close-out netting or payment netting (whether arising out of a cross-agreement,

netting agreement or otherwise) by a Hedge Counterparty against liabilities owed to a Debtor by that Hedge Counterparty under a Hedging Agreement in respect of Hedging Liabilities owed to that Hedge Counterparty by that Debtor under another Hedging Agreement.

"Inter-Hedging Ancillary Document Netting" means the exercise of any right of set-off, account combination, close-out netting or payment netting (whether arising out of a cross-agreement, netting agreement or otherwise) by a Hedging Ancillary Lender against liabilities owed to a Debtor by that Hedging Ancillary Lender under a Hedging Ancillary Document in respect of the Senior Facilities Liabilities owed to that Hedging Ancillary Lender by that Debtor under another Hedging Ancillary Document.

"Intra-Group Documents" means all documents, agreements and instruments evidencing any Intra-Group Liabilities.

"Intra-Group Lenders" means:

- (a) each Debtor; and
- (b) each member of the Group which has made a loan available to, granted credit to or made any other financial arrangement having similar effect with another member of the Group and which is named on the signing pages as an Intra-Group Lender or which becomes a party as an Intra-Group Lender in accordance with the terms of Clause 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 in its capacity as such (and excluding any Senior Secured Creditor Liabilities).

"Investment Instruments" means shares of any class, loans, bonds or other equity or debt instruments issued by an entity.

"Investor Affiliate" means:

- (a) in relation to the Senior Facilities or, if applicable, Permitted Senior Secured Debt Liabilities each Investor and each Affiliate of an Investor, other than a member of the Group; and
- (b) in relation to any Permitted Senior Secured Debt Notes or other securities:
 - (i) the Investor;
 - (ii) any Connected Person to the Investor;
 - (iii) any Holding Company of the Parent;
 - (iv) if the Investor and its Connected Persons are, in aggregate, unable to exercise more than 50 per cent. of the voting rights in the Parent, any person (other than any person described in paragraphs (b)(i) to (b)(iii) above) with an interest (direct or indirect) of at least 20 per cent. in the shares in the Parent;
 - (v) any trust of which any person described in paragraphs (b)(i) to (b)(iv) above is a trustee;

- (vi) any trust, fund or other entity which is managed by, or is under the control of, any person described in paragraphs (b)(i) to (b)(iv) above;
 - (vii) any joint venture, consortium, partnership or similar arrangement of which any person described in paragraphs (b)(i) to (b)(iv) above is a member; and
 - (viii) any Affiliate of any person described in paragraphs (b)(i) to (b)(iv) above,
- in each case, excluding any Original Lender (as defined in the Senior Facilities Agreement or in any relevant Permitted Senior Secured Debt Facilities Agreement) and any of its Affiliates, any Agent and any nominee holder of Permitted Senior Secured Debt (in its capacity as a nominee only) and excluding any member of the Group.

"Investor" has the meaning given to the term:

- (a) on or prior to the Senior Facilities Discharge Date, "Equity Investors" in the Senior Facilities Agreement; and
- (b) after the Senior Facilities Discharge Date, "Investors" or any substantially equivalent term in any relevant Permitted Senior Secured Debt Document.

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

"Issuing Bank" means:

- (a) any "Issuing Bank" under, and as defined in, the Senior Facilities Agreement; and
- (b) any party to a Permitted Senior Secured Debt Facilities Agreement which, if applicable, is an "Issuing Bank" under, and as defined in, each relevant Permitted Senior Secured Debt Facilities Agreement.

"Lender Cash Collateral" means:

- (a) any cash collateral provided by a Senior Facilities Lender to an Issuing Bank pursuant to clause 7.5 (*Cash collateral by Non-Acceptable L/C Lender*) of the Senior Facilities Agreement; and
- (b) at any time, any cash collateral provided by a Permitted Senior Secured Debt Facilities Lender to an Issuing Bank pursuant to any terms of the Permitted Senior Secured Debt Facilities Agreement under terms substantially equivalent to those set out in the clause referred to in paragraph (a) above.

"Letter of Credit" has the meaning given to the term "Letter of Credit" in the Senior Facilities Agreement and any substantially similar equivalent term in the relevant Permitted Senior Secured Debt Facilities Agreement.

"Leverage Ratio" has the meaning given to the term "Leverage Ratio" in the Senior Facilities Agreement.

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

- (a) any refinancing, novation, deferral or extension;
- (b) any claim for breach of representation, warranty or undertaking or on an event of default or 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 or acquires by way of assignment or transfer;
- (b) enters into any sub-participation in respect of; or
- (c) enters into any other agreement or arrangement having an economic effect substantially similar to a sub-participation in respect of,

the rights and benefits in respect of those Liabilities.

"Liabilities Sale" means a Debt Disposal pursuant to paragraph (a)(v) of Clause 12.2 (*Distressed Disposals and Appropriation*).

"Lower Ranking Security" means all Transaction Security which, in accordance with the applicable law of such Transaction Security, is expressed to be second ranking (or any other lower ranking).

"Majority Permitted Senior Secured Debt Facilities Lenders" has the meaning given to the term "Majority Lenders" or any substantially equivalent term in each Permitted Senior Secured Debt Facilities Agreement.

"Majority Senior Facilities Lenders" has the meaning given to the term "Majority Lenders" in the Senior Facilities Agreement.

"Majority Senior Secured Creditors" means, at any time, in relation to any instructions to the Security Agent to enforce the Transaction Security or refrain or cease from enforcing the Transaction Security or take any other Enforcement Action those Senior Secured Creditors whose Senior Secured Credit Participations at that time aggregate to 66²/₃ per cent. or more of the Total Senior Secured Credit Participations and otherwise means those Senior Secured Creditors whose Senior Secured Credit Participations at that time aggregate more than 50 per cent. of the Total Senior Secured Credit Participations at that time.

"Mandatory Prepayment" means:

- (a) in the case of the Senior Facilities Agreement, a mandatory prepayment of any of the Senior Facilities Liabilities pursuant to clause 13.2 (*Mandatory prepayments on Sale or Change of Control*), clause 13.3 (*Mandatory prepayment on an IPO*), clause 13.4

- (*Proceeds of asset disposals*), clause 13.5 (*Insurances*), clause 13.6 (*Acquisition and report proceeds*) or clause 13.7 (*Excess Cashflow*) of the Senior Facilities Agreement; or
- (b) a mandatory prepayment, repurchase or redemption (or offer therefor) under a Permitted Senior Secured Debt Document under any change of control, asset sale or other provisions which are substantially equivalent to any of those referred to in paragraph (a) above.

"Material Adverse Effect" has the meaning given to the same term in the Senior Facilities Agreement.

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

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

"Net Outstandings" means, in relation to a Multi-account Overdraft, the aggregate debit balance of overdrafts comprised in that Multi-account Overdraft, net of any credit balances on any account comprised in that Multi-account Overdraft, to the extent that the credit balances are freely available to be set-off by the relevant Ancillary Lender against Liabilities owed to it by the relevant Debtor under that Multi-account Overdraft.

"New Debt Financing" means, subject to compliance with Clause 5.1 (*New Debt Financing*), any new financing arrangement under a Permitted Senior Secured Debt Document.

"Non-Credit Related Close-Out" means a Permitted Hedge Close-Out described in any of paragraph (a)(ii) or (a)(v) of Clause 4.9 (*Permitted enforcement: Hedge Counterparties*).

"Non-Distressed Disposal" has the meaning given to that term in paragraph (a) of Clause 12.1 (*Non-Distressed Disposals*).

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

"Parallel Debt" has the meaning given to that term in paragraph (b) of Clause 15.3 (*Parallel Debt (covenant to pay the Security Agent)*).

"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, repurchase, defeasance or discharge of those Liabilities (or other liabilities or obligations).

"Payment Netting" means:

- (a) in respect of a Hedging Agreement or a Hedging Ancillary Document based on an ISDA Master Agreement, netting under section 2(c) of the relevant ISDA Master Agreement; and

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

"Permitted 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 Payment" means the Payments permitted by Clause 4.3 (*Permitted Payments: Hedging Liabilities*).

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

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

"Permitted Reorganisation"

- (a) prior to the Senior Facilities Discharge Date, has the meaning given to the same term in the Senior Facilities Agreement; and
- (b) on or after the Senior Facilities Discharge Date, has the meaning given to any substantially equivalent term to that referred to in paragraph (a) above in each relevant Permitted Senior Secured Debt Facilities Agreement.

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

"Permitted Senior Secured Debt" means, subject to compliance with the requirements of Clause 5.1 (*New Debt Financing*), any loan, credit or debt facility, notes, indenture or securities which are permitted, under the terms of the Senior Secured Finance Documents, to rank *pari passu* with the Senior Secured Creditor Liabilities including any refinancing of the Senior Facilities Liabilities and of any such loan, credit or debt facility, notes, indenture or securities but excluding any Senior Facilities or Additional Senior Facilities.

"Permitted Senior Secured Debt Acceleration Event" means a Permitted Senior Secured Debt Representative or any of the other Permitted Senior Secured Debt Creditors exercising any acceleration rights (howsoever described) or any acceleration provisions being automatically invoked in each case under and in accordance with any Permitted Senior Secured Debt Documents following the occurrence of an Event of Default under a Permitted Senior Secured Debt Document which is continuing.

"Permitted Senior Secured Debt Arranger" means an arranger of any new Permitted Senior Secured Debt which has acceded to this Agreement pursuant to Clause 16.10 (*Creditor Accession Undertaking*).

"Permitted Senior Secured Debt Arranger Liabilities" means the Arranger Liabilities owed by the Debtors to any arranger of the Permitted Senior Secured Debt under or in connection with the Permitted Senior Secured Debt Documents.

"Permitted Senior Secured Debt Commitment" has the meaning given to any term substantially similar and equivalent to the defined term "Commitment" (as that term is used in the Senior Facilities Agreement) in each relevant Permitted Senior Secured Debt Facilities Agreement.

"Permitted Senior Secured Debt Creditors" means each holder, lender or other creditor of Permitted Senior Secured Debt Liabilities including any Issuing Bank and each Ancillary Lender under any Permitted Senior Secured Debt Facilities Agreement but excluding each Permitted Senior Secured Debt Representative.

"Permitted Senior Secured Debt Discharge Date" means the date on which all Permitted Senior Secured Debt Liabilities have been fully and finally discharged (including by way of defeasance in accordance with the Permitted Senior Secured Debt Documents), whether or not as the result of an enforcement, and the Permitted Senior Secured Debt Creditors are under no further obligation to provide financial accommodation to any of the Debtors under the Permitted Senior Secured Debt Documents.

"Permitted Senior Secured Debt Documents" means each document or instrument entered into between any member of the Group and a Permitted Senior Secured Debt Creditor and/or a Permitted Senior Secured Debt Representative setting out the terms of any loan, credit or debt facility, notes, indenture or security which creates or evidences any Permitted Senior Secured Debt, each guarantee granted by a member of the Group in respect of any Permitted Senior Secured Debt, this Agreement, the Security Documents, and any other document entered into in connection with the aforementioned instruments creating or evidencing Permitted Senior Secured Debt and designated a Permitted Senior Secured Debt Document by the issuer or borrower of the Permitted Senior Secured Debt, as the case may be, and relevant Permitted Senior Secured Debt Representative (which for the purposes of determining the Arranger Liabilities, includes any document to the extent it sets out rights of any initial purchasers of any Permitted Senior Secured Debt issued by way of notes or securities (in their capacity as initial purchasers) against any member of the Group).

"Permitted Senior Secured Debt Facilities Agreement" means, subject to compliance with the requirements of Clause 5.1 (*New Debt Financing*), each facility agreement evidencing the terms of any Permitted Senior Secured Debt made by way of loan, credit or debt facility.

"Permitted Senior Secured Debt Facilities Discharge Date" means the date on which all the Permitted Senior Secured Debt Facilities Liabilities have been fully and finally discharged, whether or not as a result of an enforcement, and the Permitted Senior Secured Debt Facilities Lenders are under no further obligation to provide financial accommodation to any Debtors under any Permitted Senior Secured Debt Facilities Agreement.

"Permitted Senior Secured Debt Facilities Liabilities" means, where the Permitted Senior Secured Debt has been made available by way of loan, credit or debt facility, Liabilities owed by the Debtors to the Permitted Senior Secured Debt Facilities Lenders under the relevant Permitted Senior Secured Debt Facilities Agreement.

"Permitted Senior Secured Debt Facilities Lender" means, where the Permitted Senior Secured Debt has been made available by way of loan, credit or debt facility, a "Lender" under, and as defined in, the relevant Permitted Senior Secured Debt Facilities Agreement.

"Permitted Senior Secured Debt Guarantor" means an entity which has acceded to a Permitted Senior Secured Debt Document as a guarantor in respect of any Permitted Senior Secured Debt Liabilities.

"Permitted Senior Secured Debt Liabilities" means the Liabilities owed by the Debtors to the Permitted Senior Secured Debt Creditors under the Permitted Senior Secured Debt Documents.

"Permitted Senior Secured Debt Noteholder" means, where the Permitted Senior Secured Debt has been made available by way of notes, indenture or securities, the holder of any such notes, indenture or securities.

"Permitted Senior Secured Debt Notes" means, where the Permitted Senior Secured Debt has been made available by way of notes, indenture or securities, subject to compliance with the requirements of Clause 5.1 (*New Debt Financing*), any notes, exchange notes, securities or other debt instruments issued or to be issued by the Permitted Senior Secured Debt Notes Issuer.

"Permitted Senior Secured Debt Notes Indenture" means, where the Permitted Senior Secured Debt has been made available by way of notes, indenture or securities, any indenture between, among others, the Permitted Senior Secured Debt Notes Issuer and the Permitted Senior Secured Debt Notes Trustee pursuant to which any notes evidencing Permitted Senior Secured Debt are issued.

"Permitted Senior Secured Debt Notes Issue Date" means, where the Permitted Senior Secured Debt has been made available by way of notes, indenture or securities, the first date on which a Permitted Senior Secured Debt Note is issued pursuant to that Permitted Senior Secured Debt Notes Indenture.

"Permitted Senior Secured Debt Notes Issuer" means, where the Permitted Senior Secured Debt has been made available by way of notes, indenture or securities:

- (a) the Company; or
- (b) a special purpose vehicle which is a direct subsidiary of the Company incorporated solely for the purpose of issuing Permitted Senior Secured Debt Notes and which has granted a guarantee in respect of the Senior Secured Creditor Liabilities; or
- (c) a special purpose vehicle which is a Subsidiary of the Parent and which is a Holding Company of the Company incorporated solely for the purpose of issuing Permitted Senior Secured Debt Notes and which has granted a guarantee in respect of the Senior Secured Creditor Liabilities.

"Permitted Senior Secured Debt Notes Liabilities" means, where the Permitted Senior Secured Debt has been made available by way of notes, indenture or securities, the Liabilities owed by the Debtors to Permitted Senior Secured Debt Noteholders under Permitted Senior Secured Debt Notes.

"Permitted Senior Secured Debt Notes Trustee" means, where the Permitted Senior Secured Debt has been made available by way of notes, indenture or securities, any entity acting as trustee under such notes, indenture or securities.

"Permitted Senior Secured Debt Notes Trustee Amounts" means, in relation to a Permitted Senior Secured Debt Notes Trustee, the fees, costs and expenses payable to that Permitted Senior Secured Debt Notes Trustee (or any adviser, receiver, delegate, attorney, agent or appointee thereof) pursuant to the terms of the Permitted Senior Secured Debt Documents, including:

- (a) any amounts payable to that Permitted Senior Secured Debt Notes Trustee (or any adviser, receiver, delegate, attorney, agent or appointee thereof) by way of indemnity;
- (b) all compensation for services provided by that Permitted Senior Secured Debt Notes Trustee (or any adviser, receiver, delegate, attorney, agent or appointee thereof) payable pursuant to the terms of the Permitted Senior Secured Debt Documents; and
- (c) all out-of-pocket costs and expenses properly incurred by that Permitted Senior Secured Debt Notes Trustee (or any adviser, receiver, delegate, attorney, agent or appointee thereof) in carrying out its duties or performing any service pursuant to the terms of the Permitted Senior Secured Debt Documents, including, without limitation, the costs and expenses of the collection by that Permitted Senior Secured Debt Notes Trustee (or any adviser, receiver, delegate, attorney, agent or appointee thereof) of any amount payable to that Permitted Senior Secured Debt Notes Trustee for the benefit of the Permitted Senior Secured Debt Noteholders,

including any VAT where applicable, **provided that** "Permitted Senior Secured Debt Notes Trustee Amounts" shall not include:

- (i) any payment in relation to any unpaid costs and expenses incurred in respect of any litigation initiated by that Permitted Senior Secured Debt Notes Trustee (or any adviser, receiver, delegate, attorney, agent or appointee thereof) against any of the Senior Secured Creditors; or
- (ii) any payment made, directly or indirectly, on or in respect of any amounts owing under any Permitted Senior Secured Debt Notes (including principal, interest, premium or any other amounts to any of the Permitted Senior Secured Debt Noteholders).

"Permitted Senior Secured Debt Representative" means, in relation to any Permitted Senior Secured Debt, any agent or trustee for the relevant Permitted Senior Secured Debt Creditors of that Permitted Senior Secured Debt which has acceded to this Agreement pursuant to Clause 16.10 (*Creditor Accession Undertaking*).

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

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

- (a) any asset of that member of the Group or of that Debtor;

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

"Public Auction" means an auction or other competitive sale process in which more than one bidder participates or is invited to participate, which may or may not be conducted through a court or other legal proceeding and which is conducted in accordance with the advice of a Financial Adviser **provided that** the Senior Secured Creditors and an Investor shall have a right to participate in such auction.

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

"Receiving Entity" has the meaning given to that term in paragraph (a)(vi) of Clause 12.2 (*Distressed Disposals and Appropriation*).

"Recoveries" has the meaning given to that term in Clause 13.1 (*Order of application*).

"Recovering Creditor" has the meaning given to that term in paragraph (a) of Clause 10.1 (*Recovering Creditor's rights*).

"Redistributed Amount" has the meaning given to that term in paragraph (a)(i) of Clause 10.2 (*Reversal of redistribution*).

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

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

"Relevant Liabilities" means:

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

"Reports" has the meaning given to the term "Reports" in the Senior Facilities Agreement and any substantially similar equivalent term in the relevant Permitted Senior Secured Debt Facilities Agreement.

"Requisite Majority" means, subject to Clause 22 (*Consents, amendments and override*):

- (a) in relation to any Consent of the Senior Facilities Lenders:
 - (i) under the Senior Facilities Agreement, the Majority Lenders as defined in the Senior Facilities Agreement after the application of:

- (A) clause 37.12 (*Failure to respond*) of the Senior Facilities Agreement;
 - (B) clause 36.2 (*Disenfranchisement on Debt Purchase Transactions entered into by Investor Affiliates*) of the Senior Facilities Agreement; and
 - (C) clause 37.5 (*Disenfranchisement of Defaulting Lenders*) of the Senior Facilities Agreement; or
- (ii) where clause 37.2 (*Modifications requiring unanimous Lender agreement*) of the Senior Facilities Agreement (or any substantially equivalent provision in any other Senior Facilities Finance Document) requires otherwise, the prior consent of all (or such other proportion) of the Senior Facilities Lenders and any other entity specified therein;
- (b) in relation to any Consent of the Permitted Senior Secured Debt Facilities Lenders:
- (i) the Permitted Senior Secured Debt Facilities Lenders holding at least the principal amount of Permitted Senior Secured Debt Liabilities required to vote in favour of such Consent under the terms of the relevant Permitted Senior Secured Debt Documents after, if relevant, the application of any provisions substantially equivalent to those in paragraphs (a)(i)(A) to (a)(i)(C) above; or
 - (ii) if the required principal amount for such Consent is not specified, the holders of at least the majority of the principal amount of the then outstanding Permitted Senior Secured Debt Liabilities,

provided that to the extent the Permitted Senior Secured Debt Liabilities are comprised of more than one Permitted Senior Secured Debt Facilities Agreement, the Consent referred to in paragraphs (b)(i) and (b)(ii) above shall be in respect of each such Permitted Senior Secured Debt Facilities Agreement; and

- (c) in relation to any Consent of the Permitted Senior Secured Debt Noteholders:
- (i) the Permitted Senior Secured Debt Noteholders holding at least the principal amount of Permitted Senior Secured Debt Liabilities required to vote in favour of such Consent under the terms of the relevant Permitted Senior Secured Debt Document; or
 - (ii) if the required principal amount for such Consent is not specified, Permitted Senior Secured Debt Noteholders holding at least the majority of the principal amount of the relevant Permitted Senior Secured Debt Liabilities,

provided that to the extent the Permitted Senior Secured Debt Liabilities are comprised of more than one issue of notes, indenture or securities, the Consent referred to in paragraphs (c)(i) and (c)(ii) above shall be in respect of each such Permitted Senior Secured Debt Document which governs the relevant notes, indenture or securities.

"Reservations" has the meaning given to the same term in the Senior Facilities Agreement.

"Responsible Officer" means any person (i) who is an officer within the corporate trust and services department (however described) of any Permitted Senior Secured Debt Notes Trustee, including any director, associate director, vice president, assistant vice president, senior

associate, assistant treasurer, trust officer or any other officer of such Permitted Senior Secured Debt Notes Trustee who customarily performs functions similar to those performed by such officers, (ii) to whom any corporate trust matter is referred because of such individual's knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Agreement and any Permitted Senior Secured Debt Documents to which that Permitted Senior Secured Debt Notes Trustee is a party or (iii) who is notified by such Permitted Senior Secured Debt Notes Trustee as identified herein in accordance with Clause 20.3 (*Addresses*).

"Secured Obligations" means, to the extent legally possible, all the Liabilities and all other present and future obligations at any time due, owing or incurred by any Debtor to any Secured Party (in its capacity as such) 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 Agents, the Arrangers and the Senior Secured Creditors from time to time, but, in the case of such Agents, the Arrangers and the Senior Secured Creditors, only if it or, in the case of Permitted Senior Secured Debt Creditors (other than any Permitted Senior Secured Debt Facilities Lender which shall be required to accede to this Agreement in its capacity as such to constitute a Secured Party), its Agent is a party to this Agreement or has acceded to this Agreement, in the appropriate capacity, pursuant to Clause 16.10 (*Creditor Accession Undertaking*).

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

"Security Documents" means:

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

"Security Property" means:

- (a) the Transaction Security expressed to be granted in favour of the Security Agent as agent or trustee for the Secured Parties (or under any parallel debt, joint and several creditorship or equivalent structure as set out in Clause 15 (*The Security Agent*)) 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 agent or trustee for the Secured Parties (or under any parallel debt, joint and several creditorship or equivalent structure as set out in Clause 15 (*The Security Agent*)) 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 agent or trustee for the Secured Parties;

- (c) the Security Agent's interest in any trust fund created pursuant to Clause 9 (*Turnover of receipts*); and
- (d) any other amounts or property, whether a right, entitlement, chose 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 Facilities" has the meaning given to the term "Facilities" in the Senior Facilities Agreement.

"Senior Facilities Acceleration Event" means the Senior Facilities Agent giving notice of acceleration of any outstanding indebtedness under clause 25.18 (*Cancellation and repayment*) of the Senior Facilities Agreement.

"Senior Facilities Agent" means the Agent under and as defined in the Senior Facilities Agreement.

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

"Senior Facilities Arranger" means the Arrangers under and as defined in the Senior Facilities Agreement.

"Senior Facilities Arranger Liabilities" means the Arranger Liabilities owed by the Debtors to any arranger of the Senior Facilities under or in connection with the Senior Facilities Finance Documents.

"Senior Facilities Borrower" means a "Borrower" under and as defined in the Senior Facilities Agreement.

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

"Senior Facilities Discharge Date" means the date on which all the Senior Facilities Liabilities have been fully and finally discharged, whether or not as a result of an enforcement, and the Senior Facilities Lenders are under no further obligation to provide financial accommodation to any Debtors under the Senior Facilities Agreement.

"Senior Facilities Finance Document" has the meaning given to the term "Finance Document" in the Senior Facilities Agreement.

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

"Senior Facilities Guarantor" means a Guarantor as defined in the Senior Facilities Agreement.

"Senior Facilities Lenders" means each "Lender" (as defined in the Senior Facilities Agreement), each Issuing Bank and each Ancillary Lender .

"Senior Facilities Liabilities" means the Liabilities owed by the Debtors to the Senior Facilities Lenders under the Senior Facilities Agreement.

"Senior Secured Creditor Liabilities" means the Senior Facilities Liabilities, the Hedging Liabilities and the Permitted Senior Secured Debt Liabilities.

"Senior Secured Creditors" means the Senior Facilities Lenders, the Hedge Counterparties and the Permitted Senior Secured Debt Creditors.

"Senior Secured Credit Participation" means:

- (a) in relation to a Senior Facilities Lender, its aggregate Senior Facilities Commitment;
- (b) in relation to a Hedge Counterparty:
 - (i) in respect of any hedging transaction of that Hedge Counterparty under any Hedging Agreement that has, as of the date the calculation is made, been terminated or closed out in accordance with the terms of this Agreement, the amount, if any, payable to it under any Hedging Agreement in respect of that termination or close-out as of the date of termination or close-out (and before taking into account any interest accrued on that amount since the date of termination or close-out) to the extent that amount is unpaid (that amount to be certified by the relevant Hedge Counterparty and as calculated in accordance with the relevant Hedging Agreement); and
 - (ii) in respect of any hedging transaction of that Hedge Counterparty under any Hedging Agreement that has, as of the date (as determined pursuant to paragraph (c) of Clause 22.9 (*Calculation of Senior Secured Credit Participation*)) the calculation is made, not been terminated or closed out:
 - (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 date on which the calculation is made was deemed to be an Early Termination Date (as defined in the relevant ISDA Master Agreement) with respect to that hedging transaction 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 the Hedging Agreement in respect of that hedging transaction, if the date on which the calculation is made was deemed to be 11:00 a.m. (London time) on 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 by the relevant Hedge Counterparty in accordance with the relevant Hedging Agreement;

- (c) in relation to a Permitted Senior Secured Debt Noteholder, the aggregate of the principal amount of the Permitted Senior Secured Debt Notes Liabilities then owing to it; and
- (d) in relation to a Permitted Senior Secured Debt Facilities Lender, its aggregate Permitted Senior Secured Debt Commitment.

"Senior Secured Finance Documents" means the Senior Facilities Finance Documents, the Hedging Agreements and the Permitted Senior Secured Debt Documents.

"Senior Secured Financing Agreement" means the Senior Facilities Agreement and any Permitted Senior Secured Debt Document, as the context requires.

"Senior Subordinated Notes" means any senior subordinated notes issued from time to time by the Senior Subordinated Notes Issuer pursuant to the Senior Subordinated Notes Indenture.

"Senior Subordinated Notes Creditors" means a holder of any Senior Subordinated Notes and the Senior Subordinated Notes Trustee.

"Senior Subordinated Notes Debtors" means the Senior Subordinated Notes Issuer and any guarantor of the Senior Subordinated Notes (to the extent it is a member of the Group).

"Senior Subordinated Notes Documents" means the Senior Subordinated Notes, the Senior Subordinated Notes Indenture and the Senior Subordinated Notes Guarantees.

"Senior Subordinated Notes Guarantees" means the guarantees granted pursuant to the Senior Subordinated Notes Indenture.

"Senior Subordinated Notes Guarantee Liabilities" means all present and future money, debts and liabilities due, owing or incurred by any Senior Subordinated Notes Guarantor to any Senior Subordinated Notes Creditor under or in connection with the Senior Subordinated Notes Documents (in each case, whether alone or jointly, or jointly and severally, with any other person, whether actually or contingently, and whether as principal, surety or otherwise).

"Senior Subordinated Notes Guarantor" means each member of the Group that is a guarantor to the Senior Subordinated Notes Creditors (or any of them) for the Senior Subordinated Notes Liabilities (or any of them) under any Senior Subordinated Notes Document.

"Senior Subordinated Notes Indenture" means any indenture between, among others, the Senior Subordinated Notes Issuer and the Senior Subordinated Notes Trustee, pursuant to which the Senior Subordinated Notes are issued.

"Senior Subordinated Notes Intercreditor Principles" means the principles set out in Schedule 4 (*Subordinated Notes Intercreditor Principles*).

"Senior Subordinated Notes Issuer" means any issuer of Senior Subordinated Notes (not being a member of the Group).

"Senior Subordinated Notes Liabilities" means the Liabilities owed by the Senior Subordinated Notes Debtors to the Senior Subordinated Notes Creditors under the Senior Subordinated Notes Documents.

"Senior Subordinated Notes Trustee" means any agent or trustee acting on behalf of the Senior Subordinated Notes Creditors pursuant to the Senior Subordinated Notes Indenture.

"Senior Subordinated Notes Payment Stop Notice" a notice delivered by the Senior Facility Agent or Permitted Senior Secured Debt Representative when an Event of Default under the Senior Secured Finance Documents has occurred and is continuing.

"Senior Subordinated Notes Proceeds Loan" means any loan made for the purposes of on-lending (directly or indirectly) the proceeds of any Senior Subordinated Notes.

"SFA Cash Cover" means "cash cover" under and as defined in the Senior Facilities Agreement.

"SFA Cash Cover Document" means, in relation to any SFA Cash Cover, any Senior Facilities 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 the Senior Facilities Agreement.

"Shared Amount" has the meaning given to that term in paragraph (b) of Clause 10.1 (*Recovering Creditor's rights*).

"Shared French Securities Account Pledges" means (i) the pledges granted by UB Overseas Limited over the securities accounts in which are registered the Investment Instruments issued by United Biscuits France it owns, and (ii) the pledges granted by United Biscuits France over the securities accounts in which are registered the Investment Instruments issued by United Industries Biscuits it owns and (iii) any other securities account pledge agreements which will be granted to the Security Agent for the account of the Secured Parties under Transaction Security Documents over the securities accounts in which will be registered the securities (of any nature whatsoever) of any member of the Group incorporated in France, in accordance with the terms of the Senior Secured Finance Documents.

"Shared Pledged Accounts" means the securities accounts (*comptes titres*) pledged pursuant to the Shared French Securities Account Pledges.

"Subordinated Creditors" means the Original Subordinated Creditor and each person which becomes a Party as a Subordinated Creditor in accordance with the terms of Clause 16 (*Changes to the Parties*).

"Subordinated Documents" means any document (including articles of association or other constitutional documents), agreement or instrument evidencing any Subordinated Liabilities.

"Subordinated Liabilities" means the Liabilities owed by any member of the Group to a Subordinated Creditor.

"Subsidiary" means in relation to any company or corporation, a company or corporation:

- (a) which is controlled, directly or indirectly, by the first mentioned company or corporation;
- (b) more than half the issued share capital of which is beneficially owned, directly or indirectly, by the first mentioned company or corporation; or
- (c) which is a Subsidiary of another Subsidiary of the first mentioned company or corporation,

and for this purpose, a company or corporation shall be treated as being controlled by another if that other company or corporation is able to direct its affairs and/or to control the composition of its board of directors or equivalent body **provided that**, notwithstanding anything to the contrary:

- (i) no person shall be deemed to be a Subsidiary of a member of the Group unless another member of the Group holds shares or an equivalent ownership interest in that person;
- (ii) no person shall be treated as having ceased to be a Subsidiary of a member of the Group as a result of its shares being registered in the name of (A) another person (or its nominee) by way of Security or otherwise directly or indirectly in connection with the taking of any Security or (B) its nominee; and
- (iii) no Joint Venture shall be deemed to be a Subsidiary of a member of the Group.

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

"Total Senior Secured Credit Participations" means the aggregate of all the Senior Secured Credit Participations at any time.

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

"Transaction Security Documents" means any document entered into by any Debtor creating or expressed to create any Security over all or any part of its assets in respect of the Secured Obligations.

"Transferee" has the meaning given to that term in paragraph (a)(iv) of Clause 12.2 (*Distressed Disposals and Appropriation*).

"United Biscuits France" means a *société par actions simplifiée* organised under French law, whose registered office is at route du Mortier, Voonmeire, 44120 Vertou, France, with registration number 856 801 519.

"United Biscuits Industries" means a *société par actions simplifiée* organised under French law, whose registered office is at 116 rue Bellevue, 59850 Nieppe, France, with registration number 446 250 169 RCS Dunkerque.

"VAT" means:

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

1.2 Construction

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

- (i) any **"Agent"**, **"Ancillary Lender"**, **"Arranger"**, **"Company"**, **"Creditor"**, **"Debtor"**, **"Hedge Counterparty"**, **"Hedging Ancillary Lender"**, **"Intra-Group Lender"**, **"Investor"**, **"Issuing Bank"**, **"Parent"**, **"Party"**, **"Permitted Senior Secured Debt Arranger"**, **"Permitted Senior Secured Debt Creditor"**, **"Permitted Senior Secured Debt Representative"**, **"Permitted Senior Secured Debt Facilities Lender"**, **"Security**

Agent", **"Senior Facilities Agent"**, **"Senior Facilities Lender"**, **"Senior Secured Creditor"** or **"Subordinated Creditor"** shall be construed to be a reference to it in its capacity as such and not in any other capacity;

- (ii) any **"Agent"**, **"Ancillary Lender"**, **"Arranger"**, **"Company"**, **"Creditor"**, **"Debtor"**, **"Hedge Counterparty"**, **"Hedging Ancillary Lender"**, **"Intra-Group Lender"**, **"Investor"**, **"Issuing Bank"**, **"Parent"**, **"Party"**, **"Permitted Senior Secured Debt Arranger"**, **"Permitted Senior Secured Debt Creditor"**, **"Permitted Senior Secured Debt Representative"**, **"Permitted Senior Secured Debt Facilities Lender"**, **"Security Agent"**, **"Senior Facilities Agent"**, **"Senior Facilities Lender"**, **"Senior Secured Creditor"**, **"Subordinated Creditor"** or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Debt Documents and, in the case of the Security Agent, any person for the time being appointed as Security Agent or Security Agents in accordance with this Agreement;
- (iii) **"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 (and includes any increase in, addition to or extension of or other change to any debt, facilities or amounts outstanding thereunder) as permitted by this Agreement;
- (v) **"enforcing"** (or any derivation) the Transaction Security shall include the Security Agent appointing, or applying for or consenting in writing to the appointment of, an administrator of a Debtor (or any analogous procedure in any jurisdiction);
- (vi) a **"group of Creditors"** includes all the Creditors and a **"group of Senior Secured Creditors"** includes all the Senior Secured Creditors;
- (vii) **"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;
- (viii) 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;
- (ix) 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);
- (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;
- (xi) **"shares"** or **"share capital"** includes equivalent ownership interests (and **"shareholder"** and similar expressions shall be construed accordingly);

- (xii) a provision of law is a reference to that provision as amended or re-enacted; and
 - (xiii) a "**right to participate**" in a Public Auction shall be interpreted to mean that, subject to applicable law, any offer, or indication of a potential offer, that a Senior Secured Creditor or an Investor makes shall be considered by those running the Public Auction process against the same criteria as any offer, or indication of a potential offer, by any other bidder or potential bidder. To avoid doubt, if after having applied those same criteria, the offer or indication of a potential offer made by such Senior Secured Creditor or Investor is not considered by those running the Public Auction process to be sufficient to continue in the Public Auction process (such consideration being assessed, subject to applicable law, against the same criteria as any offer, or indication of a potential offer, by any other bidder or potential bidder (and where continuation may include being invited to review additional information or being invited to have an opportunity to make a subsequent or revised offer, whether in another round of bidding or otherwise)), then the right to participate of that Senior Secured Creditor or Investor under this Agreement shall be deemed to be satisfied.
- (b) Section, Clause and Schedule headings are for ease of reference only.
 - (c) A Default is "**continuing**" if it has not been remedied or waived.
 - (d) Where any consent is required under this Agreement from:
 - (i) a Senior Facilities Lender or Senior Facilities Finance Party where such consent is required after the relevant Senior Facilities Discharge Date; or
 - (ii) any Permitted Senior Secured Debt Representative or any Permitted Senior Secured Debt Creditor where such consent is either (A) required prior to the making of any loan if such Permitted Senior Secured Debt is constituted by a loan facility or prior to the issue of any notes or securities if such Permitted Senior Secured Debt is constituted by notes or securities or (B) after the applicable Permitted Senior Secured Debt Discharge Date, such consent requirement will not apply.
 - (e) References to any Agent acting on behalf of the Senior Secured Creditors it represents or providing any Consent under this Agreement means such Agent acting in accordance with the Debt Documents to which it is party or, if applicable, on the instructions of the Requisite Majority of such Creditors. An Agent will be entitled to seek instructions from the Creditors it represents to the extent required by the Debt Documents to which it is party with regard to any Consent to be granted by it under this Agreement.
 - (f) Any consent to be given under this Agreement shall mean such consent is to be given in writing, which for the purposes of this Agreement will be deemed to include any instructions, waivers or consents provided through any applicable clearance system in accordance with the terms of the relevant Debt Document, and shall be subject to any applicable deemed consent provisions in this Agreement and the other Debt Documents.
 - (g) After the Senior Facilities Discharge Date, any term defined in this Agreement by reference to the Senior Facilities Agreement or the Senior Facilities Finance Documents shall have the meaning that was given to that term in the relevant document immediately prior to the Senior

Facilities Discharge Date save that where this Agreement provides that such term shall be defined by reference to any substantially equivalent term in a Permitted Senior Secured Debt Facilities Agreement, to the extent that a Permitted Senior Secured Debt Facilities Agreement contains a substantially equivalent term, reference shall be made to such substantially equivalent term.

- (h) Secured Parties may only benefit from Recoveries to the extent that the Liabilities of such Secured Parties have the benefit of the guarantees or security under which such Recoveries are received and **provided that**, in all cases, the rights of such Secured Parties shall in any event be subject to the priorities set out in Clause 13 (*Application of Proceeds*) and provided further, however, that this shall not prevent any Permitted Senior Secured Debt Notes Trustee from claiming and being paid any Permitted Senior Secured Debt Notes Trustee Amounts. This shall not prevent a Secured Party benefitting from such Recoveries where it was not legally possible for the Secured Party to obtain the relevant guarantees or security.
- (i) Notwithstanding anything to the contrary, where any provision of this Agreement refers to or otherwise contemplates any consent, approval, release, waiver, agreement, notification or other step or action being required from or by any person:
 - (i) which is not a Party;
 - (ii) in respect of any agreement which is not in existence;
 - (iii) in respect of any indebtedness which has not been committed or incurred;
 - (iv) in respect of Liabilities or Creditors (or other persons) for which the relevant Discharge Date has occurred,

unless otherwise agreed or specified by the Parent, that consent, approval, release, waiver, agreement, notification or other step or action shall not be required and no such provision shall, or shall be construed so as to, in any way prohibit or restrict the rights or actions of any member of the Group. Further, for the avoidance of doubt, no reference to any agreement which is not in existence shall, or shall be construed so as to, in any way prohibit or restrict the rights or actions of any member of the Group.

- (j) In determining whether or not any Liabilities have been fully and finally discharged, contingent liabilities (such as the risk of clawback flowing from a preference) will be disregarded, except to the extent that there is a reasonable likelihood that those liabilities will become actual liabilities.
- (k) Without prejudice to the generality of any provisions of this Agreement, in this Agreement, where it relates to (i) a Debtor incorporated or established in the Netherlands, or (ii) a Transaction Security Document governed by Dutch law, a reference to:
 - (i) "security" includes any mortgage (*hypotheek*), pledge (*pandrecht*), and in general, any right in rem (*beperkt recht*), created for the purpose of granting security (*goedenrechtelijk zekerheidsrecht*);
 - (ii) a "subsidiary" means a subsidiary (*dochtermaatschappij*) as defined in Article 2:24a of the Dutch Civil Code; and

- (iii) an "insolvency event" includes any bankruptcy (*faillissement*), suspension of payments (*surseance van betaling*), debt rescheduling for natural persons (*schuldsanering natuurlijke personen*), administration (*onderbewindstelling*) and dissolution (*ontbinding*).

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 paragraph (b) of Clause 15.12 (*Exclusion of liability*) 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 Debtors' Agent

- (a) Each Debtor (other than the Parent) by its execution of this Agreement or a Debtor Accession Deed irrevocably appoints the Parent to act on its behalf as its agent in relation to the Debt Documents and irrevocably authorises the Parent on its behalf to make agreements, to enter into deeds and to effect any amendments, supplements and variations (in each case, however fundamental) capable of being given, made or effected by any Debtor (notwithstanding that they may increase that Debtor's obligations or otherwise affect that Debtor) and to give confirmations as to the continuation of surety obligations, without further reference to or the consent of that Debtor, and in each case that Debtor shall be bound as though that Debtor itself had executed or made the agreements or deeds, or effected the amendments, supplements or variations.
- (b) Every agreement or deed entered into or made by the Parent under any Debt Document on behalf of another Debtor or in connection with any Debt Document (whether or not known to any other Debtor and whether occurring before or after such Debtor became a Debtor under any Debt Document) shall be binding for all purposes on that Debtor as if it had expressly made or entered into the same.

2. RANKING AND PRIORITY

2.1 Senior Secured Creditor Liabilities

Unless expressly provided to the contrary in this Agreement, the Liabilities owed by each Debtor to the Senior Secured Creditors, the Agent Liabilities and the Liabilities owed to the Security Agent, shall rank in right and priority of payment *pari passu* and without any preference between them.

2.2 Transaction Security

The Transaction Security shall rank and secure the following Liabilities irrespective of when such Transaction Security was granted or of the date of occurrence of any of the Liabilities (but only to the extent that such Transaction Security is expressed to secure those Liabilities) in the following order:

- (a) **first**, the Liabilities owed to the Security Agent and the Agent Liabilities owed to each Agent *pari passu* and without any preference between them; and

- (b) **second**, the Senior Facilities Liabilities, the Permitted Senior Secured Debt Liabilities and the Hedging Liabilities, *pari passu* and without any preference between them.

2.3 Intra-Group Liabilities and Subordinated Liabilities

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

2.4 Additional and/or refinancing debt

- (a) The Creditors acknowledge that the Debtors (or any of them) may, in accordance with the terms of the Debt Documents, wish to:
 - (i) incur incremental Borrowing Liabilities and/or Guarantee Liabilities in respect of incremental Borrowing Liabilities; or
 - (ii) refinance or replace Borrowing Liabilities and/or incur Guarantee Liabilities in respect of any such refinancing or replacement of Borrowing Liabilities,

which in any such case is intended to rank *pari passu* with any other Liabilities and/or share *pari passu* in any Transaction Security and/or to rank behind any other Liabilities and/or to share in any Transaction Security behind any such other Liabilities.

- (b) The Creditors each confirm and undertake that, if and to the extent a financing, refinancing or replacement referred to in paragraph (a) above and such ranking and such Transaction Security is not prohibited by the terms of the Debt Documents at such time, they will (at the cost of the Debtors) co-operate with the Parent and the Debtors with a view to enabling and facilitating such financing, refinancing or replacement and such sharing in the Transaction Security to take place in a timely manner. In particular, but without limitation, each of the Secured Parties hereby authorises and directs each of their respective Agents and the Security Agent to execute any amendment to this Agreement and such other Debt Documents required by the Parent to reflect, enable and/or facilitate any such arrangements to the extent such financing, refinancing, replacement and/or sharing is not prohibited by the Debt Documents to which it/they are party. This Clause 2.4 is without prejudice to any obligations of any Secured Party set out in or contemplated by Clause 5 (*New Permitted Senior Secured Debt*).

3. SENIOR SECURED CREDITOR LIABILITIES

3.1 Payments of Senior Secured Creditor Liabilities

Subject to Clause 4 (*Hedge Counterparties and Hedging Liabilities*), the Debtors may make Payments of the Senior Secured Creditor Liabilities at any time in accordance with the applicable Senior Secured Finance Documents **provided that** following the occurrence of an Acceleration Event no Debtor may make or, following the occurrence of an Insolvency Event, the Debtor to which such Insolvency Event relates may not make (and no Senior Secured Creditor may receive) Payments of the Senior Secured Creditor Liabilities except from Recoveries distributed in accordance with Clause 13 (*Application of Proceeds*).

3.2 Amendments and waivers

The relevant Senior Secured Creditors and the Debtors may amend or waive the terms of the Senior Secured Finance Documents in accordance with their terms (and subject to any consent required under them) at any time.

3.3 Security: Senior Facilities Lenders and Permitted Senior Secured Debt Creditors

Other than as set out in Clause 3.4 (*Security: Ancillary Lenders and Issuing Banks*), the Senior Facilities Lenders, the Permitted Senior Secured Debt Creditors or the Security Agent on their behalf may take, accept or receive the benefit of:

- (a) any Security from any member of the Group in respect of the Senior Facilities Liabilities or the Permitted Senior Secured Debt Liabilities (except for any Security permitted under Clause 3.4 (*Security: Ancillary Lenders and Issuing Banks*)) in addition to the Transaction Security if 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 agent or trustee for itself and 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 agent or 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, joint and several creditor or equivalent structure for the benefit of itself and the other Secured Parties,

and ranks in the same order of priority as that contemplated in Clause 2.2 (*Transaction Security*), **provided that** all amounts received or recovered by any Senior Secured Creditor with respect to such Security are immediately paid to the Security Agent and held and applied in accordance with Clause 13 (*Application of Proceeds*); and

- (b) any guarantee, indemnity or other assurance against loss from any member of the Group in respect of the Senior Facilities Liabilities or the Permitted Senior Secured Debt Liabilities in addition to those in:
 - (i) the original form of the Senior Facilities Agreement;
 - (ii) this Agreement; and
 - (iii) any Common Assurance,

if (except for any guarantee, indemnity or other assurance against loss permitted under Clause 3.4 (*Security: Ancillary Lenders and Issuing Banks*)) 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*) **and** all amounts received or recovered by any Senior Secured Creditor with respect to such guarantee, indemnity or other assurance against loss are immediately paid to the Security Agent and held and applied in accordance with Clause 13 (*Application of Proceeds*).

3.4 Security: Ancillary Lenders and Issuing Banks

No Ancillary Lender or Issuing Bank will, unless the prior consent of the Majority Senior Facilities Lenders (in the case of any Ancillary Lender or Issuing Bank under the Senior Facilities Agreement) or the Majority Permitted Senior Secured Debt Facilities Lenders (in the case of any Ancillary Lender or Issuing Bank under any Permitted Senior Secured Debt Facilities Agreement) is obtained, take, accept or receive from any member of the Group the benefit of any Security, guarantee, indemnity or other assurance against loss in respect of any of the Liabilities owed to it other than:

- (a) the Transaction Security;
- (b) each guarantee, indemnity or other assurance against loss contained in:
 - (i) the original form of the Senior Facilities Agreement and any Permitted Senior Secured Debt Facilities Agreement;
 - (ii) this Agreement; and
 - (iii) any Common Assurance;
- (c) indemnities and assurances against loss contained in the Ancillary Documents no greater in extent than any of those referred to in paragraph (b) above;
- (d) any Cash Cover permitted under the Senior Facilities Agreement or any Permitted Senior Secured Debt Facilities Agreement relating to any Ancillary Document or for any Letter of Credit issued by the Issuing Bank;
- (e) the indemnities contained in an ISDA Master Agreement (in the case of a Hedging Ancillary Document which is based on an ISDA Master Agreement) or any indemnities which are similar in meaning and effect to those indemnities (in the case of a Hedging Ancillary Document which is not based on an ISDA Master Agreement); and
- (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.

3.5 Restriction on enforcement: Ancillary Lenders and Issuing Banks

Subject to Clause 3.6 (*Permitted enforcement: Ancillary Lenders and Issuing Banks*), so long as any of the Senior Secured Creditor Liabilities (other than any Liabilities owed to the Ancillary Lenders or Issuing Banks) are or may be outstanding, none of the Ancillary Lenders nor the Issuing Banks shall be entitled to take any Enforcement Action in respect of any of the Liabilities owed to it.

3.6 Permitted enforcement: Ancillary Lenders and Issuing Banks

- (a) Each Ancillary Lender and each Issuing Bank may take Enforcement Action which would be available to it but for Clause 3.5 (*Restriction on enforcement: Ancillary Lenders and Issuing Banks*) if:
 - (i) at the same time as, or prior to, that action, Enforcement Action has been taken in respect of the Senior Facilities Liabilities or Permitted Senior Secured Debt Facilities

Liabilities, as the case may be (excluding the Liabilities owing to Ancillary Lenders and the Issuing Banks), in which case the Ancillary Lenders and the Issuing Banks may take the same Enforcement Action as has been taken in respect of those Senior Facilities Liabilities or Permitted Senior Secured Debt Facilities Liabilities;

- (ii) that action is contemplated by the Senior Facilities Agreement or relevant Permitted Senior Secured Debt Facilities Agreement or Clause 3.4 (*Security: Ancillary Lenders and Issuing Banks*);
 - (iii) that Enforcement Action is taken in respect of Cash Cover which has been provided in accordance with the Senior Facilities Agreement or relevant Permitted Senior Secured Debt Facilities Agreement;
 - (iv) at the same time as, or prior to, that action, the consent of the Majority Senior Facilities Lenders (in the case of any Ancillary Lender or Issuing Bank under any Senior Facilities Agreement) or the Majority Permitted Senior Secured Debt Facilities Lenders (in the case of any Ancillary Lender or Issuing Bank under any Permitted Senior Secured Debt Facilities Agreement) 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 and each Issuing Bank shall be entitled (if it has not already done so) to exercise any right it may otherwise have in respect of that member of the Group to:
 - (A) accelerate any of that member of the Group's Senior Facilities Liabilities or Permitted Senior Secured Debt Facilities Liabilities (as the case may be) 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 the Senior Facilities Liabilities or any Permitted Senior Secured Debt Facilities Liabilities (as the case may be);
 - (C) exercise any right of set-off or take or receive any Payment in respect of the Senior Facilities Liabilities or any Permitted Senior Secured Debt Facilities Liabilities (as the case may be) of that member of the Group; and/or
 - (D) claim and prove in the liquidation, administration or other insolvency proceedings of that member of the Group for the Senior Facilities Liabilities or Permitted Senior Secured Debt Facilities Liabilities (as the case may be) owing to it.
- (b) Clause 3.5 (*Restriction on enforcement: Ancillary Lenders and Issuing Banks*) shall not restrict any right of an Ancillary Lender:
- (i) to demand repayment or prepayment of any of the Liabilities owed to it prior to the expiry date of the relevant Ancillary Facility; or
 - (ii) to net or set-off in relation to a Multi-account Overdraft,
- in accordance with the terms of the Senior Facilities Agreement or relevant Permitted Senior Secured Debt Facilities Agreement, to the extent that the demand is required to reduce, or the

netting or set-off represents a reduction from, the Gross Outstandings of that Multi-account Overdraft to or towards an amount equal to its Net Outstandings.

3.7 Restriction on enforcement: Senior Secured Creditors

- (a) Subject to Clause 3.6 (*Permitted Enforcement: Ancillary Lenders and Issuing Banks*) paragraphs (b) and (c) below and Clause 4 (*Hedge Counterparties and Hedging Liabilities*), no Senior Secured Creditor may take any Enforcement Action under paragraph (c) of the definition of "Enforcement Action" without the prior written consent of the Majority Senior Secured Creditors.
- (b) If the Majority Senior Secured Creditors provides consent to any Senior Secured Creditor to take any Enforcement Action, such consent shall apply equally to all Senior Secured Creditors to take the same Enforcement Action and notice of such consent shall be provided to all the Agents and the Security Agent and each Hedge Counterparty at the same time.
- (c) Notwithstanding paragraph (a) above or anything to the contrary herein, after the occurrence of an Insolvency Event in relation to a Debtor (the "**Insolvent Debtor**"), each Senior Secured Creditor may, to the extent it is able to do so under the relevant Senior Secured Finance Documents, take Enforcement Action under paragraph (a) of that definition against and/or claim in the winding-up, dissolution, administration, reorganisation or similar insolvency event of that Insolvent Debtor for Senior Secured Creditor Liabilities owing to it (but may not direct the Security Agent to enforce the Transaction Security in any manner pursuant to or in reliance on this paragraph (c)).

4. HEDGE COUNTERPARTIES AND HEDGING LIABILITIES

4.1 Identity of Hedge Counterparties

- (a) Subject to paragraph (c) below, no person providing hedging arrangements to any Debtor shall be entitled to share in any of the Transaction Security or in the benefit of any guarantee or indemnity in respect of any of the liabilities and obligations arising in relation to those hedging arrangements nor shall those liabilities and obligations be treated as Hedging Liabilities unless that person is or becomes a party to this Agreement as a Hedge Counterparty.
- (b) Upon becoming a party to this Agreement, a Hedge Counterparty shall take the benefit of the guarantee provided by each Debtor Guarantor which is a party to this Agreement as a Debtor, as set out in Schedule 5 (*Guarantee for Hedge Counterparties*).
- (c) Paragraph (a) above shall not apply to a Hedging Ancillary Lender.

4.2 Restriction on Payment: Hedging Liabilities

Prior to the Senior Facilities Discharge Date and any applicable Permitted Senior Secured Debt Facilities Discharge Date, the Debtors shall not, and shall procure that no other member of the Group will, make any Payment of the Hedging Liabilities at any time unless:

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

4.3 Permitted Payments: Hedging Liabilities

- (a) Subject to paragraph (b) below, the Debtors 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 provided that following the occurrence of an Acceleration Event no Debtor may make or, following the occurrence of an Insolvency Event, the Debtor to which such Insolvency Event relates may not make (and no Hedge Counterparty may receive) Payments of the Hedging Liabilities except from Recoveries distributed in accordance with Clause 13 (*Application of Proceeds*).
- (b) No Payment may be made to a Hedge Counterparty under paragraph (a) above if any scheduled Payment due from that Hedge Counterparty to a Debtor under a Hedging Agreement to which they are both party is due and unpaid unless the Parent chooses to make such Payment.
- (c) Failure by a Debtor to make a Payment to a Hedge Counterparty which results solely from the operation of paragraph (b) above shall, without prejudice to Clause 4.4 (*Payment obligations continue*), not result in a default (however described) in respect of that Debtor under that Hedging Agreement or any other Senior Secured Finance Document.

4.4 Payment obligations continue

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

4.5 No acquisition of Hedging Liabilities

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

- (a) enter into any Liabilities Acquisition in respect of any of the Hedging Liabilities; 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,

in each case pursuant to which payment is made by a member of the Group to a person which is not a member of the Group in respect of Hedging Liabilities, unless:

- (i) subject to Clause 4.14 (*On or after Senior Facilities Discharge Date*), the prior consent of the Majority Senior Facilities Lenders is obtained; or
- (ii) the relevant Liabilities Acquisition relates to Hedging Liabilities (or rights, benefits and/or obligations in relation thereto) in respect of which a Payment could be made under Clause 4.3 (*Permitted Payments: Hedging Liabilities*) (including any Hedging Liabilities in respect of which a Payment could be made under paragraph (a) of that Clause following a close-out, termination or any other similar or equivalent action by a member of the Group).

4.6 Amendments and waivers: Hedging Agreements

- (a) Subject to paragraph (b) below, the Hedge Counterparties may not, at any time, amend or waive any term of the Hedging Agreements.

- (b) A Hedge Counterparty and any member of the Group may at any time amend or waive any term of a Hedging Agreement in accordance with the terms of that Hedging Agreement from time to time (and subject only to any consent required under that Hedging Agreement) if:

- (i) that amendment or waiver does not breach another term of this Agreement; and
- (ii) would not result in a breach of the terms of the Debt Documents.

4.7 Security: Hedge Counterparties

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

- (a) the Transaction Security;
- (b) any guarantee, indemnity or other assurance against loss contained in:
 - (i) the original form of the Senior Facilities Agreement or any Permitted Senior Secured Debt Facilities Agreement;
 - (ii) this Agreement including Schedule 5 (*Guarantee for Hedge Counterparties*);
 - (iii) any Common Assurance; or
 - (iv) the relevant Hedging Agreement (provided any such guarantee, indemnity or other assurance against loss is no greater in extent than any of those referred to in paragraphs (b)(i) to (b)(iii) above, ignoring for this purpose any limitations applicable to any guarantee, indemnity or other assurance referred to in paragraphs (b)(i) to (b)(iii) above);
- (c) as otherwise contemplated by Clause 3.3 (*Security: Senior Facilities Lenders and Permitted Senior Secured Debt Creditors*); and
- (d) the indemnities contained in the ISDA Master Agreements (in the case of a Hedging Agreement which is based on an ISDA Master Agreement) or any indemnities which are similar in meaning and effect to those indemnities (in the case of a Hedging Agreement which is not based on an ISDA Master Agreement).

4.8 Restriction on enforcement: Hedge Counterparties

Subject to Clause 4.9 (*Permitted enforcement: Hedge Counterparties*) and Clause 4.10 (*Required enforcement: Hedge Counterparties*) and without prejudice to each Hedge Counterparty's rights under Clauses 11.2 (*Enforcement instructions*) and 11.3 (*Manner of enforcement*), the Hedge Counterparties shall not take any Enforcement Action in respect of any of the Hedging Liabilities or any of the hedging transactions under any of the Hedging Agreements at any time.

4.9 Permitted enforcement: Hedge Counterparties

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

- (ii) if:
 - (A) in relation to a Hedging Agreement which is based on the 1992 ISDA Master Agreement:
 - (I) an Illegality, a Tax Event or a Tax Event Upon Merger (each as defined in the 1992 ISDA Master Agreement); or
 - (II) an event similar in meaning and effect to a Force Majeure Event (as defined in paragraph (a)(ii)(B) below),
 has occurred in respect of any hedging transaction under that Hedging Agreement;
 - (B) in relation to a Hedging Agreement which is based on the 2002 ISDA Master Agreement, an Illegality, a Tax Event, a Tax Event Upon Merger or a Force Majeure Event (each as defined in the 2002 ISDA Master Agreement) has occurred in respect of any hedging transaction under 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 paragraph (a)(ii)(A) or (a)(ii)(B) above has occurred under and in respect of that Hedging Agreement;
 - (iii) if an Insolvency Event has occurred in relation to a Debtor which is the counterparty to that Hedging Agreement;
 - (iv) subject to Clause 4.14 (*On or after Senior Facilities Discharge Date*), if the Majority Senior Facilities Lenders and the member of the Group party to the relevant Hedging Agreement give prior consent to that termination or close-out being made;
 - (v) subject to compliance with paragraph (b) of clause 21.9 (*Hedging Transactions*) of the Senior Facilities Agreement (if applicable), if the Hedge Counterparty and the relevant Debtor consensually agree to close out a transaction under a Hedging Agreement and no Default is continuing under any Senior Facilities Finance Document or Permitted Senior Secured Debt Document; or
 - (vi) on or immediately following a refinancing (or repayment) and cancellation in full of the Senior Facilities Liabilities or any Permitted Senior Secured Debt Liabilities but only to the extent that the relevant hedging transaction relates to those Senior Facilities Liabilities or Permitted Senior Secured Debt Liabilities (as the case may be).
- (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 five Business Days after notice of that default has been given to the Security Agent pursuant to paragraph (g) of Clause 19.3 (*Notification of prescribed events*), the relevant Hedge Counterparty:
- (i) may, to the extent it is able to do so under the relevant Hedging Agreement, terminate or close-out in whole or in part any hedging transaction under that Hedging Agreement; and

- (ii) until such time as the Security Agent has given notice to that Hedge Counterparty that the Transaction Security is being enforced (or that any formal steps are being taken to enforce the Transaction Security, in each case in accordance with the terms of this Agreement and the relevant Transaction Security Documents), 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, administration or other insolvency proceedings of that member of the Group for the Hedging Liabilities owing to it.

4.10 Required enforcement: Hedge Counterparties

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

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

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

be paid by that Hedge Counterparty to the Security Agent, treated as the proceeds of enforcement of the Transaction Security and applied in accordance with the terms of this Agreement.

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

4.12 Terms of Hedging Agreements

- (a) 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:
 - (i) 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;
 - (ii) each Hedging Agreement is based either:
 - (A) on an ISDA Master Agreement; or
 - (B) on another framework agreement which is similar in effect to an ISDA Master Agreement;
 - (iii) in the event of a termination of the hedging transaction entered into under a Hedging Agreement, as a result of 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 an event similar in meaning and effect (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 party to 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; and
 - (iv) each Hedging Agreement will provide that the relevant Hedge Counterparty will be entitled to designate an Early Termination Date (as defined in the relevant ISDA Master Agreement) or otherwise be able to terminate each transaction under such Hedging Agreement if so required pursuant to Clause 4.10 (*Required enforcement: Hedge Counterparties*).

- (b) Unless otherwise agreed by the Parent from time to time:
- (i) any hedging agreement executed by any member of the Group prior to the date on which it became a member of the Group which the Parent intends should become a Hedging Agreement (an "**Existing Hedging Agreement**") shall be deemed amended by this Agreement to the extent necessary so as to ensure that the terms of such Existing Hedging Agreement comply with the terms of this Agreement in all respects (and the relevant Debtor and the Hedge Counterparty party to such Existing Hedging Agreement each consent and agree to all such amendments by their execution of, or accession to, this Agreement and acknowledge and confirm that the Existing Hedging Agreement will be construed accordingly); and
 - (ii) to the extent that the terms of a Hedging Agreement are inconsistent with the terms of this Agreement, the terms of this Agreement shall prevail.

4.13 Notice of assignment in respect of certain Hedging Agreements

- (a) Each Debtor that has created Transaction Security over any of its rights under any Hedging Agreement (a "**Charging Company**") hereby gives notice (including in terms as required by the applicable Transaction Security Document) to each Hedge Counterparty of the Transaction Security over such Hedging Agreements created pursuant to the Security Documents in favour of the Security Agent on behalf of the Secured Parties, and confirms that the Hedge Counterparty may continue to deal with the Charging Company in relation to such Hedging Agreements until such Hedge Counterparty receives written notice (as permitted by the applicable Security Document) to the contrary from the Security Agent (in which case such Hedge Counterparty shall deal only with the Security Agent in respect of such Hedging Agreements).
- (b) Each Hedge Counterparty agrees to the terms and acknowledges the notice under paragraph (a) above.

4.14 On or after Senior Facilities Discharge Date

At any time on or after the Senior Facilities Discharge Date, any action which is permitted under this Clause 4 with the consent of the Majority Senior Facilities Lenders will only be permitted to the extent that that action would not result in a breach of any Permitted Senior Secured Debt Documents (unless the prior consent of the relevant Permitted Senior Secured Debt Representative is obtained) or unless the Permitted Senior Secured Debt Discharge Date has occurred.

4.15 Hedge Counterparties' guarantee and indemnity

Each Debtor Guarantor agrees that it will be bound by the obligations set out in Schedule 5 (*Guarantee for Hedge Counterparties*).

5. NEW PERMITTED SENIOR SECURED DEBT

5.1 New Debt Financing

- (a) No member of the Group may enter into a New Debt Financing unless:
- (i) it is not prohibited under the Senior Secured Finance Documents and it otherwise complies with the requirements (if any) of the then existing Senior Secured Finance Documents relating thereto;
 - (ii) the terms applying to any new Permitted Senior Secured Debt (A) on or prior to the Senior Facilities Discharge Date are no more onerous (taken as a whole) on Debtors than those contained in the Senior Facilities Agreement where the new Permitted Senior Secured Debt is to be made available by way of loan, credit or debt facility or (B) comply with market terms for European senior secured high yield notes where the new Permitted Senior Secured Debt is to be made available by way of notes, indenture or securities;
 - (iii) each Debtor grants or re-grants any Transaction Security and/or agrees to any amendment of a Security Document required under the terms of that New Debt Financing, Senior Secured Finance Documents or as may be required under any applicable law in order to give effect to the ranking set out in Clause 2.2 (*Transaction Security*), in each case, subject to the requirements of Clause 5.2 (*Transaction Security: New Debt Financings*);
 - (iv) each new Permitted Senior Secured Debt Representative, Permitted Senior Secured Debt Facilities Lender and any new Debtor in relation to such New Debt Financing accedes to this Agreement in accordance with Clause 16 (*Changes to the Parties*);
 - (v) the New Debt Financing (and any related Security Documents and other Debt Documents) is subject to the terms of this Agreement and certain of the rights and benefits of the parties thereto are regulated accordingly;
 - (vi) no Default is continuing or would result from entering into the New Debt Financing;
 - (vii) the Parent supplies each existing Agent and the Security Agent with:
 - (A) upon execution, copies of the facility or loan agreement, indenture, notes or other debt document governing the terms of that New Debt Financing; and
 - (B) on the date on which the New Debt Financing occurs, a certificate signed by two directors confirming compliance with the conditions in this paragraph (a); and specifying the use of proceeds of the New Debt Financing (to be applied in accordance with the terms of the Debt Documents where specified).
- (b) Subject to compliance with the requirements of paragraph (a) above, the Group may enter into a New Debt Financing and all Liabilities under the new Permitted Senior Secured Debt Documents shall be deemed to be Permitted Senior Secured Debt Liabilities and rank *pari passu* in all respects with all existing Senior Secured Creditor Liabilities for the purposes of this Agreement.
- (c) Nothing in this Clause 5.1 or any other Debt Document shall restrict the Senior Secured Creditors (or any of them) and the providers of a New Debt Financing agreeing the ranking of

their respective senior claims among themselves in documentation separate to this Agreement and entered into solely between such parties (or on their behalf by an Agent).

5.2 Transaction Security: New Debt Financings

- (a) Notwithstanding any other term, condition or restriction in any other Debt Document, the Parties agree that, in connection with a New Debt Financing or any Additional Senior Facilities, each Debtor is, and the Security Agent is authorised to enter into any new Security Document, amend or waive any terms of an existing Security Document and/or release any asset from Transaction Security subject to the following conditions:
- (i) any new Transaction Security shall be:
 - (A) subject to the Agreed Security Principles and applicable law, granted in favour of the Security Agent for and on behalf of the providers and/or agents and/or trustees of a New Debt Financing or any Additional Senior Facilities and the then existing Secured Parties;
 - (B) on terms substantially the same (except that it shall also secure any New Debt Financing or Additional Senior Facilities) as the terms of the existing Transaction Security over equivalent asset(s); and
 - (C) for the purposes of this Agreement, treated as securing the Senior Secured Creditor Liabilities *pari passu* with the then existing Transaction Security;
 - (ii) any amendment or waiver of a Security Document or release and re-grant of Transaction Security shall only be undertaken:
 - (A) if required under the terms of the New Debt Financing or any Additional Senior Facilities or to the extent necessary under applicable law to give effect to the ranking set out in Clause 2.2 (*Transaction Security*) in relation to that New Debt Financing or those Additional Senior Facilities; and
 - (B) if any asset is to be released from Transaction Security, promptly upon giving effect to that release, replacement Transaction Security is, subject to the Agreed Security Principles and applicable law, granted in favour of the Security Agent for and on behalf of the providers and/or agents and/or trustees of the New Debt Financing or Additional Senior Facilities and the existing Secured Parties on substantially the same terms as the Transaction Security released (except that it shall also secure any New Debt Financing or Additional Senior Facilities); and
 - (iii) the Security Agent receives customary legal opinions as to due capacity, authority, execution and enforceability (together with customary supporting legal documentation, certificates and resolutions) satisfactory to it (acting reasonably) in relation to any re-taken, new or amended Security Document and **provided that** the Parent delivers to the Security Agent a certificate in form and substance satisfactory to the Security Agent (*acting reasonably*) confirming that such acts in connection with implementing or facilitating any New Debt Financing or Additional Senior Facilities are permitted under the Debt Documents or are otherwise consented to pursuant to the terms of the Debt Documents.

- (b) Each Debtor granting or re-granting any Transaction Security and/or agreeing to any amendment of a Security Document required under the terms of any New Debt Financing or Additional Senior Facilities in accordance with paragraph (a) above, on the effective date of such grant or re-grant of Transaction Security and/or amendment to any Security Document, represents and warrants to the Security Agent that on such date none of the circumstances described in clauses 25.5 (*Insolvency*) to 25.10 (*Similar events elsewhere*) of the Senior Facilities Agreement (or, if such date falls on or after the Senior Facilities Discharge Date, the substantially equivalent provisions in each relevant Permitted Senior Secured Debt Facilities Agreement) exist in relation to such Debtor only.

5.3 Further assurance

- (a) In this Clause 5.3, a "**Relevant Document**" means any supplement, amendment or restatement of this Agreement or any other Debt Document reasonably required in connection with a New Debt Financing or Additional Senior Facilities, including, without limitation, any amendment, waiver or release in respect of any Security Document, any grant of Transaction Security pursuant to a new Security Document, and, without prejudice to Clause 22 (*Consents, amendments and override*), the entry into any additional or replacement intercreditor agreement (on substantially the same terms as this Agreement except for the incorporation of such New Debt Financing or Additional Senior Facilities).
- (b) Each Party agrees that it shall promptly co-operate with the Debtors with a view to implementing or facilitating any Additional Senior Facilities and New Debt Financing entered into in compliance with this Agreement.
- (c) Without prejudice to the Security Agent's rights to seek instruction under paragraphs (f) and (g) of Clause 15.4 (*Instructions*) and to the requirements of clause 19.3 (*Transaction Security: Additional Debt Financing*) of the Senior Facilities Agreement, each Party agrees that it shall promptly execute (including at the reasonable request of the Parent or the Security Agent) all such Relevant Documents and give such instructions to the Security Agent and do such other acts as may reasonably be required, in each case, in connection with implementing or facilitating any New Debt Financing or Additional Senior Facilities, **provided that** the Parent delivers to the Security Agent a certificate in form and substance satisfactory to the Security Agent (acting reasonably) confirming that such acts in connection with implementing or facilitating any New Debt Financing or Additional Senior Facilities are permitted under the Debt Documents or are otherwise consented to pursuant to the terms of the Debt Documents.
- (d) Notwithstanding the foregoing, nothing in this Clause 5.3 or clause 19.3 (*Transaction Security: Additional Debt Financing*) of the Senior Facilities Agreement shall oblige the Security Agent, any Agent or other Senior Secured Creditor to execute any document if it would impose personal liabilities or obligations on, or adversely affect the rights, duties or immunities of the Security Agent, that Agent or Senior Secured Creditor (provided that the incurrence of such New Debt Financing or Additional Senior Facilities shall not adversely affect the rights of any Creditor) and nothing in this Clause 5.3 shall be construed as a commitment to advance or arrange any New Debt Financing. Each Agent is authorised and instructed by the Senior Secured Creditors that it acts as agent or trustee for, to execute on behalf of such Senior Secured Creditor, any such Relevant Document.

- (e) The Parent shall (or another Debtor so elected shall), within 30 days of demand, pay to each Senior Secured Creditor and the Security Agent the amount of all costs and expenses (including legal fees) (together with any applicable VAT) reasonably incurred by them in connection with the consideration, negotiation, preparation, printing, execution and perfection of any Relevant Document or giving instructions or doing other acts required by this Clause 5.3, subject to any agreed cap.
- (f) An entity which is a Permitted Senior Secured Debt Notes Issuer under paragraph (b) of the definition of Permitted Senior Secured Debt Notes Issuer shall at all times be a direct Subsidiary of the Company, remain a guarantor in respect of the Senior Secured Creditor Liabilities and shall only carry on business in connection with its capacity as Permitted Senior Secured Debt Notes Issuer.
- (g) An entity which is a Permitted Senior Secured Debt Notes Issuer under paragraph (c) of the definition of Permitted Senior Secured Debt Notes Issuer shall at all times remain a Subsidiary of the Parent and a Holding Company of the Company, remain a guarantor in respect of the Senior Secured Creditor Liabilities and shall only carry on business in connection with its capacity as Permitted Senior Secured Debt Notes Issuer.

6. INTRA-GROUP LENDERS AND INTRA-GROUP LIABILITIES

6.1 Restriction on Payment: Intra-Group Liabilities

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

- (a) that Payment is permitted under Clause 6.2 (*Permitted Payments: Intra-Group Liabilities*); or
- (b) the taking or receipt of that Payment is permitted under paragraph (c) of Clause 6.7 (*Permitted enforcement: Intra-Group Lenders*).

6.2 Permitted Payments: Intra-Group Liabilities

- (a) Subject to paragraph (b) below, the Debtors may make Payments in respect of the Intra-Group Liabilities (whether of principal, interest or otherwise) at any time.
- (b) Payments in respect of the Intra-Group Liabilities may not be made pursuant to paragraph (a) above if, at the time of the Payment, an Acceleration Event has occurred unless the Majority Senior Secured Creditors consent to that Payment being made or that Payment is made to facilitate Payment of any Senior Secured Creditor Liabilities, Agent Liabilities or Arranger Liabilities.

6.3 Payment obligations continue

No Debtor nor any other member of the Group shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Intra-Group Document by the operation of Clauses 6.1 (*Restriction on Payment: Intra-Group Liabilities*) and 6.2 (*Permitted Payments: Intra-Group Liabilities*) even if its obligation to make that Payment is restricted at any time by the terms of any of those Clauses.

6.4 Acquisition of Intra-Group Liabilities

- (a) Subject to paragraph (b) below, each Debtor may, and may permit any other member of the Group to:
- (i) enter into any Liabilities Acquisition; or
 - (ii) beneficially own all or any part of the share capital of a company that is party to a Liabilities Acquisition,
- in respect of any Intra-Group Liabilities at any time.
- (b) Subject to paragraph (c) below, no action described in paragraph (a) above may take place in respect of any Intra-Group Liabilities if:
- (i) that action would result in a breach of a Senior Secured Finance Document; or
 - (ii) at the time of that action, an Acceleration Event has occurred.
- (c) The restrictions in paragraph (b) above shall not apply if:
- (i) subject to Clause 4.14 (*On or after Senior Facilities Discharge Date*), the Majority Senior Secured Creditors consent to that action; or
 - (ii) that action is taken to facilitate Payment of the Senior Secured Creditor Liabilities, Agent Liabilities or Arranger Liabilities.

6.5 Security: Intra-Group Lenders

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

- (a) that Security, guarantee, indemnity or other assurance against loss is not prohibited under the Senior Secured Financing Agreements; or
- (b) prior to the Final Discharge Date, in relation to each Senior Secured Financing Agreement that prohibits that Security, guarantee, indemnity or other assurance against loss, the Requisite Majority of the relevant Senior Secured Creditors under that Senior Secured Financing Agreement provides prior written consent to that security, guarantee, indemnity or other assurance against loss.

6.6 Restriction on enforcement: Intra-Group Lenders

Subject to Clause 6.7 (*Permitted enforcement: Intra-Group Lenders*), none of the Intra-Group Lenders shall be entitled to take any Enforcement Action in respect of any of the Intra-Group Liabilities at any time prior to the Final Discharge Date, except with the prior consent of or as required by the Security Agent or in accordance with Clause 12.4 (*Recoveries from Report Providers*) or as part of a Permitted Reorganisation.

6.7 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 8.5 (*Filing of claims*)), exercise any right it may otherwise have against that member of the Group to:

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

6.8 Representations: Intra-Group Lenders

Each Intra-Group Lender which is not a Debtor represents and warrants to each Secured Party on the date of this Agreement that:

- (a) it is duly incorporated (if a corporate person) or duly established (in any other case) and validly existing under the law of its jurisdiction of incorporation or formation;
- (b) it has the power to own its assets and carry on its business in all material respects as it is being conducted;
- (c) the obligations expressed to be assumed by it in this Agreement and the Intra-Group Documents to which it is a party are legal, valid, binding and enforceable, subject to any applicable Reservations; and
- (d) the entry into and performance by it of, and the transactions contemplated by, this Agreement and the Intra-Group Documents to which it is a party do not conflict in any material respect with any law or regulation applicable to it or its constitutional documents or any agreement or instrument binding on it or any of its assets to an extent which would have or would be likely to have a Material Adverse Effect.

6.9 Notice of assignment in respect of certain Intra-Group Liabilities

- (a) Each Intra-Group Lender that has created Transaction Security over any Intra-Group Liabilities (a "**Charging Company**") hereby gives notice (including in terms as required by the applicable Transaction Security Documents) to each other Debtor (a "**Counterparty**") that is from time to time a debtor in respect of all present and future Intra-Group Liabilities owing to such Charging Company of the Transaction Security over such Intra-Group Liabilities created pursuant to the Transaction Security Documents in favour of the Security Agent on behalf of the Secured Parties, and confirms that the Counterparty may continue to deal with the Charging Company in relation to such Intra-Group Liabilities until such Counterparty receives written notice (as permitted by the applicable Security Document) to the contrary from the Security Agent (in which case such Counterparty shall deal only with the Security Agent in respect of such Intra-Group Liabilities).
- (b) Each Counterparty agrees to the terms of and acknowledges the notice under paragraph (a) above.

7. SUBORDINATED CREDITORS AND SUBORDINATED LIABILITIES

7.1 Restriction on Payment: Subordinated Liabilities

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

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

7.2 Permitted Payments: Subordinated Liabilities

- (a) Subject to paragraph (b) below, the Debtors may make Payments in respect of the Subordinated Liabilities then due if:
 - (i) the Payment is not prohibited by either the Senior Facilities Agreement or the Permitted Senior Secured Debt Facilities Agreement; or
 - (ii) such Payment is prohibited by the Senior Facilities Agreement or the Permitted Senior Secured Debt Facilities Agreement and that Payment has been consented to by the Senior Facilities Lenders (in respect of any prohibition under the Senior Facilities Agreement) or the Requisite Majority of the Permitted Senior Secured Debt Facilities Lenders (in respect of any prohibition under the Permitted Senior Secured Debt Facilities Agreement).
- (b) Payments in respect of the Subordinated Liabilities may not be made pursuant to paragraph (a) above if, at the time of the Payment, an Acceleration Event has occurred unless the Majority Senior Secured Creditors consent to that Payment being made.

7.3 Payment obligations continue

Neither the Parent nor any other Debtor or member of the Group shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Subordinated Document by the operation of Clauses 7.1 (*Restriction on Payment: Subordinated Liabilities*) and 7.2 (*Permitted Payments: Subordinated Liabilities*) even if its obligation to make that Payment is restricted at any time by the terms of any of those Clauses.

7.4 No acquisition of Subordinated Liabilities

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

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

in respect of any of the Subordinated Liabilities, unless:

- (i) prior to the Senior Facilities Discharge Date, the Majority Senior Facilities Lenders give their prior consent to that Liabilities Acquisition; and

- (ii) in relation to each other Senior Secured Financing Agreement that prohibits such Liabilities Acquisition, the Requisite Majority of the Senior Secured Creditors under that Senior Secured Financing Agreement consent to that Liabilities Acquisition.

7.5 Amendments and waivers: Subordinated Creditors

- (a) Prior to the Final Discharge Date, subject to paragraphs (b) and (c) below, the Subordinated Creditors and the Debtors shall not (and the Parent shall ensure that no other member of the Group shall) amend, waive or vary the terms of any of the documents or instruments pursuant to which the Subordinated Liabilities are constituted which would result in:
 - (i) the interests of any Secured Party being adversely affected in any material respect or the ranking and/or subordination contemplated by this Agreement being impaired;
 - (ii) any change to the amount, any scheduled repayment date or any mandatory prepayment provision under any Subordinated Document which would make such amount payable before the Final Discharge Date;
 - (iii) any member of the Group being subject to more onerous obligations (ignoring for this purpose any obligation to pay any additional amount) as a whole than those contained in the original form of the Subordinated Documents or obligations which would conflict with any provision of this Agreement; or
 - (iv) any change to provisions relating to acceleration, default, security (including enforcement), transferability, payments (including repayments and prepayments) and ranking of Subordinated Liabilities under a Subordinated Document.
- (b) Paragraph (a) above does not apply to any amendment, waiver or consent:
 - (i) made with the prior consent of the Requisite Majority of the Senior Facilities Lenders and the Permitted Senior Secured Debt Facilities Lenders;
 - (ii) which is minor, technical or administrative or corrects a manifest error; or
 - (iii) which is made on or after the Final Discharge Date.
- (c) Nothing in this Agreement or any of the Debt Documents shall prohibit or restrict any roll-up or capitalisation of any amount under any Subordinated Document or any forgiveness, write-off or capitalisation of any Subordinated Liabilities.

7.6 Security: Subordinated Creditors

The Subordinated Creditors 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 Final Discharge Date.

7.7 Restriction on enforcement: Subordinated Creditors

Subject to Clause 7.8 (*Permitted enforcement: Subordinated Creditors*), no Subordinated Creditor shall be entitled to take any Enforcement Action in respect of any of the Subordinated Liabilities at any time prior to the Final Discharge Date.

7.8 Permitted enforcement: Subordinated Creditors

After the occurrence of an Insolvency Event in relation to any member of the Group, each Subordinated Creditor may (unless otherwise directed by the Security Agent or unless the Security Agent has taken, or has given notice that it intends to take, action on behalf of that Subordinated Creditor in accordance with Clause 8.5 (*Filing of claims*)) exercise any right it may otherwise have in respect of that 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, administration or other insolvency proceedings of that member of the Group for the Subordinated Liabilities owing to it.

7.9 Representations: Subordinated Creditor

Each Subordinated Creditor represents and warrants to each Secured Party on the date of this Agreement that:

- (a) it is duly incorporated (if a corporate person) or duly established (in any other case) and validly existing under the law of its jurisdiction of incorporation or formation;
- (b) it has the power to own its assets and carry on its business in all material respects as it is being conducted;
- (c) the obligations expressed to be assumed by it in this Agreement and the Subordinated Documents to which it is a party are legal, valid, binding and enforceable, subject to any applicable Reservations; and
- (d) the entry into and performance by it of, and the transactions contemplated by, this Agreement and the Subordinated Documents to which it is a party do not conflict in any material respect with any law or regulation applicable to it or its constitutional documents or any agreement or instrument binding on it or any of its assets to an extent which would have or would be likely to have a Material Adverse Effect.

8. EFFECT OF INSOLVENCY EVENT

8.1 Cash Cover

This Clause 8 is subject to Clause 13.3 (*Treatment of Cash Cover and Lender Cash Collateral*) and, in the case of the Permitted Senior Secured Debt Notes Trustee Amounts, paragraph (b) of Clause 23.1 (*Liability*).

8.2 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 make that distribution to the

Security Agent (or to such other person as the Security Agent shall direct) until the Liabilities owing to the Secured Parties have been paid in full.

- (b) The Security Agent shall apply distributions paid to it under paragraph (a) above in accordance with Clause 13 (*Application of Proceeds*).

8.3 Set-off

- (a) Subject to paragraph (b) below, 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 which benefited from that set-off shall, to the extent legally permissible, 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 13 (*Application of Proceeds*).
- (b) Paragraph (a) above shall not apply to:
 - (i) any such discharge of the Multi-account Overdraft Liabilities to the extent that the relevant discharge represents a reduction of the Gross Outstandings of a Multi-account Overdraft to or towards an amount equal to its Net Outstandings;
 - (ii) any Close-Out Netting by a Hedge Counterparty or a Hedging Ancillary Lender;
 - (iii) any Payment Netting by a Hedge Counterparty or a Hedging Ancillary Lender;
 - (iv) any Inter-Hedging Agreement Netting by a Hedge Counterparty; and
 - (v) any Inter-Hedging Ancillary Document Netting by a Hedging Ancillary Lender.

8.4 Non-cash distributions

Subject to Clause 13.1 (*Order of application*), 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 (such proceeds to be realised in accordance with the instructions of the Majority Senior Secured Creditors) are actually applied towards the Liabilities.

8.5 Filing of claims

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

- (a) take any Enforcement Action (in accordance with the terms of this Agreement) against that member of the Group;
- (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.

8.6 Further assurance – Insolvency Event

Each Creditor will:

- (a) do all things that the Security Agent reasonably requests in order to give effect to this Clause 8; and
- (b) if the Security Agent is not entitled to take any of the actions contemplated by this Clause 8 or if the Security Agent requests that a Creditor take that action, undertake that action itself in accordance with the instructions of the Security Agent or grant a power of attorney to the Security Agent (on such terms as the Security Agent may reasonably require) to enable the Security Agent to take such action, although no Permitted Senior Secured Debt Notes Trustee shall be under any obligation to grant such powers of attorney.

8.7 Security Agent instructions

For the purposes of Clause 8.2 (*Payment of distributions*), Clause 8.5 (*Filing of claims*) and Clause 8.6 (*Further assurance – Insolvency Event*) the Security Agent shall act:

- (a) on the instructions of the Majority Senior Secured Creditors; or
- (b) in the absence of any such instructions, as it considers in its discretion to be appropriate.

9. TURNOVER OF RECEIPTS

9.1 Cash Cover

This Clause 9 is subject to Clause 13.3 (*Treatment of Cash Cover and Lender Cash Collateral*).

9.2 Turnover by the Creditors

Subject to Clause 9.3 (*Exclusions*), Clause 9.4 (*Permitted assurance and receipts*) and paragraph (c) of Clause 23.1 (*Liability*), if at any time prior to the Final Discharge Date any Creditor receives or recovers:

- (a) any Payment or distribution of, or on account of or in relation to, any of the Liabilities which is not either:
 - (i) a Permitted Payment; nor
 - (ii) made in accordance with Clause 13 (*Application of Proceeds*);
- (b) other than where paragraph (a) of Clause 8.3 (*Set-off*) applies, any amount by way of set-off in respect of any of the Liabilities owed to it which does not give effect to a Permitted Payment;
- (c) notwithstanding paragraphs (a) and (b) above, and other than where paragraph (a) of Clause 8.3 (*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 13 (*Application of Proceeds*);
- (d) the proceeds of any Distressed Disposal except in accordance with Clause 13 (*Application of Proceeds*); or
- (e) other than where paragraph (a) of Clause 8.3 (*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 13 (*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,

that Creditor will:

- (i) in relation to receipts and recoveries not received or recovered by way of set-off:
 - (A) hold an amount of that receipt or recovery equal to the Relevant Liabilities (or, if less, the amount received or recovered) on trust for the Security Agent and promptly pay or distribute that amount to the Security Agent for application in accordance with the terms of this Agreement; and
 - (B) promptly pay or distribute an amount equal to the amount (if any) by which the receipt or recovery exceeds the Relevant Liabilities to the Security Agent for application in accordance with the terms of this Agreement; and
- (ii) in relation to receipts and recoveries received or recovered by way of set-off, promptly pay an amount equal to that receipt or recovery to the Security Agent for application in accordance with the terms of this Agreement.

9.3 Exclusions

Clause 9.2 (*Turnover by the Creditors*) shall not apply to any receipt or recovery:

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

- (c) from any refinancing subject to Clause 5 (*New Permitted Senior Secured Debt*); or
- (d) in respect of funds received by the Security Agent or any other Agent in respect of the Liabilities or, as applicable, Agent Liabilities, for its own account.

9.4 Permitted assurance and receipts

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

- (a) arrange with any person which is not a member of the Group any assurance against loss in respect of, or reduction of its credit exposure to, a Debtor (including assurance by way of credit based derivative or sub-participation); or
- (b) make any assignment or transfer permitted by Clause 16 (*Changes to the Parties*), which:
 - (i) is permitted under the Senior Secured Finance Documents; and
 - (ii) is not in breach of Clause 4.5 (*No acquisition of Hedging Liabilities*) or Clause 7.4 (*No acquisition of Subordinated Liabilities*),

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

9.5 Amounts received by Debtors

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

- (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.

9.6 Saving provision

If, for any reason, any of the trusts expressed to be created in this Clause 9 should fail or be unenforceable, the affected Creditor or the affected Debtor will promptly pay or distribute an amount equal to that receipt or recovery to the Security Agent for application in accordance with the terms of this Agreement.

10. REDISTRIBUTION

10.1 Recovering Creditor's rights

- (a) Any amount paid or distributed by a Creditor (a "**Recovering Creditor**") to the Security Agent under Clause 8 (*Effect of Insolvency Event*) or Clause 9 (*Turnover of receipts*) shall be treated as having been paid or distributed by the relevant Debtor and distributed to the Security Agent, Agents, Arrangers and Senior Secured Creditors (each, a "**Sharing Creditor**") in accordance with the terms of this Agreement.

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

10.2 **Reversal of redistribution**

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

10.3 **Deferral of subrogation**

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

11. **ENFORCEMENT OF TRANSACTION SECURITY**

11.1 **Cash Cover**

This Clause 11 is subject to Clause 13.3 (*Treatment of Cash Cover and Lender Cash Collateral*).

11.2 **Enforcement instructions**

- (a) The Security Agent may refrain from enforcing the Transaction Security unless instructed otherwise by the Majority Senior Secured Creditors.
- (b) Subject to the Transaction Security having become enforceable in accordance with its terms, the Majority Senior Secured 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 11.2.

- (d) No Secured Party shall have any independent power to enforce, or to have recourse to, any Transaction Security or to exercise any rights or powers arising under the Transaction Security Documents except through the Security Agent.
- (e) The Security Agent may, subject to any contrary instructions from the Majority Senior Secured Creditors, cease enforcing the Transaction Security at any time.
- (f) Without prejudice to the rights of Creditors to take any action described in the provisos (i) and (ii) set out in the definition of "Enforcement Action", no Senior Secured Creditor or Agent may take or cause to be taken any action the purpose or intent of which is, or could be, to interfere, hinder or delay, in any manner, whether by judicial proceedings or otherwise, any enforcement of the Transaction Security by the Security Agent in accordance with the terms of the Senior Secured Finance Documents.

11.3 Manner of enforcement

If the Transaction Security is being enforced pursuant to Clause 11.2 (*Enforcement instructions*), the Security Agent shall enforce the Transaction Security in such manner (including, without limitation, the selection of any administrator of any Debtor to be appointed by the Security Agent) as the Majority Senior Secured Creditors shall instruct or, in the absence of any such instructions, as the Security Agent sees fit, in each case, taking into account the requirements of each relevant Transaction Security Document.

11.4 Exercise of voting rights

- (a) Each Creditor (other than any Agent) agrees (to the fullest extent permitted by law at the relevant time) 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 paragraph (a) above as directed by the Majority Senior Secured Creditors.
- (c) The foregoing does not entitle any party to exercise or require any other Creditor to exercise a power of voting or representation to waive, reduce, discharge or extend the due date for repayment or reschedule any liabilities owed to that Creditor, as applicable.

11.5 Waiver of rights

To the extent permitted under applicable law and subject to Clause 11.2 (*Enforcement instructions*), Clause 11.3 (*Manner of enforcement*), Clause 13 (*Application of Proceeds*) and paragraph (c) of Clause 12.2 (*Distressed Disposals and Appropriation*), each of the Secured Parties and the Debtors waives all rights it may otherwise have to require that the Transaction Security be enforced in any particular order or manner or at any particular time or that any sum received or recovered from any person, or by virtue of the enforcement of any of the Transaction Security or of any other security interest, which is capable of being applied in or towards discharge of any of the Secured Obligations is so applied.

11.6 Security held by other Creditors

If any Transaction Security is held by a Creditor other than the Security Agent, then that Creditor may only enforce that Transaction Security in accordance with instructions given by the Majority

Senior Secured Creditors pursuant to this Clause 11 (and for this purpose references to the Security Agent shall be construed as references to that Creditor).

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

12.1 Non-Distressed Disposals

(a) 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 Facilities Discharge Date, either (i) the Senior Facilities Agent notifies the Security Agent, or (ii) the Parent certifies to the Security Agent that that disposal is permitted under the Senior Facilities Finance Documents;
- (B) prior to the Permitted Senior Secured Debt Discharge Date applicable to each Permitted Senior Secured Debt Document, each relevant Permitted Senior Secured Debt Representative or the Parent certifies to the Security Agent that that disposal is not prohibited by the relevant Permitted Senior Secured Debt Documents; and
- (C) 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 or Debtor) and agrees, but subject to paragraph (b) below:

- (I) to release the Transaction Security and any other claim (relating to a Debt Document) over that asset;
 - (II) where that asset consists of shares in the capital of a Debtor, to release the Transaction Security and any other claim, including without limitation any Guarantee Liabilities or Other Liabilities (relating to a Debt Document) over that Debtor or its assets and (if any) the Subsidiaries of that Debtor and their respective assets; and
 - (III) to execute and deliver or enter into any release of the Transaction Security and any claim described in paragraphs I and II above and issue any certificates of non-crystallisation of any floating charge or any consent to dealing that may, in the discretion of the Security Agent, be considered necessary or desirable.
- (b) If that Non-Distressed Disposal is not made, each release of Transaction Security or any claim described in paragraph (a) above shall have no effect and the Transaction Security or claim subject to that release shall continue in such force and effect as if that release had not been effected.

12.2 Distressed Disposals and Appropriation

- (a) Subject to paragraphs (d) to (h) below, if a Distressed Disposal or an Appropriation is being effected, the Security Agent is irrevocably authorised (at the cost of the Parent and without any consent, sanction, authority or further confirmation from any Creditor or Debtor):
- (i) *release of Transaction Security/non-crystallisation certificates*: to release the Transaction Security and any other claim over the asset subject to the Distressed Disposal or Appropriation and execute and deliver or enter into any release of that Transaction Security or claim and issue any letters of non-crystallisation of any floating charge or any consent to dealing that may, in the discretion of the Security Agent, be considered necessary or desirable;
 - (ii) *release of liabilities and Transaction Security on a share sale/Appropriation (Debtor)*: if the asset subject to the Distressed Disposal or Appropriation consists of shares in the capital of a Debtor, to release:
 - (A) that Debtor and any Subsidiary of that Debtor from all or any part of:
 - (I) its Borrowing Liabilities;
 - (II) its Guarantee Liabilities; and
 - (III) its Other Liabilities;
 - (B) any Transaction Security granted by that Debtor or any Subsidiary of that Debtor over any of its assets; and
 - (C) any other claim of a Subordinated Creditor, 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, Debtors, Agents and Arrangers;
 - (iii) *release of liabilities and Transaction Security on a share sale/Appropriation (Holding Company)*: if the asset subject to the Distressed Disposal or Appropriation consists of shares in the capital of any Holding Company of a Debtor, to release:
 - (A) that Holding Company and any Subsidiary of that Holding Company from all or any part of:
 - (I) its Borrowing Liabilities;
 - (II) its Guarantee Liabilities; and
 - (III) its Other Liabilities;
 - (B) any Transaction Security granted by that Holding Company and any Subsidiary of that Holding Company over any of its assets; and
 - (C) any other claim of a Subordinated Creditor, an Intra-Group Lender or another Debtor over the assets of that Holding Company and any Subsidiary of that Holding Company,on behalf of the relevant Creditors, Debtors, Agents and Arrangers;

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

- (A) the Liabilities (other than Liabilities due to any Agent or Arranger); or
- (B) the Debtors' Intra-Group Receivables,

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

- (v) *sale of liabilities on a share sale/Appropriation*: if the asset subject to the Distressed Disposal or Appropriation consists of shares in the capital of a Debtor or the Holding Company of a Debtor and the Security Agent (acting in accordance with paragraph (g) below) decides to dispose of all or any part of:

- (A) the Liabilities (other than Liabilities due to any Agent or Arranger); or
- (B) the Debtors' Intra-Group Receivables,

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

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

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

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

- (A) the Intra-Group Liabilities;
- (B) the Debtors' Intra-Group Receivables; or

(C) the Subordinated Liabilities,

to execute and deliver or enter into any agreement to:

- (I) agree to the transfer of all or part of the obligations in respect of those Intra-Group Liabilities, Debtors' Intra-Group Receivables or Subordinated Liabilities on behalf of the relevant Intra-Group Lenders, Debtors or, as the case may be, the Subordinated Creditor to which those obligations are owed and on behalf of the Debtors which owe those obligations; and
- (II) (provided the Receiving Entity is a Holding Company of the Disposed Entity which is also a guarantor of Senior Secured Creditor Liabilities) to accept the transfer of all or part of the obligations in respect of those Intra-Group Liabilities, Debtors' Intra-Group Receivables or Subordinated Liabilities on behalf of the Receiving Entity or Receiving Entities to which the obligations in respect of those Intra-Group Liabilities, Debtors' Intra-Group Receivables or, as the case may be, Subordinated Liabilities are to be transferred.

(b) The net proceeds of each Distressed Disposal and each Debt Disposal shall be paid or distributed to the Security Agent for application in accordance with Clause 13 (*Application of Proceeds*) and, to the extent that:

- (i) any Liabilities Sale has occurred; or
- (ii) any Appropriation has occurred,

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

(c) In the case of:

- (i) a Distressed Disposal; or
- (ii) a Liabilities Sale,

effected by, or at the request of, the Security Agent (acting in accordance with paragraph (g) below), the Security Agent shall take reasonable care to obtain a fair market price having regard to the prevailing market conditions (though the Security Agent shall have no obligation to postpone or request the postponement of any such Distressed Disposal or disposal of Liabilities in order to achieve a higher price).

(d) Subject to paragraph (e) below in the case of a Distressed Disposal (or a disposal of Liabilities pursuant to paragraph (a)(iv) above) effected by or at the request of the Security Agent (acting in accordance with paragraph (g) below), unless the Majority Senior Facilities Lenders and the Permitted Senior Secured Debt Notes Trustee otherwise agree, it is a further condition to any release, transfer or disposal under paragraph (a) above that:

- (i) the proceeds of such disposal are in cash (or substantially in cash); and
- (ii) such sale or disposal is made:
 - (A) pursuant to a Public Auction; or

- (B) where a Fairness Opinion in respect of such sale or disposal is obtained.
- (e) Paragraph (d) above shall not apply if:
 - (i) at the time of the Distressed Disposal or disposal of Liabilities, no Permitted Senior Secured Debt Notes are outstanding; or
 - (ii) the proceeds of that Distressed Disposal or disposal of Liabilities are, when aggregated with any other amounts received by the Security Agent for application in accordance with Clause 13 (*Application of Proceeds*), in excess of the Liabilities owed by the Debtors to the Senior Secured Creditors, the Security Agent, the Agents and the Arrangers and are sufficient to discharge all claims of the Senior Secured Creditors under the Senior Secured Finance Documents against any member of the Group.
- (f) Where Borrowing Liabilities in respect of any Senior Secured Creditor Liabilities would otherwise be released pursuant to paragraph (a) above, the Creditor concerned may elect to have those Borrowing Liabilities transferred to the Parent or the Company (**provided that** the Company remains a subsidiary of the Parent after the relevant Distressed Disposal) in which case the Security Agent is irrevocably authorised (to the extent legally possible and at the cost of the relevant Debtor or the Parent and without any consent, sanction, authority or further confirmation from any Creditor or Debtor) to execute such documents as are required to so transfer those Borrowing Liabilities.
- (g) For the purposes of paragraphs (a)(ii), (a)(iii), (a)(iv), (a)(v), (a)(vi), (c) and (d) above, the Security Agent shall act:
 - (i) in the case of an Appropriation or if the relevant Distressed Disposal is being effected by way of enforcement of the Transaction Security, in accordance with Clause 11.3 (*Manner of enforcement*); and
 - (ii) in any other case:
 - (A) on the instructions of the Majority Senior Secured Creditors; or
 - (B) in the absence of any such instructions, as it considers in its discretion to be appropriate.
- (h) If any Transaction Security proposed to be released under this Clause 12.2 includes Cash Cover, the Security created or evidenced or expressed to be created or evidenced under or pursuant to the relevant Cash Cover Document shall not be released without the consent of the Security Agent or the relevant Issuing Bank or relevant Ancillary Lender with which that Cash Cover is held.
- (i) For the purposes of paragraph (d)(ii) above, the liability of a Financial Adviser providing a Fairness Opinion may be limited to the amount of its fees in respect of its engagement thereunder.

12.3 Mandatory Prepayments (before Distress Event)

- (a) So long as the requirements of paragraph (b) below and, in the case of a claim against the provider of any Report, the requirements of Clause 12.4 (*Recoveries from Report Providers*) are met, if any contractual, insurance or other claim is to be made, or is made, by a Debtor prior to a

Distress Event and that claim (or any proceeds of that claim (the "**Proceeds**")) is or are expressed to be subject to the Transaction Security, the Security Agent is irrevocably authorised (at the cost of the relevant Debtor or the Parent and without need of any letter of authority or further confirmation from any Creditor or Debtor) to:

- (i) give a consent under or release the Transaction Security, or any other claim, over the relevant Acquisition Document or insurance policy solely to the extent necessary to allow that Debtor to make that claim and to comply with that Debtor's obligations in respect of that claim and those Proceeds under the Senior Facilities Agreement and any equivalent provisions in any Permitted Senior Secured Debt Facility 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.
- (b) If any Proceeds or other amounts (together "**Senior Mandatory Prepayment Proceeds**") are required to be applied in mandatory prepayment of the Senior Facilities Liabilities and the Permitted Senior Secured Debt Liabilities, then those Senior Mandatory Prepayment Proceeds shall be applied in or towards Payment of the Senior Facilities Liabilities in accordance with the terms of the Senior Facilities Agreement and the Permitted Senior Secured Debt Liabilities in accordance with the terms of the Permitted Senior Secured Debt Documents on a *pro rata* basis and the consent of any other Party shall not be required for that application.

12.4 Recoveries from Report Providers

- (a) In this Clause 12.4:

"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, the Senior Facilities Finance Document, Hedging Agreement or Permitted Senior Secured Debt Document 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 may initiate Proceedings unless and until the Security Agent has given its prior written consent.
- (d) If no Distress Event has occurred at the time of receipt of a Net Award, and the Senior Facilities Agreement and/or any Permitted Senior Secured Debt Facilities Agreement requires Award Proceeds obtained by the Parent to be applied in mandatory prepayment of the Liabilities thereunder, the recipient of that Net Award (if not the Parent) shall pay the Award Proceeds to the Parent for application in accordance with the terms of the Senior Facilities Agreement and any Permitted Senior Secured Debt Facilities Agreement on a *pro rata* basis.
- (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 13 (*Application of Proceeds*).
- (f) The provisions of this Clause 12.4 shall apply until the Final Discharge Date.

12.5 Creditors' and Debtors' actions

- (a) Each Creditor and Debtor will:

- (i) do all things that the Security Agent requests in order to give effect to this Clause 12 (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 12); and
- (ii) if the Security Agent is not entitled to take any of the actions contemplated by this Clause 12 or if the Security Agent requests that any Creditor or Debtor take any such action, take that action itself in accordance with the instructions of the Security Agent,

provided that the proceeds of those disposals are applied in accordance with Clause 12.1 (*Non-Distressed Disposals*) or Clause 12.2 (*Distressed Disposals and Appropriation*), as the case may be.

- (b) Each Creditor and Debtor irrevocably authorises and instructs the Security Agent (at the cost of the relevant Creditor or Debtor, and without any consent, sanction, authority or further confirmation from any Creditor or Debtor) to be its agent to do anything which that Creditor or that 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 (which shall include, without limitation, the execution of any assignments, transfers, releases or other documents that the Security Agent may consider necessary to give effect to the releases and disposals contemplated by this Clause 12).

13. APPLICATION OF PROCEEDS

13.1 Order of application

Subject to Clause 13.2 (*Prospective Liabilities*) and Clause 13.3 (*Treatment of Cash Cover and Lender Cash Collateral*), 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 13, 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 13), in the following order of priority:

- (a) in payment or distribution to the Security Agent, any Receiver or any Delegate for application towards the discharge of any sums owing to any of them from any Party (other than in respect of any amounts owing to the Security Agent under paragraph (a) of Clause 15.3 (*Parallel Debt (covenant to pay the Security Agent)*)) including any such amounts arising in connection with any realisation or enforcement of the Transaction Security taken in accordance with the terms of this Agreement;
- (b) in payment or distribution to each Agent on its own behalf for application towards the discharge of the Agent Liabilities due to it, including any such amounts arising in connection with any realisation or enforcement of the Transaction Security taken in accordance with the terms of this Agreement or any action taken at the request of the Security Agent under Clause 8.6 (*Further assurance – Insolvency Event*), on a pro rata and *pari passu* basis;
- (c) in payment or distribution to:
 - (i) the Senior Facilities Agent on behalf of the Senior Facilities Arrangers and the Senior Facilities Lenders;
 - (ii) each Permitted Senior Secured Debt Representative on behalf of each Permitted Senior Secured Debt Arranger and its respective Permitted Senior Secured Debt Creditors; and
 - (iii) the Hedge Counterparties,for application towards the discharge of:
 - (A) the Senior Facilities Arranger Liabilities and the Senior Facilities Liabilities (in accordance with the terms of the Senior Facilities Finance Documents);
 - (B) the Permitted Senior Secured Debt Arranger Liabilities and the Permitted Senior Secured Debt Liabilities (in accordance with the terms of the Permitted Senior Secured Debt Documents); and
 - (C) the Hedging Liabilities (on a *pro rata* basis between the Hedging Liabilities of each Hedge Counterparty),on a *pro rata* basis and ranking *pari passu* between paragraphs (A) to (C) above;
- (d) if none of the Debtors is under any further actual or contingent liability under any Senior Secured Finance Document, in payment or distribution to any person to whom the Security Agent is obliged to pay or distribute in priority to any Debtor; and
- (e) the balance, if any, in payment or distribution to the relevant Debtor.

13.2 Prospective Liabilities

Following a Distress Event the Security Agent may, in its discretion, hold any amount of the Recoveries not in excess of the Expected Amount (as defined below) 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 or until otherwise directed by the Majority Senior Secured Creditors in respect of paragraph (b) below (the interest being credited to the relevant account) for later application under Clause 13.1 (*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,

that the Security Agent reasonably considers, in each case, might become due or owing at any time in the future (the "**Expected Amount**").

13.3 Treatment of Cash Cover and Lender Cash Collateral

- (a) Nothing in this Agreement shall prevent any Issuing Bank or Ancillary Lender taking any Enforcement Action in respect of any Cash Cover which has been provided for it in accordance with the Senior Facilities Agreement or any Permitted Senior Secured Debt Facilities Agreement.
- (b) To the extent that any Cash Cover is not held with the Relevant Issuing Bank or Relevant Ancillary Lender, all amounts from time to time received or recovered in connection with the realisation or enforcement of that 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 Issuing Bank or Relevant Ancillary Lender towards the discharge of the Senior Secured Creditor Liabilities for which that Cash Cover was provided; and
 - (ii) the balance, if any, in accordance with Clause 13.1 (*Order of application*).
- (c) To the extent that any Cash Cover is held with the Relevant Issuing Bank or Relevant Ancillary Lender, nothing in this Agreement shall prevent that Relevant Issuing Bank or Relevant Ancillary Lender receiving and retaining any amount in respect of that Cash Cover.
- (d) Nothing in this Agreement shall prevent any Issuing Bank receiving and retaining any amount in respect of any Lender Cash Collateral provided for it in accordance with the terms of the Senior Facilities Agreement or any Permitted Senior Secured Debt Document.

13.4 Investment of proceeds

Prior to the application of the proceeds of the Security Property in accordance with Clause 13.1 (*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 or until otherwise directed by the Majority Senior Secured Creditors (the interest being credited to the relevant account) pending the application from time to time of those moneys in the Security Agent's discretion in accordance with the provisions of this Clause 13.

13.5 Currency conversion

- (a) For the purpose of, or pending the discharge of, any of the Secured Obligations, the Security Agent may:
- (i) convert any moneys received or recovered by the Security Agent from one currency to another, at the Agent's Spot Rate of Exchange; and
 - (ii) notionally convert the valuation provided in any opinion or valuation from one currency to another, at the Agent's Spot Rate of Exchange.
- (b) The obligations of any Debtor to pay in the due currency shall only be satisfied:
- (i) in the case of paragraph (a)(i) above, to the extent of the amount of the due currency purchased after deducting the costs of conversion; and
 - (ii) in the case of paragraph (a)(ii) above, to the extent of the amount of the due currency which results from the notional conversion referred to in that paragraph.

13.6 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 exercising its rights, powers, authorities and discretions, or by virtue of its capacity as Security Agent under any of the Debt Documents or otherwise (other than in connection with its remuneration for performing its duties under this Agreement).

13.7 Good discharge

- (a) Any distribution or payment to be made in respect of the Secured Obligations by the Security Agent:
- (i) may be made to the relevant Agent on behalf of its Creditors;
 - (ii) may be made to the Relevant Issuing Bank or Relevant Ancillary Lender in accordance with paragraph (b)(i) of Clause 13.3 (*Treatment of Cash Cover and Lender Cash Collateral*); or
 - (iii) shall be made directly to the Hedge Counterparties,
- and any distribution or payment made in that way shall be a good discharge, to the extent of that distribution or payment, by the Security Agent.
- (b) The Security Agent is under no obligation to make the payments to the Agents or the Hedge Counterparties under paragraph (a) above in the same currency as that in which the Liabilities owing to the relevant Creditor are denominated.

13.8 Calculation of amounts

For the purposes of calculating any person's share of any sum payable to or by it or making any distribution, 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.

14. EQUALISATION

14.1 Equalisation Definitions

For the purposes of this Clause 14:

"Enforcement Date" means the first date (if any) on which a Senior Facilities Lender, the Senior Facilities Agent, a Senior Facilities Arranger or the Security Agent on their behalf (and acting in accordance with the terms of this Agreement) 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 in relation to a Senior Facilities 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 between Senior Facilities Lenders pursuant to any loss-sharing arrangement in the Senior Facilities Agreement which has taken place since the Enforcement Date to have taken place at the Enforcement Date) together with the aggregate amount of all accrued interest, fees and commission owed to it under the Senior Facilities Agreement and amounts owed to it by a Debtor in respect of any Ancillary Facility under the Senior Facilities Agreement but excluding:

- (a) any amount owed to it by a Debtor in respect of any Ancillary Facility under the Senior Facilities Agreement 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 Facilities Lender pursuant to the relevant SFA Cash Cover Document; and
- (b) any amount outstanding in respect of a Letter of Credit issued under the Senior Facilities Agreement to the extent (and in the amount) that SFA Cash Cover has been provided by a Debtor in respect of that amount and is available to the party it has been provided for pursuant to the relevant SFA Cash Cover Document.

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

14.2 Implementation of equalisation

- (a) The provisions of this Clause 14 shall be applied at such time or times after the Enforcement Date as the Security Agent shall consider appropriate.
- (b) Without prejudice to the generality of paragraph (a) above, if the provisions of this Clause 14 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 Facilities Lenders shall make appropriate adjustment payments amongst themselves.

14.3 Equalisation

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

14.4 Notification of Exposure

Before each occasion on which it intends to implement the provisions of this Clause 14, the Security Agent shall send notice to the Senior Facilities Agent (on behalf of the Senior Facilities Lenders) requesting that it notify it of, respectively, its Exposure and that of each Senior Facilities Lender (if any).

14.5 Default in payment

If a Senior Facilities Lender fails to make a payment due from it under this Clause 14, the Security Agent shall be entitled (but not obliged) to take action on behalf of the Senior Facilities Lender(s) to whom such payment was to be redistributed (subject to being indemnified to its satisfaction by such Senior Facilities Lender(s) in respect of costs) but shall have no liability or obligation towards such Senior Facilities Lender(s), any other Senior Facilities Lender as regards such default in payment and any loss suffered as a result of such default shall lie where it falls.

15. THE SECURITY AGENT

15.1 Appointment of the Security Agent

- (a) Each other Secured Party appoints the Security Agent to act as security trustee under and in connection with the Security Documents and/or each other Senior Secured Finance Document in relation to any security interest which is expressed to be or is construed to be governed by English, Dutch or Scots law, or any other law from time to time designated by the Security Agent and the Parent.
- (b) Except as expressly provided in paragraph (a) above, and without limiting or affecting Clause 15.3 (*Parallel Debt (covenant to pay the Security Agent)*), each other Secured Party appoints the Security Agent to act as security agent under and in connection with the Security Documents and/or each other Senior Secured Finance Document.

- (c) Each other Secured Party authorises the Security Agent to exercise the rights, powers, authorities and discretions specifically given to it under or in connection with the Transaction Security Documents and/or each other Senior Secured Finance Document.

15.2 Security Agent as trustee

- (a) The Security Agent declares that it holds the Security Property on trust for the Secured Parties on the terms contained in this Agreement.
- (b) Subject to paragraph (c) below, paragraph (a) above shall not apply to any Security Document which is expressed to be or is construed to be governed by any law other than English, Dutch or Scots law or any other law from time to time designated by the Security Agent and a Debtor or any Security Property arising under any such Security Document.
- (c) Paragraph (b) above shall not affect or limit paragraph (c) of Clause 15.3 (*Parallel Debt (covenant to pay the Security Agent)*) nor the applicability of the provisions of this Clause 15 with respect to any Security Document which is expressed to be or is construed to be governed by any law other than English, Dutch or Scots law or any other law from time to time designated by the Security Agent and a Debtor or any Security Property arising under any such Security Document.
- (d) Each of the Secured Parties authorises the Security Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Security Agent under or in connection with the Debt Documents together with any other incidental rights, powers, authorities and discretions.
- (e) Each other Secured Party:
 - (i) irrevocably and unconditionally appoints the Security Agent to act as agent (*mandataire*) pursuant to article 1984 of the French Code Civil (with full power to appoint and to substitute and to delegate) for the purpose of executing any Transaction Security Documents governed by French law (together, the "**French Transaction Security Documents**") in its name;
 - (ii) confirms its approval of the French Transaction Security Documents creating or expressed to create a Security benefiting to it and any Security created or to be created pursuant thereto; and
 - (iii) irrevocably authorises, empowers and directs the Security Agent (by itself or by such person(s) as it may nominate) on its behalf, to perform the duties and to exercise the rights, powers and discretions that are specifically delegated to it under or in connection with the French Transaction Security Documents, to take any action and exercise any right, power, authorities and discretion upon the terms and conditions set out in this Agreement under or in connection with the French Transaction Security Documents, in each case together with any other rights, powers and discretions which are incidental thereto and to give a good discharge for any moneys payable under the Transaction Security Documents, it being understood that each Secured Party (other than the Security Agent) shall issue special powers of attorneys in all cases where the exercise of powers granted under this Agreement requires the issuance of any such special powers of attorney, and the Security Agent accepts such appointment;

- (iv) irrevocably authorises the Security Agent (and to the extent it may have any interest therein, every other Party) to execute on behalf of itself and each Secured Party and other Party where relevant, following the occurrence of the Discharge Date, releases of all Security granted under the Security Documents,

it being specified that:

- (v) the Security Agent will act solely for itself (as Secured Party) and as agent for the other Secured Parties in carrying out its functions as security agent under the relevant Transaction Security Documents governed by French law;
- (vi) in relation to the relevant Transaction Security Documents governed by French law, the relationship between the Secured Parties (other than the Security Agent) and the Security Agent is that of principal and agent only and the Security Agent shall not have, or be deemed to have, assumed any obligations to or fiduciary relationship with, any party to this Agreement other than those for which specific provision is made by the relevant Transaction Security Documents governed by French law and this Agreement;
- (vii) in furtherance of this paragraph (e), each of the Secured Parties hereby undertakes to the Security Agent that, promptly upon request, such Secured Party will ratify and confirm all transactions entered into and other actions by the Security Agent (or any of its substitutes or delegates) in the proper exercise of the power granted to it hereunder; and
- (viii) the provisions of this paragraph (e) are governed by the laws of France.

15.3 **Parallel Debt (covenant to pay the Security Agent)**

- (a) Each Debtor hereby irrevocably and unconditionally undertakes to pay to the Security Agent amounts equal to any amounts owing from time to time by that Debtor to any Secured Party (other than the Security Agent) under any Senior Secured Finance Document, as and when those amounts are due.
- (b) Each Debtor and the Security Agent acknowledge that the obligations of each Debtor under paragraph (a) above are several and are separate and independent from, and shall not in any way limit or affect, the corresponding obligations of that Debtor to any other Secured Party under any Senior Secured Finance Document (its "**Corresponding Debt**") nor shall the amounts for which each Debtor is liable under paragraph (a) above (for the purposes of this paragraph (b), its "**Parallel Debt**") be limited or affected in any way by its Corresponding Debt **provided that** notwithstanding any other provision of this Agreement or the Senior Secured Finance Documents:
 - (i) the Parallel Debt of each Debtor shall be automatically decreased and discharged to the extent that its Corresponding Debt has been irrevocably paid or (in the case of guarantee obligations) discharged;
 - (ii) the Corresponding Debt of each Debtor shall be automatically decreased and discharged to the extent that its Parallel Debt has been irrevocably paid or (in the case of guarantee obligations) discharged;
 - (iii) the amount of the Parallel Debt of a Debtor shall at all times be equal to the amount of its Corresponding Debt; and

- (iv) the aggregate amount outstanding owed by the Debtors under the Senior Secured Finance Documents (including under this Clause 15.3) at any time shall not exceed the amount of the Corresponding Debt at that time.
- (c) For the purpose of this Clause 15.3, the Security Agent acts in its own name and not as a trustee, and its claims in respect of the Parallel Debt shall not be held on trust. The Transaction Security granted under the Transaction Security Documents to the Security Agent to secure the Parallel Debt is granted to the Security Agent in its capacity as creditor of the Parallel Debt and shall not be held on trust.
- (d) All monies received or recovered by the Security Agent pursuant to this Clause 15.3, and all amounts received or recovered by the Security Agent from or by the enforcement of any Transaction Security granted to secure the Parallel Debt, shall be applied in accordance with Clause 13.1 (*Order of application*).
- (e) Without limiting or affecting the Security Agent's rights against the Debtors (whether under this Clause 15.3 or under any other provision of any Senior Secured Finance Document), each Debtor acknowledges that:
 - (i) nothing in this Clause 15.3 shall impose any obligation on the Security Agent to advance any sum to any Debtor or otherwise under any Senior Secured Finance Document, except, if applicable, in its capacity as a Senior Secured Creditor; and
 - (ii) for the purpose of any vote taken under any Senior Secured Finance Document, the Security Agent shall not be regarded as having any participation or commitment other than, if applicable, those which it has in its capacity as a Senior Secured Creditor.
- (f) For the purposes of paragraph (a) of Clause 13.1 (*Order of application*), the Parallel Debt of each Debtor shall be deemed to be owing to the Senior Secured Creditors.

15.4 Instructions

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

- (c) Save in the case of decisions stipulated to be a matter for any other Creditor or group of Creditors under this Agreement and unless a contrary intention appears in this Agreement, any instructions given to the Security Agent by the Majority Senior Secured Creditors shall override any conflicting instructions given by any other Parties and will be binding on all Secured Parties.
- (d) Paragraph (a) above shall not apply:
 - (i) where a contrary indication appears in this Agreement;
 - (ii) where this Agreement requires the Security Agent to act in a specified manner or to take a specified action;
 - (iii) in respect of any provision which protects the Security Agent's own position in its personal capacity as opposed to its role of Security Agent for the Secured Parties including, without limitation, Clause 15.7 (*No duty to account*) to Clause 15.12 (*Exclusion of liability*), Clause 15.14 (*Confidentiality*) to Clause 15.20 (*Custodians and nominees*) and Clause 15.23 (*Acceptance of title*) to Clause 15.26 (*Disapplication of Trustee Acts*);
 - (iv) in respect of the exercise of the Security Agent's discretion to exercise a right, power or authority under any of:
 - (A) Clause 12.1 (*Non-Distressed Disposals*);
 - (B) Clause 13.1 (*Order of application*);
 - (C) Clause 13.2 (*Prospective Liabilities*);
 - (D) Clause 13.3 (*Treatment of Cash Cover and Lender Cash Collateral*); and
 - (E) Clause 13.6 (*Permitted deductions*).
- (e) If giving effect to instructions given by the Majority Senior Secured 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 the Debt Documents where either:
 - (i) it has not received any instructions as to the exercise of that discretion; or
 - (ii) the exercise of that discretion is subject to paragraph (d)(iv) above, other than paragraph (d)(iv)(A) above in relation to a Non-Distressed Disposal which is permitted by the Senior Facilities Agreement,the Security Agent shall do so as it considers in its discretion to be appropriate.
- (g) The Security Agent may refrain from acting in accordance with any instructions of any Creditor or group of Creditors until it has received any indemnification and/or security that it may in its discretion require (which may be greater in extent than that contained in the Debt Documents and which may include payment in advance) for any cost, loss or liability (together with any applicable VAT) which it may incur in complying with those instructions.

- (h) Without prejudice to the provisions of Clause 11 (*Enforcement of Transaction Security*) and the remainder of this Clause 15.4, in the absence of instructions, the Security Agent may act (or refrain from acting) as it considers in its discretion to be appropriate.

15.5 Duties of the Senior Facilities Agent, Permitted Senior Secured Debt Representative and the Security Agent

- (a) The Security Agent's duties under the Debt Documents are solely mechanical and administrative in nature.
- (b) The Security Agent shall promptly forward to an Agent, a Hedge Counterparty or the Parent, as applicable, the original or a copy of any document which is delivered to the Security Agent for the relevant Party by any other Party.
- (c) The Security Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (d) Without prejudice to Clause 19.3 (*Notification of prescribed events*), if the Security Agent receives notice from a Party referring to any Debt Document, describing a Default and stating that the circumstance described is a Default, it shall promptly notify the Agents and Hedge Counterparties.
- (e) To the extent that a Party (other than the Senior Facilities Agent or, after the Senior Facilities Discharge Date, the Permitted Senior Secured Debt Representative) is required to calculate a Common Currency Amount, the Senior Facilities Agent or, after the Senior Facilities Discharge Date, the Permitted Senior Secured Debt Representative shall upon a request by that Party, promptly notify that Party of the Agent's Spot Rate of Exchange.
- (f) The Security Agent shall have only those duties, obligations and responsibilities expressly specified in the Debt Documents to which it is expressed to be a party (and no others shall be implied).

15.6 No fiduciary duties to Debtors or Subordinated Creditor

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

15.7 No duty to account

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

15.8 Business with the Group

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

15.9 Rights and discretions

- (a) The Security Agent may:
 - (i) rely on any representation, communication, notice or document believed by it to be genuine, correct and appropriately authorised;
 - (ii) assume that:

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

as sufficient evidence that that is the case and, in the case of paragraph (a)(iii)(A) above, may assume the truth and accuracy of that certificate.
- (b) The Security Agent may assume (unless it has received notice to the contrary in its capacity as security trustee for the Secured Parties) that:
 - (i) no Default has occurred and no Debtor or any other person is in breach or default of its obligations under any Debt Document;
 - (ii) any right, power, authority or discretion vested in any Party or any group of Creditors has not been exercised; and
 - (iii) any notice made by the Parent is made on behalf of and with the consent and knowledge of all the Debtors.
- (c) The Security Agent may engage and pay for the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts.
- (d) Without prejudice to the generality of paragraph (c) above or paragraph (e) below, the Security Agent may at any time engage and pay for the services of any lawyers to act as independent counsel to the Security Agent (and so separate from any lawyers instructed by any Senior Secured Creditor) if the Security Agent in its reasonable opinion deems this to be desirable.
- (e) The Security Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Security Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
- (f) Unless this Agreement expressly specifies otherwise, the Security Agent may disclose to any other Party any information it reasonably believes it has received as security trustee under this Agreement.

- (g) Notwithstanding any other provision of any Debt Document to the contrary, the Security Agent is not obliged to do or omit to do anything if it would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.
- (h) Notwithstanding any other provision of any Debt Document to the contrary, the Security Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

15.10 Responsibility for documentation

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

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

15.11 No duty to monitor

The Security Agent shall not be bound to enquire:

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

15.12 Exclusion of liability

- (a) Without limiting paragraph (b) below (and without prejudice to any other provision of any Debt Document excluding or limiting the liability of the Security Agent, any Receiver or Delegate), none of the Security Agent, any Receiver nor any Delegate will be liable for:
 - (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Debt Document or the Security Property unless directly caused by its gross negligence or wilful misconduct;
 - (ii) exercising or not exercising any right, power, authority or discretion given to it by, or in connection with, any Debt Document, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in

connection with, any Debt Document or the Security Property unless directly caused by its gross negligence or wilful misconduct;

- (iii) any shortfall which arises on the enforcement or realisation of the Security Property; or
- (iv) without prejudice to the generality of paragraphs (a)(i) to (a)(iii) above, any damages, costs, losses, any diminution in value or any liability whatsoever arising as a result of:

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

- (B) the general risks of investment in, or the holding of assets in, any jurisdiction,

including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets; breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.

- (b) No Party (other than the Security Agent, that Receiver or that Delegate (as applicable)) may take any proceedings against any officer, employee or agent of the Security Agent, a Receiver or a Delegate in respect of any claim it might have against the Security Agent, a Receiver or a Delegate or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Debt Document or any Security Property and any officer, employee or agent of the Security Agent, a Receiver or a Delegate may rely on this Clause 15.12 subject to Clause 1.3 (*Third party rights*) and the provisions of the Third Parties Rights Act.
- (c) Nothing in this Agreement shall oblige the Security Agent to carry out:
 - (i) any "know your customer" or other checks in relation to any person; or
 - (ii) any check on the extent to which any transaction contemplated by this Agreement might be unlawful for any Senior Secured Creditor,

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

- (d) Without prejudice to any provision of any Debt Document excluding or limiting the liability of the Security Agent, any Receiver or Delegate, any liability of the Security Agent, any Receiver or Delegate arising under or in connection with any Debt Document or the Security Property shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered (as determined by reference to the date of default of the Security Agent, Receiver or Delegate (as the case may be) or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Security Agent, Receiver or Delegate (as the case may be) at any time which increase the amount of that loss. In no event shall the Security Agent, any Receiver or Delegate be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive,

indirect or consequential damages, whether or not the Security Agent, Receiver or Delegate (as the case may be) has been advised of the possibility of such loss or damages.

15.13 Resignation of the Security Agent

- (a) The Security Agent may resign and appoint one of its Affiliates as successor by giving notice to the Secured Parties and the Parent.
- (b) Alternatively, the Security Agent may resign by giving 30 days' notice to the Secured Parties and the Parent, in which case the Majority Senior Secured Creditors may appoint a successor Security Agent.
- (c) If the Majority Senior Secured Creditors have not appointed a successor Security Agent in accordance with paragraph (b) above within 20 days after notice of resignation was given, the retiring Security Agent (after consultation with the Parent, the Agent(s) and the Hedge Counterparties) may appoint a successor Security Agent.
- (d) The retiring Security Agent shall, at its own cost, make available to the successor Security Agent such documents and records and provide such assistance as the successor Security Agent may reasonably request for the purposes of performing its functions as Security Agent under the Debt Documents. The Parent shall, within 10 Business Days of demand, reimburse the retiring Security Agent for the amount of all costs and expenses (including legal fees) properly incurred by it in making available such documents and records and providing such assistance.
- (e) The Security Agent's resignation notice shall only take effect upon:
 - (i) the appointment of a successor; and
 - (ii) the transfer of all the Security Property to that successor and the Security Agent's rights and obligations under or in connection with the Parallel Debt.
- (f) Upon the appointment of a successor, the retiring Security Agent shall be discharged from any further obligation in respect of the Debt Documents (other than its obligations under paragraph (b) of Clause 15.24 (*Winding up of trust*) and paragraph (d) above) but shall remain entitled to the benefit of this Clause 15.13, Clause 18.1 (*Debtors' indemnity*) and Clause 18.3 (*Senior Secured Creditors' indemnity*) (and any Security Agent fees for the account of the retiring Security Agent shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if that successor had been an original Party.
- (g) The Majority Senior Secured Creditors may, by notice to the Security Agent, require it to resign in accordance with paragraph (b) above. In this event, the Security Agent shall resign in accordance with paragraph (b) above but the cost referred to in paragraph (d) above shall be for the account of the Parent.
- (h) Subject to applicable law, if the Security Agent:
 - (i) merges or consolidates with any person; or
 - (ii) 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, upon the Security Agent giving notice to each Agent and each Hedge Counterparty of the completion of that merger, consolidation or transfer be the Security Agent without that person or any Party taking any further steps (including executing or registering any document).

15.14 Confidentiality

- (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 other of its divisions or departments.
- (b) If information is received by another division or department of the Security Agent, it may be treated as confidential to that division or department and the Security Agent shall not be deemed to have notice of it.
- (c) Notwithstanding any other provision of any Debt Document to the contrary, the Security Agent is not obliged to disclose to any other person (i) any confidential information or (ii) any other information if the disclosure would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty.

15.15 Information from the Creditors

- (a) Each Creditor shall supply the Security Agent with any information that the Security Agent may reasonably specify as being necessary or desirable to enable the Security Agent to perform its functions as Security Agent.
- (b) The Senior Facilities Agent or, after the Senior Facilities Discharge Date, the Permitted Senior Secured Debt Representative shall, promptly upon request by the Security Agent, notify the Security Agent of the Agent's Spot Rate of Exchange.

15.16 Credit appraisal by the Secured Parties

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 or enforceability of any Debt Document, the Security Property and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Debt Document or the Security Property;
- (c) whether that Secured Party has recourse, and the nature and extent of that recourse, against any Party or any of its respective assets under or in connection with any Debt Document, the Security Property, the transactions contemplated by the Debt Documents or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Debt Document or the Security Property;

- (d) the adequacy, accuracy or completeness of any information provided by the Security Agent, any Party or by any other person under or in connection with any Debt Document, the transactions contemplated by any Debt Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Debt Document; and
- (e) the right or title of any person in or to, or the value or sufficiency of any part of the Charged Property, the priority of any of the Transaction Security or the existence of any Security affecting the Charged Property.

15.17 Reliance and engagement letters

The Security Agent may obtain and rely on any certificate or report from any Debtor's auditor and may enter into any reliance letter or engagement letter relating to that certificate or report on such terms as it may consider appropriate (including, without limitation, restrictions on the auditor's liability and the extent to which that certificate or report may be relied on or disclosed).

15.18 No responsibility to perfect Transaction Security

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

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

15.19 Insurance by Security Agent

- (a) The Security Agent shall not be obliged:

- (i) to insure any of the Charged Property;
- (ii) to require any other person to maintain any insurance; or
- (iii) to verify any obligation to arrange or maintain insurance contained in any Debt Document,

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

- (b) Where the Security Agent is named on any insurance policy as an insured party, it shall not be liable for any damages, costs or losses to any person as a result of its failure to notify the insurers of any material fact relating to the risk assumed by such insurers or any other

information of any kind, unless the Majority Senior Secured Creditors request it to do so in writing and the Security Agent fails to do so within 14 days after receipt of that request.

15.20 Custodians and nominees

The Security Agent may appoint and pay any person to act as a custodian or nominee on any terms in relation to any assets held by the Security Agent as trustee or security agent for the Secured Parties as the Security Agent may determine, including for the purpose of depositing with a custodian this Agreement or any document relating to any such assets 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.

15.21 Delegation by the Security Agent

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

15.22 Additional Security Agents

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

15.23 Acceptance of title

The Security Agent shall be entitled to accept without enquiry, and shall not be obliged to investigate, any right and title that any Debtor 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.

15.24 Winding up of trust

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

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

then:

- (i) the trusts set out in this Agreement shall be wound up and the Security Agent shall release, without recourse or warranty, all of the Transaction Security and the rights of the Security Agent under each of the Transaction Security Documents;
- (ii) the other Secured Parties hereby authorise the Security Agent to execute on behalf of itself and each other Secured Parties any necessary release documents and any documents to give effect to such release; and
- (iii) any Security Agent which has resigned pursuant to Clause 15.13 (*Resignation of the Security Agent*) shall release, without recourse or warranty, all of its rights under each Transaction Security Document.

15.25 Powers supplemental to Trustee Acts

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

15.26 Disapplication of Trustee Acts

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

15.27 Security Agent's protections

Any protection given to the Security Agent under this Clause 15 shall apply to any action taken by, or instructions given to, the Security Agent under any other provision of this Agreement.

15.28 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).

15.29 Security Agents actions

- (a) The Security Agent may carry out what in its discretion it considers to be administrative acts, or acts which are incidental to any instruction, without any instructions (though not contrary to any such instruction) but so that no such instruction shall have any effect in relation to any administrative or incidental act performed prior to actual receipt of such instruction by the Security Agent.
- (b) Notwithstanding anything in any Debt Document to the contrary, the Security Agent shall not do, or be authorised or required to do, anything which might constitute a regulated activity for the purpose of the Financial Services and Markets Act 2000 ("**FSMA**"), unless it is authorised under FSMA to do so.
- (c) 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.

15.30 Security Agent's obligations

Notwithstanding any other provision of any Senior Facilities Finance Document to the contrary, the Security Agent is not obliged to do or omit to do anything:

- (i) if it would, or might in its reasonable opinion, constitute a breach of any law or regulation or duty of confidentiality; and/or
- (ii) in circumstances where a Debtor is in breach of any representation given in clause 20.20 (*Applicable anti-corruption law, OFAC sanctions and related laws*) of the Senior Facilities Agreement and/or is in breach of any undertaking given in Clause 22.18 (*Foreign corrupt practices, OFAC sanctions, use of proceeds and sanctions*) of the Senior Facilities Agreement,

and under no circumstance shall the Security Agent be liable for any failure to act or omission.

15.31 Third Party Holders – Tiers Convenu

- (a) For the purpose of the establishment of any lower ranking securities account pledges under Lower Ranking Security including in respect of the granting of Transaction Security to the Hedge Counterparties in accordance with Clause 4.7 (*Security: Hedge Counterparties*), the Secured Parties hereby appoint with effect from the date of execution of (i) the first Lower Ranking Security in respect of the Investment Instruments issued by United Biscuits France, for their sole benefit, United Biscuits France, which hereby accepts, as third party holder ("*tiers détenteur*") of

the Shared Pledge Accounts in respect of the Investment Instruments issued by United Biscuits France (United Biscuits France in such capacity, and any successor in such capacity the "**United Biscuits France Third Party Holder**"), (ii) the first Lower Ranking Security in respect of the Investment Instruments issued by United Biscuits Industries, for their sole benefit, United Biscuits Industries, which hereby accepts, as third party holder ("*tiers détenteur*") of the Shared Pledged Accounts in respect of the Investment Instruments issued by United Biscuits Industries (United Biscuits Industries in such capacity, and any successor in such capacity, the "**United Biscuits Industries Third Party Holder**" and together with the United Biscuits France Third Party Holder, the "**Original Third Party Holders**") and (iii) the first Lower Ranking Security in respect of the shares (or any other securities of any nature whatsoever) of any member of the Group whose securities are pledged under a Security Document taking the form of a pledge over securities account under French law being a Shared French Securities Account Pledge and which shall accede to this Agreement in its capacity as Third Party Holder by delivering to the Security Agent an accession deed substantially in the form of the accession deed set out in Schedule 2 (*Form of Creditor Accession Undertaking*) (such member of Group in such capacity, and any successor in such capacity, the "**Relevant Group Company Third Party Holder**"), and together with the Original Third Party Holders, the "**Third Party Holders**"), in each case, to act as agent of the Secured Parties in connection with the Lower Ranking Security in accordance with the provisions of article 1984 et seq. of the French Code civil, perform its obligations under this Clause 15.31 as Third Party Holder and perform its obligations as third party holder ("*tiers détenteur*") of the Shared Pledged Accounts as provided in article 2337 of the French Code civil. A Third Party Holder will be automatically released from its duties as such upon the release of the relevant Lower Ranking Security pursuant to a Distressed Disposal or Non-Distressed Disposal or upon the occurrence of the Discharge Date in accordance with the provisions of this Agreement.

- (b) The Third Party Holders are not entitled to delegate all or part of their obligations under this Agreement without the prior written agreement of the Security Agent.
- (c) Each Third Party Holder undertakes:
 - (i) to perform its obligations under this Clause 15.31 in accordance with the instructions of the Security Agent acting for the account of the Secured Parties; and
 - (ii) in accordance with instructions from the Security Agent acting for the account of the Secured Parties and within the scope of his duties as Third Party Holder to take any step or any measures and accomplish any formality necessary to protect the rights of the Secured Parties pursuant to the Shared French Securities Account Pledges.
- (d) No Third Party Holder will have any obligation to act without instructions from the Security Agent acting for the account of the Secured Parties.
- (e) The Security Agent may, with the prior consent of the Parent, appoint another account holder for the management of the Shared Pledged Accounts. In the event a new account holder is appointed for the Shared Pledged Accounts, such account holder shall accede to this Agreement as a Third Party Holder in accordance with terms hereof, pursuant to which it will assume all obligations of the preceding account holder as a Third Party Holder. The Company and the Third

Party Holders undertake to accomplish any formality and execute any document necessary to implement the replacement of the account holder of the Shared Pledged Accounts appointed in accordance with the preceding sentence.

- (f) No Third Party Holder shall incur any liability to the Secured Parties nor to the relevant pledgor in connection with its duties pursuant to this Clause 15.31 except for gross negligence (*faute lourde*) or wilful misconduct (*def*).
- (g) Any reference to Secured Parties in this Clause 15.31 shall be deemed a reference to those Secured Parties benefiting from the relevant Shared French Securities Account Pledge which is Lower Ranking Security.
- (h) Each Secured Party and each Debtor agrees not to take any action to challenge the validity or enforceability of any Transaction Security (whether first, second or lower ranking) by reason of a Transaction Security over the same shares, securities or other assets being expressed to be second ranking or lower ranking.
- (i) Any decision to enforce any Transaction Security shall be taken in accordance with Clause 11 (*Enforcement of Transaction Security*) regardless of the ranking of the relevant Transaction Security.
- (j) Notwithstanding any other provisions of this Agreement, this Clause 15.31 shall be subject to French law.

16. CHANGES TO THE PARTIES

16.1 Assignments and transfers

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

16.2 Change of Subordinated Creditor

Subject to Clause 7.4 (*No acquisition of Subordinated Liabilities*), a Subordinated Creditor may assign any of its rights and benefits or transfer any of its rights, benefits and obligations in respect of the Subordinated Liabilities owed to it if any assignee or transferee has (if not already party to this Agreement as a Subordinated Creditor) acceded to this Agreement, as a Subordinated Creditor, pursuant to Clause 16.10 (*Creditor Accession Undertaking*).

16.3 New Holding Company of the Company

If any Holding Company of the Company is a Subsidiary of the Parent and a creditor of the Company in respect of any Liabilities, the Parent will procure that that Holding Company accedes to this Agreement as if it were the Parent pursuant to Clause 16.10 (*Creditor Accession Undertaking*).

16.4 Change of Senior Facilities Lender and Permitted Senior Secured Debt Creditor

- (a) A Senior Facilities Lender or Permitted Senior Secured Debt Creditor (if the relevant Permitted Senior Secured Debt is constituted by any loan, credit or debt facility) may assign any of its rights or transfer by novation any of its rights and obligations in respect of any Debt Documents or the Liabilities if:

- (i) in the case of a Senior Facilities Lender, that assignment or transfer is in accordance with the terms of the relevant Facility Agreement to which it is a party;
 - (ii) in the case of a Permitted Senior Secured Debt Creditor, that assignment or transfer is in accordance with the terms of the relevant Permitted Senior Secured Debt Documents to which it is a party; and
 - (iii) any assignee or transferee has (if not already a party to this Agreement as a Senior Facilities Lender or Permitted Senior Secured Debt Creditor (as the case may be)) acceded to this Agreement, as a Senior Facilities Lender or Permitted Senior Secured Debt Creditor (as the case may be), pursuant to Clause 16.10 (*Creditor Accession Undertaking*).
- (b) Paragraph (a)(iii) above shall not apply in respect of:
- (i) prior to the Senior Facilities Discharge Date, any Debt Purchase Transaction (as defined in the original form of the Senior Facilities Agreement) permitted by clause 36.1 (*Permitted Debt Purchase Transactions*) of the original form of the Senior Facilities Agreement; and
 - (ii) prior to the Permitted Senior Secured Debt Facilities Discharge Date, any Liabilities Acquisition of the Permitted Senior Secured Debt Facilities Liabilities permitted under the Permitted Senior Secured Debt Documents and pursuant to which the relevant Liabilities are discharged;
- entered into by a Senior Facilities Borrower or a borrower under a Permitted Senior Secured Debt Facilities Agreement (as the case may be) and effected in accordance with the terms of the Debt Documents.
- (c) Any Permitted Senior Secured Debt Noteholder may assign, transfer or novate any of its rights and obligations to any person without the need for such person to execute and deliver to a Security Agent a duly completed Creditor Accession Undertaking, **provided that** such person is legally bound by the terms and conditions of this Agreement pursuant to the terms of the relevant Permitted Senior Secured Debt Document (as the case may be).

16.5 **Change of Hedge Counterparty**

A Hedge Counterparty may (in accordance with the terms of the relevant Hedging Agreement and subject to any consent required under that Hedging Agreement) transfer any of its rights or obligations in respect of the Hedging Agreements to which it is a party if any transferee has (if not already party to this Agreement as a Hedge Counterparty) acceded to this Agreement as a Hedge Counterparty pursuant to Clause 16.10 (*Creditor Accession Undertaking*) **provided that** such entity is permitted to provide such hedging arrangements pursuant to the Senior Secured Finance Documents.

16.6 **Change of Agent or new Arranger**

No person shall become an Agent or an Arranger unless (if not already a Party) at the same time, it accedes to this Agreement as an Agent or an Arranger, as the case may be, pursuant to Clause 16.10 (*Creditor Accession Undertaking*).

16.7 Change of Intra-Group Lender

Subject to Clause 6.4 (*Acquisition of Intra-Group Liabilities*) and to the terms of the other Debt Documents, any Intra-Group Lender may assign any of its rights or transfer any of its rights and obligations in respect of the Intra-Group Liabilities to another member of the Group if that member of the Group has (if not already party to this Agreement as an Intra-Group Lender) acceded to this Agreement as an Intra-Group Lender, pursuant to Clause 16.10 (*Creditor Accession Undertaking*).

16.8 New Intra-Group Lender

- (a) If any member of the Group makes any loan to or grants any credit to or makes any other financial arrangement having similar effect with any Debtor on and from the date of this Agreement to the date falling on or before the date falling 60 days after the Completion Date, in an aggregate amount of £5,000,000 (or its equivalent) 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 16.10 (*Creditor Accession Undertaking*) no later than the date falling 60 days after the Completion Date. If any member of the Group has acceded to this Agreement in any capacity other than as an Intra-Group Lender, it shall also be deemed to have acceded to this Agreement as an Intra-Group Lender.
- (b) If any member of the Group makes any loan to or grants any credit to or makes any other financial arrangement having similar effect with any Debtor after the date falling 60 days after the Completion Date, in an aggregate amount of £5,000,000 (or its equivalent) 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 16.10 (*Creditor Accession Undertaking*). If any member of the Group has acceded to this Agreement in any capacity other than as an Intra-Group Lender, it shall also be deemed to have acceded to this Agreement as an Intra-Group Lender.

16.9 New Ancillary Lender

If any Affiliate of a Senior Secured Creditor becomes an Ancillary Lender in accordance with the Senior Facilities Agreement or a Permitted Senior Secured Debt Facilities Agreement (as the case may be), it shall not be entitled to share in any of the Transaction Security or in the benefit of any guarantee or indemnity in respect of any of the liabilities arising in relation to its Ancillary Facilities unless it has (if not already a Party as a Senior Facilities Lender or Permitted Senior Secured Debt Facilities Lender, as the case may be) acceded to this Agreement as a Senior Facilities Lender or Permitted Senior Secured Debt Facilities Lender, as the case may be, pursuant to 16.10 (*Creditor Accession Undertaking*) and, to the extent required by the Senior Facilities Agreement or that Permitted Senior Secured Debt Facilities Agreement (as the case may be), to the Senior Facilities Agreement or that Permitted Senior Secured Debt Facilities Agreement, as an Ancillary Lender.

16.10 Creditor Accession Undertaking

With effect from the date of acceptance by the Security Agent and, in the case of a Hedge Counterparty, an Affiliate of a Senior Facilities Lender or an Affiliate of a Permitted Senior

Secured Debt Facilities Lender, the relevant Agent (if applicable) of a Creditor Accession Undertaking duly executed and delivered to the Security Agent by the relevant acceding party or, if later, the date specified in that Creditor Accession Undertaking:

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

16.11 Accession of Permitted Senior Secured Debt Notes Trustee

The Parent shall ensure that, prior to any Permitted Senior Secured Debt Notes Issue Date, the relevant Permitted Senior Secured Debt Notes Trustee (and, if such entity ceases to act as trustee in relation to the Permitted Senior Secured Debt Notes for any reason, any successor or other person which is appointed or acts as trustee under the relevant Permitted Senior Secured Debt Notes Indenture) shall complete, sign and deliver to the Security Agent a Creditor Accession Undertaking under which such Permitted Senior Secured Debt Notes Trustee agrees to be bound by this Agreement as a Permitted Senior Secured Debt Notes Trustee as if it had originally been a Party to this Agreement in such capacity. In connection with the foregoing, the Security Agent shall make such changes to the terms hereof relating to the rights and duties of such Permitted Senior Secured Debt Notes Trustee and any other Party as are required by such Permitted Senior Secured Debt Notes Trustee with the consent of the Majority Senior Secured Creditors.

16.12 New Debtor

- (a) If any member of the Group:

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

in an aggregate amount of £5,000,000 or more on and from the date of this Agreement to the date falling on or before the date falling 60 days after the Completion Date, the Debtors will procure that the person incurring those Liabilities or giving that assurance (if not already a party to this Agreement as a Debtor) accedes to this Agreement as a Debtor and an Intra-Group

Lender, in accordance with paragraph (d) below, no later than the date falling 60 days after the Completion Date.

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

in an aggregate amount of £5,000,000 or more after the date falling 60 days after the Completion Date, the Debtors will procure that the person incurring those Liabilities or giving that assurance (if not already a party to this Agreement as a Debtor) accedes to this Agreement as a Debtor and an Intra-Group Lender, in accordance with paragraph (d) below, no later than contemporaneously with the incurrence of those Liabilities or the giving of that assurance.
- (c) If any Affiliate of a Senior Facilities Borrower or any borrower under a Permitted Senior Secured Debt Facilities Agreement becomes a borrower of an Ancillary Facility in accordance with the Senior Facilities Agreement or a Permitted Senior Secured Debt Facilities Agreement (as the case may be), the relevant Senior Facilities Borrower or borrower under that Permitted Senior Secured Debt Facilities Agreement, as the case may be, shall procure that such Affiliate accedes to this Agreement as a Debtor no later than contemporaneously with the date on which it becomes a borrower.
- (d) 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 and an Intra-Group Lender.
- (e) Prior to a Permitted Senior Secured Debt Notes Issue Date, the Permitted Senior Secured Debt Note Issuer shall accede to this Agreement as a Debtor (if not already a party to this Agreement as a Debtor) and as Permitted Senior Secured Notes Issuer.
- (f) With effect from the date of accession by the Permitted Senior Secured Debt Notes Issuer, the Permitted Senior Secured Debt Notes Issuer shall assume the same obligations and become entitled to the same rights as if it had been an original Party to this Agreement as a Debtor and as Permitted Senior Secured Debt Notes Issuer.

16.13 Additional Parties

- (a) Each of the Parties appoints the Security Agent to receive on its behalf each Debtor Accession Deed and Creditor Accession Undertaking delivered to the Security Agent and the Security Agent shall, as soon as reasonably practicable after receipt by it, sign and accept the same if it appears on its face to have been completed, executed and, where applicable, delivered in the form contemplated by this Agreement or, where applicable, by the relevant Senior Secured Finance Documents.
- (b) In the case of a Creditor Accession Undertaking delivered to the Security Agent by any party acceding to this Agreement as a Hedge Counterparty or any new Ancillary Lender:

- (i) the Security Agent shall, as soon as practicable after signing and accepting that Creditor Accession Undertaking in accordance with paragraph (a) above, deliver that Creditor Accession Undertaking to the applicable Agent (but in relation to a Hedge Counterparty, only if that Hedge Counterparty is also acceding to the Senior Facilities Agreement or a Permitted Senior Secured Debt Facilities Agreement (as the case may be)); and
- (ii) (if applicable) the relevant Agent shall, as soon as practicable after receipt by it, sign and accept that Creditor Accession Undertaking if it appears on its face to have been completed, executed and delivered in the form contemplated by this Agreement.
- (c) The Security Agent shall only be obliged to sign and accept a Debtor Accession Deed or Creditor Accession Undertaking delivered to it once it is satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the accession by the prospective party to this Agreement.
- (d) Each Party shall promptly upon the request of the Security Agent supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Security Agent (for itself) in order for the Security Agent to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Debt Documents.

16.14 Resignation of a Debtor

- (a) The Senior Facilities Agent shall not accept a resignation letter from any Senior Facilities Guarantor under clause 35.16 (*Resignation of a Guarantor*) of the Senior Facilities Agreement and a Permitted Senior Secured Debt Representative shall not accept a resignation letter from any Permitted Senior Secured Debt Guarantor under any equivalent provision in any other Permitted Senior Secured Debt Facilities Agreement if any Hedge Counterparty has notified the Security Agent that a payment is due and outstanding from that Senior Facilities Guarantor or Permitted Senior Secured Debt Guarantor to that Hedge Counterparty under Schedule 5 (*Guarantee for Hedge Counterparties*). The Security Agent shall, upon receiving that notification, notify the Senior Facilities Agent or the relevant Permitted Senior Secured Debt Representative.
- (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 Agent and Hedge Counterparty 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) each Hedge Counterparty notifies the Security Agent that the Debtor is under no actual or contingent obligations to that Hedge Counterparty in respect of the Hedging Liabilities;
 - (iii) to the extent that the Senior Facilities Discharge Date has not occurred, the Senior Facilities Agent notifies the Security Agent that that Debtor is not, or has ceased to be, a Senior Facilities Borrower or a Senior Facilities Guarantor (or will cease to be a Senior

Facilities Borrower or a Senior Facilities Guarantor on or prior to its resignation as a Debtor becoming effective);

- (iv) to the extent that the Permitted Senior Secured Debt Discharge Date has not occurred, each Permitted Senior Secured Debt Representative notifies the Security Agent that the Debtor is not, or has ceased to be, a borrower, issuer and/or guarantor of Permitted Senior Secured Debt Liabilities (or will cease to be a borrower, issuer and/or guarantor on or prior to its resignation as a Debtor becoming effective) or, if such Permitted Senior Secured Debt is constituted by notes or securities, that such resignation is not prohibited by the relevant indenture pursuant to which such notes or securities are issued; and
 - (v) the Parent confirms that that Debtor is under no actual or contingent obligations in respect of the Intra-Group Liabilities and the Subordinated 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 Transaction expenses

The Parent shall, or shall procure that another Debtor will, within 15 days of presentation of an invoice pay all reasonable costs and expenses (including but not limited to legal fees, accounting fees, and valuation fees and related VAT) of the Arrangers, the Security Agent, any Receiver or Delegate and the Agent incurred in connection with the arrangement, negotiation, preparation, printing, execution, syndication and perfection of:

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

17.2 Stamp taxes

The Parent shall pay (or procure that another Debtor pays) and, within five Business Days of demand by the Security Agent, indemnify the Security Agent against any cost, loss or liability the Security Agent incurs in relation to any stamp duty, stamp duty reserve, documentary registration and other similar Tax payable in connection with or in relation to any Debt Document (except for any such Tax or duty payable in connection with any assignment or transfer by any Secured Party of any of its rights and/or obligations under any Debt Document or any document entered into in relation thereto).

17.3 Interest on demand

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

17.4 Enforcement and preservation costs

The Parent shall, within five Business Days of demand, pay and reimburse or shall procure payment and reimbursement, to the Security Agent of all costs and expenses (including legal and other professional fees and related VAT) incurred by it in connection with the preservation or enforcement, or the attempted preservation or enforcement, 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 or preserving these rights.

17.5 Amendment expenses

- (a) The Parent shall within 15 days of presentation of an invoice pay and reimburse, or procure payment and reimbursement, to the Security Agent all reasonable costs and expenses reasonably incurred by the Security Agent and by any Receiver or Delegate (and any irrecoverable VAT or other similar tax thereon) in connection with any amendment, waiver or consent to the Debt Documents requested by a Debtor.
- (b) The Security Agent will use all reasonable endeavours to ensure that any such invoices are presented promptly after any such amendment, waiver or consent.

18. INDEMNITIES

18.1 Debtors' indemnity

- (a) Each Debtor jointly and severally shall within 5 Business Days of demand (accompanied by *reasonable* details of the amount demanded) indemnify the Security Agent and every Receiver and Delegate against any cost, loss or liability (together with any applicable VAT) incurred by any of them as a result of:
 - (i) any failure by the Parent to comply with its obligations under Clause 17 (*Costs and expenses*);
 - (ii) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
 - (iii) the taking, holding, protection or enforcement of the Transaction Security in accordance with the terms of the Debt Documents;
 - (iv) the exercise of any of the rights, powers, discretions, authorities and remedies vested in the Security Agent, each Receiver and each Delegate by the Debt Documents or by law;
 - (v) any default by any Debtor in the performance of any of the obligations expressed to be assumed by it in the Debt Documents;
 - (vi) instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under this Agreement; or
 - (vii) acting as Security Agent, Receiver or Delegate under the Debt Documents or which otherwise relates to any of the Security Property,

in each case for paragraphs (iii), (iv), (vi) and (vii) above, 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 12.2 (*Distressed Disposals and Appropriation*) taking into account the operation of that Clause.

- (b) Each indemnity given in this Clause 18 is a continuing obligation, independent of a 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 the Security Agent, Receiver or Delegate (as the case may be) to pay any amount or incur any expense before enforcing an indemnity under this Clause 18.

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 any Distressed Disposal for all moneys payable to it.

18.3 Senior Secured Creditors' indemnity

- (a) Subject, in the case of any Permitted Senior Secured Debt Notes Trustee, to the provisions of Clause 23 (*Permitted Senior Secured Debt Notes Trustee protection*), each Senior Secured Creditor shall (in the proportion that the Liabilities due to it bears to the aggregate of the Liabilities due to all the Senior Secured Creditors for the time being (or, if the Liabilities due to each of those Senior Secured 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 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 Secured Creditor against any payment made by it under this Clause 18.
- (b) For the purposes only of paragraph (a) above, to the extent that any hedging transaction under a Hedging Agreement has not been terminated or closed-out, the Hedging Liabilities due to any Hedge Counterparty in respect of that hedging transaction will be deemed to be:
 - (i) if the relevant Hedging Agreement is based on an ISDA Master Agreement, the amount, if any, which would be payable to it under that Hedging Agreement in respect of those hedging transactions, if the date on which the calculation is made was deemed to be an Early Termination Date (as defined in the relevant ISDA Master Agreement) for which the relevant Debtor is the Defaulting Party (as defined in the relevant ISDA Master Agreement); or
 - (ii) if the relevant Hedging Agreement is not based on an ISDA Master Agreement, the amount, if any, which would be payable to it under that Hedging Agreement in respect of that hedging transaction, if the date on which the calculation is made was deemed to be

the date on which an event similar in meaning and effect (under that Hedging Agreement) to an Early Termination Date (as defined in any ISDA Master Agreement) occurred under that Hedging Agreement for which the relevant Debtor is in a position similar in meaning and effect (under that Hedging Agreement) to that of a Defaulting Party (under, and as defined in, the same ISDA Master Agreement),

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

19. INFORMATION

19.1 Information and dealing

- (a) The Creditors (if applicable, through their respective Agents) shall provide to the Security Agent from time to time any information that the Security Agent may reasonably specify as being necessary or desirable to enable the Security Agent to perform its functions as trustee or security agent.
- (b) Each Hedge Counterparty shall promptly provide to the Security Agent copies of all Hedging Agreements to which that Hedge Counterparty is a party.
- (c) Subject to clause 31.6 (*Communication when Agent is Impaired Agent*) of the Senior Facilities Agreement (or any equivalent provision in any Permitted Senior Secured Debt Facilities Agreement), each Senior Facilities Lender and Permitted Senior Secured Debt Facilities Lender shall deal with the Security Agent exclusively through its Agent and the Hedge Counterparties shall deal directly with the Security Agent and shall not deal through any Agent. Each Permitted Senior Secured Creditor shall deal with the Security Agent through the relevant Permitted Senior Secured Debt Representative.
- (d) No Agent shall be under any obligation to act as agent or otherwise on behalf of any Hedge Counterparty except as expressly provided for in, and for the purposes of, this Agreement.
- (e) The Debtors shall notify each Agent and the Security Agent of the occurrence of any Event of Default.

19.2 Disclosure between Senior Secured Creditors and Security Agent

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

19.3 Notification of prescribed events

- (a) If a Default under any Senior Secured Finance Document either occurs or ceases to be continuing, the relevant Agent shall, upon becoming aware of that occurrence or cessation, notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each other Agent and each Hedge Counterparty.

- (b) If an Acceleration Event occurs, the relevant Agent shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify the Parent, each other Agent and each Hedge Counterparty.
- (c) If the Security Agent enforces, or takes formal steps to enforce, any of the Transaction Security, it shall notify each Agent and each Hedge Counterparty of that action.
- (d) Without prejudice to paragraph (d) of Clause 11.2 (*Enforcement instructions*), if any Senior Secured Creditor intends to exercise any right it may have to enforce, or to take formal steps to enforce, any of the Transaction Security, it shall give reasonable prior notice to the Security Agent and the Security Agent shall, upon receiving that notification, notify each Agent and each Hedge Counterparty of that action.
- (e) If any Intra-Group Lender intends to exercise any right it may have to take action in accordance with Clause 6.7 (*Permitted enforcement: Intra-Group Lenders*), it shall give reasonable prior notice to the Security Agent and the Security Agent shall, upon receiving that notification, notify each Agent and each Hedge Counterparty.
- (f) If any Subordinated Creditor intends to exercise any right it may have to take action in accordance with Clause 7.8 (*Permitted enforcement: Subordinated Creditors*), it shall give reasonable prior notice to the Security Agent and the Security Agent shall, upon receiving that notification, notify each Agent and each Hedge Counterparty.
- (g) If a Debtor defaults on any Payment due under a Hedging Agreement, the Hedge Counterparty which is party to that Hedging Agreement shall, upon becoming aware of that default, notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each Agent and each other Hedge Counterparty.
- (h) If prior to a Distress Event, the Parent has certified to a Hedge Counterparty under paragraph (a) of Clause 4.9 (*Permitted enforcement: Hedge Counterparties*) that a proposed termination or close-out, in whole or in part, of any hedging transaction under any Hedging Agreement would not result in a breach of the Debt Documents, the Parent shall deliver a copy of that certificate to the Security Agent and the Security Agent shall, upon receiving that certificate, notify each Agent and each other Hedge Counterparty.
- (i) If a Hedge Counterparty terminates or closes-out, in whole or in part, any hedging transaction under any Hedging Agreement under Clause 4.9 (*Permitted enforcement: Hedge Counterparties*), it shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each Agent and each other Hedge Counterparty.
- (j) If the Parent gives notice to the Security Agent pursuant to Clause 22.3 (*Amendments and waivers: Senior subordinated notes*) then the Security Agent shall, upon receiving that notice, notify each Agent and each Hedge Counterparty of that notice.

19.4 Agents records

The Security Agent may treat each person shown in the records of the Agents at the opening of business on a day as a Secured Party:

- (a) entitled to or liable for any payment due under any Debt Document on that day; and

- (b) entitled to receive and act upon any notice, request, document or communication or make any decision or determination under any Debt Document made or delivered on that day.

19.5 Information about Charged Property

The Parent shall supply promptly on request such information as the Security Agent may reasonably require about the Charged Property.

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 Secured Creditors

The Security Agent shall be entitled to carry out all dealings including without limitation requesting and receiving any instructions, directions and clarifications:

- (a) with the Senior Facilities Lenders and the Permitted Senior Secured Debt Creditors through their respective Agents and may give to the Agents, as applicable, any notice or other communication required to be given by the Security Agent to a Senior Facilities Lender or Permitted Senior Secured Debt Creditor; 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 Company or 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 that 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.
- (d) Any communication or document which becomes effective, in accordance with paragraphs (a) to (c) above, after 5:00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

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 Parent, the Agents and each Hedge Counterparty.

20.6 Electronic communication

- (a) Any communication to be made between any two Parties under or in connection with this Agreement may be made by electronic mail or other electronic means to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication and if those two Parties:
 - (i) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
 - (ii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.
- (b) Any electronic communication made between those two Parties will be effective only when actually received in readable form and, in the case of any electronic communication made by a Party to the Security Agent only, if it is addressed in such a manner as the Security Agent shall specify for this purpose.
- (c) If the relevant Parties agree to communicate by electronic mail or other electronic means, those Parties shall be deemed to accept that such methods of communication are not secure, and the Security Agent shall incur no liability for receiving instructions or directions via any such non-secure method.
- (d) Any electronic communication which becomes effective, in accordance with paragraph (b) above, after 5:00 p.m. in the place of receipt shall be deemed only to become effective on the following day.

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.

20.8 Notices to all Creditors

- (a) Where any request for a consent, amendment or waiver which requires the consent of all the Parties to this Agreement or any class of Creditors (or percentage thereof) (as the case may be) is received by an Agent from a Debtor or the Security Agent, the relevant Agent shall provide notice of such request to such Parties or the relevant class of Creditors at the same time.
- (b) Where an instruction is required by an Agent from a class of Creditors (or a percentage thereof), notice of such instruction shall be provided to each Creditor in the relevant class at the same time.

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 of any such right or remedy or constitute an election to affirm this Agreement. No waiver or election to affirm this Agreement on the part of any Party shall be effective unless in writing. No single or partial exercise of any right or remedy prevents 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 and the Transaction Security Documents 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 Secured 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 Secured 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 Secured 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 paragraphs (b) to (f) below, to Clause 5 (*New Permitted Senior Secured Debt*), Clause 22.3 (*Amendments and waivers: senior Subordinated Notes*), Clause 22.5 (*Exceptions*), Clause 22.6 (*Snooze/Lose*) and Clause 22.7 (*Disenfranchisement of Investor Affiliates*), this Agreement may be amended or waived only with the consent of the Parent, the Agents and the Security Agent **provided that**, to the extent that an amendment, waiver or consent only affects one class of Senior Secured Creditors, and such amendment, waiver or consent could not reasonably be expected materially and adversely to affect the interests of the other classes of

Senior Secured Creditors, only written agreement from the Agent acting on behalf of the affected class shall be required.

- (b) Subject to paragraph (c) below, an amendment or waiver of this Agreement that has the effect of changing or which relates to:

- (i) Clause 10 (*Redistribution*), Clause 13 (*Application of Proceeds*) or this Clause 22;
- (ii) paragraphs (e) and (f) of Clause 15.4 (*Instructions*);
- (iii) the order of priority or subordination under this Agreement (other than where consequential to any Additional Senior Facilities); or
- (iv) Clause 9 (*Turnover of receipts*),

shall not be made without the consent of:

- (A) the Agents (to the extent that the rights or obligations personal to the relevant Agent are affected);
- (B) the Senior Facilities Lenders;
- (C) the Permitted Senior Secured Debt Creditors (to the extent that the amendment or waiver would materially or adversely affect such Permitted Senior Secured Debt Creditors);
- (D) each Hedge Counterparty (to the extent that the amendment or waiver would materially or adversely affect such Hedge Counterparty);
- (E) the Security Agent (to the extent that the rights or obligations personal to the Security Agent are affected); and
- (F) the Parent.

- (c) Each Agent shall, to the extent it is consented to by the Requisite Majority of the Creditors it represents or it is otherwise authorised by the Debt Documents to which it is party, act on such instructions or authorisations in accordance therewith save to the extent that any amendments so consented to or authorised relate to any provision affecting the personal rights and obligations of that Agent in its capacity as such.
- (d) Paragraph (b) of Clause 4.1 (*Identity of Hedge Counterparties*), Clause 4.15 (*Hedge Counterparties' guarantee and indemnity*) and Schedule 5 (*Guarantee for Hedge Counterparties*) may be amended or waived with the consent of each Hedge Counterparty to the extent that that amendment or waiver complies with Clause 4.7 (*Security: Hedge Counterparties*) and does not in any material respect affect the Senior Facilities Lenders or the Permitted Senior Secured Debt Creditors.
- (e) This Agreement may be amended by the Agents, the Security Agent and the Parent without the consent of any other Party to cure defects, resolve ambiguities or reflect changes in each case of a minor technical or administrative nature or as otherwise prescribed by the relevant Senior Secured Finance Documents.

- (f) Notwithstanding anything to the contrary in the Debt Documents, a Secured Party may unilaterally waive, relinquish or otherwise irrevocably give up all or any of its rights under any Debt Document with the consent of the Parent.

22.2 Amendments and waivers: Transaction Security Documents

- (a) Without prejudice to any amendment, waiver or consent approved in accordance with Clause 5 (*New Permitted Senior Secured Debt*), 22.1 (*Required Consents*) and subject to paragraph (b) below and to paragraph (b) of Clause 22.5 (*Exceptions*), the Security Agent may, if authorised by the Majority Senior Secured 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 paragraphs (b) and (c) of Clause 22.5 (*Exceptions*), in the case of any amendment or waiver of, or consent under, any Transaction Security Document which has the effect of changing or which relates to:
- (i) the nature or scope of the Charged Property;
 - (ii) the manner in which the proceeds of enforcement of the Transaction Security are distributed; or
 - (iii) the release of any Transaction Security,

that amendment, waiver or consent shall not be made without any consent required under the Senior Facilities Agreement or Permitted Senior Secured Debt Documents and the consent of the Hedge Counterparties.

22.3 Amendments and waivers: senior Subordinated Notes

Notwithstanding Clause 22.1 (*Required Consents*), if the Parent gives notice to the Security Agent that the Senior Subordinated Notes Issuer intends to issue Senior Subordinated Notes, **provided that:**

- (a) the liabilities of the Senior Subordinated Notes Issuer and any other members of the Group under the Senior Subordinated Notes will be unsecured;
- (b) the Senior Subordinated Notes Issuer agrees to accede to this Agreement as a Debtor pursuant to Clause 16.12 (*New Debtor*); and
- (c) the issue of the Senior Subordinated Notes and the terms on which they will be issued are otherwise not prohibited by the Debt Documents and comply with the Senior Subordinated Notes Intercreditor Principles,

then:

- (A) the Parties agree to amend and/or supplement this Agreement as is necessary to provide for the amount and type of indebtedness that will be incurred in respect of the Senior Subordinated Notes to be covered by this Agreement; and
- (B) each other Secured Party irrevocably authorises and instructs the Security Agent (to the extent legally possible and without any consent, sanction, authority or further confirmation from any Secured Party) to execute any document required

to effect an amendment or supplement to this Agreement of the type referred to in paragraph (A) above.

22.4 Effectiveness

- (a) 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 any Agent, Arranger or Creditor, any amendment, waiver or consent permitted by this Clause 22.
- (b) Without prejudice to the generality of Clause 15.9 (*Rights and discretions*) the Security Agent may engage, pay for and rely on the services of lawyers in determining the consent level required for and effecting any amendment, waiver or consent under this Agreement.

22.5 Exceptions

- (a) Subject to paragraphs (b) and (c) below, an amendment, waiver or consent which relates to the rights or obligations which are personal to an Agent, an Arranger, the Security Agent or Hedge Counterparty in its capacity as such (including, without limitation, any ability of the Security Agent to act in its discretion under this Agreement) may not be effected without the consent of that Agent or, as the case may be, that Arranger, the Security Agent or that Hedge Counterparty.
- (b) Neither paragraph (a) above nor paragraph (a) of Clause 22.2 (*Amendments and waivers: Transaction Security Documents*) shall apply:

- (i) to any release of Transaction Security, claim or Liabilities; or
- (ii) to any consent,

which, in each case, the Security Agent gives in accordance with Clause 5 (*New Permitted Senior Secured Debt*) or 12 (*Proceeds of disposals, Recoveries from Report Providers and adjustment of Mandatory Prepayments*).

- (c) Paragraph (a) above shall apply to an Arranger only to the extent that Arranger Liabilities are then owed to that Arranger.

22.6 Snooze/Lose

If in relation to:

- (a) a request for a Consent in relation to any of the terms of this Agreement;
- (b) request to participate in any other vote of Senior Facilities Lenders, Hedge Counterparties and/or Permitted Senior Secured Debt Creditors under the terms of this Agreement;
- (c) a request to approve any other action under this Agreement; or
- (d) request to provide any confirmation or notification under this Agreement,

any Senior Secured Creditor:

- (i) fails to respond to that request or to instruct its relevant Agent to respond within 10 Business Days (or such later date as agreed by the relevant Agent and the Parent) of that request being made; or

- (ii) (in the case of paragraphs (a) to (c) above) fails to provide details of its Senior Secured Credit Participation to the Security Agent or the relevant Agent representing such Creditor within the timescale specified by the Security Agent:
 - (A) in the case of paragraphs (a) to (c) above, that Senior Secured Creditor's Senior Secured Credit Participation shall not be included for the purpose of calculating the relevant Senior Secured Credit Participations when ascertaining whether any relevant percentage (including, for the avoidance of doubt, unanimity) of such Senior Secured Credit Participations has been obtained to give that Consent, carry that vote or approve that action;
 - (B) in the case of paragraphs (a) to (c) above, that Senior Secured Creditor's status as a Senior Secured Creditor shall be disregarded for the purposes of ascertaining whether the agreement of any specified group of Senior Secured Creditors has been obtained to give that Consent, carry that vote or approve that action; and
 - (C) in the case of paragraph (d) above, that confirmation or notification shall be deemed to have been given.

22.7 Disenfranchisement of Investor Affiliates

- (a) For so long as an Investor Affiliate either beneficially owns a Senior Secured Credit Participation or has entered into a sub-participation agreement relating to a Senior Secured Credit Participation or, in each case, has entered into any other agreement or arrangement having a substantially similar economic effect and such agreement or arrangement has not been terminated, in ascertaining whether:
 - (i) any relevant percentage (including, for the avoidance of doubt, unanimity) of Senior Secured Credit Participations; or
 - (ii) the agreement of any specified group of Senior Secured Creditors,
 has been obtained to approve any request for a Consent or to carry any other vote or approve any action under this Agreement, that Senior Secured Credit Participation shall be deemed to be zero and that Investor 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 Secured Creditor.
- (b) Paragraph (a) above shall not apply to the extent that the relevant matter for which the Consent is requested, or action for which approval is sought, would, if so approved, result in any rights and/or obligations of any Investor Affiliate (in its capacity as a Senior Secured Creditor of a class entitled to approve that Consent or action) being amended, altered or otherwise affected in a manner that is different to the equivalent rights and/or obligations of other Senior Secured Creditors of the same class as that Investor Affiliate.

- (c) Each Investor Affiliate that is a Senior Facilities Lender or Permitted Senior Secured Debt Creditor agrees that:
- (i) in relation to any meeting or conference call to which all the Senior Secured Creditors, all the Senior Facilities Lenders, all the Hedge Counterparties or all the Permitted Senior Secured Debt Creditors or any combination of those groups of Senior Secured 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 Secured Creditors excluding, for the avoidance of doubt, interest rate notifications and other communications or documents of an administrative nature.

22.8 Disenfranchisement of Defaulting Lenders

- (a) For so long as a Defaulting Lender has any Available Commitment, in ascertaining whether:
- (i) any relevant percentage (including, for the avoidance of doubt, unanimity) of Senior Secured Credit Participations; or
 - (ii) the agreement of any specified group of Senior Secured 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 Commitments will be reduced by the amount of its Available Commitments and, to the extent that reduction results in that Defaulting Lender's Commitments being zero, that Defaulting Lender shall be deemed not to be a Senior Secured Creditor.
- (b) For the purposes of this Clause 22.8, the relevant Agent and the Security Agent may assume that the following Creditors are Defaulting Lenders:
- (i) any Senior Facilities Lender or Permitted Senior Secured Debt Facilities Lender which has notified the Security Agent and its relevant Agent that it has become a Defaulting Lender;
 - (ii) any Senior Facilities Lender in relation to which it is aware that any of the events or circumstances referred to in paragraph (i), (ii), (iii) or (iv) of the definition of "Defaulting Lender" in the Senior Facilities Agreement has occurred;
 - (iii) any Permitted Senior Secured Debt Facilities Lender in relation to which it is aware that any of the events or circumstances referred to in substantially equivalent provisions to those referred to in paragraph (b)(ii) above in a Permitted Senior Secured Debt Facilities Agreement has occurred,

unless it has received notice to the contrary from the Senior Facilities Lender or Permitted Senior Secured Debt Facilities Lender concerned (together with any supporting evidence reasonably requested by the Security Agent) or the relevant Agent is otherwise aware that the

Senior Facilities Lender or Permitted Senior Secured Debt Facilities Lender has ceased to be a Defaulting Lender.

22.9 Calculation of Senior Secured Credit Participation

- (a) For the purpose of ascertaining whether any relevant percentage of Senior Secured Credit Participations has been obtained under this Agreement, the Security Agent may notionally convert the Senior Secured Credit Participations into their Common Currency Amounts.
- (b) Each Agent will, upon the request of the Security Agent, promptly provide the Security Agent with details of the Senior Secured Credit Participations of the Senior Secured Creditors which it represents and (if applicable) details of the extent to which Senior Secured Credit Participations have been voted for or against any request.
- (c) Each Hedge Counterparty will, upon the request of the Security Agent or any other Agent, promptly provide the details of its Senior Secured Credit Participations (which shall be calculated as at the time stipulated by the Security Agent or the relevant Agent (as applicable) in such request) and (if applicable) details of the extent to which such Senior Secured Credit Participations have been voted for or against any request.

22.10 Deemed Consent

If an Agent gives a Consent requested by the Parent in respect of the Senior Secured Finance Documents, then, if that action was permitted by the terms of this Agreement, the Intra-Group Lenders and the Subordinated Creditors will (or will be deemed to):

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

22.11 Excluded Consents

Clause 22.10 (*Deemed Consent*) does not apply to any Consent which has the effect of:

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

22.12 No liability

None of the Senior Facilities Lenders, the Senior Facilities Agent, the Permitted Senior Secured Debt Creditors, the Permitted Senior Secured Debt Representative, the Security Agent or the Hedge Counterparties will be liable to any other Creditor, Agent or Debtor for any Consent given or deemed to be given under this Clause 22.

22.13 Agreement to override

- (a) Unless expressly stated otherwise in this Agreement, this Agreement overrides anything in the Debt Documents to the contrary.
- (b) Paragraph (a) above shall not be construed such that the absence of a restriction or condition in this Agreement overrides the presence of any such restriction or condition (including paragraph

(b)(iii), (b)(iv) and (c) of clause 19.3 (*Transaction Security: Additional Debt Financing*) of the Senior Facilities Agreement) contained in any Debt Document and nothing in paragraph (a) above will be construed as curing or postponing any Default or Event of Default.

23. PERMITTED SENIOR SECURED DEBT NOTES TRUSTEE PROTECTION

23.1 Liability

- (a) It is expressly understood and agreed by each Party that this Agreement is executed and delivered by each Permitted Senior Secured Debt Notes Trustee not individually or personally but solely in its capacity as the Permitted Senior Secured Debt Notes Trustee in the exercise of the powers and authority conferred and vested in it under a Permitted Senior Secured Debt Document, and it shall have no liability for acting for itself or in any capacity other than as the Permitted Senior Secured Debt Notes Trustee and nothing in this Agreement shall impose on it any obligation to pay any amount out of its personal assets. Prior to taking any action under this Agreement, each Permitted Senior Secured Debt Notes Trustee may request and rely upon an opinion of counsel or opinion of another qualified expert, at the reasonable expense of the Permitted Senior Secured Debt Notes Issuer or another Debtor.
- (b) Notwithstanding any other provision of this Agreement, each Permitted Senior Secured Debt Notes Trustee's obligations hereunder (if any) to make any payment or repayment (however described) of any amount or to hold any amount on trust shall be only to make payment or repayment (however described) of such amount to or hold any such amount on trust to the extent that (i) it has actual knowledge that such obligation has arisen and (ii) it has received and has not distributed to the relevant recipient any such amount.
- (c) It is further understood by each Party that in no case shall a Permitted Senior Secured Debt Notes Trustee be (i) responsible or accountable in damages or otherwise to any other Party for any loss, damage or claim incurred by reason of any act or omission performed or omitted by that Permitted Senior Secured Debt Notes Trustee in good faith in accordance with this Agreement or any of the Debt Documents and in a manner such Permitted Senior Secured Debt Notes Trustee believed to be within the scope of the authority conferred on it by this Agreement or any of the Debt Documents or by law or (ii) liable for or on account of any of the statements, representations, warranties, covenants or obligations stated to be those of any other Party, all such liability, if any, being expressly waived by the Parties and any person claiming by, through or under such Party, **provided that**, in the case of paragraphs (i) and (ii) above, a Permitted Senior Secured Debt Notes Trustee (or any successor thereof) shall be liable under this Agreement for its own gross negligence or wilful misconduct. Notwithstanding any other provisions of this Agreement or any other Permitted Senior Secured Debt Document to which a Permitted Senior Secured Debt Notes Trustee is a party, in no event shall a Permitted Senior Secured Debt Notes Trustee be liable for special, indirect, punitive or consequential loss or damages of any kind whatsoever (including, but not limited to, loss of business, goodwill, opportunity or profits), whether or not foreseeable, even if that Permitted Senior Secured Debt Notes Trustee has been advised of the likelihood of such loss or damage and regardless of whether the claim for loss or damage is made in negligence, for breach of contract or otherwise.
- (d) It is also acknowledged that no Permitted Senior Secured Debt Notes Trustee shall have any responsibility for the actions of any individual Permitted Senior Secured Debt Creditor.

- (e) No Permitted Senior Secured Debt Notes Trustee shall be charged with actual knowledge of the existence of facts that would impose an obligation on it to make any payment or prohibit it from making any payment unless, not less than two Business Days prior to the date of such payment, written notice is delivered by the Security Agent or another Agent to a Responsible Officer of the relevant Permitted Senior Secured Debt Notes Trustee that such payments are required or prohibited by this Agreement. For the purpose of this paragraph (e), delivery of the notice will be effective only when actually received by a Responsible Officer and then only if it is expressly marked for the attention of a Responsible Officer. Nothing in this paragraph (e) imposes any obligation on the Security Agent or any other Agent to deliver any notice of the type referred to herein to a Permitted Senior Secured Debt Notes Trustee.

23.2 No fiduciary duty

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

23.3 No action

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

23.4 Other parties not affected

This Clause 23 is intended to afford protection to the Permitted Senior Secured Debt Notes Trustees only. No provision of this Clause 23 shall alter or change the rights and obligations as between the other Parties to this Agreement in respect of each other.

23.5 Notices

- (a) Each Permitted Senior Secured Debt Notes Trustee shall at all times be entitled to and may rely on any notice, consent or certificate given or granted by any other Agent or the Security Agent pursuant to the terms of this Agreement without being under any obligation to enquire or otherwise determine whether any such notice, consent or certificate has been given or granted

by the relevant Agent or the Security Agent and shall not be, in any circumstances, held liable for so relying.

- (b) In acting under and in accordance with this Agreement and without prejudice to its obligations under this Agreement, each Permitted Senior Secured Debt Notes Trustee is entitled to seek instructions from the Permitted Senior Secured Debt Creditors, at any time, and where it so acts on the instructions of the requisite percentage of the Permitted Senior Secured Debt Creditors, such Permitted Senior Secured Debt Notes Trustee shall not incur any liability to any person for so acting, other than in accordance with the Permitted Senior Secured Debt Notes Indenture.

23.6 Trustee Liabilities

Subject to Clause 13.1 (*Order of application*), no provision of this Agreement shall alter or otherwise affect the rights and obligations of the Parent or any Debtor to make payments in respect of the Agent Liabilities owed to each Permitted Senior Secured Debt Notes Trustee as and when the same are due and payable and receipt and retention by each Permitted Senior Secured Debt Notes Trustee of the same or taking of any step or action by each Permitted Senior Secured Debt Notes Trustee in respect of its rights under the relevant Permitted Senior Secured Debt Documents to the same.

23.7 Provisions survive termination

The provisions of this Clause 23 shall survive the termination of this Agreement.

23.8 Resignation

Each Permitted Senior Secured Debt Notes Trustee may resign or be removed in accordance with the terms of the Permitted Senior Secured Debt Notes Indenture, **provided that** a replacement Permitted Senior Secured Debt Notes Trustee agrees with the Parties to become the replacement Permitted Senior Secured Debt Notes Trustee under this Agreement in accordance with Clause 16.6 (*Change of Agent or new Arranger*).

23.9 Reliance and information

- (a) Each Permitted Senior Secured Debt Notes Trustee may rely and shall be fully protected in acting or refraining from acting upon any notice or other document reasonably believed by it to be genuine and correct and to have been signed by, or with the authority of, the proper person. Each Permitted Senior Secured Debt Notes Trustee may rely without enquiry on certificates of the Security Agent as to the matters certified therein. Each Creditor and each Debtor confirms that it has not relied exclusively on any information provided to it by any Permitted Senior Secured Debt Notes Trustee. No Permitted Senior Secured Debt Notes Trustee is obliged to check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (b) In addition, each Permitted Senior Secured Debt Notes Trustee is entitled to assume that:
 - (i) any payment or other distribution made in respect of the Liabilities or Permitted Senior Secured Debt Liabilities, respectively, has been made in accordance with the provisions of this Agreement;
 - (ii) no Default, Event of Default or termination event (however described) has occurred;

(iii) any security, collateral, guarantee or indemnity or other assurance granted to it has been done so in compliance with Clause 3.3 (*Security: Senior Facilities Lenders and Permitted Senior Secured Debt Creditors*); and/or

(iv) the Final Discharge Date has not occurred,

unless it has actual notice to the contrary. No Permitted Senior Secured Debt Notes Trustee is obliged to monitor or enquire whether any Default, Event of Default or termination event (however described) has occurred.

23.10 Agents

Each Permitted Senior Secured Debt Notes Trustee may act through its attorneys and agents and shall not be responsible for the misconduct or negligence of any attorney or agent appointed with due care by it hereunder.

23.11 No requirement for bond or surety

Each Permitted Senior Secured Debt Notes Trustee shall not be required to give any bond or surety with respect to the performance of its duties or the exercise of its powers under this Agreement.

23.12 Illegality

Each Permitted Senior Secured Debt Notes Trustee may refrain from taking any action in any jurisdiction if the taking of such action in that jurisdiction would, in its opinion based upon legal advice in the relevant jurisdiction, be contrary to any law of that jurisdiction or, to the extent applicable, of England and Wales. Furthermore, each Permitted Senior Secured Debt Notes Trustee may also refrain from taking such action if it would otherwise render it liable to any person in that jurisdiction or England and Wales or if, in its opinion based upon such legal advice, it would not have the power to do the relevant thing in that jurisdiction by virtue of any applicable law in that jurisdiction or in England and Wales or if it is determined by any court or other competent authority in that jurisdiction or in England and Wales that it does not have such power. Each Permitted Senior Secured Debt Notes Trustee may refrain from taking any action that would constitute a breach of the relevant Permitted Senior Secured Debt Documents.

23.13 Communications

Notwithstanding anything to the contrary in this Agreement any and all communications (both text and attachments) by or from a Permitted Senior Secured Debt Notes Trustee that that Permitted Senior Secured Debt Notes Trustee in its sole discretion deems to contain confidential, proprietary, and/or sensitive information and sent by electronic mail will be encrypted. The recipient of the email communication will be required to complete a one-time registration process. Information and assistance on registering and using the email encryption technology can be found at that Permitted Senior Secured Debt Notes Trustee's secure website at any time.

23.14 Creditors and the Permitted Senior Secured Debt Notes Trustees

In acting pursuant to this Agreement and the Permitted Senior Secured Debt Notes Indenture, a Permitted Senior Secured Debt Notes Trustee is not required to have any regard to the interests of the Creditors (other than the Permitted Senior Secured Debt Creditors).

23.15 Security Agent and the Permitted Senior Secured Debt Notes Trustees

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

23.16 Disclosure of information

The Parent and each Debtor irrevocably authorises each Permitted Senior Secured Debt Notes Trustee to disclose to the Security Agent and other Agents any information that is received by it in its capacity as a Permitted Senior Secured Debt Notes Trustee.

24. 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.

25. GOVERNING LAW

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

26. ENFORCEMENT

26.1 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 26.1 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.

26.2 Service of process

- (a) Without prejudice to any other mode of service allowed under any relevant law, each Debtor:
 - (i) (unless incorporated in England and Wales) irrevocably appoints the Parent as its agent for service of process in relation to any proceedings before the English courts in connection with this Agreement and the Parent, by its execution of this Agreement, accepts that appointment; and
 - (ii) agrees that failure by a process agent to notify the relevant Debtor 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) must immediately (and in any event within five Business Days of such event taking place) notify the Agents and appoint another agent on terms acceptable to the Senior Facilities Agent or, after the Senior Facilities Discharge Date, each Permitted Senior Secured Debt Representative. Failing this, the Senior Facilities Agent or, after the Senior Facilities Discharge Date, each Permitted Senior Secured Debt Representative (as the case may be) may appoint another agent for this purpose.

- (c) Each Debtor expressly agrees and consents to the provisions of this Clause 26 and Clause 25 (*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, the Company, the Parent and the Subordinated Creditor and is intended to be and is delivered by them as a deed on the date specified above.

SCHEDULE 1

FORM OF DEBTOR ACCESSION DEED

THIS AGREEMENT is made on [] and made BETWEEN:

- (1) [INSERT FULL NAME OF NEW DEBTOR] (the "Acceding Debtor"); and
- (2) [INSERT FULL NAME OF CURRENT SECURITY AGENT] (the "Security Agent"), for itself and each of the other parties to the intercreditor agreement referred to below.

THIS AGREEMENT is made on [date] by the Acceding Debtor in relation to an intercreditor agreement (the "Intercreditor Agreement") dated [•] 2014 between, amongst others, [] as the company, [] as security agent, [] as senior facilities 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 or otherwise for the benefit of the Secured Parties (in the Relevant Documents or otherwise) and secured by the Transaction Security together with all representations and warranties expressed to be given by the Acceding Debtor (in the Relevant Documents or otherwise) in favour of the Security Agent as trustee or otherwise for the benefit of the Secured Parties,on trust or otherwise for the benefit of the Secured Parties on the terms and conditions contained in the Intercreditor Agreement.
3. The Acceding Debtor confirms that it intends to be party to the Intercreditor Agreement as a Debtor, undertakes to perform all the obligations expressed to be assumed by a Debtor under the Intercreditor Agreement and agrees that it shall be bound by all the provisions of the Intercreditor Agreement as if it had been an original party to the Intercreditor Agreement.
4. [In consideration of the Acceding Debtor being accepted as an Intra-Group Lender for the purposes of the Intercreditor Agreement, the Acceding Debtor also confirms that it intends to be party to the 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].¹

[5] *[Insert any guarantee limitation language for any accession of a guarantor as the guarantee for the Hedge Counterparties as set out in this Agreement.]*

[4]/[5][5][6] This Agreement and any non-contractual obligations arising out of or in connection with it are governed by, English law.

¹ Include this paragraph in the relevant Debtor Accession Deed if the Acceding Debtor is also to accede as an Intra-Group Lender to the Intercreditor Agreement.

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: [_____]

SCHEDULE 2

FORM OF CREDITOR ACCESSION UNDERTAKING

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

[To: [Insert full name of current [Senior Facilities Agent/Permitted Senior Secured Debt Representative]] as [Senior Facilities Agent/Permitted Senior Secured Debt Representative]]²

From: [Acceding Creditor]

THIS UNDERTAKING is made on [date] by [insert full name of new Senior Facilities Lender/Hedge Counterparty/Senior Facilities Agent/Intra-Group Lender/Subordinated Creditor/Permitted Senior Secured Debt Creditor/Permitted Senior Secured Debt Representative/Permitted Senior Secured Debt Notes Trustee/Senior Facilities Arranger/Permitted Senior Secured Debt Arranger/Third Party Holder] (the "**Acceding [Senior Facilities Lender/Hedge Counterparty/Senior Facilities Agent/Intra-Group Lender/Subordinated Creditor/Permitted Senior Secured Debt Representative/Permitted Senior Secured Debt Notes Trustee/Senior Facilities Arranger/Permitted Senior Secured Debt Arranger/Third Party Holder]**") in relation to the intercreditor agreement (the "**Intercreditor Agreement**") dated [●] 2014 between, among others, [] as the company, [] as security agent, [] as Senior Facilities Agent, the other Creditors and the other Debtors (each as defined in the Intercreditor Agreement). Terms defined in the Intercreditor Agreement shall, unless otherwise defined in this Undertaking, bear the same meanings when used in this Undertaking.

In consideration of the Acceding [Senior Facilities Lender/Hedge Counterparty/Senior Facilities Agent/Intra-Group Lender/Subordinated Creditor/Permitted Senior Secured Debt Representative/Permitted Senior Secured Debt Notes Trustee/Senior Facilities Arranger/Permitted Senior Secured Debt Arranger/Third Party Holder] being accepted as a [Senior Facilities Lender/Hedge Counterparty/Intra-Group Lender/Senior Facilities Agent/Subordinated Creditor/ Permitted Senior Secured Debt Representative/Permitted Senior Secured Debt Notes Trustee/Senior Facilities Arranger/Permitted Senior Secured Debt Arranger/Third Party Holder] for the purposes of the Intercreditor Agreement, the Acceding [Senior Facilities Lender/Hedge Counterparty/Senior Facilities Agent/Intra-Group Lender/Subordinated Creditor/ Permitted Senior Secured Debt Representative/Permitted Senior Secured Debt Notes Trustee/Senior Facilities Arranger/Permitted Senior Secured Debt Arranger/Third Party Holder] confirms that, as from [date], it intends to be party to the Intercreditor Agreement as a [Senior Facilities Lender/Hedge Counterparty/Senior Facilities Agent/Intra-Group Lender/Subordinated Creditor/ Permitted Senior Secured Debt Representative/Permitted Senior Secured Debt Notes Trustee/Senior Facilities

² Include only in the case of (i) a Hedge Counterparty or (ii) an Affiliate of a Senior Secured Creditor which is, in each case, using this undertaking to accede to a Senior Secured Financing Agreement in accordance with paragraph (c) of Clause 16.10 (*Creditor Accession Undertaking*).

Arranger/Permitted Senior Secured Debt Arranger/Third Party Holder] and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a [Senior Facilities Lender/Hedge Counterparty/Senior Facilities Agent/Intra-Group Lender/Subordinated Creditor/ Permitted Senior Secured Debt Representative/Permitted Senior Secured Debt Notes Trustee/Senior Facilities Arranger/Permitted Senior Secured Debt Arranger/Third Party Holder] 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 Facilities Lender or a Permitted Senior Secured Debt 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/Permitted Senior Secured Debt Facilities Agreement], the Acceding Lender confirms, for the benefit of the parties to the [Senior Facilities Agreement/Permitted Senior Secured Debt Facilities Agreement], that, as from [date], it intends to be party to the [Senior Facilities Agreement/Permitted Senior Secured Debt Facilities Agreement] as an Ancillary Lender, and undertakes to perform all the obligations expressed in the [Senior Facilities Agreement/Permitted Senior Secured Debt Facilities Agreement] to be assumed by a [Finance Party/[insert applicable term for the relevant Permitted Senior Secured Debt Facility Agreement]] (as defined in the [Senior Facilities Agreement/Permitted Senior Secured Debt Facilities Agreement]) and agrees that it shall be bound by all the provisions of the [Senior Facilities Agreement/Permitted Senior Secured Debt Facilities Agreement], as if it had been an original party to the [Senior Facilities Agreement/Permitted Senior Secured Debt 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/Permitted Senior Secured Debt Finance Document], the Acceding Hedge Counterparty confirms, for the benefit of the parties to the [Senior Facilities Agreement/Permitted Senior Secured Debt Finance Document], that, as from [date], it intends to be party to the [Senior Facilities Agreement/Permitted Senior Secured Debt Finance Document] as a Hedge Counterparty, and undertakes to perform all the obligations expressed in the [Senior Facilities Agreement/Permitted Senior Secured Debt Finance Document] to be assumed by a Hedge Counterparty and agrees that it shall be bound by all the provisions of the [Senior Facilities Agreement/Permitted Senior Secured Debt Finance Document], as if it had been an original party to the [Senior Facilities Agreement/Permitted Senior Secured Debt Finance Document] as a Hedge Counterparty.]”

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

[”] Include only in the case of an Ancillary Lender which is using this undertaking to accede to the Senior Facilities Agreement or Permitted Senior Secured Debt Facilities Agreement (as the case may be) in accordance with paragraph (c) of Clause 16.10 (*Creditor Accession Undertaking*).

^{””} Include only in the case of a Hedge Counterparty which is using this undertaking to accede to a Senior Secured Financing Agreement in accordance with paragraph (c) of Clause 16.10 (*Creditor Accession Undertaking*).

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 Subordinated Creditor and is delivered on the date stated above].

Acceding [Creditor]

[EXECUTED as a DEED]

[insert full name of Acceding
Creditor]

By:

Address: []

Fax: []

Accepted by the Security Agent

[Accepted by the [Senior Facilities
Agent/Permitted Senior Secured Debt
Representative]]

.....

for and on behalf of

[Insert full name of current Security Agent]

.....

for and on behalf of

[Insert full name of [Senior Facilities
Agent/Permitted Senior Secured Debt
Representative]]

Date: []

Date:³ []

³ Include only in the case of (i) a Hedge Counterparty or (ii) an Affiliate of a Senior Secured Creditor which is, in each case, using this undertaking to accede to a Senior Secured Financing Agreement in accordance with paragraph (c) of Clause 16.10 (*Creditor Accession Undertaking*).

SCHEDULE 3

FORM OF DEBTOR RESIGNATION REQUEST

To: [] as Security Agent

From: [resigning Debtor] and [Parent]

Dated: []

Dear Sirs

**[] Intercreditor Agreement
dated [•] 2014 (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 16.14 (*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:

SCHEDULE 4

SUBORDINATED NOTES INTERCREDITOR PRINCIPLES

Ranking of debt:

The Senior Secured Creditor Liabilities (and, to the extent permitted by applicable law, any liabilities of the Senior Subordinated Notes Trustees) will rank *pari passu* between themselves without any preference between them and in priority to the Senior Subordinated Notes Guarantee Liabilities. The Senior Subordinated Notes Guarantee Liabilities will rank in priority to all Intra-Group Liabilities and Subordinated Liabilities.

This Agreement will not rank or restrict payment by the Senior Subordinated Notes Issuer of the Senior Subordinated Notes Liabilities.

Restrictions on payments:

No payments in respect of the Senior Subordinated Notes Guarantee Liabilities or the Senior Subordinated Notes Proceeds Loan may be made save for customary payments, such payments to include those where:

- (a) no Senior Secured Payment Default has occurred and is continuing and no Senior Subordinated Notes Payment Stop Notice is outstanding;
- (b) the Majority Senior Secured Creditors gives prior consent to that Payment being made; or
- (c) the payment is of any Liabilities personal to the Senior Subordinated Notes Trustee which are due and payable.

A Senior Subordinated Notes Payment Stop Notice shall not extend beyond the date falling 179 days after delivery of that Senior Subordinated Notes Payment Stop Notice.

Restrictions on instructing the Security Agent and other Enforcement Action:

The Senior Subordinated Notes Creditors may not take any Enforcement Action in relation to the Senior Subordinated Notes Guarantee Liabilities **unless:**

- (i) a standstill period of 179 days has elapsed;
- (ii) they are taking the same Enforcement Action as the Senior Secured Creditors; or
- (iii) an Insolvency Event has occurred in relation to a particular Senior Subordinated Notes Guarantor against whom Enforcement Action is to be taken.

Subordination on insolvency:

Clause 8 (*Effect of Insolvency Event*) of this Agreement will apply in respect of the Senior Subordinated Notes Guarantee Liabilities.

Turnover:

Subject to customary exceptions following the occurrence of an Acceleration Event the Senior Subordinated Notes Creditors must turn over any amount received on account of any Senior Subordinated Notes Guarantee Liabilities.

Application of recoveries:

The proceeds of a sale or a distressed disposal of assets subject to the Transaction Security and any other amounts received by the Security Agent shall, to the extent permitted by applicable law, be applied in the following order of priority:

- (a) **first**, to the Security Agent, any Receiver or Delegate to discharge any sums owing to them from any Party;
- (b) **second**, *pro rata* and *pari passu* to the Senior Facilities Agent and any Permitted Senior Secured Debt Representative in respect of any Agent Liabilities;
- (c) **third**, *pro rata* and *pari passu* to (i) the Senior Facility Agent on behalf of the Senior Lenders and the Senior Facility Arrangers in respect of the Senior Facility Liabilities and the Senior Facilities Arranger Liabilities; (ii) the Hedge Counterparties in respect of the Hedging Liabilities and (iii) the Permitted Senior Secured Debt Representative on behalf of the relevant Permitted Senior Secured Debt Arranger and to respective Permitted Senior Secured Debt Creditors in respect of the relevant Permitted Senior Secured Debt Liabilities and the Permitted Senior Secured Debt Arranger Liabilities;
- (d) **fourth**, to the Senior Subordinated Notes Trustee on behalf of the Senior Subordinated Noteholders in respect of the Senior Subordinated Notes Guarantee Liabilities;
- (e) **fifth**, if none of the Debtors is under any further actual or contingent liability under any Senior Secured Finance Documents or Senior Subordinated Notes Documents, in payment or distribution to any person to whom the Security Agent is obliged to pay or distribute in priority to any Debtor; and

then, to the Debtors.

Value protection:

The Senior Subordinated Notes Creditors to benefit from customary value protections including in the case of a Distressed Disposal or a disposal of Liabilities in connection with a Distressed Disposal, making any release, transfer or disposal conditional on the proceeds of such disposal being in cash (or substantially in cash) and all claims of the Senior Secured Creditors under the Senior Secured Finance Documents against any member of the Group and any Subsidiary of that member of the Group whose shares are sold or disposed of pursuant to such Distressed Disposal, being released or sold concurrently with such sale, and all Security under the Security Documents in respect of the assets that are sold or disposed of is released and discharged concurrently with such sale.

If the Senior Facilities Agent and each Permitted Senior Secured Debt Representative determines that the Senior Facilities Lenders and the Permitted Senior Secured Debt Creditors will recover a greater amount if

any such claim is sold or otherwise transferred to the purchaser or one of its Affiliates and not released or discharged the Security Agent shall be entitled to sell or otherwise transfer such claim to the purchaser or one of its Affiliates provided such sale or disposal is made pursuant to a Public Auction or where a Fairness Opinion is obtained.

Option to purchase: Following the occurrence of an Acceleration Event or the enforcement of any Transaction Security, Senior Subordinated Notes Creditors shall have an option to purchase all (and not only part) of the Senior Secured Creditor Liabilities at par.

In each case, customary indemnities from the purchasers to the sellers will be required.

Guarantees and security: The Parent may require that all or part of the Senior Subordinated Notes Guarantee Liabilities may, to the extent permitted under applicable law, be guaranteed by the same Debtors. The Senior Subordinated Notes Guarantee Liabilities shall not be secured by the Transaction Security.

This Agreement will contain covenants restricting any Senior Subordinated Notes Creditors from taking any additional guarantees unless and to the extent legally possible it is at the same time offered to the Senior Secured Creditors and ranks in the same order of priority contemplated by these principles.

Notes Trustee: This Agreement will contain customary protective provisions for any notes trustee acting in respect of any Senior Subordinated Notes.

SCHEDULE 5
GUARANTEE FOR HEDGE COUNTERPARTIES

1.1 Guarantee

Each Debtor Guarantor irrevocably and unconditionally:

- (i) guarantees to each Hedge Counterparty as principal obligor the due and punctual performance by each other Debtor of all such Debtor's payment obligations to such Hedge Counterparty under the Hedging Agreements as and when they become due;
- (ii) undertakes with each Hedge Counterparty that if any other Debtor fails to pay any amount when due under or in connection with any Hedging Agreement it will pay such sum to the Security Agent on demand as if it was the principal obligor; and
- (iii) undertakes to indemnify each Hedge Counterparty immediately on demand against all losses, damages, costs and expenses incurred by such Hedge Counterparty if any obligation guaranteed by it in this Agreement is or becomes unenforceable, invalid or illegal. The amount of the cost, loss or liability shall be equal to the amount which that Hedge Counterparty would otherwise have been entitled to recover under this Schedule if the amount claimed had been recoverable on the basis of a guarantee, and,

subject to any limitation referred to in paragraphs 1.3 (*Limitations on guarantees by French Debtor Guarantors*) to 1.4 (*Limitations on guarantees in respect of unlawful financial assistance*) or in any Debtor Accession Deed by which it became a Debtor.

1.2 Further guarantee provisions

The guarantees, undertakings and indemnities given in paragraph 1.1 (*Guarantee*):

- (a) are given subject to, and with the benefit of the provisions set out in Schedule 6 (*Guarantee provisions*) and, in relation to any Debtor Guarantor becoming a Party to this Agreement by execution of a Debtor Accession Deed, the limitations contained in the Debtor Accession Deed pursuant to which it became a Debtor;
- (b) are given on a joint and several basis; and
- (c) are to be a continuing Security notwithstanding any intermediate payment or settlement of account or other matter or thing whatsoever (in particular, but without limitation, the intermediate satisfaction of the whole or any part of the indebtedness referred to in paragraph 1.1 (*Guarantee*)).

1.3 Limitations on guarantees by French Debtor Guarantors

- (a) The obligations of any Debtor Guarantor which is incorporated or established in France (a "**French Debtor Guarantor**"), under this Schedule:
 - (i) will not extend to cover any indebtedness which, if they did so extend, would cause the infringement of article L.225-216 of the French Code de Commerce (in the case of a French Obligor to which such provision applies) and/or would constitute a misuse of corporate assets within the meaning of article L. 241-3 or L. 242-6 of the French Code

de Commerce or any other law or regulations having the same effect, as interpreted by French courts and notwithstanding any other provision of this Schedule;

- (ii) shall be limited to a guarantee of obligations of such French Debtor Guarantor's Subsidiaries under the Hedging Agreements in respect of the Hedging Liabilities of those Subsidiaries (if they are not French Debtor Guarantors) or in respect of the Hedging Liabilities of those Subsidiaries and/or any Liabilities in their capacity as Debtor Guarantors pursuant to this Schedule (if they are French Debtor Guarantors).
- (b) For the avoidance of doubt, it is acknowledged that such French Debtor Guarantors are not acting jointly and severally with the other Debtor Guarantors and are not, "*co-débiteurs solidaires*" as to their obligations pursuant to the guarantees given pursuant to this Schedule.

1.4 Limitations on guarantees in respect of unlawful financial assistance

The guarantee, undertaking and indemnity in this Schedule, does not apply to any liability or indebtedness to the extent that it would result in the guarantee, undertaking and indemnity in this Schedule, constituting unlawful financial assistance within the meaning of section 677 of the Companies Act 2006 or any equivalent provision of any applicable law.

SCHEDULE 6
GUARANTEE PROVISIONS

1. No discharge

The obligations of each Debtor Guarantor under Schedule 5 (*Guarantee for Hedge Counterparties*) (the "**Guarantee Obligations**") shall not be discharged, diminished or in any way affected (without limitation and whether or not known to it or any Hedge Counterparty) as a result of:

- (a) any time, consent or indulgence or waiver given to, or composition made with, any Debtor or any other person;
- (b) any amendment, novation, extension, variation (including, without limitation, any new or increased Hedging Liabilities), supplement, restatement or replacement (in each case, however fundamental and of whatsoever nature) of a Hedging Agreement or any other document or Security;
- (c) the taking, variation, compromise, exchange, renewal or release of or refusal or neglect to perfect, take up or enforce any right, remedies or securities against any Debtor or any other person or any non-presentation or non-observance of any formality or other requirements in respect of any instrument or any failure to realise the full value of any Security;
- (d) any other guarantee, indemnity, charge or other Security or right or remedy held by or available to the Hedge Counterparties being or becoming wholly or in part void, voidable or unenforceable on any ground whatsoever or by any Hedge Counterparty from time to time dealing with, exchanging, varying, realising, releasing or failing to perfect or enforce any of the same;
- (e) any Debtor becoming insolvent, going into receivership or liquidation, having an administrator appointed or similar proceedings;
- (f) any change in the constitution of any Hedge Counterparty (or any Hedge Counterparty's successors or assigns) or as a result of the amalgamation or consolidation by a Hedge Counterparty with any other company or entity; or
- (g) any other act, omission, circumstance, matter or thing which but for this provision might operate to release or otherwise exonerate the Debtor Guarantor from its obligations under Schedule 5 (*Guarantee for Hedge Counterparties*) whether in whole or in part.

2. Continuing obligations

The Guarantee Obligations shall continue in full force and effect notwithstanding:

- (a) the fact that any purported obligation of any Debtor or any other person to any Hedge Counterparty (or any Security therefor) becomes wholly or partly void, invalid or unenforceable for any reason whether or not known to the Hedge Counterparty or the Debtor Guarantor;

- (b) any incapacity or any change in the constitution of, or any amalgamation or reconstruction of, the Debtor Guarantor or any other Debtor or any other matter whatsoever; or
- (c) any intermediate payment or discharge in whole or in part.

3. Debtor Guarantor intent

Without prejudice to the generality of paragraph 1 (*No discharge*) above, each Debtor Guarantor expressly confirms that it intends that this guarantee shall extend from time to time to any variation (however fundamental), increase, extension or addition of or to any of the Hedging Agreements and/or the Hedging Liabilities for the purposes of or in connection with any of the following: business acquisitions of any nature; increases in working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; any hedging arrangements not expressly prohibited under the Senior Secured Finance Documents; and any fees, costs and/or expenses associated with any of the foregoing.

4. New accounts

If notwithstanding paragraph 1.2 (*Further guarantee provisions*) of Schedule 5 (*Guarantee for Hedge Counterparties*), the Guarantee Obligations shall for whatever reason cease to be continuing obligations, each Hedge Counterparty may continue any account or open one or more new accounts with the Debtor Guarantors (or any of them) and the liability of the Debtor Guarantor shall not be reduced or affected in any way by any subsequent transactions or receipts or payments into or out of any such account or accounts.

5. Liability for indebtedness

If, notwithstanding paragraph 1.2 (*Further guarantee provisions*) of Schedule 5 (*Guarantee for Hedge Counterparties*), the Guarantee Obligations are determined for any reason (other than the full and final settlement thereof), the Debtor Guarantor will remain liable in respect of all indebtedness referred to in paragraph 1.1 (*Guarantee*) of Schedule 5 (*Guarantee for Hedge Counterparties*) as at the date of determination (whether demanded or not) and whether or not any other Debtor is then in default under the Hedging Agreements.

6. Reinstatement

If any payment by a Debtor or discharge given by a Hedge Counterparty (whether in respect of the obligations of any Debtor or any Security for those obligations or otherwise) is avoided or reduced as a result of insolvency or any similar event:

- (a) the liability of each Debtor Guarantor shall continue as if the payment, discharge, avoidance or reduction had not occurred; or

- (b) each Hedge Counterparty shall be entitled to recover the value or amount of that Security or payment from each Debtor Guarantor, as if the payment, discharge, avoidance or reduction has not occurred.

7. Primary obligations

The Guarantee Obligations shall constitute the primary obligations of the Debtor Guarantor and no Hedge Counterparty shall be obliged to make any demand on any other Debtor before enforcing its rights against the Debtor Guarantor under Schedule 5 (*Guarantee for Hedge Counterparties*).

8. Immediate recourse

Each Debtor Guarantor waives any right it may have of first requiring any Hedge Counterparty (or any trustee or agent on its behalf) to proceed against or enforce any other rights or Security or claim payment from any person before claiming from that Debtor Guarantor under Schedule 5 (*Guarantee for Hedge Counterparties*). This waiver applies irrespective of any law or any provision of this Agreement or a Hedging Agreement to the contrary.

9. No subrogation

Subject to paragraph 10 (*Exercise of subrogation*) below, until all the amounts which may be or become payable by the Debtors under or in connection with the Hedging Agreements have been irrevocably paid and discharged in full and the Hedge Counterparties have no further commitment to provide accommodation to any Debtor under the Hedging Agreements, no Debtor Guarantor will:

- (a) be subrogated to or otherwise entitled to share in, any Security or moneys held, received or receivable by any Hedge Counterparty or be entitled to any right of contribution in respect of any payment made by the Debtor Guarantor hereunder;
- (b) exercise or enforce any of its rights of subrogation and indemnity against any Debtor;
- (c) following a claim being made on the Debtor Guarantor under Schedule 5 (*Guarantee for Hedge Counterparties*), demand or accept repayment of any moneys due from any other Debtor to the Debtor Guarantor or claim any set-off or counterclaim against any other Debtor;
- (d) claim or prove in a liquidation or other insolvency proceeding of any Debtor in competition with any Hedge Counterparty;
- (e) bring legal or other proceedings for an order requiring any Debtor to make any payment, or perform any obligation, in respect of which any Debtor Guarantor has given a guarantee, undertaking or indemnity under Schedule 5 (*Guarantee for Hedge Counterparties*);
- (f) claim any contribution from any other guarantor of any Debtor's obligations under the Hedging Agreements; and/or

- (g) take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Hedge Counterparties under the Hedging Agreements or of any other guarantee or Security taken pursuant to, or in connection with, the Hedging Agreements by any Hedge Counterparty.

10. Exercise of subrogation

Following the making of a demand on the Debtor Guarantor under Schedule 5 (*Guarantee for Hedge Counterparties*), the Debtor Guarantor will (at its own cost) promptly take such of the steps or action as are referred to in paragraph 9 (*No subrogation*) above as the Security Agent may from time to time stipulate.

11. Release of Debtor Guarantor's right of contribution

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

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

12. Turnover

The Debtor Guarantor shall promptly pay to the Security Agent an amount equal to any set-off, proof or counterclaim in fact exercised by it against another Debtor or any co-surety and shall hold in trust for and promptly pay or transfer to the Security Agent any payment or distribution or benefit of any Security in fact received by it in any such case either arising as a result of a breach of paragraph 6 (*Reinstatement*) above, or as a result of compliance with directions given by the Security Agent under paragraph 7 (*Primary obligations*) above.

13. Suspense account

The Security Agent may place and keep (for such time as it shall think prudent) any moneys received, recovered or realised in respect of the Guarantee Obligations in a separate account without liability to pay interest on the amounts standing to the credit of such account. The Security Agent may retain such moneys in the suspense account until it receives irrevocable payment in full of the Guarantee Obligations (or the amount of such moneys is sufficient to

discharge in full the Guarantee Obligations) without having any obligation to apply the same or any part thereof in or towards discharge of the Guarantee Obligations.

14. **Additional Security**

This guarantee is in addition to and is not in any way prejudiced by any other guarantee or Security now or subsequently held by any Hedge Counterparty.

SIGNATURE PAGES TO THE INTERCREDITOR AGREEMENT

The Parent

EXECUTED AS A DEED

for and on behalf of

UMV GLOBAL FOODS HOLDING COMPANY LTD.

Address: Berger House
36-38 Berkeley Square
Mayfair
London
W1J 5AE

Fax No.: +90 (212) 310 28 34

Email: baris.oner@yildizholding.com.tr

Attention: Barış Öner

as Parent

By: 

Title: DIRECTOR

in the presence of

Witness

Name: Hygeyia Özfindik

Address: Kısıklı mh. Feriye cad. No:1 Üsküdar İst / TÜRKİYE

Occupation Legal Counsel

SIGNATURE PAGES TO THE INTERCREDITOR AGREEMENT

The Company

EXECUTED AS A DEED

for and on behalf of

UMV GLOBAL FOODS COMPANY LTD.

as Company

Address: Berger House
36-38 Berkeley Square
Mayfair
London
W1J 5AE

Fax No.: +90 (212) 310 28 34

Email: baris.oner@yildizholding.com.tr

Attention: Barış Öner

By: 

Title: DIRECTOR

in the presence of

Witness

Name: Aygün Özindir

Address: Kısıklı Mh. Fenerh cd. No:1 Üsküdar İl. / TÜRKİYE

Occupation legal counsel

SIGNATURE PAGES TO THE INTERCREDITOR AGREEMENT

The Debtors

EXECUTED AS A DEED

for and on behalf of

UMV GLOBAL FOODS HOLDING COMPANY LTD.

as Parent

By: 

Title: DIRECTOR

in the presence of

Witness

Name: Aygün Öztürk

Address: Kısıklı, Mh. Feri Cd. No:1 Üsküdar İst. TÜRKİYE


Occupation Legal Counsel

EXECUTED AS A DEED

for and on behalf of

UMV GLOBAL FOODS COMPANY LTD.

as Company

By: 

Title: DIRECTOR

in the presence of

Witness

Name: Aygün Öztürk

Address: Kısıklı, Mh. Feri Cd. No:1 Üsküdar İst. / TÜRKİYE

Occupation Legal Counsel

SIGNATURE PAGES TO THE INTERCREDITOR AGREEMENT

The Intra-Group Lenders

EXECUTED AS A DEED

for and on behalf of

UMV GLOBAL FOODS HOLDING COMPANY LTD.

as Parent

By: 

Title: DIRECTOR

in the presence of

Witness 

Name: Aysegül Özfindik

Address: Kızılk. mhm. Ferah cd. No:1 Üsküdar İst. / TÜRKİYE


Occupation Legal Counsel

EXECUTED AS A DEED

for and on behalf of

UMV GLOBAL FOODS COMPANY LTD.

as Company

By: 

Title: DIRECTOR

in the presence of

Witness 

Name: Aysegül Özfindik

Address: Kızılk. mhm. Ferah cd. No:1 Üsküdar İst. / TÜRKİYE

Occupation Legal Counsel

SIGNATURE PAGES TO THE INTERCREDITOR AGREEMENT

The Subordinated Creditor

EXECUTED AS A DEED

for and on behalf of

UMV DEVELOPMENTS LIMITED

as Subordinated Creditor

By: _____



Title: _____

DIRECTOR

In the presence of

Witness

Name: Hygeon Defendit

Address: Kisikli hth. Ferah cd. No.1 Üsküdar ist / TÜRKİYE

Occupation Legal Counsel

SIGNATURE PAGES TO THE INTERCREDITOR AGREEMENT

The Senior Facilities Agent

HSBC BANK PLC

By:



CRAIG CAMPBELL

The Security Agent

HSBC CORPORATE
TRUSTEE COMPANY (UK)
LIMITED

Address:

Fax:

Tel:

Email:

Attention:

By:



CRAIG CAMPBELL

SIGNATURE PAGES TO THE INTERCREDITOR AGREEMENT

The Senior Facilities Arrangers

HSBC BANK PLC

By: *CF Campbell*
CRAIG CAMPBELL

**COÖPERATIEVE CENTRALE
RAIFFEISEN-
BOERENLEENBANK B.A
(TRADING AS RABOBANK
INTERNATIONAL), LONDON
BRANCH**

By:

**ING BANK N.V., LONDON
BRANCH**

By:

**BANK OF AMERICA MERRILL
LYNCH INTERNATIONAL
LIMITED**

By:

J.P. MORGAN LIMITED

By:

SIGNATURE PAGES TO THE INTERCREDITOR AGREEMENT


The Senior Facilities Arrangers

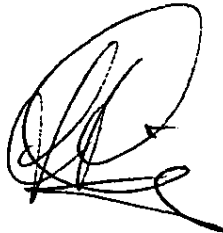
HSBC BANK PLC

By:

**COÖPERATIEVE CENTRALE
RAIFFEISEN-
BOERENLEENBANK B.A
(TRADING AS RABOBANK
INTERNATIONAL), LONDON
BRANCH**

By:


**ING BANK N.V., LONDON
BRANCH**



By:

**BANK OF AMERICA MERRILL
LYNCH INTERNATIONAL
LIMITED**

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J.P. MORGAN LIMITED

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BOERENLEENBANK B.A
(TRADING AS RABOBANK
INTERNATIONAL), LONDON
BRANCH**


By:

**ING BANK N.V., LONDON
BRANCH**

By:

**BANK OF AMERICA MERRILL
LYNCH INTERNATIONAL
LIMITED**

By:

 **CHRISTIAN BACKES
(VICE-PRESIDENT)**

J.P. MORGAN LIMITED

By:

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The Senior Facilities Arrangers

HSBC BANK PLC

By:

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BOERENLEENBANK B.A
(TRADING AS RABOBANK
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BRANCH**

By:

**ING BANK N.V., LONDON
BRANCH**

By:

**BANK OF AMERICA MERRILL
LYNCH INTERNATIONAL
LIMITED**

By:

J.P. MORGAN LIMITED

By:

**Regis Castro
Vice President**



SIGNATURE PAGES TO THE INTERCREDITOR AGREEMENT

The Senior Facilities Lenders

HSBC BANK PLC

By: *CF CAMP*
CRAIG CAMPBELL

COÖPERATIEVE CENTRALE
RAIFFEISEN-
BOERENLEENBANK B.A
(TRADING AS RABOBANK
INTERNATIONAL), LONDON
BRANCH

By:

ING BANK N.V., LONDON
BRANCH

By:

ING EUROPEAN FINANCIAL
SERVICES PLC

By:

BANK OF AMERICA MERRILL
LYNCH INTERNATIONAL
LIMITED

By:

JPMORGAN CHASE BANK,
N.A., LONDON BRANCH

By:

SIGNATURE PAGES TO THE INTERCREDITOR AGREEMENT

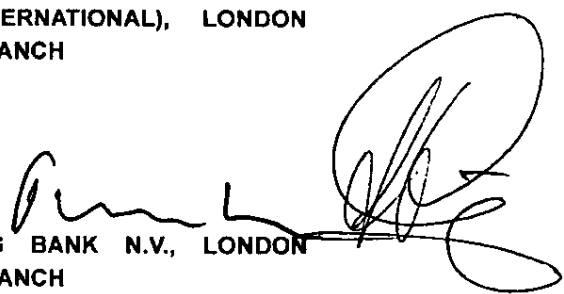
The Senior Facilities Lenders

HSBC BANK PLC

By:

**COÖPERATIEVE CENTRALE
RAIFFEISEN-
BOERENLEENBANK B.A
(TRADING AS RABOBANK
INTERNATIONAL), LONDON
BRANCH**

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**ING BANK N.V., LONDON
BRANCH**

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**ING EUROPEAN FINANCIAL
SERVICES PLC**

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N.A., LONDON BRANCH**

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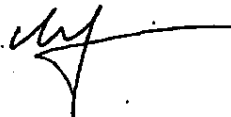
**ING BANK N.V., LONDON
BRANCH**

By:



**ING EUROPEAN FINANCIAL
SERVICES PLC**

By:



**BANK OF AMERICA MERRILL
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**ING BANK N.V., LONDON
BRANCH**


By:

**ING EUROPEAN FINANCIAL
SERVICES PLC**

By:

**BANK OF AMERICA MERRILL
LYNCH INTERNATIONAL
LIMITED**

By: **CHRISTIAN BACKES (VICE PRESIDENT)**

A handwritten signature in black ink, appearing to be 'C. Backes', written over a horizontal line.

**JPMORGAN CHASE BANK,
N.A., LONDON BRANCH**

By:

SIGNATURE PAGES TO THE INTERCREDITOR AGREEMENT

The Senior Facilities Lenders

HSBC BANK PLC

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By:


Regis Castro
Vice President