

# M

CHWP000

COMPANIES FORM No. 466(Scot)

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

# 466

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

Please do not  
write in  
this margin

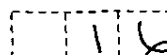
Pursuant to section 410 and 466 of the Companies Act 1985

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

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

For official use

Company number



SC298935

Name of company

\* Easynet Managed Services Limited (the "Chargor")

\* insert full name  
of company

Date of creation of the charge (note 1)

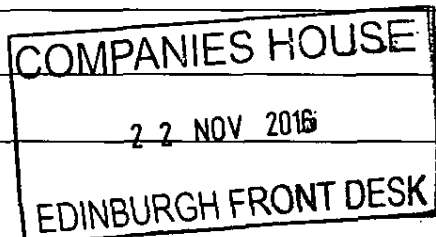
13 January 2016

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

Security Accession Deed (the "Charge")

Names of the persons entitled to the charge

Barclays Bank plc (as Security Agent)



Short particulars of all the property charged

Subject to paragraph 2.5(c) and Clause 2.6 (Property Restricting Charge) of the Charge, as further security for the payment of the Secured Obligations, the Chargor charges with full title and guarantee in favour of the Security Agent (for the benefit of itself and the other Secured Parties) by way of first floating charge all its present and future assets, undertakings and rights.

Terms defined in the charge.

Presenter's name address and  
reference (if any):

CMS Cameron McKenna LLP  
Saltire Court, 20 Castle Terrace,  
Edinburgh EH1 2EN

For official use (02/06)

Charges Section

Post room

TUESDAY



SCT

\*S5KAAMMB\*

22/11/2016

#249

COMPANIES HOUSE

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

Interoute Communications Holdings Limited, 31st Floor, 25 Canada Square, Canary Wharf, London, E14 5LQ

HSBC Corporate Trustee Company (UK) Limited, 8 Canada Square, London, E14 5HQ

Barclays Bank plc as Security Agent, 1 Churchill Place, London, E14 5HP

*Please do not  
write in  
this margin*

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

Date(s) of execution of the instrument of alteration

4 November 2016

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

3.2 (c) Prior to the Secured Debt Discharge Date, no member of the Group shall grant any Senior Notes Only Security or Shared Transaction Security or any combination thereof.

3.3 (a) Subject to Clause 4.3 (Security: Ancillary Lenders and Issuing Banks), no Debtor shall (and the Parent shall procure that no member of the Group will) grant to any of the Secured Parties the benefit of any Security in respect of that Secured Party's Secured Liabilities, in addition to the Transaction Security, unless:

- (i) the granting of such Security is permitted by the Amended Intercreditor Agreement or the Credit Facility Documents, the Senior Secured Notes Documents and the Pari Passu Debt Documents; and
- (ii) to the extent legally possible, at the same time it is also granted either:
  - (A) to the Security Agent as agent and/or trustee for the other Secured Parties in respect of their Secured Liabilities; or

See Paper Apart for further details.

See instrument of alteration for defined terms.

Short particulars of any property released from the floating charge

N/A

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

N/A

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

*Please do not  
write in  
this margin*

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

#### Transaction Security

Each of the Parties agrees that the Transaction Security created pursuant to the Transaction Security Documents shall rank and secure the Secured Obligations, *pari passu* and without any preference between them (but only to the extent that such Transaction Security is expressed to secure the Secured Obligations).

See instrument of alteration 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

*Please do not  
write in  
this margin*

*Please complete  
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 CMJ C. M. C. Date 18/11/16  
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. ☐ delete as appropriate
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 Registration Office, 139 Fountainbridge, Edinburgh EH3 9FF  
DX 235 Edinburgh or LP - 4 Edinburgh 2

This is the paper apart referred to in the Form 466 relating to an amended Intercreditor Agreement dated 4 November 2016 altering a security accession deed in relation to a debenture dated 13 January 2016 by Easynet Managed Services Limited in favour of Barclays Bank plc as Security Agent.

Continued from Form 466:

- (B) in the case of any jurisdiction in which effective Security cannot be granted in favour of the Security Agent as trustee for the Secured Parties:
  - (I) to the other Secured Parties in respect of their Secured Liabilities;  
or
  - (II) to the Security Agent under a parallel debt structure for the benefit of the other Secured Parties,

and ranks in the same order of priority as that contemplated in this Clause 3.

- (b) Subject to Clause 4.3 (*Security: Ancillary Lenders and Issuing Banks*), no Debtor or other Material Company shall (and the Parent shall procure that no member of the Group will) grant to any of the Secured Parties the benefit of any guarantee, indemnity or other assurance against loss from any member of the Group in respect of their Liabilities in addition to those in:

- (i) the original form of the RCF Agreement or the Senior Secured Notes Indenture (or any Equivalent Provision in any other Credit Facility Document or Senior Secured Notes Document);
- (ii) the Amended Intercreditor Agreement; or
- (iii) the original form of Commitment Letter (as defined in the RCF Agreement) (or any equivalent provision in any mandate letter entered into in connection with any other Credit Facility Document or Senior Secured Notes Documents which is similar in meaning and effect); or
- (iv) any Shared Assurance,

if, to the extent legally possible and subject to any Agreed Security Principles, at the same time it is also offered and, if such offer is accepted, granted to the other Senior Secured Creditors (and, if such guarantee, indemnity or other assurance against loss relates to the Shared Transaction Security, the Senior Notes Creditors) in respect of their Liabilities and ranks in the same order of priority as that contemplated in Clause 2 (*Ranking and Priority*).

- (c) For the avoidance of doubt, this Clause 3.3 shall not prevent the granting of any Security, guarantee, indemnity or other assurance against loss in respect of the Credit Facility Liabilities where such Security, guarantee, indemnity or other assurance against loss is not capable of being granted in respect of any or all of the other Secured Liabilities.

#### **4.3 Security: Ancillary Lenders and Issuing Banks**

No Ancillary Lender or Issuing Bank will, unless the prior written consent of the Instructing Group 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 Credit Facility Liabilities or *Pari Passu* Debt (as applicable) 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 RCF Finance Documents (or Equivalent Provision in any other Credit Facility Document or Pari Passu Debt Documents (as applicable));
  - (ii) the Amended Intercreditor Agreement; and
  - (iii) the Shared 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 Credit Facility Cash Cover permitted under the Credit Facility Documents or the Pari Passu Debt Documents relating to any Ancillary Facility or for any Letter of Credit issued by the Issuing Bank;
- (e) the indemnities, rights of set-off and netting contained in an ISDA Master Agreement (in the case of a Hedging Ancillary Agreement which is based on an ISDA Master Agreement) or any indemnities, rights of set-off and netting which are similar in meaning and effect to those indemnities, rights of set-off and netting (in the case of a Hedging Ancillary Agreement which is not based on an ISDA Master Agreement); or
- (f) any Security, guarantee, indemnity or other assurance against loss giving effect to, or arising as a result of the effect of, any netting or set-off arrangement relating to the Ancillary Facilities for the purpose of netting debit and credit balances arising under the Ancillary Facilities.

#### **6.4 Security: Pari Passu Creditors**

The Pari Passu Creditors may not take, accept or receive the benefit of:

- (a) any Security in respect of the Pari Passu Debt from any member of the Group or any of its Affiliates (including TopCo) in addition to the Transaction Security unless the grant of such Security is permitted by the Senior Secured Notes Documents, the Credit Facility Documents and any Pari Passu Debt Documents and, at the same time, it is also granted, to the extent legally possible:
  - (i) to the Security Agent as agent and/or trustee for the other Secured Parties in respect of their Secured Obligations;
  - (ii) in the case of any jurisdiction in which effective Security cannot be granted in favour of the Security Agent as trustee for the Secured Parties:
    - (A) to the other Secured Parties in respect of their Secured Obligations; or
    - (B) to the Security Agent under a parallel debt structure for the benefit of the other Secured Parties; or
  - (iii) in the case of any Security being granted after the date of the Amended Intercreditor Agreement, to some of the Secured Parties provided that such Security is incremental to Transaction Security that has already been granted in favour of all other Secured Parties and any proceeds derived from the enforcement of such Security will be shared with the Secured Parties in accordance with the Amended Intercreditor Agreement,

and ranks in the same order of priority as that contemplated in Clause 3 (*Transaction Security*); and

- (b) any guarantee, indemnity or other assurance against loss from any member of the Group in respect of the Pari Passu Debt in addition to those in:
  - (i) the original form of the Pari Passu Debt Documents;
  - (ii) the Amended Intercreditor Agreement; or
  - (iii) any Shared Assurance,

unless (A) the giving of such guarantee, indemnity or other assurance is permitted by the Senior Secured Notes Documents, the Credit Facility Documents and any Pari Passu Debt Documents and (B) at the same time, it is also granted to the Credit Facility Lenders and granted to the other Secured Parties in respect of their respective Secured Liabilities and ranks in the same order of priority as that contemplated in Clause 2 (*Ranking and Priority*).

#### **7.7 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) (or expressly permitted under) the Amended Intercreditor Agreement;
  - (ii) any Shared Assurance; or
  - (iii) the relevant Hedging Agreement no greater in extent than any of those referred to in paragraphs (i) and (ii) above; and
- (c) 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 and rights of set-off and netting (in the case of a Hedging Agreement which is not based on an ISDA Master Agreement).

#### **9.5 Security: Intra-Group Lenders**

Prior to the Final Discharge Date, no Intra-Group Lender may take, accept or receive the benefit of any Security, guarantee, indemnity or other assurance against loss in respect of the Intra-Group Liabilities from any member of the Group other than any Security arising by operation of law or rights of set-off or any Security, guarantee, indemnity or other assurance against loss consented to by the Instructing Group or, following the Secured Debt Discharge Date, by the Senior Notes Required Holders.

#### **10.6 Security: Shareholder Creditors**

Prior to the Final Discharge Date, the Shareholder Creditors may not take, accept or receive the benefit of any Security (other than any Security arising by operation of law), guarantee, indemnity or other assurance against loss in respect of the Shareholder Liabilities from any member of the Group other than

as expressly permitted by the Credit Facility Documents, the Senior Secured Notes Documents and the Pari Passu Debt Documents or consented to by the Instructing Group (or, following the Secured Debt Discharge Date, the Senior Notes Required Holders).

See instrument of alteration for definitions.





**FILE COPY**

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

COMPANY NO. 298935  
CHARGE CODE SC29 8935 0016

I HEREBY CERTIFY THAT PARTICULARS OF AN INSTRUMENT  
OF ALTERATION DATED 4 NOVEMBER 2016 WERE DELIVERED  
PURSUANT TO SECTION 466 OF THE COMPANIES ACT 1985  
ON 22 NOVEMBER 2016

THE INSTRUMENT RELATES TO A CHARGE CREATED ON 13  
JANUARY 2016

BY EASYNET MANAGED SERVICES LIMITED

IN FAVOUR OF  
BARCLAYS BANK PLC

GIVEN AT COMPANIES HOUSE, EDINBURGH 25 NOVEMBER 2016



Companies House



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

*Execution Version*

**4 November 2016**

**INTERROUTE COMMUNICATIONS HOLDINGS LIMITED**  
as Parent  
**HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED**  
as Senior Secured Notes Trustee  
and  
**BARCLAYS BANK PLC**  
as Security Agent

---

**AMENDMENT DEED**

related to an Intercreditor Agreement originally dated 15 October 2015

---

**LATHAM & WATKINS**

99 Bishopsgate  
London EC2M 3XF  
United Kingdom  
Tel: +44.20.7710.1000  
[www.lw.com](http://www.lw.com)

I certify that this is a true and original copy of the document stated herein.

Signed: 

Date: 16/11/2016

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(AMENDED INTERCREDITOR AGREEMENT)	

**THIS AMENDMENT DEED** (this "**Deed**") is dated 4 November 2016 and made between:

- (A) **INTERROUTE COMMUNICATIONS HOLDINGS LIMITED**, a limited liability company incorporated under the laws of England and Wales with its registered office at 31<sup>st</sup> Floor, 25 Canada Square, Canary Wharf, London, E14 5LQ and with company number 04927540, as parent (the "**Parent**");
- (B) **HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED** as trustee for the Senior Secured Noteholders (the "**Senior Secured Notes Trustee**"); and
- (C) **BARCLAYS BANK PLC** as security agent for the Secured Parties (the "**Security Agent**").

**WHEREAS:**

- (A) The Parent, the Senior Secured Notes Trustee and the Security Agent (amongst others) entered into an intercreditor agreement dated 15 October 2015 (the "**Intercreditor Agreement**").
- (B) The Parent, the Senior Secured Notes Trustee (on the basis of the direction referred to in Recital (F) below) and the Security Agent have agreed to enter into this Deed in order to amend and restate the terms of the Intercreditor Agreement in the manner set out below.
- (C) Pursuant to Section 4.14(c)(6) of the Indenture (as defined below), the Senior Secured Notes Trustee is entering into this Deed on the direction of Interoute Finco Plc, the Senior Secured Notes Issuer, given by way of an Officer's Certificate, pursuant to Sections 7.02(b), 14.02(1), 14.03 and 4.14(c) of an indenture dated as of 9 October 2015, as supplemented and amended, among *inter alios*, the Issuer, the Parent, the Security Agent and the Trustee (the "**Indenture**"). This Amendment Deed is the Intercreditor Amendment Agreement referred to in, and attached to, the Officer's Certificate of the Senior Secured Notes Issuer in which such direction of the Issuer is set out.

**IT IS AGREED** as follows:

**1. INTERPRETATION**

**1.1 Definitions**

In this Deed:

"**Amended Intercreditor Agreement**" means the Intercreditor Agreement as amended and restated by this Agreement with effect from the Closing Date.

"**Closing Date**" means the date on which:

- (a) the Existing RCF is prepaid and cancelled in full; and
- (b) the Facility B (under and as defined in the Term Loan Facility Agreement) is first utilised.

"**Existing RCF**" means the super senior multicurrency revolving facilities agreement dated 15 October 2015 between, among others, Interoute Communications Holdings Limited as parent, Interoute Communications Limited as original borrower, Credit Suisse AG, London branch, Morgan Stanley Bank International Limited and Barclays Bank PLC as mandated lead

arrangers and Barclays Bank PLC as facility agent and security agent (as amended, restated, supplemented and/or waived from time to time).

**"Term Loan Facility Agreement"** means the loan facility agreement comprising an up to €275,000,000 term loan facility dated on or about the date hereof and entered into between amongst others, Interoute Communications Limited as original borrower, the Original Guarantors (as defined therein), the Original Lenders (as defined therein) and Barclays Bank PLC as Security Agent (as amended, restated, supplemented and/or waived from time to time).

**1.2 Construction**

- (a) Terms defined in the Intercreditor Agreement (as amended pursuant to this Deed) shall have the same meaning when used in this Deed.
- (b) Clause 1.2 (*Construction*) of the Intercreditor Agreement will be deemed to be set out in full in this Deed, but as if references in that clause to the Intercreditor Agreement were references to this Deed.

**1.3 Third Party Rights**

A person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enjoy the benefit of or to enforce any term of this Deed.

**1.4 Deed**

The Parties intend that this document shall take effect as a deed, notwithstanding that a party to it may only execute it under hand.

**2. AMENDMENT AND RESTATEMENT OF THE ORIGINAL INTERCREDITOR AGREEMENT**

**2.1 The Intercreditor Agreement**

With effect from (and including) the Closing Date, the Intercreditor Agreement shall be amended and restated in the form set out in Schedule 1 (*Amended Intercreditor Agreement*) to this Deed.

**2.2 Continuing Effect**

Except as varied by the terms of this Deed, the Intercreditor Agreement will remain in full force and effect and any reference in the Amended Intercreditor Agreement or any other Finance Document to the Intercreditor Agreement or to any provision of the Intercreditor Agreement will be construed as a reference to the Amended Intercreditor Agreement, or that provision, as amended and restated by this Deed.

**3. MISCELLANEOUS**

**3.1 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.

**3.2 Partial Invalidity**

If, any provision of this Deed is or becomes invalid, illegal or unenforceable in any respect under any law the validity, legality or enforceability of the remaining provisions shall not be affected or impaired in any way.

### **3.3 Remedies and Waivers**

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

### **4. GOVERNING LAW**

This Deed and any non-contractual obligations arising out of or in connection with it are governed by English law and the Parent submits to the jurisdiction of the English courts in the terms set out in Clause 33 (*Enforcement*) of the Intercreditor Agreement (as if references in that Clause to "this Agreement" were references to this "Deed").

**IN WITNESS** whereof this Deed has been entered into on the date stated at the beginning of this Agreement and executed as a deed by Company and is delivered by them as a deed on the date specified above.

**SIGNATURES**

**THE PARENT**

**EXECUTED as a DEED by**

**INTERROUTE COMMUNICATIONS HOLDINGS LIMITED**

acting by:



Name: GARETH WILLIAMS

Title: DIRECTOR

Witness:



Name: LAURA VAUGHAN

Address: 28 CELIA HOUSE, LONDON, N1 6RB

Occupation: EXECUTIVE ASSISTANT

**THE SENIOR SECURED NOTES TRUSTEE**

**EXECUTED as a DEED by**

**HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED**

acting by:

[Redacted Signature]

Name: Luke Ashby  
Authorised Signatory

Title: \_\_\_\_\_

Witness: [Redacted Signature]

Name: Mr. S. H. H. H.

Address: HSBC Bank plc

8 Canada Square


London

Occupation: E14 5HQ



**THE SECURITY AGENT  
EXECUTED as a DEED by**

**BARCLAYS BANK PLC**

acting by: 

its duly authorised attorney

Name of duly authorised attorney: ANDERS WHITE

Title: VP - DEBT FINANCE

Witness: 

Name: SAM LOWARD

Address: \_\_\_\_\_

Occupation: VP - DEBT FINANCE

**Barclays Bank PLC**  
1 Churchill Place  
London  
E14 5HP

**SCHEDULE 1**  
**(AMENDED INTERCREDITOR AGREEMENT)**

**Dated 15 October 2015**

**(as amended pursuant to an amendment deed on  
14 November 2016)**

**INTERROUTE COMMUNICATIONS HOLDINGS LIMITED**

as Parent

**INTERROUTE FINCO PLC**

as Senior Secured Notes Issuer

**CERTAIN COMPANIES**

as Debtors

**BARCLAYS BANK PLC**

as Original RCF Agent

**HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED**

as Senior Secured Notes Trustee

**BARCLAYS BANK PLC**

as Security Agent

and

**CERTAIN ENTITIES**

as RCF Finance Parties, Intra-Group Lenders, Hedge Guarantors  
and Shareholder Creditors

---

**INTERCREDITOR AGREEMENT**

---

**LATHAM & WATKINS**

99 Bishopsgate  
London EC2M 3XF  
United Kingdom  
Tel: +44.20.7710.1000  
[www.lw.com](http://www.lw.com)

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**THIS AGREEMENT** is dated 15 October 2015 as amended and restated on 14 November 2016 pursuant to an amendment deed dated 04 November 2016 and made between:

- (A) **INTERROUTE COMMUNICATIONS HOLDINGS LIMITED**, a limited liability company incorporated under the laws of England and Wales with its registered office at 31<sup>st</sup> Floor, 25 Canada Square, Canary Wharf, London, E14 5LQ and with company number 04927540, as parent (the "**Parent**");
- (B) **INTERROUTE FINCO PLC**, a public limited company incorporated under the laws of England and Wales with its registered office at 31<sup>st</sup> Floor, 25 Canada Square, Canary Wharf, London, E14 5LQ and with company number 09727400, as senior secured notes issuer (the "**Senior Secured Notes Issuer**");
- (C) **BARCLAYS BANK PLC** as original RCF Agent (the "**Original RCF Agent**");
- (D) **BARCLAYS BANK PLC, CREDIT SUISSE AG, LONDON BRANCH AND MORGAN STANLEY BANK INTERNATIONAL LIMITED** as mandated lead arrangers and **BARCLAYS BANK PLC, CREDIT SUISSE AG, LONDON BRANCH, DEUTSCHE BANK AG, LONDON BRANCH, DNB (UK) LIMITED AND MORGAN STANLEY BANK INTERNATIONAL LIMITED** as arrangers, together with the mandated lead arrangers (the "**Original Arrangers**");
- (E) **HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED** as trustee for the Senior Secured Noteholders (the "**Senior Secured Notes Trustee**");
- (F) **THE FINANCIAL INSTITUTIONS** listed in the RCF Agreement as the "Original Lenders" (together with the Original RCF Agent, the Security Agent (as defined below) and the Original Arrangers, the "**Original RCF Finance Parties**");
- (G) **THE PERSON** listed in Part 1 of Schedule 1 (*The Parties*) hereto as shareholder creditor (the "**Original Shareholder Creditor**");
- (H) **THE PERSONS** listed in Part 2 of Schedule 1 (*The Parties*) hereto as intra-group lenders (the "**Original Intra-Group Lenders**");
- (I) **THE PERSONS** listed in Part 3 of Schedule 1 (*The Parties*) hereto as debtors (the "**Original Debtors**");
- (J) **THE SUBSIDIARIES** of the Parent listed in Part 4 of Schedule 1 (*The Parties*) hereto as original hedge guarantors (the "**Original Hedge Guarantors**"); and
- (K) **BARCLAYS BANK PLC** 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 Credit Facility Acceleration Event, a Senior Secured Notes Acceleration Event, a Pari Passu Debt Acceleration Event or a Senior Notes Acceleration Event.

**"Additional Indebtedness"** has the meaning given to that term in Clause 24.1 (*Incurrence of Additional Indebtedness*).

**"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.

**"Aggregate Exchange Rate Hedged Amount"** means, in relation to a Hedge Counterparty and with respect to a Relevant Hedged Debt, the aggregate of the notional amounts denominated in a Hedged Currency hedged by the relevant Debtors under each Hedging Agreement which is an exchange rate hedge transaction in relation to that Relevant Hedged Debt and to which that Hedge Counterparty is party.

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

**"Agreed Security Principles":**

- (a) on or prior to the RCF Discharge Date, has the meaning given to the term "Agreed Security Principles" in the RCF Agreement; and
- (b) following the RCF Discharge Date, has the meaning given to any Equivalent Provision in any Credit Facility Document or, if applicable, any Pari Passu Debt Document.

**"Ancillary Document"** means each document relating to or evidencing an Ancillary Facility.

**"Ancillary Facility"** means:

- (a) on or prior to the RCF Discharge Date, any ancillary facility made available by an Ancillary Lender in accordance with clause 9 (*Ancillary Facilities*) of the RCF Agreement; and
- (b) after the RCF Discharge Date, any ancillary facility made available by an Ancillary Lender under and in accordance with the Credit Facility Documents or any Pari Passu Debt Documents.

**"Ancillary Lender"** means:

- (a) on or prior to the RCF Discharge Date, each RCF Lender (or Affiliate of an RCF Lender) which makes an Ancillary Facility available pursuant to the terms of the relevant RCF Agreement;
- (b) after the RCF Discharge Date, each Credit Facility Lender (or Affiliate of a Credit Facility Lender) which makes an Ancillary Facility available pursuant to the terms of the relevant Credit Facility Documents; and
- (c) after the RCF Discharge Date, each Pari Passu Creditor (or Affiliate of a Pari Passu Creditor) which makes an Ancillary Facility available pursuant to the terms of the relevant Pari Passu Debt Documents.

**"Arranger"** means:

- (a) on or prior to the RCF Discharge Date, the Original Arrangers and each "Mandated Lead Arranger" and each "Arranger" under and as defined in the RCF Agreement who, if not an original Party to this Agreement has become a Party to this Agreement as an Arranger pursuant to Clause 22 (*Changes to the Parties*); and
- (b) after the RCF Discharge Date, each "Arranger" and/or "Mandated Lead Arranger" under and as defined in the relevant Credit Facility Documents who has become a Party to this Agreement as an Arranger pursuant to Clause 22 (*Changes to the Parties*).

**"Arranger Liabilities"** means the Liabilities of any Debtor to any Arranger under any Credit Facility Documents.

**"Automatic Early Termination"** means the termination or close-out of any hedging transaction prior to the maturity of that hedging transaction which is brought about automatically by the terms of the relevant Hedging Agreement and without any party to the relevant Hedging Agreement taking any action to terminate that hedging transaction.

**"Base Currency"** means Euro.

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

**"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 an Arranger or a Creditor Representative) 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 Credit Facility Borrower, an issuer under the Senior Secured Notes Documents and an issuer or borrower under the Pari Passu Debt Documents).

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

- (a) (in relation to any date for payment or purchase of a currency other than Euro) the principal financial centre of the country of that currency; or
- (b) (in relation to any date for payment or purchase of Euro) which is a TARGET Day.

**"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 Agreement 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 Agreement 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 Agreement not based on an ISDA Master Agreement, any step involved on a termination of the hedging transactions under that Hedging Agreement pursuant to any provision of that Hedging Agreement which has a similar effect to either provision referenced in paragraph (a) and paragraph (b) above.

**“Consent”** has the meaning given to that term in Clause 30.9 (*Deemed consent*).

**“Credit Facility”** means:

- (a) on or prior to the RCF Discharge Date, any RCF; and
- (b) after the RCF Discharge Date, any credit facility, instrument or arrangement that constitutes a “Credit Facility” as defined in the Senior Secured Notes Documents which is permitted, under the terms of the Senior Secured Notes Documents, the Pari Passu Debt Documents and (if applicable) the Credit Facility Documents, to share in the Transaction Security with the rights and obligations of Credit Facility Lenders as provided for in this Agreement, and in respect of which the creditors, facility agent and arrangers (if any) have acceded to this Agreement in accordance with Clause 22.3 (*Credit Facility Lenders*) and which is permitted by the terms of the Senior Secured Notes Documents and the Pari Passu Debt Documents to rank senior to the Senior Secured Notes Liabilities and the Pari Passu Debt, in each case, with respect to the proceeds of any Enforcement of the Transaction Security.

**“Credit Facility Acceleration Event”** means:

- (a) on or prior to the RCF Discharge Date, the RCF Agent exercising any of its rights under Clause 28.13 (*Acceleration*) of the RCF Agreement (other than a right to place amounts on demand, but including, without limitation, the making of a demand in respect of any amounts placed on demand) or any automatic acceleration being triggered in accordance with Clause 28.13 (*Acceleration*) of the RCF Agreement; and
- (b) after the RCF Discharge Date, the Creditor Representative in relation to any Credit Facility exercising any of its rights (other than a right to place amounts on demand, but including, without limitation, the making of a demand in respect of any amounts placed on demand) under any acceleration provision(s) of the Credit Facility Documents or any automatic acceleration being triggered in accordance with any acceleration provision(s) of the Credit Facility Documents.

**“Credit Facility Agent”** means:

- (a) on or prior to the RCF Discharge Date, the RCF Agent; and
- (b) after the RCF Discharge Date, the person acting as agent of the relevant Credit Facility Lenders in the relevant Credit Facility Document which becomes a Party as a Credit Facility Agent in accordance with Clause 22 (*Changes to the Parties*).

**“Credit Facility Borrower”** has the meaning given to the term “Borrower” in:

- (a) on or prior to the RCF Discharge Date, the RCF Agreement; and
- (b) after the RCF Discharge Date, the relevant Credit Facility Documents.

**“Credit Facility Cash Cover”** has the meaning given to the term “cash cover” in:

- (a) on or prior to the RCF Discharge Date, the RCF Agreement; and

- (b) after the RCF Discharge Date, the relevant Credit Facility Document or Pari Passu Debt Document.

**“Credit Facility Commitment”** has the meaning given to the term “Commitment” in:

- (a) on or prior to the RCF Discharge Date, the RCF Agreement; and
- (b) after the RCF Discharge Date, the relevant Credit Facility Documents.

**“Credit Facility Creditors”** means each Creditor Representative in relation to a Credit Facility, each Arranger and each Credit Facility Lender.

**“Credit Facility Discharge Date”** means the first date on which all Credit Facility Liabilities have been fully and finally discharged to the satisfaction of the relevant Credit Facility Agent(s), whether or not as the result of an enforcement, and the Credit Facility Lenders are under no further obligation to provide financial accommodation to any of the Debtors under the Credit Facility Documents.

**“Credit Facility Document”** means:

- (a) on or prior to the RCF Discharge Date, each “Finance Document” under, and as defined in, the RCF Agreement; and
- (b) after the RCF Discharge Date, each document or instrument entered into between a member of the Group and a Finance Party setting out the terms of any loan, credit or debt facility or securities which creates or evidences any Credit Facility or entered into in connection therewith and designated a “Finance Document” (under and as defined under the relevant Credit Facility Document) by a member of the Group and the applicable Credit Facility Agent or otherwise in accordance with such Credit Facility Document,

excluding this Agreement and any Hedging Agreements.

**“Credit Facility Guarantor”** means:

- (a) on or prior to the RCF Discharge Date, a “Guarantor” under, and as defined in, the RCF Agreement; and
- (b) after the RCF Discharge Date, any member of the Group that provides a guarantee in favour of any Credit Facility Creditor in connection with any Credit Facility.

**“Credit Facility Lender Cash Collateral”** means:

- (a) on or prior to the RCF Discharge Date, any cash collateral provided by a Credit Facility Lender to an Issuing Bank pursuant to clause 7.4 (*Cash collateral by Non-Acceptable L/C Lender and Borrower’s option to provide cash cover*) of the RCF Agreement; and
- (b) after the RCF Discharge Date, any cash collateral provided by a Credit Facility Lender or Pari Passu Creditor to an Issuing Bank pursuant to the terms of the Credit Facility Documents or the Pari Passu Debt Documents, as applicable.

**“Credit Facility Lenders”** means:

- (a) on or prior to the RCF Discharge Date, each RCF Lender, Issuing Bank and Ancillary Lender under a Credit Facility Document; and

- (b) after the RCF Discharge Date, each "Lender" (under, and as defined in, the Credit Facility Documents), Issuing Bank and Ancillary Lender under a Credit Facility Document.

**"Credit Facility Liabilities"** means the Liabilities owed by any Debtors to the Credit Facility Creditors under or in connection with the Credit Facility Documents (including any Liabilities owed to a Hedging Ancillary Lender in respect of the Credit Facility Documents (acting in such capacity) but excluding any Hedging Liabilities).

**"Credit Facility Participation"** means, in relation to a Credit Facility Lender, its aggregate Credit Facility Commitments, in the case of the RCF Agreement, after the application of:

- (a) paragraph (a) of clause 30.2 (*Disenfranchisement on Debt Purchase Transactions entered into by Investor Affiliates*) of the RCF Agreement; and
  - (b) clause 41.8 (*Disenfranchisement of Defaulting Lenders*) of the RCF Agreement,
- or any Equivalent Provision in any other Credit Facility Document.

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

**"Creditor Representative"** means:

- (a) in relation to the RCF Lenders, the RCF Agent;
- (b) in relation to any Credit Facility Lenders (other than the RCF Lenders), the Credit Facility Agent in respect of those Credit Facility Lenders;
- (c) in relation to the Senior Secured Noteholders, the Senior Secured Notes Trustee;
- (d) in relation to any Pari Passu Creditors, the Pari Passu Debt Representative in respect of those Pari Passu Creditors;
- (e) in relation to any Hedge Counterparty, each Hedge Counterparty shall be its own Creditor Representative; and
- (f) in relation to any Senior Noteholders, the Senior Notes Trustee.

**"Creditor Representative Amounts"** means fees, costs and expenses of a Creditor Representative payable to a Creditor Representative for its own account pursuant to the relevant Debt Documents or any engagement letter between a Creditor Representative and a Debtor (including any amount payable to a Creditor Representative by way of indemnity, remuneration or reimbursement for expenses incurred but excluding any amounts owed to a Hedge Counterparty in its capacity as its own Creditor Representative), and the costs incurred by a Creditor Representative in connection with any actual or attempted Enforcement Action which is permitted by this Agreement which are recoverable pursuant to the terms of the Debt Documents.

**"Creditor/Creditor Representative Accession Undertaking"** means:

- (a) an undertaking substantially in the form set out in Schedule 3 (*Form of Creditor/Creditor Representative Accession Undertaking*);
- (b) a Transfer Certificate, an Assignment Agreement or an Increase Confirmation (each as defined in the RCF Agreement or other Credit Facility Document) as the context may require, provided that, in each case, it contains an accession to this Agreement

which is substantially in the form set out in Schedule 3 (*Form of Creditor/Creditor Representative Accession Undertaking*);

- (c) a Transfer Certificate, an Assignment Agreement or an Increase Confirmation (each as defined in the Pari Passu RCF Agreement) as the context may require, provided that, in each case, it contains an accession to this Agreement which is substantially in the form set out in Schedule 3 (*Form of Creditor/Creditor Representative Accession Undertaking*);
- (d) a Transfer Certificate, an Assignment Agreement or an Increase Confirmation (each as defined in the Pari Passu TLB Agreement) as the context may require, provided that, in each case, it contains an accession to this Agreement which is substantially in the form set out in Schedule 3 (*Form of Creditor/Creditor Representative Accession Undertaking*); or
- (e) 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 Primary Creditors and the Subordinated Creditors.

**"Debt Disposal"** means any disposal of any Liabilities or Debtors' Intra-Group Receivables pursuant to paragraphs (d) or (e) of Clause 17.1 (*Facilitation of Distressed Disposals*).

**"Debt Documents"** means each of this Agreement, the Primary Finance Documents, the Transaction Security Documents, the Shareholder Debt Documents, the Intra-Group Debt Documents, the Senior Secured Notes Proceeds Notes, the Senior Notes Proceeds On-Loan and any other document designated as such by the Security Agent and the Parent.

**"Debt Related Hedging Liabilities"** means, on any date, in respect of a Hedge Counterparty and its Hedging Liabilities, the amount, if any, that would be payable to that Hedge Counterparty if the relevant hedging transactions were closed out on that date (in respect of hedging transactions which have not been closed out) or the close-out amount, if any, that is payable to that Hedge Counterparty (in respect of hedging transactions which have been closed out) in respect of Exchange Rate Hedging Transactions and Interest Rate Hedging Transactions in respect of which a close-out amount would be or is payable to the Hedge Counterparty, in each case, as calculated in accordance with the relevant Hedging Agreement.

**"Debtor"** means:

- (a) each Original Debtor (which, for the avoidance of doubt, includes, without limitation, each "Borrower" and "Guarantor" under the RCF Agreement (as those terms are defined therein)); and
- (b) any person which becomes a Party as a Debtor in accordance with Clause 22 (*Changes to the Parties*).

**"Debtor Accession Deed"** means:

- (a) a deed substantially in the form set out in Schedule 2 (*Form of Debtor Accession Deed*); or
- (b) only in the case of a member of the Group which is acceding as a "Borrower" or a "Guarantor" under a Credit Facility Document from time to time (as those terms are defined therein) an "Accession Deed" (as defined in the relevant Credit Facility Document) which contains substantially the same provisions as are set out in the form set out in Schedule 2 (*Form of Debtor Accession Deed*).

**“Debtor Resignation Request”** means a request substantially in the form set out in Schedule 4 (*Form of Debtor Resignation Request*).

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

**“Default”** means an Event of Default or any event or circumstance which would (with the expiry of a grace period or the giving of notice under the Credit Facility Documents, the Senior Secured Notes Documents, the Pari Passu Debt Documents or the Senior Notes Documents or any combination of any of the foregoing) be an Event of Default.

**“Defaulting Lender”** means:

- (a) on or prior to the RCF Discharge Date, a RCF Lender which is a “Defaulting Lender” under, and as defined in, the RCF Agreement;
- (b) after the RCF Discharge Date, a Credit Facility Lender which is a “Defaulting Lender” under, and as defined in, the relevant Credit Facility Document; and
- (c) at any time, a Pari Passu Creditor which is a “Defaulting Lender” under and as defined in the relevant Pari Passu Debt Document.

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

**“Designated Gross Amount”** means, in relation to a Multi-account Overdraft Facility, that Multi-account Overdraft Facility’s “Designated Gross Amount” under and as defined in the RCF Agreement or any Equivalent Provision of any other Credit Facility Document or Pari Passu Debt Document.

**“Designated Net Amount”** means, in relation to a Multi-account Overdraft Facility, that Multi-account Overdraft Facility’s “Designated Net Amount” under and as defined in the RCF Agreement or any Equivalent Provision of any other Credit Facility Document or Pari Passu Debt Document.

**“Designated Priority Long Term Operational FX Hedging Adjustment Notice”** means a notice to increase or decrease a Hedge Counterparty’s allocated Priority Long Term Operational FX Hedging Amount, substantially in the form set out in Schedule 6 (*Form of Priority Long Term Operational FX Hedging Notice*).

**“Designated Priority Long Term Operational FX Hedging Amount”** has the meaning given to that term in paragraph (a) of Clause 7.13 (*Priority Long Term Operational FX Hedging Liabilities*).

**“Designated Priority Long Term Operational FX Hedging Notice”** means a notice to allocate a Designated Priority Long Term Operational FX Hedging Amount to a Hedge Counterparty, substantially in the form set out in Schedule 6 (*Form of Priority Long Term Operational FX Hedging Notice*).

**“Distress Event”** means any of:

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

**“Distressed Disposal”** means a disposal of any Charged Property where such disposal is:

- (a) being effected at the request of the Instructing Group in circumstances where the Transaction Security has become enforceable;
- (b) being effected by enforcement of the Transaction Security; or
- (c) being effected, after the occurrence of a Distress Event, by a Debtor to a person or persons which is, or are, not a member, or members, of the Group.

**“Early Termination Date”** means an Early Termination Date (as defined in the relevant Hedging Agreement).

**“Effective Date”** means in respect of a Designated Priority Long Term Operational FX Hedging Notice, a Designated Priority Long Term Operational FX Hedging Adjustment Notice or a Priority Long Term Operational FX Hedging Reduction and Resignation Notice, as the case may be, the date which is the later of (i) the proposed effective date as specified in such notice and (ii) the date that the Security Agent accepts such notice.

**“Enforcement”** means the enforcement or disposal of any Transaction Security, the requesting of a Distressed Disposal and/or the release or disposal of claims and/or Transaction Security on a Distressed Disposal under Clause 17.1 (*Facilitation of Distressed Disposals*), the giving of instructions as to actions in respect of any Transaction Security and/or Charged Property following an Insolvency Event under Clause 12.7 (*Security Agent instructions*) and the taking of any other actions consequential on (or necessary to effect) any of those actions (but excluding the delivery of an Initial Enforcement Notice (as defined in Clause 15.3 (*Instructions to enforce – 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 (x) as a result of it becoming unlawful for a Super Senior Creditor, Non-Super Senior Hedge Counterparty, Senior Secured Noteholder, a Pari Passu Creditor or Senior Noteholder to perform its obligations under, or of any voluntary or mandatory prepayment arising under the Debt Documents or (y) any such acceleration or declaration in relation to Intra-Group Liabilities prior to the occurrence of an Acceleration Event that constitutes or gives rise to a Permitted Intra-Group Payment);
  - (ii) the making of any declaration that any Liabilities are payable on demand;
  - (iii) the making of a demand for payment in relation to a Liability that is payable on demand other than a demand in relation to Intra-Group Liabilities made in the ordinary course of dealings between the relevant Debtor and Intra-Group Lender prior to the occurrence of an Acceleration Event that constitutes or gives rise to a Permitted Intra-Group Payment;
  - (iv) the making of a 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) other than in connection with (A) an “Asset Disposition Offer”, an “Initial Public Offering” or a “Change of Control Offer” (each as defined in the Senior Secured Notes Indenture or any terms corresponding or equivalent thereto

relating to the same or substantially similar concepts in any Pari Passu Debt Document or Senior Notes Document) or (B) any open market purchases of, or any voluntary tender offer or exchange offer for, Senior Secured Notes, Pari Passu Notes or Senior Notes at a time at which no Default is continuing;

- (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 which is permitted under the Credit Facility Documents, the Senior Secured Notes Documents, any Pari Passu Debt Document, Senior Notes Document or Close-Out Netting by a Hedge Counterparty or by a Hedging Ancillary Lender or Payment Netting by a Hedge Counterparty or by a Hedging Ancillary Lender or Inter-Hedging Agreement Netting by a Hedge Counterparty or Inter-Hedging Ancillary Agreement Netting by a Hedging Ancillary Lender and other than the exercise of any such right in respect of Intra-Group Liabilities prior to the occurrence of an Acceleration Event to the extent that the exercise of such right constitutes or gives rise to a Permitted Intra-Group Payment; or
- (vii) the suing for or commencing of any legal or arbitration proceedings against any member of the Group to recover any Liabilities;
- (b) the taking of steps to enforce or require the enforcement of any right under any Transaction Security (including the crystallisation of any floating charge forming part of the Transaction Security);
- (c) in relation to any Hedging Liabilities only, (i) the designation of an Early Termination Date under any Hedging Agreement, (ii) the termination of, or closing out of any transaction under, any Hedging Agreement, prior to its stated maturity, or (iii) the demand for payment of any amount which would become payable on or following an Early Termination Date or any such termination or close-out other than a demand that gives rise to a Permitted Hedge Payment;
- (d) the entering into of any composition, compromise, assignment, assignation 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 (A) any action permitted under Clause 22 (*Changes to the Parties*), (B) any open market purchases of, or any voluntary tender offer or exchange offer for, Senior Secured Notes, Pari Passu Notes or Senior Notes at a time at which no Default is continuing or (C) any consensual amendments to and/or waivers of the Debt Documents agreed between members of the Group and the Creditors where that amendment or waiver does not constitute a Default under a Credit Facility Document, a Senior Secured Notes Document, a Pari Passu Debt Document or Senior Notes Document which is not the subject of that amendment or waiver) or (D) any such action constituting a Liabilities Acquisition in respect of Intra-Group Liabilities which is permitted under Clause 9.4 (*Acquisition of Intra-Group Liabilities*);
- (e) the petitioning, applying or voting for, or the taking of any formal steps (including the appointment of any liquidator, receiver, administrative receiver, administrator, including, without limitation, judicial or special 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:

- (A) the taking of any action falling within paragraphs (a) (ii), (iii), (iv), (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 the aforementioned 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;
- (B) a demand made by a Subordinated Creditor in relation to any Subordinated Group Liabilities to the extent that any resulting Payment would be a Permitted Intra-Group Payment or a Permitted Shareholder Creditor Payment;
- (C) any Subordinated Group Liabilities of a member of the Group being released or discharged in consideration for the issue of shares in that member of the Group;
- (D) for the purposes of paragraphs (d) or (e) above the taking of any action in accordance with a Permitted Reorganisation (as defined in Clause 16.1 (*Definitions*));
- (E) to the extent entitled by law, the taking of any actions against any Creditor (or any agent, trustee or receiver acting on behalf of such Creditor) to challenge the basis on which any sale or disposal is to take place pursuant to the powers granted to such persons under any security documentation;
- (F) an Ancillary Lender, Hedge Counterparty, Issuing Bank or other Primary Creditor bringing legal proceedings against any person solely for the purpose of:
  - (I) 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;
  - (II) obtaining specific performance (other than specific performance of an obligation to make a payment) with no claim for damages; or
  - (III) requesting judicial interpretation of any provision of any Debt Document to which it is party with no claim for damages;
- (G) the taking of any action necessary to create, register or perfect any Transaction Security by any method of perfection (except possession or control or notifying any debtors to direct payments in respect of receivables that are subject to Transaction Security to a creditor (or on its behalf) or directly collecting accounts receivables that are subject to Transaction Security or other payment rights of any member of the Group that are subject to Transaction Security) or the taking of any action necessary to prove, preserve or protect (but not enforce) any Transaction Security;
- (H) bringing legal proceedings against any person in connection with any securities violation or common fraud; or
- (I) allegations of material misstatements or omissions made in connection with the offering materials relating to any Senior Secured Notes, Pari Passu Notes or Senior Notes or in reports furnished to the Senior Secured Noteholders,



Pari Passu Noteholders or the Senior Noteholders or any exchange on which the Senior Secured Notes, Pari Passu Notes or the Senior Notes are listed by a member of the Group or the Parent pursuant to the information and reporting requirements under the Senior Secured Notes, Pari Passu Debt Documents or the Senior Notes Documents,

shall not, in each case, constitute Enforcement Action.

**"Enforcement Proceeds"** means any amount paid to or otherwise realised by a Secured Party under or in connection with any Enforcement and, following the occurrence of a Distress Event, any other proceeds of, or arising from, any of the Charged Property.

**"Equivalent Provision"** means:

- (a) with respect to a Credit Facility Document in relation to a provision or term of the RCF Agreement, any equivalent provision or term in the Credit Facility Document which is similar in meaning and effect;
- (b) with respect to a Pari Passu Facility Agreement, in relation to a provision or term of the RCF Agreement, any equivalent provision or term in the Pari Passu Debt Document which is similar in meaning and effect;
- (c) with respect to a Pari Passu Notes Indenture, in relation to a provision or term of the Senior Secured Note Indenture, any equivalent provision or term in the Pari Passu Notes Indenture which is similar in meaning and effect; and
- (d) with respect to a Senior Notes Indenture, in relation to a provision or term of the initial Senior Notes Indenture, any equivalent provision or term in any other Senior Notes Indenture which is similar in meaning and effect.

**"Event of Default"** means any event or circumstance specified as such in any Credit Facility Documents, the Senior Secured Notes Indenture, any Pari Passu Debt Document or any Senior Notes Indenture.

**"Exchange Rate Hedge Excess"** means, with respect to a Relevant Hedged Debt, the amount by which the Total Exchange Rate Hedged Amount with respect to that Relevant Hedged Debt exceeds the Permitted Maximum Exchange Rate Hedged Amount with respect to that Relevant Hedged Debt.

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

**"Exchange Rate Hedging Transaction"** means a derivative transaction entered into by a Debtor and a Hedge Counterparty for the purposes of protection against or benefit from fluctuations in the rate of exchange of one currency into another, in respect of Senior Secured Notes Liabilities, Senior Notes Liabilities and/or Pari Passu Debt and that is permitted under the terms of each of the Credit Facility Documents, the Senior Secured Notes Documents and the Pari Passu Debt Documents to share in the Transaction Security.

**"Final Discharge Date"** means the later to occur of the Super Senior Discharge Date, the Senior Secured Discharge Date and the Senior Notes Discharge Date.

**"Finance Party"**

- (a) on or prior to the RCF Discharge Date, means any RCF Finance Party; and
- (b) after the RCF Discharge Date, has the meaning given to the term “Finance Party” in the relevant Credit Facility Documents.

**“Financial Adviser”** means an internationally recognised investment bank or an internationally recognised accountancy firm 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 in respect of the relevant type of assets (in each case not being the firm appointed as the relevant Debtor’s administrator or other relevant office holder) selected by the Security Agent.

**“Financial Adviser’s Opinion”** has the meaning given to such term in Schedule 5 (*Security Enforcement Principles*).

**“Financial Indebtedness”** has the meaning given to the term “Indebtedness” in the Senior Secured Notes Indenture (irrespective of whether the Senior Secured Notes Discharge Date has occurred), but, until the Credit Facility Discharge Date, includes any “Financial Indebtedness” as defined in the RCF Agreement or (after the RCF Discharge Date) the relevant Credit Facility Document (under paragraph (b) of that definition), in each case in its original form and until the Pari Passu RCF Discharge Date, includes any “Financial Indebtedness” as defined in the Pari Passu RCF Finance Documents.

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

**“Group”** means the Parent and each of its Restricted Subsidiaries for the time being.

**“Guarantee Liabilities”** means, in relation to a member of the Group, the liabilities or 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 an Arranger or a Creditor Representative) or Debtor as or as a result of its being a guarantor or surety (including, without limitation, liabilities or obligations arising by way of guarantee, indemnity, contribution or subrogation and in particular any guarantee or indemnity arising under or in respect of this Agreement or the Primary Finance Documents (including, without limitation, liabilities arising under or in respect of the keepwell provided in Clause 11.16 (*Qualified Keepwell Provider; Non-Qualified ECP Guarantor*))).

**“Hedge Counterparty”** means any person which becomes Party as a Hedge Counterparty in accordance with Clause 22.12 (*Creditor/Creditor Representative Accession Undertaking*).

**“Hedge Guarantor”** means each Debtor that:

- (a) is an Original Hedge Guarantor (which, for the avoidance of doubt, includes, without limitation, each Debtor that is an Original Debtor under this Agreement); or
- (b) which becomes a Party as a Hedge Guarantor in accordance with Clause 22 (*Changes to the Parties*).

**“Hedge Guarantor Resignation Request”** means a request substantially in the form set out in Schedule 7 (*Form of Hedge Guarantor Resignation Request*).

**“Hedge Reduction Payment”** has the meaning given to it in Clause 7.15(b) (*Reduction in Relevant Hedged Debt*).

**"Hedged Currency"** means the currency in which a Relevant Hedged Debt (or part of a Relevant Hedged Debt) is denominated and which may be hedged by a Debtor in respect of exchange rate risk.

**"Hedging Agreement"** means any master agreement together with schedule and confirmation(s) or any other agreement(s) entered into or to be entered into between a Debtor and a Hedge Counterparty for the purposes of hedging that at the time such Hedging Agreement is entered into is permitted under the terms of the Credit Facility Documents, Senior Secured Notes Documents and Pari Passu Debt Documents, in each case, in place at that time and to share in the Transaction Security, but excluding any such master agreement (together with any schedule thereto) that has been terminated in accordance with Clause 7.16 (*Termination of hedging*).

**"Hedging Ancillary Agreement"** 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 such Ancillary Lender makes available a Hedging Ancillary Facility.

**"Hedging Force Majeure"** means:

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

**"Hedging Liabilities"** means the Liabilities owed by any Debtor to any Hedge Counterparty under or in connection with any Hedging Agreement and the guarantee and indemnity referred to in Clause 11 (*Guarantee and Indemnity*) (whether alone or jointly, or jointly and severally, with any other person, whether actually or contingently, and whether as principal, surety or otherwise).

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

- (a) in the case of a Hedging Agreement which is based on an ISDA Master Agreement:
  - (i) that date was an Early Termination Date (as defined in the relevant ISDA Master Agreement); and

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

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

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

**"Insolvency Event"** means, in relation to any Debtor (or, if applicable, any Security Provider or other Material Company):

- (a) any resolution is passed or an order is made for the winding up, dissolution, administration, administrative receivership, commencement of insolvency, bankruptcy proceedings or reorganisation of or in respect to that person, a moratorium is declared in relation to any indebtedness of that person or an administrator is appointed to that person;
- (b) any composition, compromise, assignment, assignation or arrangement is made with any of its creditors, in or out-of-court (other than (i) any open market purchases of, or any voluntary tender offer or exchange offer for, instruments evidencing Financial Indebtedness at a time at which no default thereunder is continuing and (ii) any consensual amendments to and/or waivers of any agreements or instruments creating or evidencing indebtedness agreed between that person and its relevant creditors where that amendment or waiver does not constitute a Default under a Credit Facility Document, a Senior Secured Notes Document, a Pari Passu Debt Document or a Senior Notes Document which is not the subject of that amendment or waiver);
- (c) the appointment of any liquidator (other than the appointment of a liquidator in respect of a solvent liquidation of that person that is permitted by the Credit Facility Documents, the Senior Secured Notes Documents, the Pari Passu Debt Documents and the Senior Notes Documents), receiver, preliminary receiver, administrator, administrative receiver, compulsory manager, trustee, custodian, sequestrator, conservator or other similar officer in respect of that person or any material part of its assets; or
- (d) any analogous procedure or step is taken in any jurisdiction,

which is an Event of Default or is taken at a time when an Event of Default is continuing.

**"Instructing Group"** means:

- (a) prior to the Secured Debt Discharge Date:
  - (i) subject to paragraph (ii) below, the Majority Super Senior Creditors and the Majority Senior Secured Creditors; and

- (ii) in relation to instructions as to Enforcement with respect to the Transaction Security, the group of Priority Creditors entitled to give instructions as to Enforcement under Clause 15.3 (*Instructions to enforce – Transaction Security*); and
- (b) on or after the Secured Debt Discharge Date but before the Senior Notes Discharge Date, the Senior Notes Required Holders.

**“Intercreditor Amendment”** means any amendment or waiver which is subject to Clause 30 (*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 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 Hedging Ancillary Lender against liabilities owed to a Debtor by that Hedging Ancillary Lender under a Hedging Ancillary Agreement in respect of Credit Facility Liabilities or Pari Passu Debt owed to that Hedging Ancillary Lender by that Debtor under another Hedging Ancillary Agreement.

**“Interest Rate Hedge Excess”** means, with respect to a Relevant Hedged Debt, the amount by which the Total Interest Rate Hedged Amount with respect to that Relevant Hedged Debt exceeds the Permitted Maximum Interest Rate Hedged Amount with respect to that Relevant Hedged Debt.

**“Interest Rate Hedge Proportion”** means, in relation to a Hedge Counterparty and that Hedge Counterparty’s Aggregate Interest Rate Hedged Amount with respect to a Relevant Hedged Debt, the proportion (expressed as a percentage) borne by that Hedge Counterparty’s Aggregate Interest Rate Hedged Amount to the Total Interest Rate Hedged Amount with respect to that Relevant Hedged Debt.

**“Interest Rate Hedging Transaction”** means a derivative transaction entered into by a Debtor and a Hedge Counterparty for the purposes of protection against or benefit from fluctuations in interest rates, in respect of Senior Secured Notes Liabilities, Senior Notes Liabilities and/or Pari Passu Debt that is permitted under the terms of each of the Credit Facility Documents, the Senior Secured Notes Documents and, the Pari Passu Debt Documents to share in the Transaction Security.

**“Intra-Group Debt Documents”** means all documents, agreements and instruments evidencing any Intra-Group Liabilities.

**“Intra-Group Disposal”** has the meaning given to that term in Clause 16.1 (*Definitions*).

**“Intra-Group Lenders”** means:

- (a) each Original Intra-Group Lender; 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 any Debtor and which becomes a Party as an Intra-Group Lender in accordance with Clause 22 (*Changes to the Parties*),

which in each case has not ceased to be an Intra-Group Lender in accordance with this Agreement but, for the avoidance of doubt, "Intra-Group Lender" excludes in its capacity as a lender (or other equivalent creditor) under the Senior Secured Notes Proceeds Notes, the Senior Secured Notes Issuer and each Pari Passu Debt Issuer (if any).

**"Intra-Group Liabilities"** means the Liabilities owed by any member of the Group to any of the Intra-Group Lenders (excluding, for the avoidance of doubt, any Senior Secured Notes Proceeds Liabilities and any Senior Notes Proceeds On-Loan Liabilities).

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

**"Issue Date"** means the date that the original Senior Secured Notes are issued.

**"Issuing Bank"** has the meaning given to the term "Issuing Bank" in:

- (a) on or prior to the RCF Discharge Date, the RCF Agreement; and
- (b) after the RCF Discharge Date, the relevant Credit Facility Documents or the relevant Pari Passu Debt Documents.

**"Letter of Credit"** has the meaning given to the term "Letter of Credit" in:

- (a) on or prior to the RCF Discharge Date, the RCF Agreement; and
- (b) after the RCF Discharge Date, the relevant Credit Facility Documents or Pari Passu Debt Documents.

**"Liabilities"** means all present and future liabilities and obligations at any time of the Parent or any other member of the Group owed 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 by way of assignment, assignation 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 (e) of Clause 17.1 (*Facilitation of Distressed Disposals*).

**"Long Term Operational FX Hedging Transaction"** means a derivative transaction (other than Exchange Rate Hedging Transactions) entered into by a Debtor and a Hedge Counterparty for the purposes of hedging exchange rate exposures, with a tenor of longer than 12 months and that is permitted under the terms of each of the Credit Facility Documents, the Senior Secured Notes Documents and the Pari Passu Debt Documents to share in the Transaction Security.

**"Luxembourg"** means the Grand Duchy of Luxembourg.

**"Majority Credit Facility Lenders"** means, at any time, those Credit Facility Lenders whose Credit Facility Participations at that time aggregate more than 66⅔ per cent. of the total Credit Facility Participations at that time.

**"Majority Senior Secured Creditors"** means, at any time, 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.

**"Majority Super Senior Creditors"** means, at any time, those Super Senior Creditors whose Super Senior Credit Participations at that time aggregate more than 66⅔ per cent. of the total Super Senior Credit Participations at that time.

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

**"Net Outstandings"** means, in relation to a Multi-account Overdraft Facility, the aggregate debit balance of overdrafts comprised in that Multi-account Overdraft Facility, net of any credit balances on any account comprised in that Multi-account Overdraft Facility, 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 Facility.

**"Non-Credit Related Close-Out"** means a Permitted Hedge Close-Out described in any of paragraphs (a)(ii), (a)(vi), (a)(vii) and (a)(viii) of Clause 7.9 (*Permitted Enforcement: Hedge Counterparties*).

**"Non-Distressed Disposal"** has the meaning given to that term in Clause 16.1 (*Definitions*).

**"Non-Super Senior Hedge Counterparties"** means the Hedge Counterparties to the extent they are owed Non-Super Senior Hedging Liabilities.

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

**"Non-Super Senior Hedging Liabilities"** means the Hedging Liabilities to the extent they are not Super Senior Hedging Liabilities.

**"Notes Trustee"** means:

- (a) in respect of the Senior Secured Notes, the Senior Secured Notes Trustee;
- (b) in respect of any Pari Passu Notes, the applicable Pari Passu Debt Representative;  
and
- (c) in respect of any Senior Notes, the applicable Senior Notes Trustee.

**"Notes Trustee Amounts"** means fees, costs and expenses of the relevant Notes Trustee (including any amount payable to the relevant Notes Trustee by way of indemnity, remuneration or reimbursement for expenses incurred) payable to the relevant Notes Trustee for its own account pursuant to the relevant Debt Documents or any engagement letter between the relevant Notes Trustee and the relevant member of the Group or the Senior Notes Issuer, and the costs of any actual or attempted Enforcement Action which is permitted by this Agreement which are recoverable pursuant to the terms of the relevant Debt Documents, together with any VAT payable on any of the foregoing, but shall not include (a) any amount of principal or interest payable in respect of any Debt Document or (b) the costs of bringing any claims, suit or proceeding against any Priority Creditor.

**"Original Jurisdiction"** means, in relation to each Original Debtor and each Hedge Guarantor, the jurisdiction under whose laws that Debtor is incorporated as at the date that it becomes a Party to this Agreement.

**"Original Mandatory Prepayment"** has the meaning given to it in Clause 7.15(d) (*Reduction in Relevant Hedged Debt*).

**"Other Hedging Liabilities"** has the meaning given to that term in Clause 5.2(b) (*Option to purchase: Senior Secured Noteholders and Pari Passu Creditors*).

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

**"Parallel Debt Obligations"** has the meaning given to that term in Clause 21.6(a) (*Parallel Debt*).

**"Pari Passu Creditors"** means the lenders or other creditors (including each Issuing Bank and Ancillary Lender under a Pari Passu Debt Document) in respect of any Pari Passu Debt and the respective Pari Passu Debt Representatives.

**"Pari Passu Debt"** means the Liabilities (that are not subordinated in right of payment to any Super Senior Liabilities or Senior Secured Notes Liabilities) owed by the Debtors in respect of any loan, credit or debt facility, notes, indenture or security which are permitted under the terms of the Credit Facility Documents, the Senior Secured Notes Documents and the Pari Passu Debt Documents, to share in the Transaction Security with the rights and obligations of Pari Passu Creditors as provided for in this Agreement, provided that the creditors have (or a trustee, agent or other creditor representative on their behalf has) acceded to this Agreement in accordance with Clause 22.4 (*Pari Passu Creditors and Creditor Representatives*) (including any Liabilities owed to any Hedging Ancillary Lender in respect of the Pari Passu Debt Documents (acting in such capacity)) (excluding, for the avoidance of doubt, Credit Facility Liabilities, Senior Secured Notes Liabilities and Hedging Liabilities).

**"Pari Passu Debt Acceleration Event"** means the Creditor Representative in relation to any Pari Passu Debt (or any of the other Pari Passu Creditors) exercising any acceleration rights (howsoever described) or any acceleration provisions being automatically invoked, in each case, under the Pari Passu Debt Documents (in each case, other than a right to place amounts



on demand, but including, without limitation, the making of a demand in respect of any amounts placed on demand).

**"Pari Passu Debt Discharge Date"** means the first date on which all Pari Passu Debt has been fully and finally discharged to the satisfaction of the Pari Passu Debt Representatives, whether or not as the result of an enforcement, and the Pari Passu Creditors are under no further obligation to provide financial accommodation to any of the Debtors under the Pari Passu Debt Documents.

**"Pari Passu Debt Document"** means each document or instrument (excluding this Agreement) entered into between any member of the Group and a Pari Passu Creditor setting out the terms of any loan, credit or debt facility, notes, indenture or security which creates or evidences any Pari Passu Debt or entered into in connection therewith and designated a "Pari Passu Debt Document" by a member of the Group and the applicable Pari Passu Debt Representative or designated a "Finance Document" (under and as defined under the relevant Pari Passu Debt Document) by a member of the Group and the applicable Pari Passu Debt Representative or otherwise in accordance with such Pari Passu Debt Document.

**"Pari Passu Debt Issuer"** means:

- (a) in respect of Pari Passu Notes; or
- (b) in respect of Pari Passu Debt which is in respect of any loan, credit or debt facility,

the Senior Secured Notes Issuer or another direct wholly owned Subsidiary of the Parent, that does not itself hold any ownership interest in any other person and which has no principal purpose other than to issue and/or borrow Pari Passu Debt and activities related thereto.

**"Pari Passu Debt Representative"** means the trustee, agent or other creditor representative for any tranche of Pari Passu Debt which has acceded to this Agreement as a Creditor Representative of the Pari Passu Creditors (other than the Pari Passu Debt Representative) of such tranche of Pari Passu Debt.

**"Pari Passu Debt Required Holders"** means, in respect of any direction, approval, consent or waiver to be granted by a tranche of the Pari Passu Debt, the Pari Passu Creditors holding the principal amount of the relevant tranche of Pari Passu Debt required to vote in favour of such direction, consent or waiver under the terms of the relevant Pari Passu Debt Documents or, if the required amount is not specified:

- (a) in the case of Pari Passu Debt that does not constitute Pari Passu Notes, the holders holding more than 66⅔ per cent. of the commitments in respect of the relevant tranche of Pari Passu Debt; and
- (b) in the case of Pari Passu Notes, the holders holding at least the majority of the principal amount of the then outstanding relevant tranche of Pari Passu Debt, in each case in accordance with the relevant Pari Passu Debt Documents. For the avoidance of doubt, in determining whether the Pari Passu Creditors of the required principal amount of relevant tranche of Pari Passu Debt have concurred in any direction, approval, consent or waiver, relevant Pari Passu Debt held, directly or indirectly, by any Debtor, or by any person directly or indirectly controlling or controlled by or under direct or indirect common control with any Debtor, will be considered as though not outstanding.

**"Pari Passu Facility Agreement"** means any facility agreement which constitutes a Pari Passu Debt Document.

**"Pari Passu Noteholder"** means any Pari Passu Creditor which is a holder of Pari Passu Notes.

**"Pari Passu Notes"** means any Pari Passu Debt which is an issuance of debt securities.

**"Pari Passu Notes Indenture"** means any indenture which constitutes a Pari Passu Debt Document.

**"Pari Passu Notes Trustee Amounts"** means the Notes Trustee Amounts payable to any Pari Passu Debt Representative representing Pari Passu Noteholders.

**"Pari Passu RCF Discharge Date"** means the date on which all Pari Passu Debt under the Pari Passu RCF Finance Documents have been fully and finally discharged to the satisfaction of the relevant Pari Passu Debt Representative, whether or not as the result of an enforcement, and the Pari Passu Creditors under the Pari Passu RCF Finance Documents are under no further obligation to provide financial accommodation to any of the Debtors under the Pari Passu RCF Finance Documents.

**"Pari Passu RCF Agreement"** means the revolving credit facility agreement dated 04 November 2016 made between, amongst others, the Parent, the Obligor (as defined therein), the Facility Agent (as defined therein) and the Security Agent.

**"Pari Passu RCF Finance Documents"** means the "Finance Documents" as defined in the Pari Passu RCF Agreement.

**"Pari Passu TLB Discharge Date"** means the date on which all Pari Passu Debt under the Pari Passu TLB Finance Documents have been fully and finally discharged to the satisfaction of the relevant Pari Passu Debt Representative, whether or not as the result of an enforcement, and the Pari Passu Creditors under the Pari Passu TLB Finance Documents are under no further obligation to provide financial accommodation to any of the Debtors under the Pari Passu TLB Finance Documents.

**"Pari Passu TLB Agreement"** means the term loan facility agreement dated 04 November 2016 made between, amongst others, the Parent, the Obligor (as defined therein), the Facility Agent (as defined therein) and the Security Agent

**"Pari Passu TLB Finance Documents"** means the "Finance Documents" as defined in the Pari Passu TLB Agreement.

**"Participating Member State"** means any member state of the European Union that has the Euro as its lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union.

**"Party"** means a party to this Agreement.

**"Payment"** means any payment, repayment, prepayment, redemption, defeasance or discharge of any principal, interest or other amount on or in respect of any of the Liabilities (or other liabilities or obligations).

**"Payment Netting"** means:

- (a) in respect of a Hedging Agreement or a Hedging Ancillary Agreement 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 Agreement not based on an ISDA Master Agreement, netting pursuant to any provision of that Hedging

Agreement or a Hedging Ancillary Agreement which has a similar effect to the provision referenced in paragraph (a) above.

**"Permitted Administration Costs"** means the reasonable and ordinary course administrative and maintenance costs, expenses and taxes of the Senior Notes Issuer (in acting as a holding company for the Group (if applicable) and in acting as the issuer or borrower of the Senior Notes) which (if prior to the Secured Debt Discharge Date) are permitted by the Credit Facility Documents, the Senior Secured Notes Documents and the Pari Passu Debt Documents.

**"Permitted Credit Facility Lender Payments"** means the Payments permitted by Clause 4.2 (*Payment of Credit Facility Liabilities*).

**"Permitted Hedge Close-Out"** means, in relation to a transaction under a Hedging Agreement, a termination or close-out of that transaction which is permitted pursuant to Clause 7.9 (*Permitted Enforcement: Hedge Counterparties*).

**"Permitted Hedge Payments"** means the Payments permitted by Clause 7.3 (*Permitted Payments: Hedging Liabilities*).

**"Permitted Intra-Group Payments"** means the Payments permitted by Clause 9.2 (*Permitted Payments: Intra-Group Liabilities*).

**"Permitted Maximum Exchange Rate Hedged Amount"** means, with respect to a Relevant Hedged Debt, an amount equal to 100% of the Term Outstandings thereof.

**"Permitted Maximum Interest Rate Hedged Amount"** means, with respect to a Relevant Hedged Debt, an amount equal to 100% of the Term Outstandings thereof.

**"Permitted Pari Passu Debt Payments"** means the Payments permitted by Clause 6.3 (*Payment of Pari Passu Debt*).

**"Permitted Payment"** means a Permitted Credit Facility Lender Payment, a Permitted Hedge Payment, a Permitted Intra-Group Payment, a Permitted Pari Passu Debt Payment, a Permitted Senior Notes Payment, a Permitted Senior Secured Notes Payment or a Permitted Shareholder Creditor Payment.

**"Permitted Senior Notes Payments"** means the Payments permitted by Clause 8.3 (*Permitted Payments: Senior Notes Liabilities*).

**"Permitted Senior Secured Notes Payments"** means the Payments permitted by Clause 5.1 (*Payment of Senior Secured Notes Liabilities*).

**"Permitted Shareholder Creditor Payments"** means the Payments permitted by Clause 10.2 (*Permitted Payments: Shareholder Liabilities*).

**"Primary Creditors"** means the Super Senior Creditors, the Senior Secured Creditors and the Senior Notes Creditors.

**"Primary Finance Documents"** means the Credit Facility Documents, the Senior Secured Notes Documents, the Hedging Agreements, the Pari Passu Debt Documents and the Senior Notes Documents.

**"Principal Obligations"** has the meaning given to that term in Clause 21.6(a) (*Parallel Debt*).

**"Priority Creditors"** means the Primary Creditors other than the Senior Notes Creditors.

**"Priority Long Term Operational FX Hedge Counterparty"** means a Hedge Counterparty to the extent they have been allocated a Designated Priority Long Term Operational FX Hedging Amount in accordance with Clause 7.13 (*Priority Long Term Operational Hedging*).

**"Priority Long Term Operational FX Hedging Liabilities"** means, on any date, in respect of a Hedge Counterparty which has been allocated a Designated Priority Long Term Operational FX Hedging Amount and its Hedging Liabilities, the amount that would be payable to that Hedge Counterparty if the relevant hedging transactions were closed out on that date (in respect of hedging transactions which have not been closed out) or the close-out amount that is payable to that Hedge Counterparty (in respect of hedging transactions which have been closed out) in respect of Long Term Operational FX Hedging Transactions, in each case, as calculated in accordance with the relevant Hedging Agreement, up to, but not exceeding, the Designated Priority Long Term Operational FX Hedging Amount.

**"Priority Long Term Operational FX Hedging Liabilities Recoveries Amount"** means €10,000,000.

**"Priority Long Term Operational FX Hedging Notice"** means:

- (a) a Designated Priority Long Term Operational FX Hedging Notice;
- (b) a Designated Priority Long Term Operational FX Hedging Adjustment Notice; or
- (c) a Priority Long Term Operational FX Hedging Reduction and Resignation Notice.

**"Priority Long Term Operational FX Hedging Reduction and Resignation Notice"** means a notice of resignation of a Hedge Counterparty as a Priority Long Term Operational FX Hedge Counterparty, substantially in the form set out in Schedule 6 (*Form of Priority Long Term Operational FX Hedging Notice*).

**"Public Auction"** means an auction or other competitive sale process of shares or other assets in which two or more bidders participate or are invited to participate, by or on behalf of the Security Agent pursuant to an enforcement of Transaction Security or by a member of the Group in circumstances that are a Distressed Disposal, the process of such sale or disposal having been conducted as follows:

- (a) prior to the sale or other disposal, the Security Agent shall, in respect of such auction or other competitive sale process, consult with a Financial Adviser selected by the Security Agent (acting reasonably) with respect to the procedures which may reasonably be expected to be used to obtain the best price reasonably obtainable in the then prevailing market conditions (taking into account all relevant circumstances and with a view to facilitating a prompt and expeditious sale at the best price reasonably obtainable in the prevailing market conditions although there shall be no obligation to postpone any such sale in order to achieve a higher price);
- (b) the Security Agent shall have implemented (to the extent permitted by applicable law) in all material respects the procedures recommended by such Financial Adviser in relation to such auction or process; and
- (c) the Creditors shall have a right to participate in such auction or process.

For the purposes of paragraphs (a), (b) and (c) above:

- (i) the Security Agent shall be entitled (at the cost of the Group) to retain any Financial Adviser as its and/or any of the other Primary Creditors' financial adviser to advise and assist in the proposed sale or disposition for such

remuneration as the Security Agent in good faith determines is appropriate for the circumstances;

- (ii) except as required by applicable law, the Security Agent shall not have any obligation to any person to engage in or to use reasonable efforts to engage in a listing of any or all of any equity interests the subject of such auction or other competitive sale process, including without limitation if recommended by such Financial Adviser;
- (iii) by reason of certain prohibitions, or exemptive or safe-harbour provisions from such prohibitions, or other guidance contained in applicable law or regulations of any applicable governmental authority, the Security Agent may, with respect to any sale of all or any part of such equity interests or assets:
  - (A) limit purchasers to those who meet the requirements of such governmental authority or exemptive or safe-harbour provision (as applicable) and/or make representations and undertakings satisfactory to the Security Agent relating to compliance with such requirements and/or provisions; and/or
  - (B) limit purchasers to persons who will agree, among other things to acquire such shares for their own account, for investment and not with a view to the distribution or resale thereof;
- (iv) the Security Agent and other Primary Creditors shall not under any circumstances be required to make representations, warranties or undertakings to any actual or proposed purchaser (other than customary representations in a security enforcement as to power to transfer the relevant equity interests or other assets pursuant to the Transaction Security Documents) or to indemnify any actual or proposed purchaser against any costs, liabilities or similar expenses or losses;
- (v) without limitation to the other circumstances of the sale or other disposition that the Security Agent and such Financial Adviser may take into consideration, the Security Agent may (but is not required to) in all circumstances specify that no offer to purchase equity interests or other assets will be entertained unless such offer:
  - (A) is for all (and not some only) of the equity interests or other assets being sold or otherwise disposed of;
  - (B) is for cash consideration payable at closing (and therefore not including, for the avoidance of doubt, any element of deferred consideration) and is not subject to any financing conditions other than customary UK "certain funds" conditions; and/or
  - (C) contemplates a closing of the sale of the equity interests or other assets in not more than three (3) months (or such longer period as the Security Agent may specify) from the time of signing of the sale and purchase agreement in respect of such equity interests or other assets; and
- (vi) a "right to participate" means any offer, or indication of a potential offer, that a Creditor makes shall be considered by the Security Agent or such Financial Adviser against the same criteria as any offer, or indication of a potential offer, by any other bidder or potential bidder. For the avoidance of doubt, if

after having applied that same criteria, the offer or indication of a potential offer made by a Creditor is not considered by the Security Agent or such Financial Adviser to be sufficient to continue in the sale or disposal process, such consideration being against the same criteria as any offer, or indication of a potential offer, by any other bidder or potential bidder (such 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 Creditor under this Agreement shall be deemed to be satisfied.

For the purposes of paragraph (a), such Financial Adviser may be instructed by the Security Agent to take the limitations set out in sub-paragraphs (i) to (vi) (inclusive) above into account and to formulate recommendations that are consistent with them.

**"Purchasing Senior Secured Creditors"** has the meaning given to that term in Clause 5.2(a) (*Option to purchase: Senior Secured Noteholders and Pari Passu Creditors*).

**"RCF"** means each "Facility" as defined in the RCF Agreement.

**"RCF Agent"** means the Original RCF Agent and any other "Agent" as defined in the RCF Agreement which has acceded to this Agreement in accordance with Clause 22.12 (*Creditor/Creditor Representative Accession Undertaking*).

**"RCF Agreement"** means the facility agreement comprising an up to €75,000,000 revolving credit facility (as may be increased in accordance with the terms thereof) made between, amongst others, the Parent, the Obligors (as defined therein), the RCF Agent, the other Original RCF Finance Parties and others dated on the date of this Agreement.

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

**"RCF Finance Documents"** has the meaning given to the term "Finance Document" in the RCF Agreement, but excluding the Hedging Agreements.

**"RCF Finance Parties"** means the Original RCF Finance Parties and any other "Finance Party" as defined in the RCF Agreement which has acceded to this Agreement in accordance with Clause 22.2 (*RCF Lenders*) or Clause 22.12 (*Creditor/Creditor Representative Accession Undertaking*), other than the Hedge Counterparties.

**"RCF Lenders"** means each "Lender" as defined in the RCF Agreement.

**"RCF Liabilities"** means the Liabilities owed by the Debtors to the RCF Finance Parties under the RCF Finance Documents (but excluding any Hedging Liabilities).

**"Receiver"** means a receiver or receiver and manager or administrative receiver or preliminary receiver or other similar officer of the whole or any part of the Charged Property.

**"Recoveries"** has the meaning given to that term in Clause 19.1(a) (*Order of application*).

**"Recovering Creditor"** has the meaning given to that term in Clause 14.1(a) (*Recovering Creditor's rights*).

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

**"Relevant Hedged Debt"** has the meaning given to that term in Clause 7.15(a)(i) (*Reduction in Relevant Hedged Debt*).

**"Relevant Hedging Transaction"** has the meaning given to that term in Clause 7.15(a)(i) (*Reduction in Relevant Hedged Debt*).

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

**"Relevant Liabilities"** means:

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

**"Restricted Obligations"** has the meaning given to such term in Clause 11.14 (*Limitation on Swiss Hedge Guarantors*).

**"Restricted Subsidiary"** has the meaning given to such term in the RCF Agreement or, after the RCF Discharge Date, in the Senior Secured Notes Indenture (irrespective of whether the Senior Secured Notes Discharge Date has occurred).

**"Secured Debt Discharge Date"** means the later to occur of the Super Senior Discharge Date and the Senior Secured Discharge Date.

**"Secured Liabilities"** means the Super Senior Liabilities, the Senior Secured Liabilities, the Creditor Representative Amounts (other than any such Liabilities payable to any Senior Notes Trustee including, for the avoidance of doubt, Senior Notes Trustee Amounts), the Arranger Liabilities and, to the extent secured by Shared Transaction Security, the Senior Notes Liabilities.

**"Secured Obligations"** means:

- (a) in the case of all Transaction Security other than Shared Transaction Security, all the Liabilities and all other present and future liabilities and obligations at any time due, owing or incurred by any member of the Group and by each Debtor to any Secured Party (other than any Senior Notes Creditors) under this Agreement and the Primary Finance Documents, both actual and contingent and whether incurred solely or jointly and as principal or surety or in any other capacity (including the Parallel Debt Obligations); and

- (b) in the case of all Shared Transaction Security (if any), all the Liabilities and all other present and future liabilities and obligations at any time due, owing or incurred by any member of the Group and by each Debtor to any Secured Party under this Agreement and the Primary Finance Documents, both actual and contingent and whether incurred solely or jointly and as principal or surety or in any other capacity (including the Parallel Debt Obligations).

**"Secured Parties"** means the Super Senior Creditors, the Senior Secured Creditors, the Senior Notes Creditors, the Creditor Representatives, the Arrangers, the Security Agent and any Receiver or Delegate from time to time but, in the case of each Credit Facility Lender, Hedge Counterparty, Creditor Representative, Arranger, or Pari Passu Creditor (other than a Pari Passu Noteholder) only if it is a Party to this Agreement or has acceded to this Agreement, in the appropriate capacity, in accordance with Clause 22.12 (*Creditor/Creditor Representative Accession Undertaking*).

**"Security"** means a mortgage, charge, pledge, assignment, assignation, transfer, lien, right of set-off, retention or extended retention of title provision, or any other security interest securing any obligation of any person or any other agreement or arrangement having the effect of giving security or preferential ranking to a creditor, or any other agreement or arrangement having a similar effect.

**"Security Agent's Spot Rate of Exchange"** means, in respect of the conversion of one currency (the **"First Currency"**) into another currency (the **"Second Currency"**) the Security Agent'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 Security Agent in accordance with paragraph (e) of Clause 21.8 (*Duties of the Security Agent*).

**"Security Enforcement Objective"** means maximising, so far as is consistent with prompt and expeditious realisation of value from Enforcement, the recovery of all Secured Parties.

**"Security Enforcement Principles"** means the principles set out in Schedule 5 (*Security Enforcement Principles*).

**"Security Property"** means:

- (a) the Transaction Security expressed to be granted in favour of the Security Agent as trustee, agent or otherwise (including as creditor of the Parallel Debt Obligations) for the other Secured Parties and all proceeds of that Transaction Security;
- (b) all obligations expressed to be undertaken by a Debtor or a Security Provider to pay amounts in respect of the Liabilities to the Security Agent as trustee or otherwise for the Secured Parties and secured by the Transaction Security, together with all representations and warranties expressed to be given by a Debtor or a Security Provider in this Agreement, the Primary Finance Documents, the Transaction Security Documents or any other Debt Documents in favour of the Security Agent as trustee or otherwise for the Secured Parties;
- (c) the Security Agent's interest in any trust fund created pursuant to Clause 13 (*Turnover of receipts*); and
- (d) any other amounts or property, whether rights, entitlements, choses in action or otherwise, actual or contingent, which the Security Agent is required by the terms of this Agreement, the Primary Finance Documents, the Transaction Security Documents or any other Debt Documents to hold as trustee on trust or otherwise for the Secured Parties.



**"Security Provider"** means any person that has granted Transaction Security which does not constitute a Debtor (including each Shareholder Creditor).

**"Senior Noteholders"** means the holders or lenders, from time to time, of Senior Notes, as determined in accordance with the relevant Senior Notes Indenture.

**"Senior Notes"** means any high yield notes, payment-in-kind notes or loans, exchange notes, debt securities or other loans or debt instruments issued or borrowed, or to be issued or borrowed, by any Senior Notes Issuer:

- (a) the terms of which comply with the terms of the Credit Facility Documents, the Senior Secured Notes Indenture, the Pari Passu Debt Documents and this Agreement (as confirmed by the Parent in writing to the RCF Agent and the Senior Secured Notes Trustee);
- (b) which are designated as such by the Parent by written notice to each Creditor Representative who is a Party at such time; and
- (c) in respect of which the entity acting as trustee, agent or representative in respect of such notes or instruments at any time has acceded to this Agreement as a Senior Notes Trustee pursuant to Clause 22.12 (*Creditor/Creditor Representative Accession Undertaking*).

**"Senior Notes Acceleration Event"** means:

- (a) any Senior Notes Trustee or any of the Senior Noteholders exercising any rights to accelerate amounts outstanding under the Senior Notes pursuant to any Senior Notes Indenture; or
- (b) any Senior Notes Liabilities becoming due and payable by operation of any automatic acceleration provision contained in a Senior Notes Document, other than any right to declare any amount payable on demand.

**"Senior Notes Creditors"** means the Senior Noteholders and each Senior Notes Trustee.

**"Senior Notes Default"** means a Senior Notes Event of Default or any event or circumstances which would (with the expiry of a grace period, or the giving of notice, under the Senior Notes Documents or any combination of the foregoing) be a Senior Notes Event of Default.

**"Senior Notes Discharge Date"** means the first date on which all Senior Notes Liabilities have been fully and finally discharged to the satisfaction of the relevant Senior Notes Trustee, whether or not as the result of an enforcement and the Senior Notes Creditors are under no further obligation to provide financial accommodation to any Debtors under the Senior Notes Documents.

**"Senior Notes Documents"** means each Senior Notes Indenture, the Senior Notes and the Senior Notes Guarantees in respect of the Senior Notes.

**"Senior Notes Enforcement Notice"** has the meaning given to it in Clause 8.9 (*Permitted Senior Notes Enforcement*).

**"Senior Notes Event of Default"** means an event of default under the relevant Senior Notes Indenture.

**"Senior Notes Guarantee"** means each guarantee by a Senior Notes Guarantor of the obligations of a Senior Notes Issuer under any Senior Notes Documents which either (i)

contains provisions in relation to standstill, payment blockage, subordination and turnover that substantially replicate those provisions of this Agreement relating to each Senior Notes Guarantee or (ii) which is made expressly subject to the provisions of this Agreement in a legally binding manner.

**"Senior Notes Guarantee Liabilities"** means the Liabilities due, owing or incurred by any Debtor to any Senior Notes Creditor under or in connection with the Senior 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) provided, however, that the definition of "Senior Notes Guarantee Liabilities" shall not include the Senior Notes Trustee Amounts.

**"Senior Notes Guarantors"** means each member of the Group that is a guarantor under the Senior Notes in accordance with a Senior Notes Indenture and which is also a Senior Secured Notes Guarantor, a Hedge Guarantor and a Guarantor under any Credit Facility Document (other than, for the avoidance of doubt, the issuer of such Senior Notes).

**"Senior Notes Indenture"** means any indenture or indentures (or other agreement(s) or instrument(s)) pursuant to which any Senior Notes are issued or advanced.

**"Senior Notes Issuer"** means any limited liability company which is a direct wholly owned Subsidiary of TopCo (that is not the Parent or member of the Group), that does not itself hold any ownership interest in any other person and which has no principal purpose other than to issue Senior Notes and activities related thereto.

**"Senior Notes Issuer Liabilities"** means the Liabilities due, owing or incurred by the Senior Notes Issuer to the Senior Notes Creditors under or in connection with any Senior Notes or Senior Notes Documents.

**"Senior Notes Liabilities"** means the Liabilities due, owing or incurred by the Debtors to any Senior Notes Creditor under or in connection with any Senior Notes or Senior Notes Documents, provided, however, that the definition of "Senior Notes Liabilities" shall not include the Senior Notes Trustee Amounts.

**"Senior Notes Only Security"** means, at the election of the Parent in accordance with Clause 3.2(a), Security granted for the benefit of the Senior Notes Liabilities over:

- (a) the shares held by TopCo in the Senior Notes Issuer; and
- (b) the Senior Notes Issuer's rights under the Senior Notes Proceeds Loan,

that, in each case, excludes any Transaction Security.

**"Senior Notes Payment Stop Notice"** has the meaning given to that term in Clause 8.4 (*Issue of Senior Notes Payment Stop Notice*).

**"Senior Notes Proceeds Loan"** means any loan from the Senior Notes Issuer to TopCo of the gross or net proceeds of an issue of Senior Notes.

**"Senior Notes Proceeds On-Loan"** means any loan from TopCo to the Parent that is made to on-lend the gross or net proceeds of an issue or borrowing of Senior Notes by the Senior Notes Issuer.

**“Senior Notes Proceeds On-Loan Liabilities”** means the Liabilities due, owing or incurred to TopCo under any Senior Notes Proceeds On-Loan.

**“Senior Notes Required Holders”** means, in respect of any direction, approval, consent or waiver, the Senior Noteholders holding the principal amount of Senior Notes required to vote in favour of such direction, approval, consent or waiver under the terms of the Senior Notes Indenture or, if the required amount is not specified, the holders holding at least the majority of the principal amount of the then outstanding Senior Notes, in accordance with the Senior Notes Indenture. For the avoidance of doubt, in determining whether the Senior Noteholders of the required principal amount of Senior Notes have concurred in any direction, approval, waiver or consent, Senior Notes owned by any Debtor, or by any Person directly or indirectly controlling or controlled by or under direct or indirect common control with any Debtor, will be considered as though not outstanding.

**“Senior Notes Standstill Period”** has the meaning given to it in Clause 8.10 (*Senior Notes Standstill Period*).

**“Senior Notes Trustee”** means any entity acting as trustee, agent or representative under any issue or borrowing of Senior Notes and which accedes to this Agreement pursuant to Clause 22.12 (*Creditor/Creditor Representative Accession Undertaking*).

**“Senior Notes Trustee Amounts”** means Notes Trustee Amounts payable to any Senior Notes Trustee.

**“Senior Secured Credit Participation”** means, in relation to a Senior Secured Creditor (other than any Creditor Representative), the aggregate of:

- (a) the outstanding principal amount (including capitalised interest, if applicable) of the Senior Secured Notes held by it, if any;
- (b) the outstanding principal amount (including capitalised interest, if applicable) of any outstanding Pari Passu Notes held by it (if any) and its outstanding “Commitments” under and as defined in any Pari Passu Facility Agreement; and
- (c) in respect of any transaction of that Senior Secured Creditor under any Hedging Agreement that has, as of the date the calculation is made, been terminated or closed out in accordance with the terms of this Agreement, the amount, if any, payable to it under that Hedging Agreement (to the extent that it constitutes a Non-Super Senior Hedging Liability) in respect of that termination or close-out as of the date of termination or close-out (and before taking into account any interest accrued on that amount since the date of termination or close-out) to the extent that amount is unpaid (that amount to be certified by the relevant Senior Secured Creditor and as calculated in accordance with the relevant Hedging Agreement).

**“Senior Secured Creditors”** means the Senior Secured Notes Creditors, the Pari Passu Creditors and the Non-Super Senior Hedge Counterparties.

**“Senior Secured Discharge Date”** means the latest to occur of the Senior Secured Notes Discharge Date, the Pari Passu Debt Discharge Date and the Non-Super Senior Hedging Discharge Date.

**“Senior Secured Event of Default”** means an Event of Default under a Credit Facility Document, the Senior Secured Notes Indenture and/or (if applicable) a Pari Passu Debt Document other than a Senior Secured Payment Default.

**“Senior Secured Liabilities”** means the Senior Secured Notes Liabilities, the Pari Passu Debt and the Non-Super Senior Hedging Liabilities.

**“Senior Secured Noteholders”** means the “Holders” as defined in the Senior Secured Notes Indenture.

**“Senior Secured Notes”** means the €590,000,000 in aggregate principal amount of 7.375% senior secured fixed rate notes and senior secured floating rate notes due 2020 issued by the Senior Secured Notes Issuer pursuant to the terms of the Senior Secured Notes Indenture and any additional notes issued from time to time under the Senior Secured Notes Indenture.

**“Senior Secured Notes Acceleration Event”** means the Senior Secured Notes Trustee or any of the Senior Secured Noteholders exercising any acceleration rights (howsoever described) or any acceleration provisions being automatically invoked in each case under section 6.02 (Acceleration) of the Senior Secured Notes Indenture.

**“Senior Secured Notes Creditors”** means the Senior Secured Noteholders and the Senior Secured Notes Trustee.

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

**“Senior Secured Notes Documents”** means:

- (a) the Senior Secured Notes Indenture;
- (b) the Senior Secured Notes;
- (c) the Senior Secured Notes Guarantees; and
- (d) the Transaction Security Documents.

**“Senior Secured Notes Guarantees”** means the “Note Guarantees” as defined in the Senior Secured Notes Indenture.

**“Senior Secured Notes Indenture”** means the senior secured notes indenture dated on or around the date of this Agreement between, among others, the Senior Secured Notes Issuer and the Senior Secured Notes Trustee, as amended from time to time.

**“Senior Secured Notes Liabilities”** means:

- (a) the Liabilities owed by the Senior Secured Notes Issuer and the Debtors to the Senior Secured Notes Creditors under the Senior Secured Notes Documents; and
- (b) the Senior Secured Notes Proceeds Liabilities,

but, in each case, excluding any Hedging Liabilities.

**“Senior Secured Notes Proceeds Liabilities”** means the Liabilities owed by the Parent (as holder or borrower of the Senior Secured Notes Proceeds Notes) to the Senior Secured Notes Issuer and/or any Pari Passu Debt Issuer (as the case may be) under the Senior Secured Notes Proceeds Notes.

**“Senior Secured Notes Proceeds Notes”** means any loan, bond or other debt instrument whereby any proceeds of the issue of Senior Secured Notes or, as the case may be, any Pari Passu Debt are lent by the Senior Secured Notes Issuer or Pari Passu Debt Issuer (respectively) to the Parent.

**“Senior Secured Notes Required Holders”** means, in respect of any direction, approval, consent or waiver, the Senior Secured Noteholders holding the principal amount of Senior Secured Notes required to vote in favour of such direction, approval, consent or waiver under the terms of the Senior Secured Notes Indenture or, if the required amount is not specified, the holders holding at least the majority of the principal amount of the then outstanding Senior Secured Notes, in accordance with the Senior Secured Notes Indenture. For the avoidance of doubt, in determining whether the Senior Secured Noteholders of the required principal amount of the Senior Secured Notes have concurred in any direction, approval, waiver or consent, Senior Secured Notes owned by any Debtor, or by any Person directly or indirectly controlling or controlled by or under the direct or indirect common control with any Debtor, will be considered as though not outstanding.

**“Senior Secured Notes Trustee Amounts”** means the Notes Trustee Amounts payable to the Senior Secured Notes Trustee.

**“Senior Secured Payment Default”** means a Default under a Credit Facility Document, the Senior Secured Notes Indenture or a Pari Passu Debt Document that arises by reason of any non-payment under such Debt Document other than in respect of an amount (a) not constituting principal, interest or fees and (b) not exceeding €150,000 (or its equivalent in other currencies).

**“Shared 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, given to all the Secured Parties in respect of their Secured Liabilities.

**“Shared Recoveries”** has the meaning given to that term in Clause 19.1(b) (*Order of application*).

**“Shared Transaction Security”** means, at the election of the Parent in accordance with Clause 3.2(a), Security granted for the benefit of the Secured Parties and the Senior Notes Creditors over:

- (a) the shares held by TopCo in the Parent;
- (b) TopCo’s rights under the Senior Notes Proceeds On-Loan; and
- (c) the Shareholder Creditors’ rights under the Shareholder Debt Documents.

**“Shareholder Creditors”** means:

- (a) the Original Shareholder Creditor;
- (b) each TopCo; and
- (c) any direct or indirect shareholder (or Affiliate which is not a member of the Group) of the Parent (and their respective transferees and successors) which has made a loan or financial accommodation to the Parent or another member of the Group, which is permitted under the terms of the Credit Facility Documents, the Senior Secured Notes Documents, the Pari Passu Debt Documents and the Senior Notes Documents and which accedes to this agreement by executing a Creditor/Creditor Representative Accession Undertaking in accordance with this Agreement,

which in each case has not ceased to be a Shareholder Creditor in accordance with this Agreement.

**“Shareholder Debt Documents”** means all documents, agreements and instruments evidencing any Shareholder Liabilities.

**"Shareholder Liabilities"** means all Liabilities of the Parent to any Shareholder Creditor (including, but not limited to, any Financial Indebtedness, dividends or other distributions in respect of share capital), excluding any Senior Notes Proceeds On-Loan Liabilities under a Senior Notes Proceeds On-Loan.

**"Sharing Creditor"** has the meaning given to that term in Clause 14.1(a) (*Recovering Creditor's rights*).

**"Short Term Operational FX Hedging Liabilities"** means, on any date, in respect of a Hedge Counterparty and its Hedging Liabilities, the amount that would be payable to that Hedge Counterparty if the relevant hedging transactions were closed out on that date (in respect of hedging transactions which have not been closed out) or the close-out amount owing that is payable to that Hedge Counterparty (in respect of hedging transactions which have been closed out) in respect of Short Term Operational FX Hedging Transactions, in each case, as calculated in accordance with the relevant Hedging Agreement.

**"Short Term Operational FX Hedging Transaction"** means a derivative transaction (other than Exchange Rate Hedging Transactions) entered into by a Debtor and a Hedge Counterparty for the purposes of hedging exchange rate exposures, with a tenor of 12 months or less, and that is permitted under the terms of each of the Credit Facility Documents, the Senior Secured Notes Documents and the Pari Passu Debt Documents to share in the Transaction Security.

**"Sponsor Affiliate"** has the meaning given to such term in:

- (a) on or prior to the RCF Discharge Date, the RCF Agreement; and
- (b) after the RCF Discharge Date, the relevant Credit Facility Documents.

**"Subordinated Creditors"** means:

- (a) the Shareholder Creditors;
- (b) the Intra-Group Lenders; and
- (c) in its capacity as a lender under the Senior Notes Proceeds On-Loan, TopCo.

**"Subordinated Group Liabilities"** means all of the Subordinated Liabilities excluding the Senior Notes Proceeds On-Loan Liabilities.

**"Subordinated Liabilities"** means the Senior Notes Proceeds On-Loan Liabilities, the Shareholder Liabilities and the Intra-Group Liabilities.

**"Subsidiary"** means any person (referred to as the **"first person"**) in respect of which another person (referred to as the **"second person"**):

- (a) holds a majority of the voting rights in that first person or has the right under the constitution of the first person to direct the overall policy of the first person or alter the terms of its constitution; or
- (b) is a member of that first person and has the right to appoint or remove a majority of its board of directors or equivalent administration, management or supervisory body; or
- (c) is a member of that first person and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in the first person or the rights under its constitution to direct the overall policy of the first person or alter the terms of its constitution; or

- (d) has the power to exercise, or actually exercises dominant influence or control over the first person; or
- (e) together with the first person are managed on a unified basis,

and, for the purposes of this definition, a person shall be treated as a member of another person if any of that person's Subsidiaries is a member of that other person or if any shares in that other person are held by a person acting on behalf of it or any of its Subsidiaries.

**"Super Senior Credit Participation"** means, in relation to a Super Senior Creditor (other than a Creditor Representative (save for where that Creditor Representative falls within paragraph (e) of the definition of Creditor Representative)), the aggregate of:

- (a) its Credit Facility Participation, if any; and
- (b) in respect of any transaction of that Super Senior Creditor under any Hedging Agreement that has, as of the date the calculation is made, been terminated or closed out in accordance with the terms of this Agreement, the amount, if any, payable to it under that Hedging Agreement to the extent that it constitutes a Super Senior Hedging Liability 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 Super Senior Creditor and as calculated in accordance with the relevant Hedging Agreement).

**"Super Senior Creditors"** means the Credit Facility Creditors and the Super Senior Hedge Counterparties.

**"Super Senior Discharge Date"** means the date on which all Super Senior Liabilities have been fully and finally discharged to the satisfaction of the relevant Creditor Representatives (in the case of the Credit Facility Liabilities) and each Super Senior Hedge Counterparty (in the case of the Super Senior Hedging Liabilities), whether or not as the result of an enforcement, and the Super Senior Creditors are under no further obligation to provide financial accommodation to any of the Debtors under the Credit Facility Documents and the Super Senior Hedging Agreements.

**"Super Senior Hedge Counterparty"** means a Hedge Counterparty to the extent it is owed Super Senior Hedging Liabilities.

**"Super Senior Hedging Agreements"** means any Hedging Agreement entered into by a Super Senior Hedge Counterparty in respect of Super Senior Hedging Liabilities.

**"Super Senior Hedging Liabilities"** means (i) at any time prior to the occurrence of the later of the Pari Passu RCF Discharge Date and the Pari Passu TLB Discharge Date, none and (ii) at any time after the occurrence of the later of the Pari Passu RCF Discharge Date and the Pari Passu TLB Discharge Date, the aggregate of each Hedge Counterparty's Hedging Liabilities, up to, in respect of each Hedge Counterparty, a maximum amount equal to the aggregate of the Debt Related Hedging Liabilities, the Short Term Operational FX Hedging Liabilities and the Priority Long Term Operational FX Hedging Liabilities with respect to such Hedge Counterparty.

**"Super Senior Liabilities"** means the Credit Facility Liabilities and the Super Senior Hedging Liabilities.

**"Swiss Federal Tax Administration"** means the tax authorities referred to in article 34 of the Swiss Withholding Tax Act.

**"Swiss Hedge Guarantor"** means any Hedge Guarantor incorporated in Switzerland and/or having its registered office in Switzerland and/or qualifying as a Swiss resident pursuant to article 9 of the Swiss Withholding Tax Act.

**"Swiss Security Documents"** has the meaning given to it in Clause 21.4 (*Swiss Security Documents*).

**"Swiss Withholding Tax"** means a tax imposed under the Swiss Withholding Tax Act.

**"Swiss Withholding Tax Act"** means the Swiss Federal Act on the Withholding Tax of 13 October 1965 (*Bundesgesetz vom 13. Oktober 1965 über die Verrechnungssteuer*) together with the related ordinances, regulations and guidelines, all as amended and applicable from time to time.

**"TARGET Day"** means any day on which TARGET2 is open for the settlement of payments in Euro.

**"TARGET2"** means the Trans-European Automated Real-time Gross Settlement Express Transfer payment system which utilises a single shared platform and which was launched on 19 November 2007.

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

**"Term Outstandings"** means, with respect to a Relevant Hedged Debt, at any time, an amount equal to the aggregate of the amounts of principal (not including any deferred interest, but including any capitalised interest) then outstanding under that Relevant Hedged Debt.

**"TopCo"** means the Original Shareholder Creditor and any person that becomes the direct Holding Company of the Parent in a transaction that does not trigger a Change of Control (as defined in the Revolving Facility Agreement in its original form) and accedes to this Agreement as a Shareholder Creditor by executing a Creditor/Creditor Representative Accession Undertaking in accordance with this Agreement and which grants security over its rights under any loan advanced by it to the Parent (or any other Debtor).

**"Total Exchange Rate Hedged Amount"** means, with respect to a Relevant Hedged Debt, at any time, the aggregate of each Hedge Counterparty's Aggregate Exchange Rate Hedged Amount with respect to that Relevant Hedged Debt at that time.

**"Total Interest Rate Hedged Amount"** means, with respect to a Relevant Hedged Debt, at any time, the aggregate of each Hedge Counterparty's Aggregate Interest Rate Hedged Amount with respect to that Relevant Hedged Debt at that time.

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

**"Transaction Security Documents"** means:

- (a) each "Transaction Security Document" as defined in the RCF Agreement or, after the RCF Discharge Date, if applicable, any Equivalent Provision in any other Credit Facility Document;
- (b) any other document entered into at any time by a member of the Group or Security Provider creating any Security 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,

which in each case, to the extent legally possible:

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

**“Unrestricted Subsidiary”:**

- (a) on or prior to the RCF Discharge Date, has the meaning given to it in the RCF Agreement; and
- (b) following the RCF Discharge Date, has the meaning given to any Equivalent Provision in any Credit Facility Document, the Senior Secured Notes Indenture and any Pari Passu Debt Document.

**“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 Ancillary Lender, Arranger, Credit Facility Creditor, Credit Facility Lender, Creditor, Creditor Representative, Debtor, Hedge Counterparty, Hedge Guarantor, Intra-Group Lender, Issuing Bank, Non-Super Senior Hedge Counterparty, Parent, Pari Passu Creditor, Pari Passu Debt Representative, Party, RCF Agent, RCF Lender, RCF Finance Party, Finance Party, Security Agent, Secured Party, Security Provider, Senior Noteholder, Senior Notes Issuer, Senior Notes Trustee, Senior Secured Noteholder, Senior Secured Notes Issuer, Senior Secured Notes Trustee, Shareholder Creditor, Super Senior Creditor, Super Senior Hedge Counterparty 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 Ancillary Lender, Arranger, Credit Facility Creditor, Credit Facility Lender, Creditor, Creditor Representative, Debtor, Hedge Counterparty, Hedge Guarantor, Intra-Group Lender, Issuing Bank, Non-Super Senior Hedge Counterparty, Parent, Pari Passu Creditor, Pari Passu Debt Representative, Party, RCF Agent, RCF Lender, RCF Finance Party, Finance Party, Security Agent, Secured Party, Security Provider, Senior Noteholder, Senior Notes Issuer, Senior Notes Trustee, Senior Secured Noteholder, Senior Secured Notes Issuer, Senior Secured Notes Trustee, Shareholder Creditor, Super Senior Creditor, Super Senior Hedge Counterparty, Subordinated Creditor or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees and, in the case of the Security Agent, any person for the time being appointed as Security Agent or Security Agents in accordance with this Agreement.
- (iii) **"assets"** includes present and future properties, revenues and rights of every description;
- (iv) a **"Debt Document"** or any other document, agreement or instrument is (other than a reference to a **"Debt Document"** or any other document, agreement or instrument in **"original form"** or in a form as of a specific date) a reference to that Debt Document, or other document, agreement or instrument, as amended, novated, supplemented, extended or restated as permitted by this Agreement;
- (v) **"enforcing"** (or any derivation) the Transaction Security shall include the appointment of an administrator of a Debtor by the Security Agent;
- (vi) **"indebtedness"** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (vii) the **"original form"** of a **"Debt Document"** or any other document, agreement or instrument is a reference to that Debt Document, document, agreement or instrument as originally entered into;
- (viii) a **"person"** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
- (ix) **"proceeds"** of a Distressed Disposal or of a Debt Disposal includes proceeds in cash;
- (x) a **"regulation"** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but if not having the force of law, being a regulation or the like with which the persons to whom it is addressed customarily comply in the ordinary course of their business) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
- (xi) **"set-off"** includes combining accounts and payment netting except that, in relation to any Hedging Liabilities, **"set-off"** does not include payment netting or close-out netting;
- (xii) **"shares"** or **"share capital"** include equivalent ownership interests (and **"shareholder"** and similar expressions shall be construed accordingly);

- (xiii) any action or omission being “**permitted**” under the terms of the Credit Facility Documents, the Senior Secured Notes Documents, the Pari Passu Debt Documents and/or the Senior Notes Documents includes a reference to “(or not **prohibited**)” thereunder; and any requirement that any action or omission is permitted (or not prohibited) under (w) the Credit Facility Documents shall only apply before the Credit Facility Discharge Date and to the Credit Facility Documents which are in place at the relevant time, (x) the Senior Secured Notes Documents shall only apply before the Senior Secured Notes Discharge Date and to the Senior Secured Notes Documents which are in place at the relevant time, (y) the Pari Passu Debt Documents shall only apply before the Pari Passu Debt Discharge Date and to any Pari Passu Debt Documents which are in place at the relevant time and/or (z) the Senior Notes Documents shall only apply before the Senior Notes Discharge Date and to any Senior Notes Documents which are in place at the relevant time; and
- (xiv) a provision of law is a reference to that provision as amended or re-enacted.
- (b) Section, Clause and Schedule headings are for ease of reference only.
- (c) A Default (other than an Event of Default) is “**continuing**” if it has not been remedied or waived and an Event of Default is “**continuing**” if it has not been remedied or waived.
- (d) Any Default or Event of Default arising under the Senior Secured Notes Documents will have the meaning ascribed to such term in the Senior Secured Notes Indenture.
- (e) Any Default or Event of Default arising under the RCF Agreement will have the meaning ascribed to such term in the RCF Agreement.
- (f) Any Default or Event of Default arising under any other Debt Document will have the meaning ascribed to such term in the relevant Debt Document.
- (g) In determining whether any Liabilities have been fully and finally discharged, the relevant Creditor Representative (and, if applicable, Security Agent) will disregard contingent liabilities (such as the risk of clawback from a preference claim) except to the extent that it believes there is a reasonable likelihood that those contingent liabilities will become actual liabilities.
- (h) Notwithstanding any other provision of this Agreement, until the relevant proceeds are released from escrow, the provisions of this Agreement shall not apply to or create any restriction in respect of any escrow arrangement pursuant to which the proceeds of any Senior Secured Notes and/or Senior Notes and/or any Pari Passu Debt are subject and this Agreement shall not govern the rights and obligations of the Senior Secured Noteholders or Senior Noteholders or the Pari Passu Creditors, as the case may be, until such proceeds are released from such escrow arrangement in accordance with the terms thereof other than to redeem the Senior Secured Notes and/or the Senior Notes and/or the Pari Passu Debt (as the case may be) pursuant to the terms of the Senior Secured Notes Indenture or the relevant Senior Notes Indenture or the relevant Pari Passu Debt Document (as the case may be).

### 1.3 Dutch terms

In this Agreement, where it relates to a Dutch entity, or Dutch security, a reference to:

- (a) a necessary action to authorise where applicable, includes without limitation:

- (i) any action required to comply with the Works Councils Act of the Netherlands (*Wet op de ondernemingsraden*); and
- (ii) obtaining a positive advice (*advies*) from the competent works council(s) if a positive advice is required pursuant to the Dutch Works Councils Act (*Wet op de ondernemingsraden*);
- (b) gross negligence means *grove schuld*;
- (c) negligence means *schuld*;
- (d) a security interest includes any mortgage (*hypotheek*), pledge (*pandrecht*), right of retention (*recht van retentie*), right to reclaim goods (*recht van reclame*), and, in general, any right in rem (*beperkt recht*), created for the purpose of granting security (*goederenrechtelijk zekerheidsrecht*);
- (e) wilful misconduct means *opzet*;
- (f) a winding-up, administration or dissolution (and any of those terms) includes a Dutch entity being declared bankrupt (*failliet verklaard*) or dissolved (*ontbonden*);
- (g) a moratorium includes *surseance van betaling* and a moratorium is declared or occurs includes *surseance verleend*;
- (h) any step or procedure taken in connection with insolvency proceedings includes a Dutch entity having filed a notice under Section 36 of the Dutch Tax Collection Act (*Invorderingswet 1990*);
- (i) an administrative receiver or receiver includes a *curator*;
- (j) an administrator includes a *bewindvoerder*; and
- (k) a merger includes a *juridische fusie*.

#### 1.4 Luxembourg terms

- (a) Luxembourg legal concepts expressed in English terms in this Agreement may not correspond to the original French or German terms relating thereto.
- (b) In this Agreement, where it relates to a Luxembourg entity, a reference to:
  - (i) a winding up, dissolution or administration includes a Luxembourg entity:
    - (A) being declared bankrupt (*faillite déclarée*);
    - (B) being subject to *liquidation judiciaire*;
    - (C) having filed for controlled management (*gestion contrôlée*);
  - (ii) a moratorium includes a reprieve from payment (*sursis de paiement*) or a *concordat préventif de faillite*;
  - (iii) a trustee in bankruptcy includes a *curateur*;
  - (iv) an administrator includes a *commissaire* or a *juge délégué*;
  - (v) a receiver or an administrative receiver does not include a *juge commissaire* or a *curateur*; and

- (vi) an attachment includes a *saisie*.

## 1.5 Currency symbols and definitions

- (a) “£”, “GBP” and “sterling” denote the lawful currency of the United Kingdom;
- (b) “USD” means the lawful currency of the United States of America; and
- (c) “€”, “Euro” and “euro” means the single currency unit of the Participating Member States.

## 1.6 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 or Delegate may, subject to this Clause 1.6 and the Third Parties Rights Act, rely on any Clause of this Agreement which expressly confers rights on it.
- (d) The Third Parties Rights Act shall apply to this Agreement in respect:
  - (i) of any Senior Secured Noteholder which by holding any Senior Secured Notes has effectively agreed to be bound by the provisions of this Agreement and will be deemed to receive the benefits hereof, and be subject to the terms and conditions hereof, as if such person was a Party hereto;
  - (ii) of any Pari Passu Creditor which by holding any Pari Passu Debt has effectively agreed to be bound by the provisions of this Agreement and will be deemed to receive the benefits hereof, and be subject to the terms and conditions hereof, as if such person was a Party hereto; and
  - (iii) of any Senior Noteholder which by holding any Senior Notes in the form of debt securities has effectively agreed to be bound by the provisions of this Agreement and will be deemed to receive the benefits hereof, and be subject to the terms and conditions hereof, as if such person was a Party hereto.

## 2. RANKING AND PRIORITY

### 2.1 Ranking

Unless expressly provided to the contrary in this Agreement, the Liabilities shall rank in right and priority of payment in the following order:

- (a) *first*, the Super Senior Liabilities, the Senior Secured Liabilities and the Senior Notes Trustee Amounts *pari passu* and without any preference between them;
- (b) *second*, the Senior Notes Guarantee Liabilities and the Senior Notes Proceeds On-Loan Liabilities *pari passu* and without any preference between them; and
- (c) *third*, the Subordinated Group Liabilities.

## **2.2 Subordinated Liabilities**

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

## **2.3 Senior Notes Issuer Liabilities**

This Agreement does not purport to rank the Senior Notes Issuer Liabilities.

# **3. TRANSACTION SECURITY**

## **3.1 Transaction Security**

- (a) Each of the Parties agrees that the Transaction Security created pursuant to the Transaction Security Documents shall rank and secure the Secured Obligations, *pari passu* and without any preference between them (but only to the extent that such Transaction Security is expressed to secure the Secured Obligations).
- (b) Each of the Parties agrees that the Shared Transaction Security created pursuant to the Transaction Security Documents shall rank and secure the following Liabilities (but only to the extent that such Shared Transaction Security is expressed to secure those Liabilities) in the following order:
  - (i) first, the Super Senior Liabilities and the Senior Secured Liabilities, *pari passu* and without any preference between them; and
  - (ii) second, the Senior Notes Liabilities, *pari passu* and without any preference between them,

in each case irrespective of:

- (A) the order of execution, creation, registration, intimation, recording, notice, enforcement or otherwise;
- (B) the date on which any Liability arose; and
- (C) any fluctuation in the amount, or any intermediate discharge in whole or in part, of any Liability.

## **3.2 Senior Notes Liabilities**

- (a) If the Senior Notes Liabilities benefit from any Security granted by TopCo and/or the Senior Notes Issuer, that Security shall be limited to either the Senior Notes Only Security or the Shared Transaction Security or any combination thereof at the election of the Parent.
- (b) The Senior Notes Liabilities shall not be secured by the Transaction Security or any assets subject to the Transaction Security except for the Shared Transaction Security.
- (c) Prior to the Secured Debt Discharge Date, no member of the Group shall grant any Senior Notes Only Security or Shared Transaction Security or any combination thereof.

### 3.3 Security: Debtors' Obligations

- (a) Subject to Clause 4.3 (*Security: Ancillary Lenders and Issuing Banks*), no Debtor shall (and the Parent shall procure that no member of the Group will) grant to any of the Secured Parties the benefit of any Security in respect of that Secured Party's Secured Liabilities, in addition to the Transaction Security, unless:
- (i) the granting of such Security is permitted by this Agreement or the Credit Facility Documents, the Senior Secured Notes Documents and the Pari Passu Debt Documents; and
  - (ii) to the extent legally possible, at the same time it is also granted either:
    - (A) to the Security Agent as agent and/or trustee for the other Secured Parties in respect of their Secured Liabilities; or
    - (B) in the case of any jurisdiction in which effective Security cannot be granted in favour of the Security Agent as trustee for the Secured Parties:
      - (I) to the other Secured Parties in respect of their Secured Liabilities; or
      - (II) to the Security Agent under a parallel debt structure for the benefit of the other Secured Parties,
- and ranks in the same order of priority as that contemplated in this Clause 3.
- (b) Subject to Clause 4.3 (*Security: Ancillary Lenders and Issuing Banks*), no Debtor or other Material Company shall (and the Parent shall procure that no member of the Group will) grant to any of the Secured Parties the benefit of any guarantee, indemnity or other assurance against loss from any member of the Group in respect of their Liabilities in addition to those in:
- (i) the original form of the RCF Agreement or the Senior Secured Notes Indenture (or any Equivalent Provision in any other Credit Facility Document or Senior Secured Notes Document);
  - (ii) this Agreement; or
  - (iii) the original form of Commitment Letter (as defined in the RCF Agreement) (or any equivalent provision in any mandate letter entered into in connection with any other Credit Facility Document or Senior Secured Notes Documents which is similar in meaning and effect); or
  - (iv) any Shared Assurance,
- if, to the extent legally possible and subject to any Agreed Security Principles, at the same time it is also offered and, if such offer is accepted, granted to the other Senior Secured Creditors (and, if such guarantee, indemnity or other assurance against loss relates to the Shared Transaction Security, the Senior Notes Creditors) in respect of their Liabilities and ranks in the same order of priority as that contemplated in Clause 2 (*Ranking and Priority*).
- (c) For the avoidance of doubt, this Clause 3.3 shall not prevent the granting of any Security, guarantee, indemnity or other assurance against loss in respect of the Credit Facility Liabilities where such Security, guarantee, indemnity or other assurance

against loss is not capable of being granted in respect of any or all of the other Secured Liabilities.

### **3.4 Creditor Representative Amounts**

Subject to Clause 19 (*Application of Proceeds*) where applicable, nothing in this Agreement will prevent payment by the Parent or any Debtor of the Creditor Representative Amounts or the receipt and retention of such Creditor Representative Amounts by the relevant Creditor Representative(s).

## **4. CREDIT FACILITY LENDERS AND CREDIT FACILITY LIABILITIES**

### **4.1 Entry into Credit Facility Documents**

An Arranger, Credit Facility Agent or Credit Facility Lender under a Credit Facility Document (under paragraph (b) of that definition) may only accede to this Agreement on or after the RCF Discharge Date if the Security Agent has received a certificate signed by a director of the Parent (without personal liability) confirming that the entry into of such Credit Facility Document by the relevant members of the Group is permitted under the Credit Facility Documents (other than any Credit Facility Documents under which all amounts outstanding are being repaid or prepaid in full with the proceeds borrowed under the relevant new Credit Facility Documents), the Senior Secured Notes Documents, the Pari Passu Debt Documents and the Senior Notes Documents and the first utilisation under that Credit Facility Document shall not be made prior to the RCF Discharge Date. The Security Agent shall provide copies of such certificate to the Creditor Representatives of the other Primary Creditors (other than the Creditor Representatives of any Primary Creditors to which all amounts outstanding under the relevant Credit Facility Documents are being repaid or prepaid in full with the proceeds borrowed under the relevant new Credit Facility Documents).

### **4.2 Payment of Credit Facility Liabilities**

The Debtors may make Payments of the Credit Facility Liabilities at any time in accordance with the terms of the Credit Facility Documents.

### **4.3 Security: Ancillary Lenders and Issuing Banks**

No Ancillary Lender or Issuing Bank will, unless the prior written consent of the Instructing Group 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 Credit Facility Liabilities or Pari Passu Debt (as applicable) 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 RCF Finance Documents (or Equivalent Provision in any other Credit Facility Document or Pari Passu Debt Documents (as applicable));
  - (ii) this Agreement; and
  - (iii) the Shared 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 Credit Facility Cash Cover permitted under the Credit Facility Documents or the Pari Passu Debt Documents relating to any Ancillary Facility or for any Letter of Credit issued by the Issuing Bank;
- (e) the indemnities, rights of set-off and netting contained in an ISDA Master Agreement (in the case of a Hedging Ancillary Agreement which is based on an ISDA Master Agreement) or any indemnities, rights of set-off and netting which are similar in meaning and effect to those indemnities, rights of set-off and netting (in the case of a Hedging Ancillary Agreement which is not based on an ISDA Master Agreement); or
- (f) any Security, guarantee, indemnity or other assurance against loss giving effect to, or arising as a result of the effect of, any netting or set-off arrangement relating to the Ancillary Facilities for the purpose of netting debit and credit balances arising under the Ancillary Facilities.

#### **4.4 Restriction on Enforcement: Ancillary Lenders and Issuing Banks**

- (a) Subject to Clause 4.5 (*Permitted Enforcement: Ancillary Lenders and Issuing Banks*), so long as any of the Super Senior Liabilities (other than any Credit Facility Liabilities owed to the Ancillary Lenders or Issuing Banks) are or may be outstanding, none of the Ancillary Lenders and the Issuing Banks shall be entitled to take any Enforcement Action in respect of any of the Credit Facility Liabilities owed to it in such capacity.
- (b) Subject to Clause 4.5 (*Permitted Enforcement: Ancillary Lenders and Issuing Banks*) so long as any of the Pari Passu Debt (other than any Pari Passu Debt owed to the Ancillary Lenders or Issuing Banks) are or may be outstanding, none of the Ancillary Lenders and the Issuing Banks shall be entitled to take any Enforcement Action in respect of any of the Pari Passu Debt owed to it in such capacity.

#### **4.5 Permitted Enforcement: Ancillary Lenders and Issuing Banks**

- (a) The Ancillary Lenders and the Issuing Banks may take Enforcement Action which would be available to them but for Clause 4.4 (*Restriction on Enforcement: Ancillary Lenders and Issuing Banks*) if:
  - (i) in respect of Ancillary Lenders and the Issuing Banks owed Credit Facility Liabilities, at the same time as, or prior to, that action, Enforcement Action has been taken in respect of such Credit Facility Liabilities (excluding the Liabilities owing to Ancillary Lenders or 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 Credit Facility Liabilities;
  - (ii) in respect of Ancillary Lenders and Issuing Banks owed Pari Passu Debt, at the same time as, or prior to, that action, Enforcement Action has been taken in respect of such Pari Passu Debt (excluding the Liabilities owing to Ancillary Lenders or 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 that Pari Passu Debt;
  - (iii) that action is contemplated by the Credit Facility Documents or the Pari Passu Debt Document, as relevant, or Clause 4.3 (*Security: Ancillary Lenders and Issuing Banks*);

- (iv) that Enforcement Action is taken in respect of Credit Facility Cash Cover which has been provided in accordance with the Credit Facility Documents or the Pari Passu Debt Document, as relevant;
- (v) at the same time as, or prior to, that action, the consent of the Majority Super Senior Creditors or the Pari Passu Debt Required Holders, as relevant, to that Enforcement Action is obtained; or
- (vi) an Insolvency Event has occurred in relation to any Debtor, 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 Debtor to:
  - (A) accelerate any of that Debtor's Credit Facility Liabilities or Pari Passu Debt, as relevant, owing to it or declare them prematurely due and payable on demand;
  - (B) make a demand under any guarantee, indemnity or other assurance against loss given by that Debtor in respect of any Credit Facility Liabilities or Pari Passu Debt, as relevant;
  - (C) exercise any right of set-off against that Debtor or take or receive any Payment from that Debtor (in each case) in respect of any Credit Facility Liabilities or Pari Passu Debt, as relevant, of that Debtor ; or
  - (D) claim and prove in the liquidation of that Debtor for the Credit Facility Liabilities or Pari Passu Debt, as relevant, owing to it.
- (b) Clause 4.4 (*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 Credit Facility Liabilities or Pari Passu Debt, as relevant 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 Facility,

in accordance with the terms of the Credit Facility Documents or the Pari Passu Debt Documents, as relevant, 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 Facility to or towards an amount equal to its Net Outstandings.

## 5. SENIOR SECURED NOTEHOLDERS AND SENIOR SECURED NOTES LIABILITIES

### 5.1 Payment of Senior Secured Notes Liabilities

- (a) The Debtors may make Payments of the Senior Secured Notes Liabilities at any time in accordance with the terms of the Senior Secured Notes Documents, but subject to Clause 27.25 (*Note Purchase Condition*) of the RCF Agreement and any Equivalent Provision in any other Credit Facility Document.
- (b) The Parties acknowledge that the Senior Secured Notes Trustee Amounts are senior obligations of the Senior Secured Notes Issuer and the Debtors and payments in respect of the same are not restricted by this Agreement.

- (c) The Senior Secured Notes Issuer may not make a loan of the gross or net proceeds of an issue of Senior Secured Notes to any member of the Group other than the Parent.

## 5.2 Option to purchase: Senior Secured Noteholders and Pari Passu Creditors

- (a) Subject to Clause 5.3 (*Terms of purchase*), after a Distress Event, the Senior Secured Notes Trustee and the Pari Passu Debt Representative(s) may, at the direction and the expense of the Senior Secured Noteholders and the Pari Passu Creditors as applicable (the "**Purchasing Senior Secured Creditors**"), if after all such Senior Secured Noteholders and Pari Passu Creditors have been given an opportunity to so participate:

- (i) it gives not less than ten days' prior written notice to the RCF Agent or Creditor Representative of the Credit Facility Lenders and if applicable, the Super Senior Hedge Counterparties (in each case, with copy to the Security Agent); and
- (ii) prior to giving any such notice, it obtains all necessary approvals from the Purchasing Senior Secured Creditors,

procure the acquisition by a person nominated by the Purchasing Senior Secured Creditors of all (but not part only) of the rights and obligations of both the Credit Facility Lenders and the Super Senior Hedge Counterparties in connection with the Credit Facility Liabilities under the Credit Facility Documents and the Super Senior Hedging Liabilities under the Super Senior Hedging Agreements by way of transfer under clause 29 (*Changes to the Lenders*) of the RCF Agreement or the corresponding provision in any other Credit Facility Documents or relevant Super Senior Hedging Agreement (the "**Purchase Option**").

- (b) In the event that a Purchase Option is to be exercised in accordance with the terms of this Clause 5.2 and there are Non-Super Senior Hedging Liabilities arising under a Super Senior Hedging Agreement to be subject to the Purchase Option (the "**Other Hedging Liabilities**"), the Purchasing Senior Secured Creditors exercising such Purchase Option shall be obliged to, at the expense of such Purchasing Senior Secured Creditors, also procure the acquisition by a person nominated by the Purchasing Senior Secured Creditors of all (but not part only) of the rights and obligations of the Hedge Counterparty party to that Super Senior Hedging Agreement in connection with the Other Hedging Liabilities under that Super Senior Hedging Agreement. Any notice to be given under Clause 5.2(a)(i) shall include details of the purchase of any Other Hedging Liabilities.

- (c) If more than one Purchasing Senior Secured Creditor wishes to exercise the option to purchase the Credit Facility Liabilities and the Super Senior Hedging Liabilities in accordance with paragraph (a) above, each such Purchasing Senior Secured Creditor shall:

- (i) acquire those Liabilities *pro rata*, in the proportion that its Senior Secured Credit Participation bears to the aggregate Senior Secured Credit Participations of all the Purchasing Senior Secured Creditors (in each case discounting the Senior Secured Liabilities described in paragraph (c) of the definition of Senior Secured Credit Participation in Clause 1.1 (*Definitions*)); and
- (ii) instruct the Senior Secured Notes Trustee in accordance with the terms of the Senior Secured Notes Indenture or the relevant Creditor Representative(s) in accordance with the terms of the relevant Pari Passu Debt Documents, who will (provided, in the case of the Senior Secured Notes Trustee, it has

received such instructions and a corresponding indemnity to its satisfaction) determine (consulting with each other as required) the appropriate share of the Liabilities to be acquired under paragraph (a) above by each such Purchasing Senior Secured Creditor and who shall inform each such Purchasing Senior Secured Creditor accordingly,

and the Senior Secured Notes Trustee or the relevant Creditor Representative(s) (as applicable) shall promptly inform the Creditor Representatives of the Credit Facility Lenders and the Hedge Counterparties of the Purchasing Senior Secured Creditors intention to exercise the option to purchase the Credit Facility Liabilities.

### 5.3 Terms of purchase

Any purchase under Clause 5.2 (*Option to purchase: Senior Secured Noteholders and Pari Passu Creditors*) shall be on and is subject to the following terms:

- (a) that the transfer is lawful and any conditions relating to such transfer contained in the Credit Facility Documents and the Super Senior Hedging Agreements are complied with, other than any requirement to obtain the consent of, or consult with, any Debtor or other member of the Group relating to such transfer (which consent or consultation shall not be required);
- (b) payment to the relevant Credit Facility Agent on behalf of the Credit Facility Creditors in full in cash of an amount equal to the Credit Facility Liabilities at that time (whether or not due and including all amounts which would have been payable under the Credit Facility if the amounts outstanding thereunder were being prepaid by the relevant Debtors on the date of that payment) outstanding as at the date that amount is to be paid, as determined by the Creditor Representative(s) of the Credit Facility Lenders (acting reasonably) together with costs and expenses (including legal fees) incurred by the Creditor Representative or Credit Facility Lenders as a consequence of giving effect to the transfer to such Purchasing Senior Secured Creditors (and payment to the Security Agent of any corresponding costs and expense incurred by it as a result of the transfer);
- (c) payment to the relevant Hedge Counterparty in full of the Hedging Purchase Amount(s) in respect of the transaction(s) under the Super Senior Hedging Agreements together with costs and expenses (including legal fees) incurred by the relevant Super Senior Hedge Counterparties as a consequence of giving effect to the transfer to such Purchasing Senior Secured Creditors;
- (d) as a result of the transfer, no Credit Facility Lender or Super Senior Hedge Counterparty will be under any actual or contingent liability to any Debtor or any other person under this Agreement, any Credit Facility Document, any Super Senior Hedging Agreement or any other relevant Debt Document for which it is not holding cash collateral in an amount and on terms reasonably satisfactory to it;
- (e) the Purchasing Senior Secured Creditors (or, if required by the Credit Facility Lenders and Super Senior Hedge Counterparties, a third party acceptable to all the Credit Facility Lenders and Super Senior Hedge Counterparties) indemnifies, in a form satisfactory to each Credit Facility Lender and each other Finance Party under the Credit Facility Documents on the date of the relevant transfer and each Super Senior Hedge Counterparty under the Super Senior Hedging Agreements, them in respect of all losses which may be sustained or incurred by any Credit Facility Lender or other such Finance Party or Super Senior Hedge Counterparty as a result of any sum received or recovered by that Credit Facility Lender or Super Senior Hedge Counterparty from any Debtor, any Purchasing Senior Secured Creditor any

other person pursuant to this Clause 5.3 being required (or it being alleged that it is required) to be paid back by or clawed back from that Credit Facility Lender or Super Senior Hedge Counterparty for any reason; and

- (f) the relevant transfer shall be without recourse to, or representation or warranty from, any Credit Facility Lender or other Finance Party under such Credit Facility Document or Super Senior Hedge Counterparty under any Super Senior Hedging Agreements, except that each Credit Facility Lender and Super Senior Hedge Counterparty shall be deemed to have represented and warranted on the date of that transfer that it has the power to enter into and make, and has taken all necessary action to authorise the making by it of, that transfer.

#### **5.4 Option to purchase: Senior Secured Notes Trustee and Pari Passu Debt Representative**

For the purposes of Clause 5.2 (*Option to purchase: Senior Secured Noteholders and Pari Passu Creditors*), and Clause 5.3 (*Terms of purchase*):

- (a) the terms "Senior Secured Noteholder" and "Purchasing Senior Secured Creditor" shall not include the Senior Secured Notes Trustee (to the extent acting solely in such capacity); and
- (b) the terms "Pari Passu Creditor" and "Purchasing Senior Secured Creditor" shall not include any Pari Passu Debt Representative.

### **6. PARI PASSU CREDITORS AND PARI PASSU DEBT**

#### **6.1 Ancillary Lenders and Issuing Banks**

This Clause 6 is subject to Clause 4.3 (*Security: Ancillary Lenders and Issuing Banks*), Clause 4.4 (*Restriction on Enforcement: Ancillary Lenders and Issuing Banks*) and Clause 4.5 (*Permitted Enforcement: Ancillary Lenders and Issuing Banks*).

#### **6.2 Entry into Pari Passu Debt Documents**

- (a) No Debtor shall enter into any Pari Passu Debt Documents unless such Pari Passu Debt Documents (and the incurrence of any Financial Indebtedness thereunder) are permitted by the Credit Facility Documents, the Senior Secured Notes Documents, the Pari Passu Debt Documents and the Senior Notes Documents.
- (b) No Debtor may enter into a Pari Passu Debt Document unless the Security Agent has received a certificate signed by a director of the Parent (without personal liability) confirming that the entry into and performance of such Pari Passu Debt Document are permitted under the Credit Facility Documents, the Senior Secured Notes Documents, the Pari Passu Debt Documents and the Senior Notes Documents. The Security Agent shall provide copies of such certificate to the Creditor Representatives of the other Creditors.
- (c) No Senior Secured Notes Proceeds Notes may be advanced to or issued by (as applicable) any member of the Group other than the Parent and only the Parent shall incur Senior Secured Notes Proceeds Liabilities.

#### **6.3 Payment of Pari Passu Debt**

- (a) The Debtors may make Payments of Pari Passu Debt at any time in accordance with the terms of the Pari Passu Debt Documents.

- (b) The Parties acknowledge that the Pari Passu Notes Trustee Amounts are senior obligations of the Pari Passu Debt Issuer and the Debtors and payments in respect of the same are not restricted by this Agreement.

#### 6.4 Security: Pari Passu Creditors

The Pari Passu Creditors may not take, accept or receive the benefit of:

- (a) any Security in respect of the Pari Passu Debt from any member of the Group or any of its Affiliates (including TopCo) in addition to the Transaction Security unless the grant of such Security is permitted by the Senior Secured Notes Documents, the Credit Facility Documents and any Pari Passu Debt Documents and, at the same time, it is also granted, to the extent legally possible:
  - (i) to the Security Agent as agent and/or trustee for the other Secured Parties in respect of their Secured Obligations;
  - (ii) in the case of any jurisdiction in which effective Security cannot be granted in favour of the Security Agent as trustee for the Secured Parties:
    - (A) to the other Secured Parties in respect of their Secured Obligations; or
    - (B) to the Security Agent under a parallel debt structure for the benefit of the other Secured Parties; or
  - (iii) in the case of any Security being granted after the date of this Agreement, to some of the Secured Parties provided that such Security is incremental to Transaction Security that has already been granted in favour of all other Secured Parties and any proceeds derived from the enforcement of such Security will be shared with the Secured Parties in accordance with this Agreement,and ranks in the same order of priority as that contemplated in Clause 3 (*Transaction Security*); and
- (b) any guarantee, indemnity or other assurance against loss from any member of the Group in respect of the Pari Passu Debt in addition to those in:
  - (i) the original form of the Pari Passu Debt Documents;
  - (ii) this Agreement; or
  - (iii) any Shared Assurance,

unless (A) the giving of such guarantee, indemnity or other assurance is permitted by the Senior Secured Notes Documents, the Credit Facility Documents and any Pari Passu Debt Documents and (B) at the same time, it is also granted to the Credit Facility Lenders and granted to the other Secured Parties in respect of their respective Secured Liabilities and ranks in the same order of priority as that contemplated in Clause 2 (*Ranking and Priority*).

### 7. HEDGE COUNTERPARTIES AND HEDGING LIABILITIES

#### 7.1 Identity of Hedge Counterparties

- (a) Subject to paragraph (b) 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 from any member of the Group in respect of any of the liabilities arising in relation to those hedging arrangements nor shall those liabilities be treated as Hedging Liabilities unless that person is or becomes a Party to this Agreement as a Hedge Counterparty.

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

## **7.2 Restriction on Payment: Hedging Liabilities**

Prior to the latest to occur of the Credit Facility Discharge Date, the Senior Secured Notes Discharge Date and the Pari Passu Debt 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 the respective Hedging Agreements and Clause 7.3 (*Permitted Payments: Hedging Liabilities*); or
- (b) the taking or receipt of that Payment is permitted under paragraph (c) of Clause 7.9 (*Permitted Enforcement: Hedge Counterparties*).

## **7.3 Permitted Payments: Hedging Liabilities**

- (a) Subject to paragraph (b) below, the Debtors and each other member of the Group may make Payments to any Hedge Counterparty in respect of the Hedging Liabilities then due to that Hedge Counterparty under any Hedging Agreement in accordance with the terms of that Hedging Agreement:
- (i) if the Payment is a scheduled Payment arising under the relevant Hedging Agreement;
- (ii) to the extent that the relevant Debtor's obligation to make the Payment arises as a result of the operation of:
- (A) any of sections 2(d) (Deduction or Withholding for Tax) (and any provision requiring the payment of any tax credit related to Section 2(d)), 2(e) (Default Interest; Other Amounts), 8(a) (Payment in the Contractual Currency), 8(b) (Judgments) and 11 (Expenses) of the 1992 ISDA Master Agreement (if the Hedging Agreement is based on a 1992 ISDA Master Agreement);
- (B) any of sections 2(d) (Deduction or Withholding for Tax), (and any provision requiring the payment of any tax credit related to Section 2(d)), 8(a) (Payment in the Contractual Currency), 8(b) (Judgments), 9(h)(i) (Prior to Early Termination) and 11 (Expenses) of the 2002 ISDA Master Agreement (if the Hedging Agreement is based on a 2002 ISDA Master Agreement); or
- (C) any provision of a Hedging Agreement which is similar in meaning and effect to any provision listed in paragraphs (A) or (B) above (if the Hedging Agreement is not based on an ISDA Master Agreement);
- (iii) to the extent that the relevant Debtor's obligation to make the Payment arises from a Non-Credit Related Close-Out in relation to that Hedging Agreement;
- (iv) to the extent that:

- (A) the relevant Debtor's obligation to make the Payment arises from a Credit Related Close-Out in relation to that Hedging Agreement; and
  - (B) no Event of Default (other than in Event of Default under the Senior Notes Indenture) is continuing at the time of that Payment or would result from that Payment;
- (v) to the extent that no Event of Default (other than in the Event of Default under the Senior Notes Indenture) is continuing or would result from that Payment and the relevant Debtor's obligation to make the Payment arises as a result of a close-out or termination arising as a result of:
  - (A) section 5(a)(vii) (*Bankruptcy*) of the 1992 ISDA Master Agreement (if the relevant Hedging Agreement is based on a 1992 ISDA Master Agreement) and the Event of Default (as defined in the relevant Hedging Agreement) has occurred with respect to the relevant Hedge Counterparty;
  - (B) section 5(a)(vii) (*Bankruptcy*) of the 2002 ISDA Master Agreement (if the relevant Hedging Agreement is based on a 2002 ISDA Master Agreement) and the Event of Default (as defined in the relevant Hedging Agreement) has occurred with respect to the relevant Hedge Counterparty;
  - (C) any provision of a Hedging Agreement which is similar in meaning and effect to any provision listed in paragraphs (A) or (B) above (if the Hedging Agreement is not based on an ISDA Master Agreement) and the equivalent event of default has occurred with respect to the relevant Hedge Counterparty; or
  - (D) the relevant Debtor terminating or closing-out the relevant Hedging Agreement as a result of a Hedging Force Majeure and the Termination Event (as defined in the relevant Hedging Agreement in the case of a Hedging Agreement based on an ISDA Master Agreement) or the equivalent termination event (in the case of a Hedging Agreement not based on an ISDA Master Agreement) has occurred with respect to the relevant Hedge Counterparty; or
- (vi) if the Majority Super Senior Creditors (excluding the Super Senior Hedge Counterparties) and the Majority Senior Secured Creditors (excluding the Non-Super Senior Hedge Counterparties) give their prior written consent to the Payment being made.
- (b) No Payment may be made to a Hedge Counterparty under paragraph (a) above if any scheduled Payment due from that Hedge Counterparty to a Debtor under a Hedging Agreement to which they are both party is due and unpaid.
- (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 7.4 (*Payment obligations continue*), not result in a default (however described) in respect of that Debtor under that Hedging Agreement.
- (d) For the avoidance of doubt, no payment will be due and unpaid if a Hedge Counterparty is entitled to withhold any payment pursuant to Section 2(a)(iii) of the ISDA Master Agreement, or if the Hedging Agreement is not based on an ISDA Master Agreement, any provision which is similar in meaning and effect to such provision.



- (e) Nothing in this Agreement obliges a Hedge Counterparty to make a payment to a Debtor under a Hedging Agreement to which they are both party if any scheduled Payment due from that Debtor to the Hedge Counterparty under that Hedging Agreement is due and unpaid.

#### **7.4 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 the terms of any Debt Document by the operation of Clauses 7.2 (*Restriction on Payment: Hedging Liabilities*) and 7.3 (*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.

#### **7.5 No acquisition of Hedging Liabilities**

Prior to the Credit Facility Discharge Date, the Senior Secured Notes Discharge Date and the Pari Passu Debt 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 Hedging Liabilities unless the prior written consent of (i) the Majority Credit Facility Lenders and (ii) the Majority Senior Secured Creditors (excluding the Non-Super Senior Hedge Counterparties), is obtained.

#### **7.6 Amendments and waivers**

- (a) Subject to paragraph (b) below, the Hedge Counterparties may not, at any time, amend or waive any term of the Hedging Agreements.
- (b) A Hedge Counterparty may amend or waive any term of a Hedging Agreement with the prior written agreement of the relevant Debtor if that amendment or waiver does not breach another term of this Agreement.

#### **7.7 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) (or expressly permitted under) this Agreement;
  - (ii) any Shared Assurance; or
  - (iii) the relevant Hedging Agreement no greater in extent than any of those referred to in paragraphs (i) and (ii) above; and
- (c) 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 and rights of set-off and

netting (in the case of a Hedging Agreement which is not based on an ISDA Master Agreement).

**7.8 Restriction on Enforcement: Hedge Counterparties**

Subject to Clause 7.9 (*Permitted Enforcement: Hedge Counterparties*) and Clause 7.10 (*Required Enforcement: Hedge Counterparties*) and without prejudice to each Hedge Counterparty's rights under Clauses 15.3 (*Instructions to enforce – Transaction Security*) and 15.5 (*Manner of enforcement*), the Hedge Counterparties shall not take any Enforcement Action under any of the Hedging Agreements or otherwise in respect of the Hedging Liabilities at any time.

**7.9 Permitted Enforcement: Hedge Counterparties**

(a) To the extent it is able to do so under the relevant Hedging Agreement, a Hedge Counterparty may terminate, reduce or close-out in whole or in part any transaction under that Hedging Agreement prior to its stated maturity and make a demand for payment of any amount which would become payable to it on or following such termination, reduction or close out:

(i) if:

- (A) a Senior Secured Notes Acceleration Event which has resulted in the Senior Secured Notes becoming immediately due and payable;
- (B) a Pari Passu Debt Acceleration Event which has resulted in a tranche of the Pari Passu Debt becoming immediately due and payable;
- (C) a Senior Notes Acceleration Event which has resulted in the Senior Notes becoming immediately due and payable; or
- (D) the enforcement of any Transaction Security,

has occurred;

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

(iii) if an Event of Default has occurred and is continuing under clause 28.6 (*Insolvency*) of the RCF Agreement or the Equivalent Provisions of any other Credit Facility Documents or section 6.01 (Events of Default) of the Senior Secured Notes Indenture or the equivalent provisions of any Pari Passu Debt Document (in each case) in relation to a Debtor which is party to that Hedging Agreement;

(iv) if:

(A)

- (I) in relation to a Hedging Agreement which is based on an ISDA Master Agreement, an event falling within the definition of Event of Default (as defined in Section 5(a) of the relevant form of ISDA Master Agreement) or Termination Event (other than an Additional Termination Event) (as defined in Section 14 of the relevant form of ISDA Master Agreement) which has not been referred to elsewhere in Clause 7.9(a)(i) (*Permitted Enforcement:*

*Hedge Counterparties*) or in Clause 7.9(b) (*Permitted Enforcement: Hedge Counterparties*) and has occurred in respect of that Hedging Agreement; or

- (II) in relation to a Hedging Agreement which is not based on an ISDA Master Agreement, an event similar in meaning and effect to those described in paragraph (i) above, which has not been referred to elsewhere in Clause 7.9(a) (*Permitted Enforcement: Hedge Counterparties*) or in Clause 7.9(b) (*Permitted Enforcement: Hedge Counterparties*) and has occurred in respect of that Hedging Agreement; and
- (B) in each case, the Majority Credit Facility Lenders and the Majority Senior Secured Creditors (excluding the Non-Super Senior Hedge Counterparties) give prior written consent to that termination or close-out being made;
- (v) to the extent necessary to comply with Clause 7.10 (*Required Enforcement: Hedge Counterparties*);
- (vi) to the extent that that termination or close-out is necessary to comply with paragraph (iii) of Clause 7.15(a) (*Reduction in Relevant Hedged Debt*);
- (vii) if that Hedge Counterparty and the relevant Debtor consensually agree to close out a transaction under a Hedging Agreement and no Event of Default is continuing at the time of that action or would result from that action;
- (viii) if that Hedge Counterparty ceases to be secured under the Transaction Security Documents or to be guaranteed under this Agreement, in each case, without its consent;
- (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 or unremedied for more than 10 days after notice of that default has been given to the relevant Debtor under that Hedging Agreement, with a copy to the Security Agent pursuant to paragraph (i) of Clause 27.3 (*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 any transaction under that Hedging Agreement; and
  - (ii) until such time as the Security Agent has given notice to that Hedge Counterparty that the Transaction Security is being enforced (or that any formal steps are being taken to enforce the Transaction Security), shall be entitled to exercise any right it might otherwise have to sue for, commence or join legal or arbitration proceedings against any Debtor to recover any Hedging Liabilities due under that Hedging Agreement (excluding, for the avoidance of doubt, any enforcement of the Transaction Security).
- (c) After the occurrence of an Insolvency Event in relation to any Debtor, each Hedge Counterparty shall be entitled to exercise any right it may otherwise have in respect of that Debtor to:
  - (i) prematurely close-out or terminate any Hedging Liabilities of that Debtor;

- (ii) make a demand under any guarantee, indemnity or other assurance against loss given by that Debtor 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 Debtor; or
- (iv) claim and prove in the liquidation of that Debtor for the Hedging Liabilities owing to it.

#### **7.10 Required Enforcement: Hedge Counterparties**

- (a) Subject to paragraph (b) below, a Hedge Counterparty shall promptly terminate or close out in full any transaction under all or any of the Hedging Agreements to which it is party prior to their stated maturity, following:
  - (i) the occurrence of an Acceleration Event and delivery to it of a notice from the Security Agent that an Acceleration Event has occurred; and
  - (ii) delivery to it of a subsequent notice from the Security Agent (acting on the instructions of the Instructing Group) instructing it to do so.
- (b) Paragraph (a) above shall not apply to the extent that that Acceleration Event occurred as a result of an arrangement made between any Debtor and any Primary Creditor with the purpose of bringing about that Acceleration Event.
- (c) If a Hedge Counterparty is entitled to terminate or close-out any transaction under paragraph (b) of Clause 7.9 (*Permitted Enforcement: Hedge Counterparties*) (or would have been able to if that Hedge Counterparty had given the notice referred to in that paragraph) but has not terminated or closed out each such transaction, that Hedge Counterparty shall promptly terminate or close-out in full each such transaction following a request to do so by the Security Agent (acting on the instructions of the Instructing Group).

#### **7.11 Treatment of Payments due to Debtors on termination of transactions under Hedging Agreements**

- (a) If, on termination of any hedging transaction under any Hedging Agreement occurring after a Distress Event, a scheduled Payment, 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.

#### **7.12 Terms of Hedging Agreements**

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

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

that Hedging Agreement will:

- (A) if it is based on a 1992 ISDA Master Agreement, provide for payments under the "Second Method" and will make no material amendment to section 6(e) (Payments on Early Termination) of the ISDA Master Agreement;
  - (B) if it is based on a 2002 ISDA Master Agreement, make no material amendment to the provisions of section 6(e) (Payments on Early Termination) of the ISDA Master Agreement; or
  - (C) if it is not based on an ISDA Master Agreement, provide for any other method the effect of which is that the party to which that event is referable will be entitled to receive payment under the relevant termination provisions if the net replacement value of all terminated transactions entered into under that Hedging Agreement is in its favour;
- (d) each Hedging Agreement will not provide for Automatic Early Termination;
- (e) each Hedging Agreement will provide that the relevant Hedge Counterparty will be entitled to designate an Early Termination Date or otherwise be able to terminate each transaction under such Hedging Agreement if so required pursuant to Clause 7.10 (*Required Enforcement: Hedge Counterparties*);
- (f) each Hedging Agreement will permit the relevant Hedge Counterparty and each relevant Debtor to take such action as may be necessary to comply with Clause 7.15(a) (*Reduction in Relevant Hedged Debt*); and
- (g) each Hedging Agreement will permit (but shall not require) the relevant Debtor to exercise its right provided for in (and in accordance with) Clause 7.16 (*Termination of hedging*).

### 7.13 Priority Long Term Operational FX Hedging Liabilities

- (a) Prior to entering into any relevant Hedging Agreement, in order to designate any Hedging Liabilities in respect of Long Term Operational FX Hedging Transactions as Priority Long Term Operational FX Hedging Liabilities, the Parent and relevant Hedge Counterparty shall deliver to the Security Agent a Designated Priority Long Term Operational FX Hedging Notice detailing in respect of that Hedge Counterparty and its Hedging Liabilities, the maximum amount (subject to paragraph (c) below, the “**Designated Priority Long Term Operational FX Hedging Amount**”) that would be payable to that Hedge Counterparty if the relevant hedging transactions were closed out in respect of Long Term Operational FX Hedging Transactions, up to which such Hedging Liabilities shall, at any time after the relevant Effective Date, be entitled to share in the proceeds of enforcement of any Security created by any Transaction Security Document and receive Recoveries pursuant to Clause 19.1 (*Order of application*) *pari passu* with, *inter alia*, the Arranger Liabilities and Credit Facility Liabilities as Super Senior Hedging Liabilities and the proposed effective date of such allocation.
- (b) Subject to paragraph (c) below, the Parent and relevant Hedge Counterparty together may propose to increase or decrease the Designated Priority Long Term Operational FX Hedging Amount in respect of such Hedge Counterparty’s Priority Long Term Operational FX Hedging Liabilities by delivering to the Security Agent a Designated Priority Long Term Operational FX Hedging Adjustment Notice, such notice to specify the proposed effective date of such increase or decrease. Should a Hedge Counterparty’s Designated Priority Long Term Operational FX Hedging Amount be decreased pursuant to this paragraph (b), an amount equal to such decrease shall become available on the relevant Effective Date to be allocated to another Hedge Counterparty and its Hedging Liabilities in respect of Long Term Operational FX Hedging Transactions in accordance with the terms of this Clause 7.13.
- (c) The aggregate of all Designated Priority Long Term Operational FX Hedging Amounts (taking into account any increase or decrease set out in a Designated Priority Long Term Operational FX Hedging Adjustment Notice issued pursuant to paragraph (b) above that has been accepted by the Security Agent, and any decrease set out in a Priority Long Term Operational FX Hedging Reduction and Resignation Notice issued pursuant to paragraph (g) below that has been accepted by the Security Agent) in relation to the Priority Long Term Operational FX Hedging Liabilities may not at any time exceed the Priority Long Term Operational FX Hedging Liabilities Recoveries Amount and, in any such case, only the amounts so notified to the Security Agent which, taken in the order of being accepted by the Security Agent, add up to, but do not exceed, the Priority Long Term Operational FX Hedging Liabilities Recoveries Amount shall be treated as Designated Priority Long Term Operational FX Hedging Amounts. Promptly upon receipt of a Designated Priority Long Term Operational FX Hedging Notice or a Designated Priority Long Term Operational FX Hedging Adjustment Notice pursuant to this Clause 7.13, the Security Agent shall notify the relevant Debtor and Hedge Counterparty:
  - (i) whether the proposed Designated Priority Long Term Operational FX Hedging Amount set out in a Designated Priority Long Term Operational FX Hedging Notice or Designated Priority Long Term Operational FX Hedging Adjustment Notice, as the case may be, would cause the Priority Long Term Operational FX Hedging Liabilities Recoveries Amount to be exceeded and if so, the amount by which the proposed Designated Priority Long Term Operational FX Hedging Amount results in an excess over the Priority Long Term Operational FX Hedging Liabilities Recoveries Amount; or

- (ii) whether the Designated Priority Long Term Operational FX Hedging Notice or Designated Priority Long Term Operational FX Hedging Adjustment Notice, as the case may be, has been accepted and if so, the date of acceptance by the Security Agent and the Effective Date.

Any Designated Priority Long Term Operational FX Hedging Notice or Designated Priority Long Term Operational FX Hedging Adjustment Notice setting out a Designated Priority Long Term Operational FX Hedging Amount, which would cause the Priority Long Term Operational FX Hedging Liabilities Recoveries Amount to be exceeded shall be deemed revoked and of no further effect.

- (d) The Security Agent shall only be required to recognise and give effect to any allocation, adjustment or release of the Designated Priority Long Term Operational FX Hedging Amount or resignation as a Priority Long Term Operational FX Hedge Counterparty requested pursuant to any Priority Long Term Operational FX Hedging Notice to the extent such Priority Long Term Operational FX Hedging Notice:
  - (i) complies in form and substance with the form of Priority Long Term Operational FX Hedging Notice set out in Schedule 6 (*Form of Priority Long Term Operational FX Hedging Notice*);
  - (ii) has been duly executed by: (A) the Parent; and (B)(x) the Hedge Counterparty to whom any portion of the available Designated Priority Long Term Operational FX Hedging Amount is to be allocated; (y) the Hedge Counterparty who is to release any portion of any Designated Priority Long Term Operational FX Hedging Amount previously allocated to it in accordance with this Clause 7.13 (*Priority Long Term Operational FX Hedging Liabilities*) or (z) the Hedge Counterparty who is resigning as a Priority Long Term Operational FX Hedge Counterparty;
  - (iii) to the extent applicable, identifies the portion of the Designated Priority Long Term Operational FX Hedging Amount (by reference to an amount in the Base Currency) that is to be allocated to the proposed new Super Senior Hedge Counterparty and/or released by an existing Super Senior Hedge Counterparty;
  - (iv) identifies the relevant Hedging Agreement pursuant to which the relevant Hedging Liabilities arise; and
  - (v) complies with paragraph (c) above and does not otherwise purport to allocate any part of the Designated Priority Long Term Operational FX Hedging Amount which is not available for allocation or which has previously been allocated and not released to any other Hedge Counterparty pursuant to this Clause 7.13 (*Priority Long Term Operational FX Hedging Liabilities*).
- (e) If a Designated Priority Long Term Operational FX Hedging Notice is accepted by the Security Agent, the Designated Priority Long Term Operational FX Hedging Amount, as set out in such notice, will from the relevant Effective Date be allocated to that Hedge Counterparty.
- (f) If a Designated Priority Long Term Operational FX Hedging Adjustment Notice is accepted by the Security Agent, the revised Designated Priority Long Term Operational FX Hedging Amount, as set out in such notice, shall from the relevant Effective Date be allocated to that Hedge Counterparty in place of any existing Designated Priority Long Term Operational FX Hedging Amount allocated to it.

- (g) A Hedge Counterparty may resign as a Priority Long Term Operational FX Hedge Counterparty by delivering to the Parent and the Security Agent a Priority Long Term Operational FX Hedging Reduction and Resignation Notice confirming that the Designated Priority Long Term Operational FX Hedging Amount attributable to it (specifying such amount, taking into account any increase or decrease pursuant to paragraph (f) above) in respect of its Long Term Operational FX Hedging Transactions shall be reduced to zero and specifying the proposed effective date of such reduction and resignation. Following the relevant Effective Date, an amount equal to such Designated Priority Long Term Operational FX Hedging Amount shall become available to be allocated to another Hedge Counterparty and its Hedging Liabilities in respect of Long Term Operational FX Hedging Transactions in accordance with the terms of this Clause 7.13.
- (h) The Parties authorise the Security Agent to disclose by written notice to the Parent and/or any third party contemplating accession as a Hedge Counterparty with respect to any Long Term Operational FX Hedging Transactions, upon request, the unutilised amount of the Priority Long Term Operational FX Hedging Liabilities Recoveries Amount at the date of such notice (being the amount by which the aggregate of all Designated Priority Long Term Operational FX Hedging Amounts that have been allocated (after taking into account any increase or decrease set out in a Designated Priority Long Term Operational FX Hedging Adjustment Notice issued pursuant to paragraph (b) above that has been accepted by the Security Agent, and any decrease set out in a Priority Long Term Operational FX Hedging Reduction and Resignation Notice issued pursuant to paragraph (g) above that has been accepted by the Security Agent) is less than the Priority Long Term Operational FX Hedging Liabilities Recoveries Amount).
- (i) Other than in the case of fraud, gross negligence or wilful misconduct by the Security Agent, the Security Agent shall not be responsible or liable in any circumstance pertaining to its role and responsibilities as set out in this Clause 7.13.

#### 7.14 Calculation of Liabilities

Prior to application pursuant to Clause 19 (*Application of Proceeds*) the Security Agent shall request from each Hedge Counterparty, and each Hedge Counterparty shall provide, with respect to that Hedge Counterparty and its Hedging Liabilities, written notice of the amount of Hedging Liabilities which constitute Super Senior Hedging Liabilities and Non-Super Senior Hedging Liabilities.

#### 7.15 Reduction in Relevant Hedged Debt

- (a) If:
  - (i) transactions have been entered into under Hedging Agreements (the "**Relevant Hedging Transactions**") to hedge currency or interest rate risk in respect of the Senior Secured Notes, any particular Pari Passu Debt or Senior Notes (the "**Relevant Hedged Debt**");
  - (ii) the Relevant Hedged Debt relating to such Relevant Hedging Transactions is reduced (in whole or in part) in accordance with the Senior Secured Notes Documents, the Pari Passu Debt Documents or the Senior Notes Documents, as the case may be; and
  - (iii) the reduction in such Relevant Hedged Debt results in:
    - (A) an Interest Rate Hedge Excess, then, on the same day as that reduction becomes effective in accordance with the terms of the



Senior Secured Notes Documents, the Pari Passu Debt Documents or the Senior Notes Documents, as the case may be, the relevant Hedge Counterparty's Aggregate Interest Rate Hedged Amount shall be reduced by that Hedge Counterparty's Interest Rate Hedge Proportion of that Interest Rate Hedge Excess by the relevant Debtor or Hedge Counterparty terminating or closing out all Relevant Hedging Transaction(s) in full or in part, as may be necessary; or

- (B) an Exchange Rate Hedge Excess, then, on the same day as that reduction becomes effective in accordance with the terms of the Senior Secured Notes Documents, the Pari Passu Debt Documents or the Senior Notes Documents, as the case may be, the relevant Hedge Counterparty's Aggregate Exchange Rate Hedged Amount shall be reduced by that Hedge Counterparty's Exchange Rate Hedge Proportion of that Exchange Rate Hedge Excess by the relevant Debtor or Hedge Counterparty terminating or closing out all Relevant Hedging Transaction(s) in full or in part, as may be necessary.
- (b) The relevant Debtor(s) shall, and the Parent shall procure that the relevant Debtor(s) shall, pay to that Hedge Counterparty (in accordance with the relevant Hedging Agreement) an amount (each a "**Hedge Reduction Payment**") equal to the sum of all payments (if any) that become due from that Debtor to that Hedge Counterparty under the relevant Hedging Agreement(s) as a result of any action described in paragraph (a) above.
- (c) Each Hedge Counterparty shall co-operate in any process described in paragraph (b) above and shall pay (in accordance with the relevant Hedging Agreement(s)) any amount that becomes due from it under the relevant Hedging Agreement(s) to a Debtor as a result of any action described in paragraph (a) above.
- (d) Where the Relevant Hedged Debt relating to Relevant Hedging Transactions is required to be reduced (in whole or in part) in accordance with the Credit Facility Documents, the Senior Secured Notes Documents or the Pari Passu Debt Documents, as the case may be (each an "**Original Mandatory Prepayment**") and:
  - (i) there will be a termination or close-out of the Relevant Hedging Transactions in full or in part, as may be necessary, in accordance with (a)(iii) above; and
  - (ii) any Hedge Reduction Payment becomes due from a Debtor to a Hedge Counterparty,

the required amount of the Original Mandatory Prepayment under the Credit Facility Documents, the Senior Secured Notes Documents or the Pari Passu Debt Documents, as the case may be, shall be reduced so that the aggregate of the reduced amount of the Original Mandatory Prepayment and all Hedge Reduction Payments resulting from that reduced Original Mandatory Prepayment is equal to the original amount of the Original Mandatory Prepayment.

#### 7.16 Termination of hedging

Each Debtor shall have the right (but not the obligation) to terminate and cancel any Hedging Agreement upon five Business Days, prior written notice to the relevant Hedge Counterparty (with a copy to the Security Agent) (such notice to comply with Clause 7.13(f) (*Priority Long Term Operational FX Hedging Liabilities*) where such Hedge Counterparty is a Priority Long Term Operational FX Hedge Counterparty) provided that there are no

outstanding hedging transactions thereunder or Hedging Liabilities in respect of such Hedging Agreement outstanding thereunder.

#### **7.17 No outstanding transactions or Hedging Liabilities**

If a Hedging Agreement is terminated by the relevant Debtor in circumstances where there are no outstanding transactions thereunder or Hedging Liabilities in respect of such Hedging Agreement outstanding, as provided for in Clause 7.16 (*Termination of hedging*), the Hedge Counterparty shall immediately cease to be a Hedge Counterparty for the purposes of this Agreement and shall be discharged from further obligations to the 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 such termination).

### **8. SENIOR NOTES CREDITORS AND SENIOR NOTES LIABILITIES**

#### **8.1 Issue of Senior Notes**

- (a) No member of the Group shall enter into any Senior Notes Indenture or issue any Senior Notes or incur any Senior Notes Liabilities under a Senior Notes Document, no member of the Group shall grant any Senior Notes Guarantee or Shared Transaction Security and TopCo and the Senior Notes Issuer shall not grant any Shared Transaction Security or Senior Notes Only Security unless:
  - (i) each Creditor Representative receive copies of the Senior Notes Documents as soon as practicable after the relevant Senior Notes are issued;
  - (ii) the issuer is a Senior Notes Issuer and the terms of the Senior Notes comply with the requirements (if any) of the Credit Facility Documents, Senior Secured Notes Documents or Pari Passu Debt Documents or (if not in compliance with any such requirements) are otherwise approved by the Majority Credit Facility Lenders, the Senior Secured Notes Trustee(s) or the Pari Passu Debt Representative(s) (acting on the instructions of the requisite number of Senior Secured Noteholders/Pari Passu Creditors (as applicable)) and the Security Agent has received a certificate signed by a director of the Parent (without personal liability) confirming the same;
  - (iii) the Senior Notes Guarantees comply with (and are subject to) the provisions of this Agreement;
  - (iv) the net proceeds of the issue of the Senior Notes are applied in a manner and for a purpose that complies with the terms of the Credit Facility Documents, Senior Secured Notes Documents and Senior Notes Documents;
  - (v) the relevant Senior Notes Trustee (if not already a Party in such capacity) signs a Creditor/Creditor Representative Accession Undertaking and each of the Senior Notes Guarantors (if not already a Party in such capacity) signs a Debtor Accession Deed before or concurrently with the issuance or advance of the Senior Notes;
  - (vi) the Shared Transaction Security is granted, on or prior to the date that it is granted for the benefit of the Senior Notes Liabilities, in support of the Secured Liabilities and ranks in the same order of priority as that contemplated in Clause 3.1(b) (*Transaction Security*); and
  - (vii) the scheduled or mandatory principal payments under the Senior Notes Documents are not required to be paid prior to the date falling one year after the latest maturity date of the then existing Credit Facility Liabilities, Senior

Secured Notes Liabilities and Pari Passu Debt (without prejudice to any customary change of control, asset sale, optional redemption and mandatory redemption provisions).

- (b) The Parent shall elect by prior written notice delivered to the Security Agent prior to the date that it incurs any Senior Notes Liabilities whether a Senior Notes Creditor will benefit from Senior Notes Only Security or Shared Transaction Security or a combination thereof.
- (c) No Senior Notes Issuer shall make a loan of the gross or net proceeds of an issue or borrowing of Senior Notes to any person other than TopCo. TopCo shall not on-lend such proceeds to any person other than the Parent and any such loan shall constitute a Senior Notes Proceeds On-Loan.

## **8.2 Restriction on Payment and dealings: Senior Notes Liabilities**

- (a) Until the Secured Debt Discharge Date, except as otherwise approved in writing by the Credit Facility Agent and (to the extent otherwise prohibited under the Senior Secured Notes Indenture or the Pari Passu Debt Documents) the Senior Secured Notes Trustee(s) and/or the Pari Passu Debt Representative(s) (as applicable), no Debtor shall (and the Parent shall ensure that no other member of the Group will):
  - (i) pay, repay, prepay, redeem, acquire or defease any principal, interest or other amount on or in respect of, or make any distribution in respect of, any Senior Notes Liabilities or Senior Notes Proceeds On-Loan Liabilities in cash or in kind or apply any such money or property in or towards discharge of any Senior Notes Guarantee Liabilities except as permitted by Clause 8.3 (*Permitted Payments: Senior Notes Liabilities*), Clause 8.9 (*Permitted Senior Notes Enforcement*) or Clause 12.5 (*Filing of claims*);
  - (ii) exercise any set-off against any Senior Notes Liabilities or Senior Notes Proceeds On-Loan Liabilities, except as permitted by Clause 8.3 (*Permitted Payments: Senior Notes Liabilities*), Clause 8.8 (*Restrictions on enforcement by Senior Notes Creditors*) or Clause 12.5 (*Filing of claims*); or
  - (iii) create or permit to subsist any Security over any assets of any member of the Group or give any guarantee or other assurance against loss (and the Senior Notes Trustee(s) may not, and no Senior Notes Creditor may, accept the benefit of any such Security or guarantee or other assurance against loss) from any member of the Group for, or in respect of, any Senior Notes Liabilities other than the Senior Notes Guarantees.
- (b) Until the Secured Debt Discharge Date, except as otherwise approved in writing by the Credit Facility Agent and (to the extent otherwise prohibited under the Senior Secured Notes Documents or the Pari Passu Debt Documents) the Senior Secured Notes Trustee(s) and/or any Creditor Representative(s) in respect of the Pari Passu Debt (as applicable), TopCo shall not create or permit to subsist any Security over any of its assets (and the Senior Notes Trustee(s) may not and no Senior Notes Creditor may, accept the benefit of any such Security) for, or in respect of, any Senior Notes Liabilities other than the Senior Notes Only Security or the Shared Transaction Security or any combination thereof.
- (c) For the avoidance of doubt, this Clause 8.2 shall not directly restrict the right of any Senior Notes Trustee or any Senior Noteholder to receive Payments from the Senior Notes Issuer, or of the Senior Notes Issuer to make such Payments, in respect of the Senior Notes Issuer Liabilities.

### 8.3 Permitted Payments: Senior Notes Liabilities

The Debtors may:

- (a) prior to the Secured Debt Discharge Date, make Payments to the Senior Notes Creditors in respect of the Senior Notes Liabilities then due and payable in accordance with the Senior Notes Documents and in respect of the Senior Notes Proceeds On-Loan Liabilities then due in accordance with the relevant Senior Notes Proceeds On-Loan:
  - (i) if:
    - (A) the Payment is of:
      - (I) any of the principal amount (including any capitalised interest) of the Senior Notes Liabilities (together with any corresponding amount under the relevant Senior Notes Proceeds On-Loan) which is not prohibited to be paid by the Credit Facility Documents and is not prohibited from being paid by the Senior Secured Notes Indenture or the Pari Passu Debt Documents; or
      - (II) any other amount (including, without limitation, cash pay interest, default interest, fees and additional amounts) which is not an amount of principal or capitalised interest (together with any corresponding amount under any Senior Notes Proceeds On-Loan);
    - (B) no Senior Notes Payment Stop Notice is outstanding; and
    - (C) no Senior Secured Payment Default has occurred and is continuing; or
  - (ii) if the Majority Super Senior Creditors and the Majority Senior Secured Creditors give their prior approval in writing to that Payment being made; or
  - (iii) if the Payment is of Senior Notes Trustee Amounts; or
  - (iv) if the Payment is of Permitted Administration Costs or of any costs, commissions, taxes, consent fees, underwriter or lead manager fees (including any original issue discount) and expenses incurred in respect of (or reasonably incidental to) the Senior Notes Documents (including in relation to any reporting or listing requirements under the Senior Notes Documents); or
  - (v) if the Payment is of costs, commissions, taxes, premiums and any expenses incurred in respect of (or reasonably incidental to) any financing or refinancing of the Senior Notes in compliance with this Agreement, the Credit Facility Documents, any Senior Secured Notes Indenture and any Pari Passu Debt Documents; or
  - (vi) if the Payment is of the principal amount of the Senior Notes Liabilities or Senior Notes Proceeds On-Loan Liabilities on or after the final maturity date for those Senior Notes Liabilities or Senior Notes Proceeds On-Loan Liabilities (provided that such maturity date is not earlier than the maturity date contained in the original form of the Senior Notes Document governing

such Senior Notes Liabilities or Senior Notes Proceeds On-Loan governing such Senior Notes Proceeds On-Loan Liabilities),

provided that no Debtor shall provide funding to the Senior Notes Issuer in respect of any such Payment more than five Business Days prior to the date that any such Payment is to be made by the Senior Notes Issuer; and

- (b) on or after the Secured Debt Discharge Date, make Payments to the Senior Notes Creditors in respect of the Senior Notes Liabilities in accordance with the Senior Notes Documents and make any corresponding Payments in respect of the relevant Senior Notes Proceeds On-Loan.

#### 8.4 Issue of Senior Notes Payment Stop Notice

- (a) Until the Secured Debt Discharge Date, except with the prior written approval of the Credit Facility Agent and (to the extent otherwise prohibited under the Senior Secured Notes Indenture or the Pari Passu Debt Documents) the Senior Secured Notes Trustee(s) and/or the Pari Passu Debt Representative(s) (as applicable) and subject to Clause 12 (*Effect of Insolvency Event*), the Parent shall procure that (x) no member of the Group (other than the Senior Notes Issuer) shall make, and no Senior Notes Creditor may receive from any member of the Group (other than the Senior Notes Issuer), any Permitted Senior Notes Payment (other than Senior Notes Trustee Amounts) and (y) no member of the Group shall make, and no Senior Notes Issuer or TopCo may receive from any member of the Group, any Payment of or in respect of Senior Notes Proceeds On-Loan Liabilities if:

- (i) a Senior Secured Payment Default is continuing; or
- (ii) a Senior Secured Event of Default (other than a Senior Secured Payment Default) is continuing, from the date of receipt by the relevant Senior Notes Trustee(s) of a notice (a "**Senior Notes Payment Stop Notice**") from the Credit Facility Agent or the Senior Secured Notes Trustee(s) or the Pari Passu Debt Representative(s) (as the case may be) specifying the event or circumstance in relation to that Senior Secured Event of Default until the earliest of:
  - (A) the date falling 179 days after receipt by the Senior Notes Trustee of that Senior Notes Payment Stop Notice;
  - (B) in relation to payments of Senior Notes Liabilities or Senior Notes Proceeds On-Loan Liabilities, if a Senior Notes Standstill Period is in effect at any time after delivery of that Senior Notes Payment Stop Notice, the date on which that Senior Notes Standstill Period expires;
  - (C) the date on which the relevant Senior Secured Event of Default has been remedied or waived or ceases to exist (or, if the relevant Credit Facility Liabilities, Senior Secured Notes Liabilities or Pari Passu Debt has been accelerated, such acceleration has been rescinded revoked or waived) in accordance with the relevant Credit Facility Documents or the Senior Secured Notes Documents or the Pari Passu Debt Documents (as applicable) provided that no other Senior Secured Event of Default is continuing at that time;
  - (D) the date on which the Credit Facility Agent or the Senior Secured Notes Trustee(s) or the Pari Passu Debt Representative(s) which delivered the relevant Senior Notes Payment Stop Notice (and, if at such time an Event of Default is continuing in relation to any other

Senior Secured Liabilities, the Representative in respect of such Senior Secured Liabilities) delivers a notice to the Parent, the Security Agent and the Senior Notes Trustee(s) cancelling the Senior Notes Payment Stop Notice;

- (E) the Secured Debt Discharge Date; and
  - (F) the date on which the Security Agent or a Senior Notes Trustee takes Enforcement Action permitted under this Agreement against a Debtor.
- (b) Unless the Senior Notes Trustee(s) waives this requirement:
  - (i) a new Senior Notes Payment Stop Notice may not be delivered unless and until 360 days have elapsed since the delivery of the immediately preceding Senior Notes Payment Stop Notice; and
  - (ii) no Senior Notes Payment Stop Notice may be delivered in reliance on a Senior Secured Event of Default more than 45 days after the date the relevant Credit Facility Agent, Senior Secured Notes Trustee and Pari Passu Debt Representative(s) (as applicable) received notice of that Senior Secured Event of Default.
- (c) A Creditor Representative may serve only one Senior Notes Payment Stop Notice each with respect to the same event or set of circumstances. Subject to paragraph (b) above, this shall not affect the right of that or any other Creditor Representative to issue a Senior Notes Payment Stop Notice in respect of any other event or set of circumstances.
- (d) No Senior Notes Payment Stop Notice may be served by a Creditor Representative in respect of Senior Secured Event of Default which had been notified to each of them at the time at which an earlier Senior Notes Payment Stop Notice was issued.
- (e) For the avoidance of doubt, this Clause 8.4:
  - (i) acts as a suspension of payment and not as a waiver of the right to receive payment on the date such payments are due;
  - (ii) will not prevent the accrual or capitalisation of interest (including default interest) in accordance with the Senior Notes Documents;
  - (iii) will not prevent the payment of any Senior Notes Trustee Amounts; and
  - (iv) will not prevent the payment of audit fees, directors' fees, taxes and other proper and incidental expenses required to maintain existence.

#### **8.5 Effect of Senior Notes Payment Stop Notice or Senior Secured Payment Default**

Any failure to make a Payment due under the Senior Notes Documents as a result of the issue of a Senior Notes Payment Stop Notice or the occurrence of a Senior Secured Payment Default shall not prevent:

- (a) the occurrence of an Event of Default as a consequence of that failure to make a Payment in relation to the relevant Senior Notes Document; or
- (b) the issue of a Senior Notes Enforcement Notice on behalf of the Senior Notes Creditors.

#### 8.6 Payment obligations and capitalisation of interest continue

- (a) No Debtor shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Senior Notes Document or Senior Notes Proceeds On-Loan by the operation of Clauses 8.2 (*Restriction on Payment and dealings: Senior Notes Liabilities*) to and including 8.5 (*Effect of Senior Notes Payment Stop Notice or Senior Secured Payment Default*) even if its obligation to make that Payment is restricted at any time by the terms of any of those Clauses.
- (b) The accrual and capitalisation of interest (if any) in accordance with the Senior Notes Documents and any Senior Notes Proceeds On-Loan shall continue notwithstanding the issue of a Senior Notes Payment Stop Notice.

#### 8.7 Cure of Payment Stop: Senior Notes Creditors

If:

- (a) at any time following the issue of a Senior Notes Payment Stop Notice or the occurrence of a Senior Secured Payment Default, that Senior Notes Payment Stop Notice ceases to be outstanding and/or (as the case may be) the Senior Secured Payment Default ceases to be continuing; and
- (b) the relevant Debtor then promptly pays to the Senior Notes Creditors an amount equal to any Payments which had accrued under the Senior Notes Documents and which would have been Permitted Senior Notes Payments but for that Senior Notes Payment Stop Notice or Senior Secured Payment Default,

then any Event of Default which may have occurred as a result of that suspension of Payments shall be waived and any Senior Notes Enforcement Notice which may have been issued as a result of that Event of Default shall be waived, in each case without any further action being required on the part of the Senior Notes Creditors.

#### 8.8 Restrictions on enforcement by Senior Notes Creditors

Until the Secured Debt Discharge Date, except with the prior consent of or as required by an Instructing Group, no Senior Notes Creditor shall take or require the taking of any Enforcement Action in relation to the Senior Notes Guarantees Liabilities or Senior Notes Proceeds On-Loan Liabilities or Shared Transaction Security and TopCo shall not take any Enforcement Action in relation to any Senior Notes Proceeds On-Loan Liabilities except as permitted under Clause 8.9 (*Permitted Senior Notes Enforcement*) provided, however, that no such action required by the Security Agent need be taken except to the extent the Security Agent is otherwise entitled under this Agreement to direct such action.

#### 8.9 Permitted Senior Notes Enforcement

- (a) Subject to Clause 8.12 (*Enforcement on behalf of Senior Notes Creditors*), the restrictions in Clause 8.8 (*Restrictions on enforcement by Senior Notes Creditors*) will not apply in respect of the Senior Notes Guarantee Liabilities or Senior Notes Proceeds On-Loan Liabilities or Shared Transaction Security if:
  - (i) a Senior Notes Event of Default (other than solely by reason of a cross-default (other than a cross-default arising from a Senior Secured Payment Default) arising from a Senior Secured Notes Event of Default) (the "**Relevant Senior Notes Default**") is continuing;

- (ii) the Credit Facility Agent, the Senior Secured Notes Trustee(s), the Pari Passu Debt Representative(s) and each Hedge Counterparty have received a written notice of the Relevant Senior Notes Default specifying the event or circumstance in relation to the Relevant Senior Notes Default from the relevant Senior Notes Trustee;
  - (iii) a Senior Notes Standstill Period has elapsed or otherwise terminated; and
  - (iv) the Relevant Senior Notes Default is continuing at the end of the relevant Senior Notes Standstill Period.
- (b) Promptly upon becoming aware of a Senior Notes Default, the relevant Senior Notes Trustee(s) may by notice (a "**Senior Notes Enforcement Notice**") in writing notify the Credit Facility Agent, the Senior Secured Notes Trustee(s), the Pari Passu Debt Representative(s) and each Hedge Counterparty of the existence of such Senior Notes Default.

#### 8.10 Senior Notes Standstill Period

In relation to a Relevant Senior Notes Default, a Senior Notes Standstill Period shall mean the period beginning on the date (the "**Senior Notes Standstill Start Date**") the relevant Senior Notes Trustee(s) serves a Senior Notes Enforcement Notice on the Credit Facility Agent, the Senior Secured Notes Trustee(s) and the Pari Passu Debt Representative(s) in respect of such Relevant Senior Notes Default and ending on the earlier to occur of:

- (a) the date falling 179 days after the Senior Notes Standstill Start Date (the "**Senior Notes Standstill Period**");
- (b) the date any Priority Creditor takes any Enforcement Action in relation to a particular Senior Notes Guarantor provided, however, that:
  - (i) if a Senior Notes Standstill Period ends pursuant to this paragraph (b), the Senior Notes Creditors may only take the same Enforcement Action in relation to the Senior Notes Guarantor as the Enforcement Action taken by the Priority Creditors against such Senior Notes Guarantor and not against any other member of the Group; and
  - (ii) Enforcement Action for the purpose of this paragraph (b) shall not include action taken to preserve or protect any Security as opposed to realise it;
- (c) the date of an Insolvency Event (other than an Insolvency Event directly caused by any action taken by or at the request or direction of any Senior Notes Creditor that is not otherwise permitted under this Agreement) in relation to a particular Senior Notes Guarantor against whom Enforcement Action is to be taken provided that if a Senior Notes Standstill Period ends pursuant to this paragraph (c), the Senior Notes Creditors may only take Enforcement Action against that Senior Notes Guarantor;
- (d) the expiry of any other Senior Notes Standstill Period outstanding at the date such first mentioned Senior Notes Standstill Period commenced (unless that expiry occurs as a result of a cure, waiver or other permitted remedy);
- (e) the date on which the Majority Super Senior Creditors (if prior to the Super Senior Discharge Date) and the Majority Senior Secured Creditors (if prior to the Senior Secured Discharge Date) give their consent to the termination of the relevant Senior Notes Standstill Period; and



- (f) a failure to pay the principal amount outstanding on the Senior Notes at the final original stated maturity of the Senior Notes.

#### 8.11 Subsequent Senior Notes Defaults

The Senior Notes Creditors may take Enforcement Action under Clause 8.9 (*Permitted Senior Notes Enforcement*) in relation to a Relevant Senior Notes Default even if, at the end of any relevant Senior Notes Standstill Period or at any later time, a further Senior Notes Standstill Period has begun as a result of any other Senior Notes Default.

#### 8.12 Enforcement on behalf of Senior Notes Creditors

- (a) If the Security Agent has notified the Senior Notes Trustee(s) that it is taking steps to enforce Security created pursuant to any Security Document over shares of a Senior Notes Guarantor, no Senior Notes Creditor may take any action referred to in Clause 8.9 (*Permitted Senior Notes Enforcement*) against that Senior Notes Guarantor while the Security Agent is taking steps to enforce that Security in accordance with the instructions of the Instructing Group where such action might be reasonably likely to adversely affect such enforcement or the amount of proceeds to be derived therefrom.
- (b) If the Senior Notes Creditors are permitted to give instructions to the Security Agent to require the enforcement of the Security constituted pursuant to any Shared Transaction Security in accordance with the provisions of Clause 8.8 (*Restrictions on enforcement by Senior Notes Creditors*), such Enforcement Action must require the realisation of the relevant Shared Transaction Security by way of a sale or disposal conducted in accordance with Clause 17.4(b) (*Senior Notes Liabilities*).

#### 8.13 Option to purchase: Senior Notes Creditors

Subject to Clause 8.14 (*Terms of purchase*), after a Distress Event, one or more of the Senior Notes Trustee(s) may at the direction and expense of one or more of the Senior Notes Creditors (the "**Purchasing Senior Creditors**"), if after all such Senior Notes Creditors have been given an opportunity to so participate:

- (a) it gives not less than ten days' prior written notice to the Security Agent, the RCF Agent or Creditor Representative of the Credit Facility Lenders, the Senior Secured Notes Trustee, the Pari Passu Debt Representative(s) and if applicable, the Hedge Counterparties; and
- (b) prior to giving any such notice, it obtains all necessary approvals from the Purchasing Senior Creditors,

acquire or procure the acquisition by a person nominated by the Purchasing Senior Creditors of all (but not part only) of the rights and obligations of the Credit Facility Lenders, the Super Senior Hedge Counterparties, the Senior Secured Creditors, the Pari Passu Creditors and the Non-Super Senior Hedge Counterparties in connection with the Liabilities owed to them under their respective Debt Documents by way of transfer under clause 29 (*Changes to the Lenders*) of the RCF Agreement or the corresponding provision in any other Credit Facility Documents or relevant Debt Documents.

#### 8.14 Terms of purchase

Any purchase under Clause 8.13 (*Option to purchase: Senior Notes Creditors*) shall be on and is subject to the following terms:

- (a) that the transfer is lawful and any conditions relating to such transfer contained in the underlying Debt Documents under which the relevant Liabilities arise are complied with, other than any requirement to obtain the consent of, or consult with, any Debtor or other member of the Group relating to such transfer (which consent or consultation shall not be required);
- (b) payment to the relevant Creditor Representative for the benefit of the relevant Creditors in full in cash of an amount equal to the relevant Liabilities at that time (whether or not due and including all amounts which would have been payable under the Credit Facility if the amounts outstanding thereunder were being prepaid by the relevant Debtors on the date of that payment) outstanding as at the date that amount is to be paid, as determined by the relevant Creditor Representative(s) (acting reasonably) together with costs and expenses (including legal fees) incurred by such Creditor Representative(s) or the creditors that they represent as a consequence of giving effect to the transfer to such Purchasing Senior Creditor;
- (c) payment to the relevant Hedge Counterparty in full of the Hedging Purchase Amount(s) in respect of the transaction(s) under the Hedging Agreements together with costs and expenses (including legal fees) incurred by the relevant Hedge Counterparties as a consequence of giving effect to the transfer to such Purchasing Senior Creditor;
- (d) as a result of the transfer, no Credit Facility Lender, Senior Secured Notes Creditor, Pari Passu Creditor or Hedge Counterparty will be under any actual or contingent liability to any Debtor or any other person under this Agreement, any Credit Facility Document, any Senior Secured Notes Document, any Pari Passu Debt Document, any Hedging Agreement or any other relevant Debt Document for which it is not holding cash collateral in an amount and on terms reasonably satisfactory to it;
- (e) the Purchasing Senior Creditors (or, if required by any Credit Facility Lender, Senior Secured Notes Creditor, Pari Passu Creditor or Hedge Counterparty, a third party acceptable to all the Credit Facility Lenders, Senior Secured Notes Creditors, Pari Passu Creditors and Hedge Counterparties) indemnifies, in a form satisfactory to each Credit Facility Lender and each other Finance Party under the relevant Credit Facility Documents, Senior Secured Notes Creditor, Pari Passu Creditor and Hedge Counterparty, them in respect of all losses which may be sustained or incurred by any Credit Facility Lender or other such Finance Party, Senior Secured Notes Creditor, Pari Passu Creditor or Hedge Counterparty as a result of any sum received or recovered by that Credit Facility Lender, Senior Secured Notes Creditor, Pari Passu Creditor or Hedge Counterparty from any Debtor, any Purchasing Senior Creditor or any other person pursuant to this Clause 8.14 being required (or it being alleged that it is required) to be paid back by or clawed back from that Credit Facility Lender, Senior Secured Notes Creditor, Pari Passu Creditor or Hedge Counterparty for any reason;
- (f) the relevant transfer shall be without recourse to, or representation or warranty from, any Credit Facility Lender or other such Finance Party, Senior Secured Notes Creditor, Pari Passu Creditor or Hedge Counterparty under such Credit Facility Document, Senior Secured Notes Document, Pari Passu Debt Document or Hedging Agreement, respectively, except that each Credit Facility Lender, Senior Secured Notes Creditor, Pari Passu Creditor and Hedge Counterparty shall be deemed to have represented and warranted on the date of that transfer that it has the power to enter into and make, and has taken all necessary action to authorise the making by it of that transfer.

#### **8.15 Option to purchase: Senior Notes Trustee**

For the purposes of Clause 8.13 (*Option to purchase: Senior Notes Creditors*), the term "Senior Notes Creditors" and "Purchasing Senior Creditors" shall not include a Senior Notes Trustee.

### **9. INTRA-GROUP LENDERS AND INTRA-GROUP LIABILITIES**

#### **9.1 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 9.2 (*Permitted Payments: Intra-Group Liabilities*); or
- (b) the taking or receipt of that Payment is permitted under paragraph (c) of Clause 9.7 (*Permitted Enforcement: Intra-Group Lenders*).

For the avoidance of doubt, no release or discharge of any Intra-Group Liabilities of a member of the Group in consideration for the issue of shares in that member of the Group shall be restricted by this Clause prior to an Acceleration Event.

#### **9.2 Permitted Payments: Intra-Group Liabilities**

- (a) Subject to paragraph (b) below, the Debtors may make Payments in respect of the Intra-Group Liabilities (whether of principal, interest or otherwise) from time to time and the Intra-Group Lenders may accept or agree to accept any such Payment 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 and is continuing under any of the Primary Finance Documents unless:
  - (i) the Instructing Group has (or, following the Secured Debt Discharge Date, the Senior Notes Required Holders have) consented to that Payment being made and accepted; or
  - (ii) that Payment is made to facilitate Payment of the Secured Liabilities or the Senior Notes Liabilities which are otherwise permitted to be made under this Agreement,

provided that nothing in this Clause shall prevent the capitalisation of interest on any Intra-Group Liabilities.

#### **9.3 Payment obligations continue**

No Debtor shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Debt Document by the operation of Clauses 9.1 (*Restriction on Payment: Intra-Group Liabilities*) and 9.2 (*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.

#### **9.4 Acquisition of Intra-Group Liabilities**

- (a) Subject to paragraph (b) below, each Debtor may, and may permit any other member of the Group to:

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

in respect of any Intra-Group Liabilities at any time.
- (b) Subject to paragraph (c) below, no action described in paragraph (a) above may take place in respect of any Intra-Group Liabilities if:
  - (i) that action would result in a breach of any of the Credit Facility Documents, the Senior Secured Notes Documents, the Pari Passu Debt Documents or the Senior Notes Documents; or
  - (ii) at the time of that action, an Acceleration Event has occurred under any of the Primary Finance Documents.
- (c) The restrictions in paragraph (b) above shall not apply if:
  - (i) the Instructing Group has (or, following the Secured Debt Discharge Date, the Senior Notes Required Holders have) consented to that action; or
  - (ii) that action is taken to facilitate Payment of the Secured Liabilities or the Senior Notes Liabilities which are otherwise permitted to be made under this Agreement.

#### **9.5 Security: Intra-Group Lenders**

Prior to the Final Discharge Date, no Intra-Group Lender may take, accept or receive the benefit of any Security, guarantee, indemnity or other assurance against loss in respect of the Intra-Group Liabilities from any member of the Group other than any Security arising by operation of law or rights of set-off or any Security, guarantee, indemnity or other assurance against loss consented to by the Instructing Group or, following the Secured Debt Discharge Date, by the Senior Notes Required Holders.

#### **9.6 Restriction on Enforcement: Intra-Group Lenders**

Subject to Clause 9.7 (*Permitted Enforcement: Intra-Group Lenders*), no Intra-Group Lender shall be entitled to take any Enforcement Action (other than rights of set-off to enable Permitted Intra-Group Payments) in respect of any of the Intra-Group Liabilities at any time prior to the Final Discharge Date.

#### **9.7 Permitted Enforcement: Intra-Group Lenders**

Prior to the Final Discharge Date and after the occurrence of an Insolvency Event in relation to any Debtor, each Intra-Group Lender may (unless otherwise directed by the Security Agent (which directions shall not prevent any Intra-Group Lender from exercising any right pursuant to paragraphs (a) to (d) below (inclusive) to enable Payments permitted by Clause 9.2 (*Permitted Payments: Intra-Group Liabilities*)) 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 12.5 (*Filing of claims*)) and shall, if so directed by the Security Agent, exercise any right it may otherwise have against that Debtor to:

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

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

but shall not take any other Enforcement Action in respect of any Intra-Group Liabilities owing to it by that Debtor unless the prior written consent of the Instructing Group (or, following the Secured Debt Discharge Date, the Senior Notes Required Holders) is obtained.

#### 9.8 **Representations: Intra-Group Lenders**

On the date of this Agreement (or, if later, the date that a member of the Group becomes a Party as an Intra-Group Lender), each Intra-Group Lender which is not a Debtor represents and warrants to the Primary Creditors, the Security Agent and the Creditor Representatives that:

- (a) it is duly incorporated, formed and established and validly existing with limited liability under the law of its jurisdiction of incorporation, formation or establishment;
- (b) subject to the Legal Reservations, the obligations expressed to be assumed by it in this Agreement are legal, valid, binding and enforceable in accordance with their terms; and
- (c) the entry into and performance by it of, and the transactions contemplated by, this Agreement do not and will not:
  - (i) conflict with:
    - (A) any law or regulation applicable to it save to the extent that such conflict could not reasonably be expected to have a Material Adverse Effect; or
    - (B) its constitutional documents;
  - (ii) conflict with, breach or constitute a default or termination event (however described) under any agreement or instrument binding on it or any of its assets to an extent which has or could reasonably be expected to have a Material Adverse Effect.

The terms “**Legal Reservations**” and “**Material Adverse Effect**” shall have the meanings provided in the original forms of the RCF Agreement.

#### 9.9 **Intra-Group Lenders’ Agent**

- (a) Each Intra-Group Lender (other than the Parent) irrevocably appoints the Parent to act on its behalf as its agent in relation to this Agreement and irrevocably authorises:
  - (i) the Parent on its behalf to supply all information concerning itself contemplated by this Agreement to the other Parties and to give and receive all notices, consents and instructions, to agree, accept and execute on its behalf all documents in connection with this Agreement (including amendments and variations of, and consents under, this Agreement) and to take such other action as may be necessary or desirable under, or in connection with, this Agreement; and
  - (ii) each other Party to give any notice, demand or other communication to that Intra-Group Lender pursuant to this Agreement to the Parent.

- (b) Each Intra-Group Lender (other than the Parent) confirms that:
  - (i) it will be bound by any action taken by the Parent under, or in connection with, this Agreement; and
  - (ii) each other Party may rely on any action purported to be taken by the Parent on behalf of that Intra-Group Lender.

#### 9.10 Notice of assignment in respect of certain Subordinated Liabilities

- (a) (In its capacity as a creditor under any Senior Secured Proceeds Notes) each Senior Secured Notes Issuer, (in its capacity as a lender under any Senior Notes Proceeds On-Loan) Topco, each Shareholder Creditor, Intra-Group Lender or other Debtor that has, pursuant to the Transaction Security Documents, granted Security over any Subordinated Liabilities, Senior Secured Notes Proceeds Liabilities or Senior Notes Proceeds On-Loan Liabilities owed by another Party (a "**Counterparty**"):
  - (i) hereby gives notice to such Counterparty of that Security; and
  - (ii) confirms that the Counterparty may continue to deal with it, subject to the terms of the Transaction Security Documents, until that Counterparty receives written notice to the contrary from the Security Agent (in which case that Counterparty agrees to only deal with the Security Agent in respect of the relevant Subordinated Liabilities, Senior Secured Notes Proceeds Liabilities or Senior Proceeds On-Loan Liabilities).
- (b) Each Counterparty agrees to the terms of paragraph (a) above and confirms it has not received notice that any Shareholder Creditor, Intra-Group Lender or other Debtor has assigned its rights in respect any Subordinated Liabilities, Senior Secured Notes Proceeds Liabilities or Senior Notes Proceeds On-Loan Liabilities to a third party or created any other interest (whether by way of Security or otherwise) in any Subordinated Liabilities, Senior Secured Notes Proceeds Liabilities or Senior Notes Proceeds On-Loan Liabilities (as the case may be) in favour of a third party (other than pursuant to the Transaction Security Documents).

### 10. SHAREHOLDER CREDITORS AND SHAREHOLDER LIABILITIES

#### 10.1 Restriction on incurrence and Payment: Shareholder Liabilities

Prior to the Final Discharge Date:

- (a) no member of the Group may incur Shareholder Liabilities other than the Parent; and
- (b) the Debtors shall not, and shall procure that no other member of the Group will, make, and no Shareholder Creditor may take, receive or accept from a member of the Group, any Payments of the Shareholder Liabilities at any time unless:
  - (i) that Payment is permitted under Clause 10.2 (*Permitted Payments: Shareholder Liabilities*); or
  - (ii) the taking or receipt of that Payment is permitted under paragraph (c) of Clause 10.8 (*Permitted Enforcement: Shareholder Creditors*).

#### 10.2 Permitted Payments: Shareholder Liabilities

The Debtors may only make, and the Shareholder Creditors may only take, receive or accept, Payments in respect of the Shareholder Liabilities (whether of principal, interest or otherwise) from time to time if:

- (a) the Payment is permitted by the Credit Facility Documents, the Senior Secured Notes Documents, the Pari Passu Debt Documents and the Senior Notes Documents; or
- (b) the Instructing Group has (or, following the Secured Debt Discharge Date, the Senior Notes Required Holders have) consented to that Payment being made, taken, received or accepted.

#### 10.3 Payment obligations continue

No Debtor shall be released from the liability to make any Payment (including of default interest, which shall continue to accrue) under any Debt Document by the operation of Clauses 10.1 (*Restriction on incurrence and Payment: Shareholder Liabilities*) and 10.2 (*Permitted Payments: Shareholder Liabilities*) even if its obligation to make that Payment is restricted at any time by the terms of any of those Clauses.

#### 10.4 Acquisition of Shareholder Liabilities

Prior to the Final Discharge Date, no Debtor may, and no Debtor may permit any other member of the Group to:

- (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 Shareholder Liabilities at any time unless the Debtor that enters into that Liabilities Acquisition or owns share capital in such a company is the Parent and:

- (i) that action is expressly permitted by the Credit Facility Documents, the Senior Secured Notes Documents, the Pari Passu Debt Documents and the Senior Notes Documents;
- (ii) such Liabilities Acquisition (under paragraph (a) above) is made in consideration of (1) a Permitted Shareholder Creditor Payment and/or (2) the incurrence of replacement Shareholder Liabilities that are permitted by the Credit Facility Documents, the Senior Secured Notes Documents, the Pari Passu Debt Documents and the Senior Notes Documents;
- (iii) the Instructing Group has (or, following the Secured Debt Discharge Date, the Senior Notes Required Holders have) consented to that action;
- (iv) any payments which are made in connection with such acquisition would be Permitted Shareholder Creditor Payments; or
- (v) such acquisition is implemented by way of a share issue by the Parent that is permitted by the Credit Facility Documents, the Senior Secured Notes Documents, the Pari Passu Debt Documents and the Senior Notes Documents.

#### 10.5 Amendments and waivers: Shareholder Liabilities

- (a) Prior to the Final Discharge Date, neither a Shareholder Creditor nor the Parent shall amend or waive the terms of any agreement evidencing the terms of the Shareholder Liabilities unless:
  - (i) following the amendment or waiver, the Shareholder Creditors would continue not to have recourse to any member of the Group other than the Parent and the Shareholder Liabilities would otherwise meet the criteria for "Subordinated Shareholder Funding" in the Credit Facility Documents (if applicable), the Senior Secured Notes Documents, the Pari Passu Debt Documents and the Senior Notes Documents;
  - (ii) the amendment or waiver is of a minor and administrative nature and is not materially prejudicial to the Primary Creditors; or
  - (iii) the prior written consent of the Instructing Group (or, following the Secured Debt Discharge Date, the Senior Notes Required Holders) is obtained.
- (b) Without prejudice to paragraph (a) above, prior to the Final Discharge Date, and only for so long as the Senior Secured Notes, any Pari Passu Notes or any Senior Notes are rated by Moody's Investors Service Limited, no Shareholder Creditor shall amend or waive the terms of any agreement evidencing the terms of the Shareholder Liabilities in a manner which would result in such Shareholder Liabilities not complying with any the following:
  - (i) ranking junior to all unsubordinated liabilities of the Parent, including without limitation liabilities owed to trade creditors;
  - (ii) having a maturity which is at least six months after the later of the final maturity date of the Senior Secured Notes, the final maturity date of any Pari Passu Notes and the final maturity date of any Senior Notes; and
  - (iii) only being transferable to:
    - (A) another holder of Shareholder Liabilities;
    - (B) a holder of a share of the Parent;
    - (C) the Parent;
    - (D) any member of the Group; or
    - (E) (other than small differences in ownership) any person where contemporaneously with the transfer, the Shareholder Creditor transfers to the proposed transferee such shares in the Parent as may be in the same proportions as (x) the aggregate nominal value of the Shareholder Liabilities outstanding under the agreement evidencing the terms of such Shareholder Liabilities and the aggregate number of shares of the Parent respectively bear to (y) the total nominal value of the interests in the Shareholder Liabilities outstanding under the agreement evidencing the terms of such Shareholder Liabilities held by the Subordinated Creditor and the total number of shares held by the Subordinated Creditor immediately prior to the relevant transfer,

unless consent is received from the Instructing Group.



- (c) Notwithstanding paragraph (b) above, if any of the restrictions in paragraphs (b)(i) to (iii) above ceases to be a required condition to achieve equity treatment for a shareholder loan published by Moody's Investors Service Limited from time to time, that restriction on amendments under any of paragraphs (b)(i) to (iii) above shall cease to apply. For the avoidance of doubt, there shall be no restriction on amendments to the Shareholder Liabilities to:
- (i) increase the amount thereof;
  - (ii) extend the maturity of all or part thereof;
  - (iii) capitalise or vary the rate of all or part of the interest thereof; or
  - (iv) convert all or part thereof into shares or other equity of the Parent.

#### **10.6 Security: Shareholder Creditors**

Prior to the Final Discharge Date, the Shareholder Creditors may not take, accept or receive the benefit of any Security (other than any Security arising by operation of law), guarantee, indemnity or other assurance against loss in respect of the Shareholder Liabilities from any member of the Group other than as expressly permitted by the Credit Facility Documents, the Senior Secured Notes Documents and the Pari Passu Debt Documents or consented to by the Instructing Group (or, following the Secured Debt Discharge Date, the Senior Notes Required Holders).

#### **10.7 Restriction on Enforcement: Shareholder Creditors**

Subject to Clause 10.8 (*Permitted Enforcement: Shareholder Creditors*), none of the Shareholder Creditors shall be entitled to take any Enforcement Action (other than rights of set-off to enable Permitted Shareholder Creditor Payments) in respect of any of the Shareholder Liabilities at any time prior to the Final Discharge Date.

#### **10.8 Permitted Enforcement: Shareholder Creditors**

Prior to the Final Discharge Date and after the occurrence of an Insolvency Event in relation to any Debtor or Security Provider, each Shareholder 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 Shareholder Creditor in accordance with Clause 12.5 (*Filing of claims*)), and shall, if so directed by the Security Agent, exercise any right it may otherwise have against that Debtor or Security Provider to:

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

but shall not take any other Enforcement Action in respect of any Shareholder Liabilities owing to it by that Debtor unless the prior written consent of the Instructing Group (or, following the Secured Debt Discharge Date, the Senior Notes Required Holders) is obtained.

## **11. GUARANTEE AND INDEMNITY**

### **11.1 Guarantee and indemnity**

Each Hedge Guarantor irrevocably and unconditionally, jointly and severally:

- (a) guarantees to each Hedge Counterparty punctual performance by each other Debtor of all that Debtor's obligations under any Hedging Agreement;
- (b) undertakes with each Hedge Counterparty that whenever another Debtor does not pay any amount when due under or in connection with any Hedging Agreement, that Hedge Guarantor shall immediately on demand pay that amount as if it was the principal debtor; and
- (c) agrees with each Hedge Counterparty that if any obligation guaranteed by it is or becomes unenforceable, invalid or illegal, it will, as an independent and primary obligation, indemnify that Hedge Counterparty immediately on demand against any cost, loss or liability it incurs as a result of a Debtor not paying any amount which would, but for such unenforceability, invalidity or illegality, have been payable by it under any Hedging Agreement on the date when it would have been due. The amount payable by a Hedge Guarantor under this indemnity will not exceed the amount it would have had to pay under this Clause 11 if the amount claimed had been recoverable on the basis of a guarantee.

### **11.2 Continuing Guarantee**

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

### **11.3 Reinstatement**

If any discharge, release or arrangement (whether in respect of the obligations of any Debtor or any security for those obligations or otherwise) is made by a Hedge Counterparty in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored in insolvency, liquidation, administration or otherwise, without limitation, then the liability of each Hedge Guarantor under this Clause 11 will continue or be reinstated as if the discharge, release or arrangement had not occurred.

### **11.4 Waiver of defences**

The obligations of each Hedge Guarantor under this Clause 11 will not be affected by an act, omission, matter or thing which, but for this Clause 11, would reduce, release or prejudice any of its obligations under this Clause 11 (without limitation and whether or not known to it or any Hedge Counterparty) including:

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

#### **11.5 Hedge Guarantor Intent**

Without prejudice to the generality of Clause 11.4 (*Waiver of defences*), each Hedge Guarantor expressly confirms that it intends that this guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to any Hedging Agreement and/or any hedging made available under any Hedging Agreement for the purposes of or in connection with any of the following: business acquisitions of any nature; increasing working capital; enabling investor distributions to be made; carrying out restructurings; refinancing existing facilities; refinancing any other indebtedness; making facilities available to new borrowers; any other variation or extension of the purposes for which any such facility or amount might be made available from time to time; and any fees, costs and/or expenses associated with any of the foregoing.

#### **11.6 Immediate recourse**

Each Hedge 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 Hedge Guarantor under this Clause 11. This waiver applies irrespective of any law or any provision of any Hedging Agreement to the contrary.

#### **11.7 Appropriations**

Until all amounts which may be or become payable by the Debtors under or in connection with any Hedging Agreement have been irrevocably paid in full, each Hedge Counterparty (or any trustee or agent on its behalf) may:

- (a) refrain from applying or enforcing any other moneys, security or rights held or received by that Hedge Counterparty (or any trustee or agent on its behalf) in respect of those amounts, or apply and enforce the same in such manner and order as it sees fit (whether against those amounts or otherwise) and no Hedge Guarantor shall be entitled to the benefit of the same; and
- (b) hold in an interest-bearing suspense account any moneys received from any Hedge Guarantor or on account of any Hedge Guarantor's liability under this Clause 11.

#### **11.8 Deferral of Hedge Guarantors' rights**

Until all amounts which may be or become payable by the Debtors under or in connection with any Hedging Agreement have been irrevocably paid in full and unless the Security Agent otherwise directs, no Hedge Guarantor will exercise any rights which it may have by reason of performance by it of its obligations under the Hedging Guarantee or by reason of any amount being payable, or liability arising, under this Clause 11:

- (a) to be indemnified by a Debtor;
- (b) to claim any contribution from any other Debtor of any Debtor's obligations under any Hedging Agreement;
- (c) 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 the Hedging Agreement or of any other guarantee or security taken pursuant to, or in connection with, any Hedging Agreement by any Hedge Counterparty;
- (d) to bring legal or other proceedings for an order requiring any Debtor to make any payment, or perform any obligation, in respect of which any Hedge Guarantor has given a guarantee, undertaking or indemnity under Clause 11.1 (*Guarantee and indemnity*);
- (e) to exercise any right of set-off against any Debtor; and/or
- (f) to claim or prove as a creditor of any Debtor in competition with any Hedge Counterparty.

If a Hedge Guarantor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution to the extent necessary to enable all amounts which may be or become payable to the Hedge Counterparties by the Debtors under or in connection with any Hedging Agreement to be repaid in full on trust for the Hedge Counterparties and shall promptly pay or transfer the same to the relevant Hedge Counterparty.

#### **11.9 Release of Hedge Guarantors' right of contribution**

If any Hedge Guarantor (a "**Retiring Hedge Guarantor**") ceases to be a Hedge Guarantor in accordance with the provisions of Clause 11.17 (*Resignation of Hedge Guarantor*) then on the date such Retiring Hedge Guarantor ceases to be a Hedge Guarantor:

- (a) that Retiring Hedge Guarantor is released by each other Hedge Guarantor from any liability (whether past, present or future and whether actual or contingent) to make a contribution to any other Hedge Guarantor arising by reason of the performance by any other Hedge Guarantor of its obligations under any Hedging Agreement or this Clause 11; and
- (b) each other Hedge Guarantor waives any rights it may have by reason of the performance of its obligations under any Hedging Agreement or this Clause 11 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 Agreement or this Clause 11 or of any other security taken pursuant to, or in connection with, any Hedging Agreement or this Clause 11 where such rights or security are granted by or in relation to the assets of the Retiring Hedge Guarantor.

#### **11.10 Additional security**

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

#### **11.11 Guarantee limitations**

This guarantee does not apply to any liability to the extent that it would result in this guarantee constituting unlawful financial assistance within the meaning of applicable provisions under the laws of the Original Jurisdiction of the relevant Original Hedge

Guarantor or otherwise being illegal and, with respect to any Hedge Guarantor that is not an Original Hedge Guarantor, is subject to any limitations set out in the Debtor Accession Deed applicable to such Hedge Guarantor.

#### 11.12 Limitation on French Hedge Guarantors

- (a) With regard to any Hedge Guarantor incorporated in France (a "**French Hedge Guarantor**"), the obligations and liabilities of such company under this Clause 11 (*Guarantee and indemnity*) shall be limited at any time to the guarantee of:
  - (i) the payment obligations under the Hedging Agreements of its subsidiaries which are Borrowers or Guarantors, provided that its obligations and liabilities in relation to the payment obligations of any of its subsidiaries acting as Hedge Guarantors shall at all times be limited to an amount not exceeding the higher of the amounts in principal and interest borrowed by the French Hedge Guarantor (directly or by way of intra group loans funded out of the proceeds of the relevant Hedging Agreements) and the amounts in principal and interest borrowed (directly or by way of intra group loans funded out of the proceeds of the relevant Hedging Agreements) by its subsidiaries; and
  - (ii) the payment obligations of any other Borrower under the Hedging Agreements which is not a subsidiary of the French Hedge Guarantor, up to an amount not exceeding the amounts in principal and interest borrowed (directly or by way of intra group loans funded out of the proceeds of the relevant Hedging Agreements) by such French Hedge Guarantor (the "**Maximum Guaranteed Amount**") less any amount previously paid under this Clause 11 (*Guarantee and indemnity*). Any payment made by a French Hedge Guarantor under this Clause 11 (*Guarantee and indemnity*) in respect of its obligations shall reduce *pro tanto* the outstanding amount of the intra group loans due by such French Hedge Guarantor and any repayment of intra group loans by such French Hedge Guarantor shall reduce *pro tanto* the Maximum Guaranteed Amount.
- (b) Notwithstanding any other provision of this Clause 11 (*Guarantee and indemnity*), the obligations and liabilities of a French Hedge Guarantor shall not extend to a point where it would result in a French Hedge Guarantor not complying with French financial assistance rules as set out in article L. 225-216 of the French Code de commerce and/or would constitute a misuse of corporate assets within the meaning of articles L. 242-6 and L. 241-3 of the French Code de commerce or more generally any laws or regulations having the same effect, as interpreted by French courts from time to time.
- (c) For the purposes of this paragraph, "**subsidiary**" shall mean, in relation to any company, other companies which are controlled by it within the meaning of article L. 233-3 of the French Code de commerce.

#### 11.13 Limitation on German Hedge Guarantors

- (a) With regard to any Hedge Guarantor incorporated and existing as a German limited liability company (a "**German Hedge Guarantor**"), each of the Hedge Counterparties agrees not to enforce the guarantee and/or indemnity provided for under or in connection with this Agreement by any German Hedge Guarantor if and to the extent the guarantee and/or indemnity guarantees or secures obligations of a shareholder of the German Hedge Guarantor and/or any of its Affiliates (as defined below) in each case other than any direct or indirect subsidiary of such German

Hedge Guarantor, and if and to the extent the enforcement of such guarantee and/or indemnity would:

- (i) cause the assets of the relevant German Hedge Guarantor less the liabilities, provisions and liability reserves of the German Hedge Guarantor (the "**Net Assets**") to be less than the registered share capital (*Stammkapital*) of the German Hedge Guarantor; or
- (ii) cause an increase of a shortfall, if the Net Assets of the German Hedge Guarantor already fall short of the amount of the registered share capital (*Vertiefung einer Unterbilanz*),

the circumstances set out in (1) and (2) being a "**Share Capital Impairment**"; or

- (iii) deprive such German Hedge Guarantor of the liquidity necessary to fulfill its liabilities towards its creditors (a "**Liquidity Impairment**").

In this Clause 11.13 the term "**Affiliate**" refers to an affiliated company (*verbundenes Unternehmen*) of a shareholder of the German Hedge Guarantor within the meaning of §§ 15 et. seq. of the German Stock Corporation Act (*Aktiengesetz*).

- (b) For the purposes of the calculation of the Net Assets in this Clause 11.13 (*Limitation on German Hedge Guarantors*) the following items shall be adjusted as follows:
  - (i) any amount of an increase in the registered share capital of the German Hedge Guarantor after the date of this Agreement that has been effected without the prior written consent of the Hedge Counterparty shall be deducted from the registered share capital;
  - (ii) any contractual liabilities incurred in violation of any Hedging Agreement after the date of this Agreement shall be disregarded as liabilities;
  - (iii) any loans provided to a German Hedge Guarantor by any member of the Group shall be disregarded if and to the extent that such loans are subordinated or are deemed subordinated, and (except for loans subordinated pursuant to section 39 sub-section 1 no. 5 of the German insolvency code (*Insolvenzordnung*)) the German Hedge Guarantor's balance sheet does not show such loans as liability;
  - (iv) non-distributable assets (§ 268 (8) of the German Commercial Code) shall be disregarded (i.e. deducted); and
  - (v) the net assets shall take into account the costs of the Auditor's Determination (as defined below) either as a reduction of assets or an increase of liabilities.
- (c) In addition to paragraph (b) above, if after enforcement of the guarantee and/or any other indemnity provided for under or in connection with this Agreement the German Hedge Guarantor would not have Net Assets in excess of its respective registered share capital, such German Hedge Guarantor shall dispose of, to the extent permitted by law and commercially justifiable and notwithstanding any other terms of this Agreement, any and all of its assets that are shown in the balance sheet with a book value (*Buchwert*) that is significantly lower than the market value of the asset and that are not operationally necessary to continue its existing business or can be (subject to commercially reasonable conditions) replaced by way of sale and lease-back, the purchase of services from third parties or otherwise.

- (d) The limitations set out in this Clause 11.13 (*Limitation on German Hedge Guarantors*) shall not apply to a guarantee and/or any other indemnity provided for under or in connection with this Agreement by the relevant German Hedge Guarantor in relation to any liabilities of a Debtor under any Hedging Agreement to the extent such liabilities arise from the hedging in relation to amounts borrowed under any Primary Finance Document to the extent that the proceeds of such borrowing are on-lent to such German Hedge Guarantor or any of its Subsidiaries from time to time and have not been repaid.
- (e) The limitations set out in this Clause 11.13 (*Limitation on German Hedge Guarantors*) shall not apply:
  - (i) on the date on which and so long as a profit and loss sharing agreement (*Ergebnisabführungsvertrag*) and/or a domination agreement (*Beherrschungsvertrag*) with the German Hedge Guarantor as dominated entity (*beherrschtes Unternehmen*) is registered with the relevant commercial register (*Handelsregister*) of the relevant German Hedge Guarantor, unless the dominating entity is insolvent; or
  - (ii) if and to the extent that the relevant German Hedge Guarantor's guarantee and/or any other indemnity provided under this Agreement is covered by a valuable consideration or recourse claim (*vollwertiger Gegenleistungs- oder Rückgewähranspruch*) against any shareholder or other parent company,

each as applied in accordance with §§ 30, 31 of the German Limited Liability Companies Act (*GmbHG*).

- (f) If no later than 15 Business Days following a request by a Hedge Counterparty to make a payment under the guarantee and/or other indemnity provided for under or in connection with this Agreement, the relevant German Hedge Guarantor has provided to the Hedge Counterparty:
  - (i) an up-to date balance sheet;
  - (ii) a certificate signed by two directors or a director and an authorised signatory to the Hedge Counterparty (i) to what extent the guarantee and/or indemnity granted hereunder is an up-stream or cross-stream guarantee and/or indemnity; and (ii) which amount of such cross-stream and/or up-stream guarantee and/or other indemnity cannot be enforced as it would cause the Net Assets of the relevant German Hedge Guarantor being less than its respective registered share capital - taking into account the adjustments set out in paragraph (b) above and the realisation duties set out paragraph (c) above - (the "**Management Determination**"); and
  - (iii) in case the respective Hedge Counterparty has contested the Management Determination, after twenty Business Days further, a determination prepared by auditors of international standing and reputation appointed by the relevant German Hedge Guarantor either confirming the Management Determination or setting out deviations from the Management's Determination or, if no Management Determination has been provided, determining these matters which would have been the subject of the Management Determination provided by the relevant German Hedge Guarantor under paragraph (f)(ii) above (the "**Auditor's Determination**"),

the German Hedge Guarantor shall fulfil its obligations under, and each Hedge Counterparty shall be entitled to enforce, the guarantee and/or indemnity provided

for under or in connection with this Agreement in an amount which would not, in accordance with the Auditor's Determination, cause a Share Capital Impairment or Liquidity Impairment, in each case as calculated and adjusted in accordance with paragraphs (b) and (c) above. If the relevant German Hedge Guarantor fails to deliver the above documents within the time periods set out above, following a request by the Hedge Counterparty to make a payment under the guarantee and/or other indemnity provided for under or in connection with this Agreement, the Hedge Counterparty shall be entitled to enforce this guarantee and/or other indemnity without any limitation or restriction.

- (g) For the avoidance of doubt, any balance sheet to be prepared for the determination of the Net Assets shall be prepared in accordance with relevant accounting principles.
- (h) Nothing in this Agreement shall be interpreted as a restriction or limitation of the enforcement of the guarantee and/or other indemnity provided for under or in connection with this Agreement if and to the extent that the guarantee and/or other indemnity provided for under or in connection with this Agreement secures the relevant German Hedge Guarantor's own obligations or obligations of any of its direct or indirect Subsidiaries.
- (i) This Clause 11.13 shall apply *mutatis mutandis* to a German Hedge Guarantor organised and existing as a partnership with a limited liability company as unlimited liable partner (e.g. GmbH & Co. KG), provided that in such cases and for the purpose of this Clause 11.13 only any reference to such German Hedge Guarantor's Net Assets shall be deemed to be a reference to the net assets, and any reference to a Liquidity Impairment by such German Hedge Guarantor shall be deemed to be a reference of a liquidity impairment of such unlimited liable partner in the form of a limited liability company.

#### 11.14 Limitation on Swiss Hedge Guarantors

- (a) If and to the extent that:
  - (i) a Swiss Hedge Guarantor under a Debt Document guarantees and/or secures obligations other than obligations of one of its direct or indirect subsidiaries (i.e. obligations of a Swiss Hedge Guarantor's direct or indirect parent companies (up-stream liabilities) or sister companies (cross-stream liabilities)) ("**Restricted Obligations**"); and
  - (ii) a guarantee payment in fulfilling such obligations would, under Swiss law and practice, constitute a repayment of capital (*Einlagerückgewähr*), a violation of the legally protected reserves (*gesetzlich geschützte Reserven*) or the payment of a (constructive) dividend (*Gewinnausschüttung*) by such Swiss Hedge Guarantor or would otherwise be restricted under Swiss corporate law,

such Restricted Obligations (and the amount of any payment in relation thereto) shall from time to time be limited to the amount permitted to be paid under Swiss law and practice, **provided that**, such limited amount shall at no time be less than the profits and reserves of such Swiss Hedge Guarantor available for distribution as dividends (being – according to Swiss law and practice as of the date of this Agreement – the balance sheet profits and any reserves available for this purpose, in each case in accordance with art. 675(2), art. 671(1) and (2), no. 3 and (4) and art. 798 of the Swiss Federal Code of Obligations) at the time or times payment under or pursuant to Clause 11.1 (*Guarantee and indemnity*) or otherwise under a Debt Document is requested from such Swiss Hedge Guarantor and further provided that such



limitation (as may apply from time to time or not) shall not (generally or definitively) free such Swiss Hedge Guarantor from payment obligations hereunder in excess thereof, but merely postpone the payment date therefore until such times as payment is again permitted notwithstanding such limitation. Any and all indemnities and guarantees of such Swiss Hedge Guarantor contained in any Debt Documents shall be construed in a manner consistent with the provisions herein contained.

- (b) In case a Swiss Hedge Guarantor who must make a payment in respect of Restricted Obligations under this Agreement is obliged to withhold Swiss Withholding Tax in respect of such payment, such Swiss Hedge Guarantor shall:
  - (i) procure that such payments can be made without deduction of Swiss Withholding Tax, or with deduction of Swiss Withholding Tax at a reduced rate, by discharging the liability to such tax by notification pursuant to applicable law (including double tax treaties) rather than payment of the tax;
  - (ii) if the notification procedure pursuant to sub-paragraph (i) above does not apply, deduct Swiss Withholding Tax at the rate of thirty-five per cent. (35%) (or such other rate as in force from time to time), or if the notification procedure pursuant to sub-paragraph (i) above applies for a part of the Swiss Withholding Tax only, deduct Swiss Withholding Tax at the reduced rate resulting after the discharge of part of such tax by notification under applicable law, from any payment made by it in respect of Restricted Obligations and promptly pay any such taxes to the Swiss Federal Tax Administration;
  - (iii) notify the Security Agent that such notification, or as the case may be, deduction has been made and provide the Security Agent with evidence that such a notification of the Swiss Federal Tax Administration has been made or, as the case may be, such taxes deducted have been paid to the Swiss Federal Tax Administration;
  - (iv) in the case of a deduction of Swiss Withholding Tax, use its best efforts to ensure that any person other than the Security Agent, which is entitled to a full or partial refund of the Swiss Withholding Tax deducted from such payment in respect of Restricted Obligations, will, as soon as possible after such deduction:
    - (A) request a refund of the Swiss Withholding Tax under applicable law (including tax treaties) and pay to the Security Agent upon receipt any amounts so refunded; or
    - (B) if the Security Agent or a Secured Party is entitled to a full or partial refund of the Swiss Withholding Tax deducted from such payment and if requested by the Security Agent, provide the Security Agent or Secured Party those documents that are required by law and applicable tax treaties to be provided by the payer of such tax in order to enable the Security Agent or Secured Party to prepare a claim for refund of Swiss Withholding Tax; and
  - (v) to the extent such a deduction is made, not be obliged to either gross-up or indemnify, or otherwise pay for such deductions in relation to any such payment made by it in respect of any Restricted Obligations unless such payment is permitted under the laws of Switzerland then in force.

- (c) If and to the extent requested by the Security Agent and if and to the extent this is from time to time required under Swiss law (restricting profit distributions), in order to allow the Security Agent (and the Secured Parties) to obtain a maximum benefit under the Debt Documents and, in particular, this Clause 11.14, a Swiss Hedge Guarantor shall promptly implement the following:
  - (i) the preparation of an up-to-date audited balance sheet of such Swiss Hedge Guarantor;
  - (ii) the confirmation of the auditors of such Swiss Hedge Guarantor that the relevant amount represents (the maximum of) freely distributable profits;
  - (iii) the prompt convening of a meeting of the shareholders of such Swiss Hedge Guarantor which will approve the (resulting) profit distribution;
  - (iv) if the enforcement of any Restricted Obligations would be limited as a result of any matter referred to in this Clause 11.14, such Swiss Hedge Guarantor shall, (i) to the extent permitted by applicable law, write up or realise any of its assets shown in its balance sheet with a book value that is significantly lower than the market value of the assets, in case of realisation, however, only if such assets are not necessary for such Swiss Hedge Guarantor's business (*nicht betriebsnotwendig*), and (ii) reduce its share capital to the minimum allowed under then applicable law, provided that such steps are permitted under the Debt Documents, and
  - (v) all such other measures reasonably necessary and/or to promptly procure the fulfilment of all prerequisites reasonably necessary to allow such Swiss Hedge Guarantor and relevant parent company to promptly make the payments and perform the obligations agreed hereunder from time to time with a minimum of limitations.

#### 11.15 Limitation on Swedish Hedge Guarantors

Notwithstanding anything to the contrary herein, the obligations and liabilities of each member of the Group incorporated in Sweden (each a "**Swedish Hedge Guarantor**") (a) in its capacity as an Intra-Group Lender and (b) under this Clause 11 (*Guarantee and Indemnity*), shall be limited if (and only if) required by an application of the provisions of Chapter 17, Sections 1-4 (or its equivalent from time to time) of the Swedish Companies Act (*Sw. aktiebolagslagen (2005:551)*) regulating unlawful distribution of assets and other transfers within the meaning of the Swedish Companies Act, and it is understood that the liability of the Swedish Hedge Guarantors for such obligations and liabilities shall apply only to the extent permitted by the above-mentioned provisions of the Swedish Companies Act.

#### 11.16 Qualified Keepwell Provider; Non-Qualified ECP Guarantor

- (a) Each Qualified Keepwell Provider hereby jointly and severally, absolutely, unconditionally and irrevocably, undertakes to provide (where the Qualified Keepwell Provider is not the Parent, subject to any limitation set out in Clause 11.11 (*Guarantee limitations*), Clause 11.12 (*Limitation on French Hedge Guarantors*), Clause 11.13 (*Limitation on German Hedge Guarantors*), Clause 11.14 (*Limitation on Swiss Hedge Guarantors*) and Clause 11.15 (*Limitation on Swedish Hedge Guarantors*) which are applicable to the Qualified Keepwell Provider in its capacity as a Hedge Guarantor) such funds or other support as may be needed from time to time by any Non-Qualified ECP Guarantor to honour all of such Non-Qualified ECP Guarantor's obligations under this guarantee in respect of Swap Obligations (but, in each case, only up to the maximum amount of such liability that can be hereby

incurred without rendering the Qualified Keepwell Provider's obligations hereunder voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations and undertakings of the Qualified Keepwell Provider under this paragraph (a) shall remain in full force and effect until all Swap Obligations in respect of which a Non-Qualified ECP Guarantor has provided a guarantee have been fully and finally discharged. The Parties intend this provision to constitute, and this provision shall be deemed to constitute, a "keepwell, support, or other agreement" for the benefit of, each Non-Qualified ECP Guarantor for all purposes of Section 1a (18)(A)(v)(II) of the CEA.

- (b) If, notwithstanding paragraph (a) above, there exists at any time any Non-Qualified ECP Guarantor that is providing a guarantee or granting security with respect to any Swap Obligation, any guarantee or security provided by such Non-Qualified ECP Guarantor shall not constitute a guarantee or security for Excluded Swap Obligations, and any reference in any Debt Document with respect to such Non-Qualified ECP Guarantor providing a guarantee or security for Swap Obligations or Secured Obligations shall be deemed to be all Swap Obligations other than the Excluded Swap Obligations (and each Party hereto hereby relinquishes, waives and releases any rights to enforce such guarantee or security in respect of such Excluded Swap Obligations and its right to (directly or indirectly) share in any recoveries from a Non-Qualified ECP Guarantor).
- (c) For the purposes of paragraphs (a) and (b) above, the following terms have the following meanings:

"CEA" means the Commodity Exchange Act (7 U.S.C. § 1 et seq.) (as amended).

"CFTC" means the Commodity Futures Trading Commission.

"ECP" means an "eligible contract participant" as defined in the CEA and the applicable rules issued by the CFTC.

"**Excluded Swap Obligations**" means, with respect to any Hedge Guarantor, as it relates to all or a portion of the guarantee of such Hedge Guarantor under this Clause 11 or all or a portion of the grant by such Hedge Guarantor of a security interest in connection therewith, any obligation (each a "**Swap Obligation**") to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of Section 1a(47) of the CEA if, and to the extent that, all or a portion of the guarantee of such Hedge Guarantor of, or the grant by such Hedge Guarantor of a security interest to secure, such Swap Obligation (or any guarantee thereof) is or becomes illegal under the CEA or any rule, regulation, or order of the CFTC (or the application or official interpretation of any thereof) by virtue of such Hedge Guarantor's failure for any reason to constitute an ECP at the time the guarantee of such Hedge Guarantor, or a grant by such Hedge Guarantor of a security interest, becomes effective with respect to such Swap Obligation.

"**Non-Qualified ECP Guarantor**" means, in respect of any Swap Obligation, a Hedge Guarantor that is not a Qualified ECP Guarantor at the time the relevant guarantee or grant of the relevant security interest becomes effective with respect to such Swap Obligation.

"**Qualified ECP Guarantor**" means, in respect of any Swap Obligation, each Hedge Guarantor that has total assets exceeding USD 10,000,000 at the time the relevant guarantee or grant of the relevant security interest becomes effective with respect to such Swap Obligation or otherwise constitutes an ECP and can cause another person

to qualify as an ECP at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the CEA.

**"Qualified Keepwell Provider"** means the Parent or, in respect of any Swap Obligation, if the Parent is not an ECP at the time the relevant guarantee or grant of the relevant security interest becomes effective with respect to such Swap Obligation, any other Hedge Guarantor notified by the Parent to the Security Agent and each Hedge Counterparty that is (i) a corporation, partnership, proprietorship, organisation, trust or other entity other than a "commodity pool" as defined in Section 1a(10) of the CEA and CFTC regulations thereunder that has total assets exceeding USD 10,000,000 or (ii) an ECP that can cause another person to qualify as an ECP under Section 1a(8)(A)(v)(II) of the CEA by entering into a keepwell.

**"Swap Obligation"** has the meaning given to it in the definition of "Excluded Swap Obligation".

- (d) If there are any Excluded Swap Obligations with respect to any Debtor:
  - (i) no recoveries that are attributable to such Debtor may be applied in or towards payment to the Hedge Counterparties to such Excluded Swap Obligations and Clause 19 (*Application of Proceeds*) shall apply accordingly;
  - (ii) Clause 13.3 (*Turnover by the Senior Notes Creditors and Subordinated Creditors*) shall not apply to any receipt or recovery that is attributable to a guarantee or security provided by such Debtor to the extent that such receipt or recovery is not received by the Hedge Counterparties to such Excluded Swap Obligations; and
  - (iii) no payments shall be required to be made to the Hedge Counterparties to such Excluded Swap Obligations under Clause 20 (*Equalisation*) to the extent that, but for this paragraph (iii), a payment would otherwise be required to be made under Clause 20 (*Equalisation*) as a result of any receipt or recovery that is attributable to a guarantee or security provided by such Debtor not being received by the Hedge Counterparties to such Excluded Swap Obligations and the exposures with respect to such Hedge Counterparties shall be adjusted accordingly.

#### 11.17 Resignation of Hedge Guarantor

- (a) The Parent may request that a Hedge Guarantor (other than a person which is at that time the Qualified Keepwell Provider) ceases to provide a guarantee and indemnity under Clause 11.1 (*Guarantee and indemnity*) in respect of the obligations owed by a Debtor to a Hedge Counterparty under any Hedging Agreement by delivering to that Hedge Counterparty a Hedge Guarantor Resignation Request.
- (b) The relevant Hedge Counterparty shall accept a Hedge Guarantor Resignation Request and notify the Parent and the Security Agent of the same if:
  - (i) no payment is due from that Hedge Guarantor to such Hedge Counterparty in respect of any Hedging Liabilities under Clause 11.1 (*Guarantee and indemnity*);
  - (ii) the Parent confirms in the Hedge Guarantor Resignation Request that no Default is continuing or would result from the acceptance of the Hedge Guarantor Resignation Request; and

- (iii) either such Hedge Counterparty has consented to that resignation or the Parent has confirmed in the Hedge Guarantor Resignation Request that:
  - (A) that Hedge Guarantor, or its Holding Company, is being disposed of to a person which is not a member of the Group (a "**Third Party Disposal**") where that disposal is permitted under the Credit Facility Documents, the Senior Secured Notes Documents, the Pari Passu Debt Documents and the Senior Notes Documents;
  - (B) that Hedge Guarantor has been designated an Unrestricted Subsidiary and this designation has become effective in accordance with the requirements for such designation (if any) in the Credit Facility Documents, the Senior Secured Notes Documents, the Pari Passu Debt Documents and the Senior Notes Documents; or
  - (C) in the case of a Debtor that after the Issue Date only became a Hedge Guarantor because simultaneously with or after becoming a Hedge Guarantor it was becoming a guarantor of any other Financial Indebtedness of the Group in accordance with the Credit Facility Documents, the Senior Secured Notes Documents, the Pari Passu Debt Documents and the Senior Notes Documents, such guarantee of other Financial Indebtedness by such Hedge Guarantor is released or discharged and such Hedge Guarantor does not guarantee any other Financial Indebtedness of any Debtor (unless such other guarantee is released at the same time as the Hedge Guarantor Resignation Letter becomes effective).
- (c) The resignation of the Hedge Guarantor shall not be effective until the later of (x) the date of the relevant Third Party Disposal or (as applicable) effectiveness of the designation as an Unrestricted Subsidiary or (as applicable) the relevant guarantee being released or discharged or (as applicable) the date specified in the Hedge Guarantor Resignation Request and (y) the date of the fulfillment of all requirements provided in paragraph (b) above, at which time that Debtor shall cease to be a Hedge Guarantor and shall have no further rights or obligations under this Agreement as a Hedge Guarantor.

## 12. EFFECT OF INSOLVENCY EVENT

### 12.1 Credit Facility Cash Cover

This Clause 12 is subject to Clause 19.3 (*Treatment of Credit Facility Cash Cover and Credit Facility Lender Cash Collateral*) and Clause 23.6 (*Turnover obligations*).

### 12.2 Payment of distributions

- (a) Without limitation to Clause 13 (*Turnover of receipts*) and Clause 19 (*Application of Proceeds*), after the occurrence of an Insolvency Event in relation to Debtor, any Subordinated Creditor or Senior Notes Creditor entitled to receive a distribution out of the assets of the relevant Debtor subject to the Insolvency Event in respect of:
  - (i) Subordinated Liabilities owed to that Subordinated Creditor; or
  - (ii) in the case of Senior Notes Creditor, the Senior Notes Guarantee Liabilities,
 shall, to the extent it is able to do so, including pursuant to applicable law and regulation, direct the person responsible for the distribution of the assets of the

relevant member of the Group to pay that distribution to the Security Agent until the Secured 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 19 (*Application of Proceeds*).

### 12.3 Set-Off

- (a) Subject to paragraph (b) below, to the extent that any Debtor's Liabilities are discharged by way of set-off (mandatory or otherwise) after the occurrence of an Insolvency Event in relation to that Debtor, any Creditor which benefited from that set-off shall (in the case of a Priority Creditor, only to the extent that such amount constitutes Enforcement Proceeds) 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 19 (*Application of Proceeds*).
- (b) Paragraphs (a) above shall not apply to:
  - (i) any such discharge of the Multi-account Overdraft Facility 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.

### 12.4 Non-cash distributions

If the Security Agent or any other Secured Party or Senior Notes Creditor receives a distribution in a form other than in cash in respect of any of the Liabilities, the Liabilities will not be reduced by that distribution until and except to the extent that the realisation proceeds are actually applied towards the Liabilities.

### 12.5 Filing of claims

Without prejudice to any Ancillary Lender's right of netting or set-off relating to a Multi-account Overdraft Facility (to the extent that the netting or set-off represents a reduction of the Gross Outstandings of that Multi-account Overdraft Facility to or towards an amount equal to its Net Outstandings), until the Final Discharge Date and after the occurrence of an Insolvency Event in relation to a Debtor, Security Provider or other Material Company, each Subordinated Creditor irrevocably authorises the Security Agent (acting in accordance with Clause 12.7 (*Security Agent instructions*)), on its behalf, to:

- (a) take any Enforcement Action (in accordance with the terms of this Agreement) against the relevant Debtor, Security Provider or other Material Company;
- (b) demand, sue, prove and give receipt for any or all of the relevant Debtor's, Security Provider's or Material Company's Subordinated Liabilities;

- (c) collect and receive all distributions on, or on account of, any or all of the relevant Debtor, Security Provider's or other Material Company's Subordinated Liabilities; and
- (d) file claims, take proceedings and do all other things the Security Agent considers reasonably necessary to recover the relevant Debtor, Security Provider's or other Material Company's Subordinated Liabilities.

#### **12.6 Subordinated Creditors' actions**

Each Subordinated Creditor will:

- (a) do all things that the Security Agent (acting in accordance with Clause 12.7 (*Security Agent instructions*)) requests in order to give effect to this Clause 12; and
- (b) if the Security Agent is not entitled to take any of the actions contemplated by this Clause 12 or it (acting in accordance with Clause 12.7 (*Security Agent instructions*)) requests that Subordinated Creditor to take that action, undertake that action itself in accordance with the instructions of the Security Agent (acting in accordance with Clause 12.7 (*Security Agent instructions*)) or grant a power of attorney to the Security Agent (on such terms as the Security Agent (acting in accordance with Clause 12.7 (*Security Agent instructions*)) may reasonably require) to enable the Security Agent to take such action.

#### **12.7 Security Agent instructions**

For the purposes of Clause 12.5 (*Filing of claims*) and Clause 12.6 (*Subordinated Creditors' actions*) the Security Agent shall act:

- (a) on the instructions of the Instructing Group (under paragraph (b) of that definition); or
- (b) in the absence of any such instructions, in accordance with Clause 15.3 (*Instructions to enforce – Transaction Security*).

### **13. TURNOVER OF RECEIPTS**

#### **13.1 Credit Facility Cash Cover**

This Clause 13 is subject to Clause 19.3 (*Treatment of Credit Facility Cash Cover and Credit Facility Lender Cash Collateral*).

#### **13.2 Turnover by Priority Creditors**

Subject to Clause 13.4 (*Exclusions*) and Clause 13.5 (*Permitted assurance and receipts*) and, in the case of any Notes Trustee, to Clause 23.6 (*Turnover obligations*), if at any time prior to the Final Discharge Date any Priority Creditor receives or recovers the proceeds of any enforcement of any Transaction Security or the proceeds of any Distressed Disposal in respect of any assets which are subject to the Transaction Security (in each case, whether before or after an Insolvency Event) except in accordance with Clause 19 (*Application of Proceeds*), that Priority Creditor will:

- (a) in relation to receipts and recoveries not received or recovered by way of set-off:
  - (i) 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

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

### 13.3 Turnover by the Senior Notes Creditors and Subordinated Creditors

Subject to Clause 13.4 (*Exclusions*) and Clause 13.5 (*Permitted assurance and receipts*) and, in the case of any Notes Trustee, Clause 23.6 (*Turnover obligations*), if at any time prior to the Final Discharge Date any Senior Notes Creditor or Subordinated Creditor receives or recovers from any member of the Group:

- (a) any Payment or distribution of, or on account of or in relation to, any of the Liabilities which is not either:
  - (i) a Permitted Payment; or
  - (ii) made in accordance with Clause 19 (*Application of Proceeds*);
- (b) other than where Clause 12.3 (*Set-Off*) applies, any amount by way of set-off in respect of any of the Liabilities owed to it (i) which does not give effect to a Permitted Payment; or (ii) which is permitted under Clause 9.7 (*Permitted Enforcement: Intra-Group Lenders*);
- (c) notwithstanding paragraphs (a) and (b) above, and other than where Clause 12.3 (*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 Debtor or a member of the Group where the Intra-Group Lender has provided Transaction Security in respect of Intra-Group Liabilities owed by that member of the Group (other than after the occurrence of an Insolvency Event in respect of that Debtor or 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 recovered in accordance with Clause 19 (*Application of Proceeds*); or
- (d) the proceeds of any enforcement of any Transaction Security except in accordance with Clause 19 (*Application of Proceeds*); or
- (e) other than where Clause 12.3 (*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 Debtor which is not in accordance with Clause 19 (*Application of Proceeds*) and which is made as a result of, or after, the occurrence of an Insolvency Event in respect of that Debtor,

that Senior Notes Creditor or Subordinated Creditor (as applicable) 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 separate from other assets, property or funds and promptly pay that amount to the Security Agent for application in accordance with the terms of this Agreement; and
- (B) promptly pay an amount equal to the amount (if any) by which the receipt or recovery exceeds the Relevant Liabilities to the Security Agent for application in accordance with the terms of this Agreement; and
- (ii) in relation to receipts and recoveries received or recovered by way of set-off, promptly pay an amount equal to that recovery to the Security Agent for application in accordance with the terms of this Agreement.

#### 13.4 Exclusions

Clause 13.2 (*Turnover by the Priority 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 Agreement Netting by a Hedging Ancillary Lender; or
- (b) by an Ancillary Lender by way of that Ancillary Lender's right of netting or set-off relating to a Multi-account Overdraft Facility (to the extent that that netting or set-off represents a reduction from the Gross Outstandings of that Multi-account Overdraft Facility to or towards an amount equal to its Net Outstandings); or
- (c) made in accordance with Clause 20 (*Equalisation*).

#### 13.5 Permitted assurance and receipts

Nothing in this Agreement shall restrict the ability of any Primary 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 22 (*Changes to the Parties*),

which is permitted by the relevant Credit Facility Documents, Senior Secured Notes Documents and Pari Passu Debt Documents and is not in breach of Clause 7.5 (*No Acquisition of Hedging Liabilities*), Clause 9.4 (*Acquisition of Intra-Group Liabilities*) or Clause 10.4 (*Acquisition of Shareholder Liabilities*) and that Primary 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.

### 13.6 Sums received by Debtors

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

- (a) hold an amount of that receipt or recovery equal to the Relevant Liabilities (or if less, the amount received or recovered) on trust for the Security Agent and separate from other assets, property or funds 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.

### 13.7 Saving provision

If, for any reason, any of the trusts expressed to be created in this Clause 13 should fail or be unenforceable, the affected Creditor or Debtor will promptly pay an amount equal to that receipt or recovery to the Security Agent to be held on trust by the Security Agent for application in accordance with the terms of this Agreement.

### 13.8 Non-creation of charge

Nothing in this Clause 13 or any other provision of this Agreement is intended to or shall create a charge or other security.

## 14. REDISTRIBUTION

### 14.1 Recovering Creditor's rights

- (a) Any amount paid by a Creditor (a "**Recovering Creditor**") to the Security Agent under Clause 12 (*Effect of Insolvency Event*) or Clause 13 (*Turnover of receipts*) shall be treated as having been paid by the relevant Debtor and distributed to the Security Agent, the Creditor Representatives, the Arrangers, the Super Senior Creditors, the Non-Super Senior Hedge Counterparties, the Senior Secured Noteholders, the Pari Passu Creditors and the Senior Noteholders (each a "**Sharing Creditor**") in accordance with the terms of this Agreement.
- (b) On an application by the Security Agent pursuant to Clause 19 (*Application of Proceeds*) of a Payment or distribution received by a Recovering Creditor from a Debtor, as between the relevant Debtor and the Recovering Creditor an amount equal to the amount received or recovered by the Recovering Creditor and paid or distributed to the Security Agent by the Recovering Creditor (the "**Shared Amount**") will be treated as not having been paid or distributed by that Debtor.

### 14.2 Reversal of redistribution

- (a) If any part of the Shared Amount received or recovered by a Recovering Creditor becomes repayable to a Debtor and is repaid by that Recovering Creditor to that Debtor, then:
  - (i) each Sharing Creditor (in the case of any Notes Trustee, subject to Clause 23.6 (*Turnover obligations*)) shall, upon request of the Security Agent, pay to the Security Agent for the account of that Recovering Creditor an amount equal to the appropriate part of its share of the Shared Amount received by it (together with an amount as is necessary to reimburse that Recovering

Creditor for its proportion of any interest on the Shared Amount which that Recovering Creditor is required to pay) (the "**Redistributed Amount**"); and

- (ii) as between the relevant Debtor and each relevant Sharing Creditor, an amount equal to the relevant Redistributed Amount will be treated as not having been paid by that Debtor.
- (b) The Security Agent shall not be obliged to pay any Redistributed Amount to a Recovering Creditor under 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.

#### **14.3 Deferral of subrogation**

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

#### **14.4 Exceptions**

- (a) This Clause 14 shall not apply to the extent that the Recovering Creditor would not, after making any payment pursuant to this Clause 14, have a valid and enforceable claim against the relevant Debtor and, in such case, the Recovering Creditor shall be entitled to rely on Clause 20 (*Equalisation*).
- (b) A Recovering Creditor is not obliged to share with any Secured Party (or in respect of the Shared Transaction Security, any Secured Party or Senior Notes Creditor) any amount which the Recovering Creditor has received or recovered as a result of taking legal or arbitration proceedings, if:
  - (i) it notified that Secured Party (or in respect of the Shared Transaction Security, that Secured Party or Senior Notes Creditor) of the legal or arbitration proceedings; and
  - (ii) that Secured Party (or in respect of the Shared Transaction Security, that Secured Party or Senior Notes Creditor) had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

### **15. ENFORCEMENT OF TRANSACTION SECURITY**

#### **15.1 Credit Facility Cash Cover**

This Clause 15 is subject to Clause 19.3 (*Treatment of Credit Facility Cash Cover and Credit Facility Lender Cash Collateral*).

## 15.2 Enforcement

The Secured Parties (or any and each Senior Notes Trustee) shall not give instructions to the Security Agent as to the Enforcement of the Transaction Security other than in accordance with this Agreement. This Agreement does not regulate Enforcement of Senior Notes Only Security.

## 15.3 Instructions to enforce – Transaction Security

- (a) If either the Majority Super Senior Creditors or the Majority Senior Secured Creditors wish to issue Enforcement instructions, the Creditor Representatives (and, if applicable, Hedge Counterparties) representing the Primary Creditors comprising the Majority Super Senior Creditors or Majority Senior Secured Creditors (as the case may be) shall deliver a copy of those proposed Enforcement instructions (an “Initial Enforcement Notice”) to the Security Agent and the Security Agent shall promptly forward such Initial Enforcement Notice to each Creditor Representative and each Hedge Counterparty which did not deliver such Initial Enforcement Notice.
- (b) Subject to paragraphs (c), (d), (e) and (f) below, the Security Agent will act in accordance with Enforcement instructions received from the Majority Senior Secured Creditors.
- (c) If:
  - (i) the Majority Senior Secured Creditors have not either:
    - (A) made a determination as to the method of Enforcement they wish to instruct the Security Agent to pursue (and notified the Security Agent of that determination in writing); or
    - (B) appointed a Financial Adviser to assist them in making such a determination,within three months of the date of the Initial Enforcement Notice; or
  - (ii) the Super Senior Discharge Date has not occurred within six months of the date of the Initial Enforcement Notice,then the Security Agent will act in accordance with Enforcement instructions received from the Majority Super Senior Creditors until the Super Senior Discharge Date has occurred.
- (d) If an Insolvency Event (other than an Insolvency Event directly caused by any Enforcement Action taken by or at the request or direction of the Majority Senior Secured Creditors or a Super Senior Creditor, in each case, that is not otherwise permitted under this Agreement) is continuing with respect to any Debtor then the Security Agent will, to the extent the Majority Super Senior Creditors elect to provide such Enforcement instructions, act in accordance with Enforcement instructions received from the Majority Super Senior Creditors until the Super Senior Discharge Date has occurred.
- (e) If the Majority Senior Secured Creditors have not either:
  - (i) made a determination as to the method of Enforcement they wish to instruct the Security Agent to pursue (and notified the Security Agent of that determination in writing); or

(ii) appointed a Financial Adviser to assist them in making such a determination, and the Majority Super Senior Creditors:

- (A) determine in good faith (and notify the other Creditor Representatives, the Hedge Counterparties and the Security Agent) that a delay in issuing Enforcement instructions could reasonably be expected to have a material adverse effect on the ability to effect a Distressed Disposal or on the expected realisation proceeds of any Enforcement; and
- (B) deliver Enforcement instructions which they reasonably believe to be consistent with the Security Enforcement Principles before the Security Agent has received any Enforcement instructions from the Majority Senior Secured Creditors,

then the Security Agent will act in accordance with the Enforcement instructions received from the Majority Super Senior Creditors until the Super Senior Discharge Date has occurred.

- (f) Following the Senior Secured Discharge Date, any Enforcement instructions with respect to the Shared Transaction Security may be given by the then applicable Instructing Group.

#### 15.4 Enforcement instructions – Senior Notes

- (a) Subject to paragraph (c), the Security Agent may refrain from enforcing the Transaction Security or taking any other action as to Enforcement unless instructed otherwise by:
  - (i) the Instructing Group in accordance with Clause 15.3 (*Instructions to enforce – Transaction Security*); or
  - (ii) if required under paragraph (c) below, the Creditor Representative(s) for the Senior Notes Creditors (acting on the instructions of the Senior Notes Required Holders).
- (b) Subject to the Transaction Security having become enforceable in accordance with its terms:
  - (i) the Instructing Group may give or refrain from giving instructions to the Security Agent to take action as to Enforcement in accordance with Clause 15.3 (*Instructions to enforce – Transaction Security*); or
  - (ii) if required under paragraph (c) below, the Creditor Representative(s) for the Senior Notes Creditors (acting on the instructions of the Senior Notes Required Holders) may give or refrain from giving instructions to the Security Agent to enforce the Shared Transaction Security.
- (c) Prior to the Secured Debt Discharge Date:
  - (i) if the Instructing Group has instructed the Security Agent to cease or not to proceed with Enforcement; or
  - (ii) in the absence of instructions as to Enforcement from the Instructing Group,the Security Agent shall give effect to any instructions to enforce the Shared Transaction Security which the Creditor Representative(s) for the Senior Notes

Creditors (acting on the instructions of the Senior Notes Required Holders) are then entitled to give to the Security Agent under Clause 8.9 (*Permitted Senior Notes Enforcement*) provided that such instructions are consistent with the Security Enforcement Principles.

- (d) Notwithstanding the preceding paragraphs (b)(ii) and (c), if at any time the Creditor Representative(s) for the Senior Notes Creditors is then entitled to give the Security Agent instructions as to enforcement of the Shared Transaction Security pursuant to the preceding paragraph (c) and such Creditor Representative(s) gives such instruction, then the Majority Super Senior Creditors or the Majority Senior Secured Creditors may give instructions to the Security Agent as to Enforcement in lieu of any instructions to enforce given by the Creditor Representative for the Senior Notes Creditors under Clause 8.9 (*Permitted Senior Notes Enforcement*) and the Security Agent shall act on the first such instructions received from or on behalf of either the Majority Super Senior Creditors or the Majority Senior Secured Creditors.
- (e) The Security Agent is entitled to rely on and comply with instructions given in accordance with this Clause 15.4 .

#### **15.5 Manner of enforcement**

If the Transaction Security is being enforced or other action as to Enforcement is being taken pursuant to Clause 15.3 (*Instructions to enforce – Transaction Security*), the Security Agent shall enforce the Transaction Security or take other action as to Enforcement in such manner (including, without limitation, the selection of any administrator of any Debtor to be appointed by the Security Agent) as:

- (a) the Instructing Group shall instruct; or
- (b) prior to the Secured Debt Discharge Date, if:
  - (i) the Security Agent has, pursuant to paragraph (c) of Clause 15.3 (*Instructions to enforce – Transaction Security*), received instructions given by the Senior Notes Required Holders to enforce the Shared Transaction Security; and
  - (ii) the Instructing Group (or any other group of Priority Creditors pursuant to Clause 15.4(d)) has not given instructions as to the manner of enforcement of the Shared Transaction Security,

the Senior Notes Required Holders shall instruct,

**provided that** any such instructions are consistent with the Security Enforcement Principles or, in the absence of any such instructions, as the Security Agent considers in its discretion to be appropriate and consistent with the Security Enforcement Principles.

#### **15.6 Exercise of voting rights**

- (a) Each Creditor (other than a Notes Trustee) agrees with the Security Agent that it will cast its vote in any proposal put to the vote by or under the supervision of any judicial or supervisory authority in respect of any insolvency, pre insolvency or rehabilitation or similar proceedings relating to any member of the Group as instructed by the Security Agent (except that, but without prejudice to Clauses 17.1 (*Facilitation of Distressed Disposals*) and 18 (*Further assurance – Disposals and releases*), it shall not be required to waive, reduce, discharge, extend the due date for payment of or reschedule any of the Liabilities owed to it).

- (b) The Security Agent shall give instructions for the purposes of paragraph (a) of this Clause 15.6 as directed by the Instructing Group or, following the Secured Debt Discharge Date, the Senior Notes Required Holders provided such instructions have been given in accordance with Clause 15.3 (*Instructions to enforce – Transaction Security*).
- (c) Nothing in this Clause 15.6 entitles any party to exercise or require any other Primary Creditor to exercise such power of voting or representation to waive, reduce, discharge, extend the due date for (or change the basis for accrual of any) payment of, or reschedule any of, the Liabilities owed to that Primary Creditor.

#### **15.7 Duties owed**

Each of the Secured Parties and the Debtors acknowledges that, in the event that the Security Agent enforces or is instructed to enforce the Transaction Security prior to the Final Discharge Date, the duties of the Security Agent and of any Receiver or Delegate owed to the Hedge Counterparties, the Senior Secured Notes Trustee, the Senior Secured Noteholders, the Pari Passu Creditors, any Pari Passu Debt Representative, the Senior Noteholders and any Senior Notes Trustee in respect of the method, type and timing of that enforcement or of the exploitation, management or realisation of any of that Transaction Security shall, subject to Clause 17.2 (*Proceeds of Distressed Disposals and Debt Disposals*) and Clause 17.5 (*Security Agent's actions*), be no different to or greater than the duty that is owed by the Security Agent, Receiver or Delegate to the Debtors under general law provided that no Party shall have the right to claim any breach of this Clause 15.7 by the Security Agent in relation to action taken by the Security Agent as a result of and in accordance with instructions received by the Security Agent pursuant to this Clause 15 (*Enforcement of Transaction Security*) (but without prejudice to any rights such Party may have against any other Party in respect of such instructions).

#### **15.8 Waiver of rights**

To the extent permitted under applicable law and subject to Clause 15.3 (*Instructions to enforce – Transaction Security*), Clause 15.5 (*Manner of enforcement*), paragraph (c) of Clause 17.1 (*Facilitation of Distressed Disposals*) and Clause 19 (*Application of Proceeds*), each of the Secured Parties (and in respect of the Shared Transaction Security, each of the Secured Parties and the Senior Notes Creditors) 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.

#### **15.9 Enforcement through Security Agent only**

The Secured Parties and the Senior Notes Creditors shall not have any independent power to enforce, or have recourse to, any of the Transaction Security or to exercise any right, power, authority or discretion arising under the Transaction Security Documents except through the Security Agent (other than, for the avoidance of doubt, in the case of the Senior Notes Only Security).

#### **15.10 Alternative Enforcement Actions**

- (a) After the Security Agent has received instructions from an Instructing Group pursuant to paragraph (b) of Clause 15.3 (*Instructions to enforce – Transaction Security*) it shall not accept any subsequent instructions as to Enforcement from anyone other than the Instructing Group that instructed it in respect of such Enforcement (save in the case where the initial instructions were given by the

Majority Senior Secured Creditors, and the Majority Super Senior Creditors have subsequently become the Instructing Group) regarding any other Enforcement over or relating to the Transaction Security directly or indirectly the subject of the Enforcement which has been commenced (including, for the avoidance of doubt, in respect of Enforcement relating to the shares in a company, the giving of any instructions as to Enforcement of the Transaction Security over those shares or to the assets of that company or the shares in or assets of any direct or indirect Subsidiary of that company).

- (b) This Clause 15.10 shall not restrict the right of the Instructing Group to instruct the Security Agent as to Enforcement of the Transaction Security that includes any shares or assets which are not directly or indirectly the subject of a prior instruction as to Enforcement, subject to compliance with the requirements of Clause 15.3(a) (*Enforcement instructions – Consultation periods*).

## 16. NON-DISTRESSED DISPOSALS

### 16.1 Definitions

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

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

to a person or persons outside the Group, or by one member of the Group to another member of the Group (an **“Intra-Group Disposal”**) where the Security Agent has received a certificate signed by a director of the Parent (without personal liability) confirming that, in each case:

- (i) such disposal is permitted under the Credit Facility Documents;
- (ii) such disposal is permitted under the Senior Secured Notes Documents;
- (iii) such disposal is permitted under the Pari Passu Debt Documents;
- (iv) such disposal is permitted under the Senior Notes Documents;
- (v) such disposal is not a Distressed Disposal; and
- (vi) any corresponding release of Security is permitted under the relevant Debt Documents.

**“Permitted Reorganisation”** means a solvent liquidation, reorganisation, merger, amalgamation or consolidation involving a Debtor and one or more other Restricted Subsidiaries (or in the case of a solvent reorganization only no other Restricted Subsidiary) that results in the same person, a different person or in the case of a solvent reorganisation only no person owning the relevant assets and where such solvent liquidation, reorganisation, merger, amalgamation or consolidation is permitted under the Credit Facility Documents, the Senior Secured Notes Documents, the Pari Passu Debt Documents and the Senior Notes Documents and the Security Agent has received a certificate signed by a director of the Parent (without personal liability) confirming that such solvent liquidation, reorganisation, merger, amalgamation or consolidation, in each case, is permitted under the Credit Facility Documents, the Senior Secured Notes Documents, the Pari Passu Debt Documents and the Senior Notes Documents.



## 16.2 Facilitation of Non-Distressed Disposals

- (a) If a disposal of an asset is a Non-Distressed Disposal, the Security Agent is irrevocably authorised and required (at the cost of the Parent and without any consent, sanction, authority or further confirmation from any Creditor, other Secured Party or Debtor), but subject to paragraph (b) below:
- (i) to release the Transaction Security or any other claim (relating to a Debt Document) over that asset;
  - (ii) where that asset consists of shares in the capital of a Debtor or any Holding Company of a Debtor, to release the Transaction Security or any other claim (relating to a Debt Document) over the assets of that Debtor or Holding Company and the assets of any of their Subsidiaries; and
  - (iii) to execute and deliver or enter into any release of the Transaction Security or any claim described in paragraphs (i) and (ii) above and issue any certificates of non-crystallisation of any floating charge or any consent to dealing that may, in the discretion of the Security Agent, be considered necessary or desirable,

provided that, in the case of a Non-Distressed Disposal which is an Intra-Group Disposal:

- (A) such Intra-Group Disposal is made subject to the existing Transaction Security or, to the extent that replacement Transaction Security is required from the transferee under the terms of the Debt Documents, such Transaction Security will (subject to any requirements relating to the release, retaking, amendment or extension of the Transaction Security under the Debt Documents) be granted at the same time as (or before) the relevant disposal is effected; and
- (B) to the extent that replacement Transaction Security is required from the transferee under the terms of the Debt Documents contemporaneously with such release (followed by an immediate retaking of Security on substantially the same terms and ranking, save to the extent otherwise permitted by the Debt Documents), the Parent delivers to the Security Agent either:
  - (I) a solvency opinion from a Financial Advisor, in form and substance reasonably satisfactory to the Security Agent, confirming the solvency of that Debtor and its Subsidiaries, taken as a whole, after giving effect to such Intra-Group Disposal and any transactions related to such release and retaking;
  - (II) a certificate from the board of directors or chief financial officer of that Debtor (acting in good faith), which confirms the solvency of that Debtor granting such Transaction Security after giving effect to such Intra-Group Disposal and any transactions related to such release and retaking; or
  - (III) an opinion of counsel, in form and substance reasonably satisfactory to the Security Agent (subject to customary exceptions and qualifications), confirming that, after giving effect to such Intra-Group Disposal and any transactions

related to such release and retaking, the Transaction Security created under the Transaction Security Documents so released and retaken is valid and perfected Transaction Security not otherwise subject to any limitation, imperfection or new hardening period, in equity or at law, that such Transaction Security was not otherwise subject to immediately prior to such release and retaking.

- (b) Each release of Transaction Security or any claim described in paragraph (a) above shall (to the extent permitted under applicable law) become effective only upon the making of the relevant Non-Distressed Disposal.
- (c) If any proceeds from a disposal under paragraphs (a) above are required to be applied in mandatory prepayment of any of the Secured Liabilities or to be offered to Secured Creditors pursuant to the terms of the relevant Primary Finance Documents (other than the Senior Notes Documents) then such proceeds shall be applied in or towards Payment of such Secured Liabilities or shall be offered to the relevant Secured Creditors in accordance with the terms of the relevant Primary Finance Documents (other than the Senior Notes Documents) and the consent of any other Party shall not be required for that application.

#### **16.3 Release of a Debtor**

If a member of the Group ceases to be a Debtor in accordance with Clause 22.16 (*Resignation of a Debtor*), then the Security Agent is irrevocably authorised and obliged (at the cost of the relevant Debtor or the Parent and without any consent, sanction, authority or further confirmation from any Creditor or Debtor):

- (a) to release the Transaction Security or any other claim (relating to a Debt Document) over that Debtor's assets (and the assets of that Debtor's Subsidiaries where that Debtor has been designated an Unrestricted Subsidiary);
- (b) to release the Transaction Security or any other claim (relating to a Debt Document) over the shares in the capital of, and over any Financial Indebtedness owing by, that Debtor (and where that Debtor has been designated an Unrestricted Subsidiary, that Debtor's Subsidiaries);
- (c) to release that Debtor from its Guarantee Liabilities (and to release the Guarantee Liabilities of that Debtor's Subsidiaries where that Debtor has been designated an Unrestricted Subsidiary); and
- (d) to execute and deliver or enter into any release of the Transaction Security or any claim described in paragraphs (a), (b) and (c) 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 (acting reasonably), be considered necessary or desirable or as requested by the Parent.

#### **16.4 Permitted Reorganisations**

In circumstances where a Debtor is party to a Permitted Reorganisation, the Security Agent is irrevocably authorised and required (at the cost of the Parent and without any consent, sanction, authority or further confirmation from any Creditor, other Secured Party or Debtor), to the extent necessary for that Permitted Reorganisation to occur only:

- (a) to release that Debtor from its Guarantee Liabilities if that Debtor is the subject of a solvent winding-up or similar solvent process in connection with the Permitted Reorganisation; and

- (b) to release the Transaction Security over the shares in the capital of that Debtor or its assets,

provided that:

- (i) to the extent that replacement Transaction Security is required from the surviving entity under the terms of the Debt Documents, such Transaction Security will (subject to any requirements relating to the release, retaking, amendment or extension of the Transaction Security under the Debt Documents) be granted at the same time as (or before) the relevant Permitted Reorganisation is effected; and
- (ii) to the extent that replacement Transaction Security is required from the surviving entity under the terms of the Debt Documents, contemporaneously with such Permitted Reorganisation (followed by an immediate retaking of Security on substantially the same terms and ranking, save to the extent otherwise permitted by the Debt Documents), the Parent delivers to the Security Agent either:
  - (A) a solvency opinion from a Financial Advisor, in form and substance reasonably satisfactory to the Security Agent, confirming the solvency of that Debtor (or, if different, the surviving entity) and its Subsidiaries, taken as a whole, after giving effect to such Permitted Reorganisation and any transactions related to such release and retaking;
  - (B) a certificate from the board of directors or chief financial officer of that Debtor (or, if different, the surviving entity) (acting in good faith), which certificate confirms the solvency of that Debtor (or, if different, the surviving entity) granting such Transaction Security after giving effect to such Permitted Reorganisation and any transactions related to such release and retaking; or
  - (C) an opinion of counsel, in form and substance reasonably satisfactory to the Security Agent (subject to customary exceptions and qualifications), confirming that, after giving effect to such Permitted Reorganisation any transactions related to such release and retaking, the Transaction Security created under the Transaction Security Documents so released and retaken is valid and perfected Transaction Security not otherwise subject to any limitation imperfection or new hardening period, in equity or at law, that such Transaction Security was not otherwise subject to immediately prior to such release and retaking.

#### **16.5 Release of Swedish law Transaction Security Documents**

Notwithstanding any other provisions in any Debt Document, the release of any Transaction Security Document governed by Swedish law will always be subject to the prior written consent of the Security Agent, such consent to be granted at the Security Agent's sole discretion. Each Secured Party authorises the Security Agent to release such Transaction Security without notification or further reference to the Secured Parties.

## 17. DISTRESSED DISPOSALS

### 17.1 Facilitation of Distressed Disposals

Subject to Clause 17.3 (*Restriction on Enforcement – Primary Creditors*) and Clause 17.4 (*Senior Notes Liabilities*), if a Distressed Disposal is being effected, the Security Agent is irrevocably authorised and required (at the cost of the Parent) and without any consent, sanction, authority or further confirmation from any Creditor, other Secured Party or Debtor:

- (a) *Release of Transaction Security / non-crystallisation certificates:* to release the Transaction Security, or any other claim over the asset subject to the Distressed Disposal and execute and deliver or enter into any release of that Transaction Security, or claim and issue any letters of non-crystallisation of any floating charge or any consent to dealing that may, in the discretion of the Security Agent, be considered necessary or desirable;
- (b) *Release of liabilities and Transaction Security on a share sale (Debtor):* if the asset subject to the Distressed Disposal consists of shares in the capital of a Debtor, to release (or instruct to release):
  - (i) that Debtor and any Subsidiary of that Debtor from all or any part of:
    - (A) its Borrowing Liabilities (other than the Borrowing Liabilities of the Senior Secured Notes Issuer which are Senior Secured Notes Liabilities and the Borrowing Liabilities of the Pari Passu Debt Issuer which are Senior Secured Notes Liabilities);
    - (B) its Guarantee Liabilities; and
    - (C) its Other Liabilities;
  - (ii) any Transaction Security granted by the Holding Company of that Debtor over shares in the capital of that Debtor or by that Debtor or any Subsidiary of that Debtor over any of its assets; and
  - (iii) any other claim of another Debtor or Subordinated Creditor over that Debtor's assets or over the assets of any Subsidiary of that Debtor,on behalf of the relevant Creditors and Debtors;
- (c) *Release of liabilities and Transaction Security on a share sale (Holding Company):* if the asset subject to the Distressed Disposal consists of shares in the capital of any Holding Company of a Debtor, to release (or instruct to release):
  - (i) that Holding Company and any Subsidiary of that Holding Company from all or any part of:
    - (A) its Borrowing Liabilities (other than the Borrowing Liabilities of the Senior Secured Notes Issuer which are Senior Secured Liabilities and the Borrowing Liabilities of the Pari Passu Debt Issuer which are Senior Secured Notes Liabilities);
    - (B) its Guarantee Liabilities; and
    - (C) its Other Liabilities;

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

on behalf of the relevant Creditors and Debtors;

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

- (i) the Liabilities (other than the Borrowing Liabilities of the Senior Secured Notes Issuer which are Senior Secured Liabilities and the Borrowing Liabilities of the Pari Passu Debt Issuer which are Senior Secured Notes Liabilities); or
- (ii) the Debtors' Intra-Group Receivables,

owed by that Debtor or Holding Company or any Subsidiary of that Debtor or Holding Company on the basis that any transferee of those Liabilities or Debtors' Intra-Group Receivables (the "Transferee") will not be treated as a Primary 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 Primary Creditor or a Secured Party for the purposes of this Agreement;

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

- (i) the Liabilities (other than the Borrowing Liabilities of the Senior Secured Notes Issuer which are Senior Secured Liabilities and the Borrowing Liabilities of the Pari Passu Debt Issuer which are Senior Secured Notes Liabilities); or
- (ii) the Debtors' Intra-Group Receivables,

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

- (A) all (and not part only) of the Liabilities owed to the Primary Creditors (other than the Borrowing Liabilities of the Senior Secured Notes Issuer which are Senior Secured Liabilities and the Borrowing Liabilities of the Pari Passu Debt Issuer which are Senior Secured Notes Liabilities); and
- (B) all or part of any other Liabilities (other than the Borrowing Liabilities of the Senior Secured Notes Issuer which are Senior

Secured Liabilities and the Borrowing Liabilities of the Pari Passu Debt Issuer which are Senior Secured Notes Liabilities) and the Debtors' Intra-Group Receivables,

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

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

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

to execute and deliver or enter into any agreement to:

- (A) agree to the transfer of all or part of the obligations in respect of those Intra-Group Liabilities or Debtors' Intra-Group Receivables on behalf of the relevant Intra-Group Lenders and Debtors to which those obligations are owed and on behalf of the Debtors which owe those obligations; and
- (B) accept the transfer of all or part of the obligations in respect of those Intra-Group Liabilities or Debtors' Intra-Group Receivables on behalf of the Receiving Entity or Receiving Entities to which the obligations in respect of those Intra-Group Liabilities or Debtors' Intra-Group Receivables are to be transferred.

#### 17.2 **Proceeds of Distressed Disposals and Debt Disposals**

To the extent required by Clause 13 (*Turnover of receipts*), 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 19 (*Application of Proceeds*) and, to the extent that any Liabilities Sale has occurred, as if that Liabilities Sale had not occurred.

#### 17.3 **Restriction on Enforcement – Primary Creditors**

If a Distressed Disposal or a Debt Disposal is being effected, no Distressed Disposal or Debt Disposal may be made for consideration in a form other than cash except to the extent contemplated by the Security Enforcement Principles.

#### 17.4 **Senior Notes Liabilities**

If on or after the issuance of the Senior Notes, but before the Senior Notes Discharge Date, a Distressed Disposal is being effected such that the Senior Notes Guarantees Liabilities and/or any Senior Notes Proceeds On-Loan Liabilities and/or any Shared Transaction Security will be released under Clause 17.1 (*Facilitation of Distressed Disposals*), it is a further condition to the release that either:

- (a) the Senior Notes Trustee (acting on the instructions of the Senior Notes Required Holders) has approved the release; or
- (b) where shares or assets of a Senior Notes Guarantor are sold or disposed of:

- (i) the proceeds of such sale or disposal received are in cash (or substantially in cash);
- (ii) all Liabilities owed to the Secured Parties by that Senior Notes Guarantor whose shares are sold or disposed of pursuant to such Enforcement Action and each of its direct and indirect Subsidiaries, are unconditionally released and discharged or sold or disposed of concurrently with such sale or disposal (such sale or disposal being a "**Secured Liabilities Disposal**") (and the obligations of members of the Group in respect of such Liabilities are not assumed by the purchaser or one of its affiliates), and all Transaction Security under the Transaction Security Documents in respect of the assets that are sold or disposed of is simultaneously and unconditionally released and discharged concurrently with such sale or disposal, provided that, in the event of a Secured Liabilities Disposal, the aggregate cash proceeds of such Secured Liabilities Disposal together with the cash proceeds of the relevant share or asset sale or disposal are greater than if the relevant Liabilities had been released or discharged (as determined by the Instruction Group in good faith and as notified in writing to the Security Agent); and
- (iii) such sale or disposal (including any Secured Liabilities Disposal) is made:
  - (A) pursuant to a Public Auction; or
  - (B) where a Financial Adviser selected by the Security Agent has delivered an opinion in respect of such sale or disposal that the amount received in connection therewith is fair from a financial point of view taking into account all relevant circumstances including the method of enforcement provided that the liability of such Financial Adviser in giving such opinion may be limited to the amount of its fees in respect of such engagement.

#### 17.5 **Security Agent's actions**

For the purposes of Clause 17.1 (*Facilitation of Distressed Disposals*), the Security Agent shall act:

- (a) on the instructions of the Primary Creditors entitled at that time to give instructions under Clause 15.3 (*Instructions to enforce – Transaction Security*) or Clause 15.3 (*Instructions to enforce – Transaction Security*); or
- (b) in the absence of any such instructions, as the Security Agent sees fit.

#### 17.6 **Appointment of Financial Adviser**

Without prejudice to Clause 21.12 (*Rights and discretions*), the Security Agent may engage or approve the engagement of (in each case on such terms as it may consider appropriate (including, without limitation, restrictions on that Financial Adviser's liability and the extent to which any advice, valuation or opinion may be relied on or disclosed)), pay for and rely on the services of a Financial Adviser to provide advice, a valuation or an opinion in connection with:

- (a) a Distressed Disposal or a Debt Disposal; or
- (b) the application or distribution of any proceeds of a Distressed Disposal or a Debt Disposal.

## 18. FURTHER ASSURANCE – DISPOSALS AND RELEASES

Each Creditor and Debtor will:

- (a) do all things that the Security Agent requests in order to give effect to Clause 16 (*Non-Distressed Disposals*) and Clause 17 (*Distressed Disposals*) (which shall include, without limitation, the execution of any assignments, assignments, transfers, releases or other documents that the Security Agent may consider to be necessary to give effect to the releases or disposals contemplated by those Clauses); and
- (b) if the Security Agent is not entitled to take any of the actions contemplated by those Clauses or if the Security Agent requests that any Creditor or Debtor take any such action, take that action itself in accordance with the instructions of the Security Agent,

provided that the proceeds of those disposals are applied in accordance with Clause 16 (*Non-Distressed Disposals*) or Clause 17 (*Distressed Disposals*) as the case may be.

## 19. APPLICATION OF PROCEEDS

### 19.1 Order of application

- (a) Subject to Clause 19.2 (*Prospective liabilities*) and Clause 19.3 (*Treatment of Credit Facility Cash Cover and Credit Facility Lender Cash Collateral*), all amounts from time to time received or recovered by the Security Agent in connection with the realisation or Enforcement of all or any part of the Transaction Security (other than the Shared Transaction Security) or otherwise paid to the Security Agent for application pursuant to this paragraph (a) (for the purposes of this paragraph (a), 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 19 (*Application of Proceeds*)), in the following order of priority:
  - (i) **first**, *pari passu* and pro rata, in payment of any sums owing to the Security Agent, any Receiver or any Delegate, in payment of any Senior Secured Notes Trustee Amounts payable to the Senior Secured Notes Trustee, any Pari Passu Notes Trustee Amounts payable to any Pari Passu Debt Representative representing Pari Passu Noteholders and any Senior Notes Trustee Amounts payable to any Senior Notes Trustee and in payment to each Creditor Representative (to the extent not included in any of the foregoing and excluding, for the avoidance of doubt, any Hedge Counterparty as its own Creditor Representative) of the Creditor Representative Amounts;
  - (ii) **second**, *pari passu* and pro rata, in or towards payment of all costs and expenses incurred by the Primary Creditors in connection with any realisation or enforcement of the Transaction Security taken in accordance with the terms of this Agreement or any Distressed Disposal or any action taken at the request of the Security Agent;
  - (iii) **third**, in or towards payment to:
    - (A) the Credit Facility Agent(s) on behalf of the Arrangers and the Credit Facility Lenders; and
    - (B) each Super Senior Hedge Counterparty,



for application towards the discharge of:

- (I) the Arranger Liabilities and the Credit Facility Liabilities in accordance with the terms of the Credit Facility Documents; and
- (II) the Super Senior Hedging Liabilities (on a *pari passu* and pro rata basis between the Super Senior Hedging Liabilities of each Super Senior Hedge Counterparty (for the avoidance of doubt, the aggregate amount paid to the Super Senior Hedge Counterparties under this provision shall not exceed the sum of (x) the Short Term Operational FX Hedging Liabilities, (y) the Priority Long Term Operational FX Hedging Liabilities and (z) Debt Related Hedging Liabilities)).

on a *pari passu* and pro rata basis as between paragraphs (I) and (II) above.

(iv) **fourth**, in or towards payment to:

- (A) the Senior Secured Notes Trustee on behalf of the Senior Secured Noteholders;
- (B) each Pari Passu Debt Representative on behalf of the respective Pari Passu Creditors; and
- (C) each Non-Super Senior Hedge Counterparty,

for application towards the discharge of:

- (I) the Senior Secured Notes Liabilities (in accordance with the Senior Secured Notes Indenture);
- (II) the Pari Passu Debt (in accordance with the relevant Pari Passu Debt Documents) (on a *pari passu* and pro rata basis between the Pari Passu Debt of each Pari Passu Creditor); and
- (III) the Non-Super Senior Hedging Liabilities (on a *pari passu* and pro rata basis between the Non-Super Senior Hedging Liabilities of each Non Super Senior Hedge Counterparty),

on a *pari passu* and pro rata basis as between paragraphs (I), (II) and (III) above;

- (v) **fifth**, in or towards payment to the Senior Notes Trustee on behalf of the Senior Notes Creditors for application towards the discharge of the Senior Notes Liabilities (in accordance with the Senior Notes Documents); and
- (vi) **sixth**, after the Final Discharge Date, in payment or distribution to any person to whom the Security Agent is obliged to pay or distribute in priority to any Debtor; and
- (i) **seventh**, the balance (if any) in payment or distribution to the relevant Debtor.

(b) Subject to Clause 19.2 (*Prospective liabilities*), all amounts from time to time received or recovered by the Security Agent in connection with the realisation or

Enforcement of all or any part of the Shared Transaction Security or otherwise paid to the Security Agent (as the case may be) for application pursuant to this paragraph (b) (for the purposes of this paragraph, the "**Shared 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 19 (*Application of Proceeds*)), in the following order of priority:

(i) **first**, *pari passu* and pro rata, in payment of any sums owing to the Security Agent, any Receiver or any Delegate, in payment of any Senior Secured Notes Trustee Amounts payable to the Senior Secured Notes Trustee, any Pari Passu Notes Trustee Amounts payable to any Pari Passu Debt Representative representing Pari Passu Noteholders and any Senior Notes Trustee Amounts payable to any Senior Notes Trustee and in payment to each Creditor Representative (to the extent not included in any of the foregoing and excluding, for the avoidance of doubt, any Hedge Counterparty as its own Creditor Representative) of the Creditor Representative Amounts;

(ii) **second**, *pari passu* and pro rata, in or towards payment of all costs and expenses incurred by the Primary Creditors in connection with any realisation or enforcement of the Transaction Security taken in accordance with the terms of this Agreement or any Distressed Disposal or any action taken at the request of the Security Agent;

(iii) **third**, in or towards payment to:

(A) the Credit Facility Agent(s) on behalf of the Arrangers and the Credit Facility Lenders; and

(B) each Super Senior Hedge Counterparty,

for application towards the discharge of:

(I) the Arranger Liabilities and the Credit Facility Liabilities in accordance with the terms of the Credit Facility Documents; and

(II) the Super Senior Hedging Liabilities (on a *pari passu* and pro rata basis between the Super Senior Hedging Liabilities of each Super Senior Hedge Counterparty (for the avoidance of doubt, the aggregate amount paid to the Super Senior Hedge Counterparties under this provision shall not exceed the sum of (x) the Short Term Operational FX Hedging Liabilities, (y) the Priority Long Term Operational FX Hedging Liabilities and (z) Debt Related Hedging Liabilities)).

on a *pari passu* and pro rata basis as between paragraphs (I) and (II) above.

(iv) **fourth**, in or towards payment to:

(A) the Senior Secured Notes Trustee on behalf of the Senior Secured Noteholders;

(B) each Pari Passu Debt Representative on behalf of the respective Pari Passu Creditors; and

(C) each Non-Super Senior Hedge Counterparty,

for application towards the discharge of:

- (I) the Senior Secured Notes Liabilities (in accordance with the Senior Secured Notes Indenture);
- (II) the Pari Passu Debt (in accordance with the relevant Pari Passu Debt Documents) (on a *pari passu* and pro rata basis between the Pari Passu Debt of each Pari Passu Creditor); and
- (III) the Non-Super Senior Hedging Liabilities (on a *pari passu* and pro rata basis between the Non-Super Senior Hedging Liabilities of each Non Super Senior Hedge Counterparty),

on a *pari passu* and pro rata basis as between paragraphs (I), (II) and (III) above;

- (v) **fifth**, in or towards payment to the Senior Notes Trustee on behalf of the Senior Notes Creditors for application towards the discharge of the Senior Notes Liabilities (in accordance with the Senior Notes Documents); and
- (vi) **sixth**, after the Final Discharge Date, in payment or distribution to any person to whom the Security Agent is obliged to pay or distribute in priority to any Debtor; and
- (ii) **seventh**, the balance (if any) in payment or distribution to the relevant Debtor.

## 19.2 Prospective liabilities

Following a Distress Event, the Security Agent may, in its discretion, hold any amount of the Recoveries or the Shared Recoveries in one or more interest bearing suspense or impersonal account(s) in the name of the Security Agent with one of the Credit Facility Lenders (or itself or any other financial institution it deems fit) and for so long as the Security Agent (in its sole discretion) deems appropriate until otherwise directed by the Instructing Group (under paragraph (b) of that definition, or, after the Secured Debt Discharge Date, the Senior Notes Required Holders) (the interest being credited to the relevant account) for later application under Clause 19.1 (*Order of application*) in respect of:

- (a) any sum to the Security Agent, any Receiver or any Delegate; and
- (b) any part of the Liabilities (including, for the avoidance of doubt, the Arranger Liabilities) or the Creditor Representative Amounts,

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

## 19.3 Treatment of Credit Facility Cash Cover and Credit Facility Lender Cash Collateral

- (a) Nothing in this Agreement shall prevent any Issuing Bank or Ancillary Lender taking any Enforcement Action in respect of any Credit Facility Cash Cover which has been provided for it in accordance with the Credit Facility Documents or Pari Passu Debt Documents, as relevant.
- (b) To the extent that any Credit Facility 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 Credit Facility 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 and Relevant Ancillary Lender towards the discharge of the Credit Facility Liabilities or Pari Passu Debt, as relevant, for which that Credit Facility Cash Cover was provided; and
  - (ii) the balance, if any, in accordance with Clause 19.1 (*Order of application*).
- (c) To the extent that any Credit Facility 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 Credit Facility Cash Cover.
- (d) Nothing in this Agreement shall prevent any Issuing Bank receiving and retaining any amount in respect of any Credit Facility Lender Cash Collateral provided for it in accordance with the terms of the Credit Facility Documents or Pari Passu Debt Documents, as relevant.

#### **19.4 Investment of proceeds**

Prior to the application of the proceeds of the Security Property in accordance with Clause 19.1 (*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 until otherwise directed by the Instructing Group (under paragraph (b) of that definition) (the interest being credited to the relevant account) pending the application from time to time of those monies in the Security Agent's discretion in accordance with the provisions of this Clause 19.

#### **19.5 Currency conversion**

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

#### **19.6 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 or

regulation to make from any distribution or payment made by it under this Agreement, and to pay all Taxes which may be assessed against it in respect of any of the Charged Property, or as a consequence of performing its duties, or 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).

#### **19.7 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 Creditor Representatives on behalf of the Creditors that it represents;
  - (ii) may be made to the Relevant Issuing Bank or Relevant Ancillary Lender in accordance with paragraph (b)(i) of Clause 19.3 (*Treatment of Credit Facility Cash Cover and Credit Facility Lender Cash Collateral*); or
  - (iii) shall be made directly to the Hedge Counterparties,and any payment made in that way shall be a good discharge, to the extent of that payment, by the Security Agent.
- (b) The Security Agent is under no obligation to make the payments to the Creditor Representatives or the Hedge Counterparties under paragraph (a) of this Clause 19.7 in the same currency as that in which the Liabilities owing to the relevant Creditor are denominated pursuant to the relevant Debt Document.

#### **19.8 Calculation of Amounts**

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

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

### **20. EQUALISATION**

#### **20.1 Equalisation Definitions**

For the purposes of this Clause 20:

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

#### **20.2 Implementation of equalisation**

The provisions of this Clause 20 (*Equalisation*) shall be applied at such time or times after the Enforcement Date as the Security Agent shall consider appropriate. Without prejudice to

the generality of the preceding sentence, if the provisions of this Clause 20 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 Super Senior Credit Participations and the Super Senior Creditors shall make appropriate adjustment payments amongst themselves.

### 20.3 Equalisation

If, for any reason, any Super Senior Liabilities remain unpaid after the Enforcement Date and after the application of Recoveries and the Shared Recoveries, each as defined in, and in accordance with Clause 19.1 (*Order of application*) and the resulting losses are not borne by the Super Senior Creditors in the proportions which their respective exposures at the Enforcement Date bore to the aggregate Super Senior Credit Participations of all Super Senior Creditors at the Enforcement Date, the Super Senior Creditors will make such payments, from such Recoveries and Shared Recoveries (each as defined in Clause 19.1 (*Order of application*)) actually applied, amongst themselves as the Security Agent shall require to put the Super Senior Creditors in such a position that (after taking into account such payments) those losses are borne in those proportions.

### 20.4 Turnover of Enforcement Proceeds

If:

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

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

### 20.5 Notification of exposure

Before each occasion on which it intends to implement the provisions of this Clause 20 (*Equalisation*), the Security Agent shall send notice to, amongst others, the RCF Agent (on behalf of the RCF Finance Parties), the relevant Creditor Representative (on behalf of any other Super Senior Creditor) and each Hedge Counterparty requesting that it notify it of, respectively, its exposure and that of each Super Senior Creditor (if any).

### 20.6 Default in payment

If a Creditor fails to make a payment due from it under this Clause 20 (*Equalisation*), the Security Agent shall be entitled (but not obliged) to take action on behalf of the Super Senior Creditor(s) to whom such payment was to be redistributed (subject to being indemnified to its satisfaction by such Super Senior Creditor(s) in respect of costs) but shall have no liability or obligation towards such Super Senior Creditor(s), any other Super Senior Creditor or Creditor as regards such default in payment and any loss suffered as a result of such default shall lie where it falls.

## 21. THE SECURITY AGENT

### 21.1 Appointment by Secured Parties

- (a) Each of the Secured Parties (and in respect of the Shared Transaction Security, each of the Secured Parties and the Senior Notes Creditors) (other than the Security Agent) irrevocably appoints the Security Agent in accordance with the following provisions of this Clause 21 to act (as the case may be) as its agent or trustee with respect to, or as a beneficiary of, the Parallel Debt Obligations and the Transaction Security Documents, and irrevocably authorises the Security Agent on its behalf to:
  - (i) execute each Transaction Security Document expressed to be executed by the Security Agent; and
  - (ii) perform such duties and exercise such rights and powers under this Agreement and the Transaction Security Documents as are specifically delegated to the Security Agent by the terms thereof, together with such rights, powers and discretions as are reasonably incidental thereto including enforcing the Transaction Security in accordance with the terms of this Agreement and the relevant Transaction Security Document.
- (b) Each Secured Party which becomes a party to any Debt Document ratifies and approves all acts and declarations previously done by the Security Agent on such Secured Party's behalf.
- (c) The Security Agent is released from any applicable restrictions on entering into any transaction as a representative of:
  - (i) two or more principals contracting with each other; and
  - (ii) one or more principals with whom it is contracting in its own name.

### 21.2 Security Agent as trustee

- (a) Without prejudice to Clause 21.3 (*Transaction Security governed by German law*), Clause 21.4 (*Swiss Security Documents*) and Clause 21.5 (*French Security*), the Security Agent declares that it shall hold the Security Property on trust for the Secured Parties (and in respect of the Shared Transaction Security, the Secured Parties and the Senior Notes Creditors) on the terms contained in this Agreement (in relation to any Transaction Security governed by Swedish law, the Parties acknowledge and agree that the relationship of the Secured Parties to the Security Agent shall be construed as one of principal and agent).
- (b) Each of the Primary Creditors authorises the Security Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Security Agent under or in connection with the Debt Documents together with any other incidental rights, powers, authorities and discretions.

### 21.3 Transaction Security governed by German Law

- (a) The Security Agent shall:
  - (i) with respect to any Transaction Security Document governed by German law (a "**German Security Document**") creating or evidencing a non-accessory security right (*nicht-akzessorische Sicherheit*) hold, administer and realise any Transaction Security which is or will be assigned or otherwise

transferred or mortgaged to it as security (*Sicherungsabtretung/ Sicherungsübereignung/ Grundschuld*) as trustee for the benefit of the Secured Parties;

- (ii) with respect to any German Security Document creating or evidencing an accessory security right (*akzessorische Sicherheit*) hold (in its own name and on its own behalf in its capacity as creditor of the Parallel Debt Obligations), administer and realise (in its own name and on its own behalf and/or in the name, and on behalf, of any other Secured Parties being a party to such German Security Document) any Transaction Security which is or will be pledged (*Verpfändung*) or otherwise charged or encumbered to it as the creditor of the Parallel Debt Obligations or any other Secured Parties; and
  - (iii) act in relation to such Transaction Security in accordance with the terms of the Facilities Agreement, this Agreement and the German Security Documents.
- (b) Each Secured Party hereby authorises the Security Agent (whether or not by or through employees or agents) to:
  - (i) accept (including preparation, execution and perfection) as its representative any pledge (*Pfandrecht*) or other creation of any accessory security right (*akzessorische Sicherheit*) made to such Secured Party in relation to this Agreement and the Debt Documents and to act and execute on its behalf as its representative, subject to the terms of this Agreement, amendments or releases of, accessions and alterations to, and to carry out similar dealings with regard to any German Security Document which creates a pledge (*Pfandrecht*) or any other accessory security right (*akzessorische Sicherheit*);
  - (ii) execute (on its own behalf and on behalf of each of the other Secured Parties) without the need for any further referral to, or authority from, any other person all necessary releases or confirmations of any German law Transaction Security which is permitted under the Security Documents and/or the German Security Documents or consented to or agreed upon in accordance with this Agreement and the other Debt Documents;
  - (iii) to exercise such other rights, remedies, powers and discretions as are specifically delegated to or conferred upon the Security Agent under the German Security Documents together with such powers and discretions as are reasonably incidental thereto;
  - (iv) make and receive all declarations and statements which are necessary in connection with the German Security Documents or the Transaction Security created thereunder; and
  - (v) to take such actions or measures as may from time to time be authorised under or in accordance with the German Security Documents and the other Debt Documents.
- (c) Each Secured Party which becomes a party to any Debt Document ratifies and approves all acts and declarations previously done by the Security Agent on such Secured Party's behalf (including, for the avoidance of doubt, the declarations made by the Security Agent as representative without power of attorney (*Vertreter ohne Vertretungsmacht*)) in relation to the creation of any pledge (*Pfandrecht*) or any other accessory security right (*akzessorische Sicherheit*) on behalf and for the benefit of any Secured Party.



#### 21.4 Swiss Security Documents

In relation to the Transaction Security Documents governed by the laws of Switzerland (the "**Swiss Security Documents**");

- (a) the Security Agent holds:
  - (i) any security created or evidenced or expressed to be created or evidenced under or pursuant to a Swiss Security Document by way of a security assignment (*Sicherungsabtretung*) or transfer for security purposes (*Sicherungsübereignung*) or any other non-accessory (*nicht akzessorische*) security;
  - (ii) the benefit of this paragraph; and
  - (iii) any proceeds and other benefits of such Security,

as fiduciary (*treuhänderisch*) in its own name but for the account of all relevant Secured Parties which have the benefit of such security in accordance with this Agreement and the respective Swiss Security Document;

- (b) each present and future Secured Party hereby authorises the Security Agent:
  - (i) to (A) accept and execute as its direct representative (*direkter Stellvertreter*) any Swiss law pledge or any other Swiss law accessory (*akzessorische*) security created or evidenced or expressed to be created or evidenced under or pursuant to a Swiss Security Document for the benefit of such Secured Party and (B) hold, administer and, if necessary, enforce any such Security on behalf of each relevant Secured Party which has the benefit of such Security;
  - (ii) to agree as its direct representative (*direkter Stellvertreter*) to amendments and alterations to any Swiss Security Document which creates or evidences or expressed to create or evidence a pledge or any other Swiss law accessory (*akzessorische*) Security;
  - (iii) to effect as its direct representative (*direkter Stellvertreter*) any release of a Security created or evidenced or expressed to be created or evidenced under a Swiss Security Document in accordance with this Agreement; and
  - (iv) to exercise as its direct representative (*direkter Stellvertreter*) such other rights granted to the Security Agent hereunder or under the relevant Swiss Security Document;
- (c) each present and future Secured Party hereby authorises the Security Agent, when acting in its capacity as creditor of the Parallel Debt Obligations (as defined in 21.6(a) (*Parallel Debt*)), to hold:
  - (i) any Swiss law pledge or any other Swiss law accessory (*akzessorische*) Security;
  - (ii) any proceeds of such Security; and
  - (iii) the benefit of the Parallel Debt Obligations,

as creditor in its own right but for the benefit of such Secured Parties in accordance with this Agreement.

#### 21.5 French Security

The Security Agent is hereby appointed as agent (*mandataire*) of each of the Secured Parties (and in respect of the Shared Transaction Security, each of the Secured Parties and the Senior Notes Creditors) (other than the Security Agent) pursuant to articles 1984 *et seq.* of the French *Code civil*, in order to represent and act on behalf of each of them for any actions required or advisable in connection with the entry into, performance, management and foreclosure of, and in respect of any dispute arising from or in connection with, any Security created pursuant to any Transaction Security Document (including any Shared Transaction Security) governed by French law.

#### 21.6 Parallel Debt

(a) In this Clause:

**"Principal Obligations"** means any amount which a Debtor owes to a Secured Party (and in respect of the Shared Transaction Security, each of the Secured Parties and the Senior Notes Creditors) under or in connection with the Primary Finance Documents

**"Parallel Debt Obligations"** means any amount which a Debtor owes to the Security Agent under this Clause.

(b) Each Debtor irrevocably and unconditionally undertakes to pay to the Security Agent amounts equal to, and in the currency or currencies of, its Principal Obligations.

(c) The Parallel Debt Obligations of each Debtor:

(i) shall become due and payable at the same time as its Principal Obligations; and

(ii) are independent and separate from, and without prejudice to, its Principal Obligations.

(d) Each of the Debtors and each Secured Party (and in respect of the Shared Transaction Security, each Secured Party and each Senior Notes Creditor) (other than the Security Agent) acknowledges that:

(i) the Security Agent is the independent and separate creditor of the Parallel Debt Obligations;

(ii) the right of the Security Agent to demand payment of the Parallel Debt Obligations in its own name shall be independent, separate and several from, and shall not in any way limit or affect, the rights of the other Secured Parties (and in respect of the Shared Transaction Security, the other Secured Parties and Senior Notes Creditors) to demand payment of the Principal Obligations;

(iii) the Parallel Debt Obligations shall not be limited or affected in any way by the corresponding Principal Obligations provided that (i) the Parallel Debt Obligations of a Debtor shall be (a) decreased to the extent that its Principal Obligations have been irrevocably and unconditionally paid or discharged, and (b) increased to the extent that its Principal Obligations have increased, and the Principal Obligations of a Debtor shall be (x) decreased to the extent

that its Parallel Debt Obligations have been irrevocably and unconditionally paid or discharged, and (y) increased to the extent that its Parallel Debt Obligations have increased, in each case (ii) provided that the Parallel Debt Obligations of a Debtor shall never exceed its Principal Obligations and (iii) provided further that no Principal Obligation shall be discharged by a discharge of the Parallel Debt Obligations if such discharge of the Parallel Debt Obligations is effected by virtue of any set-off, counterclaim or similar defence invoked by a Debtor vis-à-vis the Security Agent other than in accordance with the terms of the Primary Finance Documents.

- (e) Without limiting or affecting the Security Agent's rights against any Debtor (whether under this Clause 21.6 or under any provision of the Primary Finance Documents):
  - (i) the Security Agent agrees with each other Secured Party (and in respect of the Shared Transaction Security, each other Secured Party and Senior Notes Creditor) (on a several and divided basis) that it will not exercise its rights under the Parallel Debt Obligations in respect of the Principal Obligations owing to a Secured Party (and in respect of the Shared Transaction Security, a Secured Party or a Senior Notes Creditor) except with the consent of the Instructing Group or after the Super Senior Discharge Date and the Senior Secured Discharge Date any and each Senior Notes Trustee. However, for the avoidance of doubt, nothing in the previous sentence shall in any way limit the Security Agent's right to act in the protection or preservation of rights under any Transaction Security Document or to enforce any Transaction Security as contemplated by this Agreement, the relevant Transaction Security Document or any other Primary Finance Document (or to do any act reasonably incidental to the foregoing);
  - (ii) each Debtor acknowledges that (x) nothing in this Clause 21.6 shall impose any obligation on the Security Agent to advance any sum to any Debtor or otherwise under any Primary Finance Document, except in its capacity as a Secured Party (if applicable and other than the Security Agent) under any Primary Finance Document in accordance with the terms thereof, and (y) for the purpose of any vote taken under any Primary Finance Document, the Security Agent shall not be regarded as having any participation or commitment other than those which it has in its capacity as a Secured Party (if applicable and other than the Security Agent) under any Primary Finance Document in accordance with the terms thereof.
- (f) The Security Agent acts in its own name and not as agent, representative or trustee of the Secured Parties (and in respect of the Shared Transaction Security, each of the other Secured Parties and Senior Notes Creditors), and its claims in respect of the Parallel Debt Obligations shall not be held on trust. The Transaction Security granted under the Primary Finance Documents to the Security Agent to secure the Parallel Debt Obligations is granted to the Security Agent in its capacity as creditor of the Parallel Debt Obligations and shall not be held on trust.

## **21.7 Instructions**

- (a) The Security Agent shall:
  - (i) subject to paragraphs (d) and (e) below, exercise or refrain from exercising any right, power, authority or discretion vested in it as Security Agent in accordance with any instructions given to it by the Instructing Group (or, if this Agreement stipulates that the matter is a decision for any other Creditor or group of Creditors, from that Creditor or group of Creditors); and

- (ii) not be liable for any act (or omission) if it acts (or refrains from acting) in accordance with paragraph (i) above (or, if this Agreement stipulates the matter is a decision for any other Creditor or group of Creditors, in accordance with instructions given to it by that Creditor or group of Creditors).
- (b) The Security Agent shall be entitled to request instructions, or clarification of any instruction, from the Instructing Group (or, if this Agreement stipulates the matter is a decision for any other Creditor or group of Creditors, from that Creditor or group of Creditors) as to whether, and in what manner, it should exercise or refrain from exercising any right, power, authority or discretion or respond to any request for it to undertake duties of an exceptional nature or outside the scope of its normal duties under the Debt Documents and the Security Agent may refrain from acting unless and until it receives those instructions or that clarification.
- (c) Save in the case of decisions stipulated to be a matter for any other Creditor or group of Creditors under this Agreement and unless a contrary intention appears in this Agreement, any instructions given to the Security Agent by the Instructing Group (or, if this Agreement stipulates that the matter is a decision for any other Creditor or group of Creditors, from that Creditor or group of Creditors) shall override any conflicting instructions given by any other Parties and will be binding on all Secured Parties (and in respect of the Shared Transaction Security, the Secured Parties and the Senior Notes Creditors).
- (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, Clauses 21.10 (*No duty to account*) to Clause 21.16 (*Exclusion of liability*), Clause 21.19 (*Confidentiality*) to Clause 21.26 (*Custodians and nominees*) and Clause 21.29 (*Acceptance of title*) to Clause 21.32 (*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 7.13 (*Priority Long Term Operational FX Hedging Liabilities*);
    - (B) Clause 16 (*Non-Distressed Disposals*);
    - (C) Clause 17.6 (*Appointment of Financial Adviser*);
    - (D) Clause 19.1 (*Order of application*);
    - (E) Clause 19.2 (*Prospective liabilities*);
    - (F) Clause 19.3 (*Treatment of Credit Facility Cash Cover and Credit and Credit Facility Lender Cash Collateral*); and
    - (G) Clause 19.6 (*Permitted deductions*); and

- (v) in respect of the exercise of the Security Agent's discretion as to whether it chooses to undertake duties that fall outside the scope of its normal duties under the Debt Documents.
- (e) If giving effect to instructions given by the Instructing Group or any Creditor or group of Creditor entitled to give instructions hereunder would (in the Security Agent's opinion) have an effect equivalent to an Intercreditor Amendment, the Security Agent shall not act in accordance with those instructions unless consent to it so acting is obtained from each Party (other than the Security Agent) whose consent would have been required in respect of that Intercreditor Amendment.
- (f) In exercising any discretion to exercise a right, power or authority under the Debt Documents where either:
  - (i) it has not received any instructions as to the exercise of that discretion; or
  - (ii) the exercise of that discretion is subject to paragraph (d)(iv) above,
 the Security Agent shall do so having regard to the interests of all the Secured Parties (and in respect of the Shared Transaction Security, all the Secured Parties and the Senior Notes Creditors).
- (g) The Security Agent may refrain from acting in accordance with any instructions of any Creditor or group of Creditors or undertaking any duties that fall outside the scope of its normal duties under the Debt Documents 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 complying with those instructions.
- (h) Without prejudice to the provisions of Clause 15 (*Enforcement of Transaction Security*) and the remainder of this Clause 21.7, in the absence of instructions or if the Security Agent considers that by complying with any instructions that it has received it would be reasonably likely to breach any of its duties, the Security Agent may act (or refrain from acting) as it considers in its discretion to be appropriate.

#### **21.8 Duties of the Security Agent**

- (a) The Security Agent's duties under the Debt Documents are solely mechanical and administrative in nature.
- (b) The Security Agent shall promptly:
  - (i) forward to each Creditor Representative and to each Hedge Counterparty a copy of any document received by the Security Agent from any Debtor under any Debt Document; and
  - (ii) forward to a Party the original or a copy of any document which is delivered to the Security Agent for that Party by any other Party.
- (c) Except where a Debt Document specifically provides otherwise, the Security Agent is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party.
- (d) Without prejudice to Clause 27.3 (*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 Primary Creditors.

- (e) To the extent that a Party (other than the Security Agent) is required to calculate a Base Currency Amount, the Security Agent shall upon a request by that Party, promptly notify that Party of the relevant Security Agent's Spot Rate of Exchange.
- (f) The Security Agent shall have only those duties, obligations and responsibilities expressly specified in the Debt Documents to which it is expressed to be a party (and no others shall be implied).

**21.9 No fiduciary duties to Debtors or Subordinated Creditors**

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

**21.10 No duty to account**

The Security Agent shall not be bound to account to any other Secured Party (or in respect of the Shared Transaction Security any other Secured Party or Senior Notes Creditor) for any sum or the profit element of any sum received by it for its own account.

**21.11 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.

**21.12 Rights and discretions**

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

as sufficient evidence that that is the case and, in the case of paragraph (A) above, may assume the truth and accuracy of that certificate.

- (b) The Security Agent may assume (unless it has received notice to the contrary in its capacity as security trustee for the Secured Parties (or as security trustee for the Secured Parties and Senior Notes Creditors in respect of the Shared Transaction Security)) that:
  - (i) no Default has occurred;
  - (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 Primary Creditor) if the Security Agent in its reasonable opinion deems this to be desirable.
- (e) The Security Agent may rely on the advice or services of any lawyers, accountants, tax advisers, surveyors or other professional advisers or experts (whether obtained by the Security Agent or by any other Party) and shall not be liable for any damages, costs or losses to any person, any diminution in value or any liability whatsoever arising as a result of its so relying.
- (f) The Security Agent, any Receiver and any Delegate may act in relation to the Debt Documents and the Security Property through its officers, employees and agents and shall not:
  - (i) be liable for any error of judgment made by any such person; or
  - (ii) be bound to supervise, or be in any way responsible for any loss incurred by reason of misconduct, omission or default on the part of any such person,
 unless such error or such loss was directly caused by the Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct.
- (g) Unless this Agreement expressly specifies otherwise, the Security Agent may disclose to any other Party any information it reasonably believes it has received as security trustee under this Agreement.
- (h) Notwithstanding any other provision of any Debt Document to the contrary, the Security Agent is not obliged to do or omit to do anything if it would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.
- (i) Notwithstanding any provision of any Debt Document to the contrary, the Security Agent is not obliged to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties, obligations or responsibilities or the exercise of any right, power, authority or discretion if it has grounds for believing the repayment of such funds or adequate indemnity against, or security for, such risk or liability is not reasonably assured to it.

#### **21.13 Spanish Transaction Security Documents**

Without prejudice to Clause 21.1, each of the Secured Parties appoints the Security Agent as its agent and representative in relation to any Transaction Security Documents subject to Spanish law and hereby authorises and grants a power of attorney in favour of the Security Agent to:

- (a) execute and notarise before a Spanish public notary in its name and on its behalf any Transaction Security Documents subject to Spanish law, including in particular pledges over shares, bank accounts or other credit rights;
- (b) execute any document expressed to be executed by the Security Agent;
- (c) perform the duties, obligations and responsibilities and exercise the rights, powers, authorities and discretions granted to the Security Agent together with any incidental rights, powers, authorities and discretions;
- (d) enforce the Transaction Security Documents subject to Spanish law in accordance with this Agreement and the relevant Transaction Security Document; and
- (e) appoint in accordance with this Agreement, attorneys or representatives in Spain to exercise any rights, powers, authorities and discretions granted to the Security Agent under this Agreement or other Debt Document.

#### **21.14 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; or
- (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.

#### **21.15 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.

#### **21.16 Exclusion of liability**

- (a) Without limiting paragraph (b) below (and without prejudice to any other provision of any Debt Document excluding or limiting the liability of the Security Agent, any Receiver or Delegate), none of the Security Agent, any Receiver nor any Delegate will be liable for:



- (i) any damages, costs or losses to any person, any diminution in value, or any liability whatsoever arising as a result of taking or not taking any action under or in connection with any Debt Document or the Security Property unless directly caused by its gross negligence or wilful misconduct;
- (ii) exercising or not exercising any right, power, authority or discretion given to it by, or in connection with, any Debt Document, the Security Property or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Debt Document or the Security Property;
- (iii) any shortfall which arises on the enforcement or realisation of the Security Property; or
- (iv) without prejudice to the generality of paragraphs (i) to (iii) above, any damages, costs, losses, any diminution in value or any liability whatsoever arising as a result of:
  - (A) any act, event or circumstance not reasonably within its control; or
  - (B) the general risks of investment in, or the holding of assets in, any jurisdiction,

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

- (b) No Party (other than the Security Agent, that Receiver or that Delegate (as applicable)) may take any proceedings against any officer, employee or agent of the Security Agent, a Receiver or a Delegate in respect of any claim it might have against the Security Agent, a Receiver or a Delegate or in respect of any act or omission of any kind by that officer, employee or agent in relation to any Debt Document or any Security Property and any officer, employee or agent of the Security Agent, a Receiver or a Delegate may rely on this Clause subject to Clause 1.6 (*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 Primary Creditor,

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

- (d) Without prejudice to any provision of any Debt Document excluding or limiting the liability of the Security Agent, any Receiver or Delegate, any liability of the Security Agent, any Receiver or Delegate arising under or in connection with any Debt Document or the Security Property shall be limited to the amount of actual loss which has been finally judicially determined to have been suffered (as determined by

reference to the date of default of the Security Agent, Receiver or Delegate (as the case may be) or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Security Agent, Receiver or Delegate (as the case may be) at any time which increase the amount of that loss. In no event shall the Security Agent, any Receiver or Delegate be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Security Agent, Receiver or Delegate (as the case may be) has been advised of the possibility of such loss or damages.

#### **21.17 Primary Creditors' indemnity to the Security Agent**

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

that amount, in each case as calculated in accordance with the relevant Hedging Agreement.

- (c) Subject to paragraph (d) below, the Parent shall immediately on demand reimburse any Primary Creditor for any payment that Primary Creditor makes to the Security Agent pursuant to paragraph (a) above.

- (d) Paragraph (c) above shall not apply to the extent that the indemnity payment in respect of which the Primary Creditor claims reimbursement relates to a liability of the Security Agent to a Debtor.

#### **21.18 Resignation of the Security Agent**

- (a) The Security Agent may resign and appoint one of its Affiliates as successor by giving notice to the Creditor Representatives and the Parent.
- (b) Alternatively the Security Agent may resign by giving 30 days' notice to the Creditor Representatives and the Parent, in which case the Instructing Group or if after the Super Senior Discharge Date and the Senior Secured Discharge Date, a Senior Notes Trustee may appoint a successor Security Agent.
- (c) If the Instructing Group or a Senior Notes Trustee has not appointed a successor Security Agent in accordance with paragraph (b) above within 20 days after notice of resignation was given, the retiring Security Agent (after consultation with the Creditor Representatives and the Parent) may appoint a successor Security Agent.
- (d) If the Security Agent wishes to resign because (acting reasonably) it has concluded that it is no longer appropriate for it to remain as security agent and the Security Agent is entitled to appoint a successor Security Agent under paragraph (c) above, the Security Agent may (if it concludes (acting reasonably) that it is necessary to do so in order to persuade the proposed successor Security Agent to become a Party to this Agreement as Security Agent) agree with the proposed successor Security Agent amendments to this Clause 21 and any other term of this Agreement dealing with the rights or obligations of the Security Agent consistent with then current market practice for the appointment and protection of corporate trustees together with any reasonable amendments to the security agency fee payable to the Security Agent which are consistent with the successor Security Agent's normal fee rates and those amendments will bind the Parties.
- (e) The retiring Security Agent shall, (subject to paragraph (h) below) 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 three Business Days of demand, reimburse the retiring Security Agent for the amount of all costs and expenses (including legal fees) reasonably incurred by it in making available such documents and records and providing such assistance.
- (f) 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.
- (g) 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 21.30 (*Winding up of trust*) and paragraph (d) above) but shall remain entitled to the benefit of this Clause 21 and Clause 26.1 (*Indemnity to the Security Agent*) (and any Security Agent fees for the account of the retiring Security Agent shall cease to accrue from (and shall be payable on) that date). Any successor and each of the other Parties shall have the same rights and obligations amongst themselves as they would have had if that successor had been an original Party.

- (h) The Instructing Group (or if after the Super Senior Discharge Date and the Senior Secured Discharge Date a Senior Notes Trustee) 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 provided that any costs incurred in connection with the Security Agent complying with its obligations under paragraph (d) above shall be for the account of the Parent.

#### **21.19 Confidentiality**

- (a) In acting as trustee or agent for the Secured Parties (and in respect of the Shared Transaction Security, the Secured Parties and the Senior Notes Creditors), the Security Agent shall be regarded as acting through its trustee or agency division which shall be treated as a separate entity from any other of its divisions or departments.
- (b) If information is received by another division or department of the Security Agent, it may be treated as confidential to that division or department and the Security Agent shall not be deemed to have notice of it.
- (c) Notwithstanding any other provision of any Debt Document to the contrary, the Security Agent is not obliged to disclose to any other person (i) any confidential information or (ii) any other information if the disclosure would, or might in its reasonable opinion, constitute a breach of any law or regulation or a breach of a fiduciary duty.

#### **21.20 Information from the Creditors**

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

#### **21.21 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 (and in respect of the Shared Transaction Security, that Secured Party or Senior Notes Creditor) 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,

except in the case of the Senior Secured Notes Trustee. For the avoidance of doubt, such exclusion in favour of the Senior Secured Notes Trustee shall not give rise to any additional responsibility or liability in respect of the Security Agent than it would have incurred had the exclusion not applied.

#### **21.22 Security Agent's management time and additional remuneration**

- (a) In the event of:

- (i) an Event of Default; or
- (ii) the Security Agent being requested by a Debtor or the Instructing Group or the Senior Notes Trustee to undertake duties which the Security Agent and the Parent agree to be of an exceptional nature or outside the scope of the normal duties of the Security Agent under the Debt Documents; or
- (iii) the Security Agent and the Parent agreeing that it is otherwise appropriate in the circumstances,

the Parent shall pay to the Security Agent any additional remuneration that may be agreed between them or determined pursuant to paragraph (b) below.

- (b) If the Security Agent and the Parent fail to agree upon the nature of the duties or upon the additional remuneration referred to in paragraph (a) above or whether additional remuneration is appropriate in the circumstances and an Event of Default has occurred and is continuing, any dispute shall be determined by an investment bank (acting as an expert and not as an arbitrator) selected by the Security Agent and approved by the Parent or, failing approval, nominated (on the application of the Security Agent) by the President for the time being of the Law Society of England and Wales (the costs of the nomination and of the investment bank being payable by the Parent) and the determination of any investment bank shall be final and binding upon the Parties.

#### **21.23 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).

#### **21.24 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 perfect its title to any of the Charged Property or to render the Transaction Security effective or to secure the creation of any ancillary Security under any law or regulation; or
- (e) require any further assurance in relation to any Transaction Security Document.

#### **21.25 Insurance by Security Agent**

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

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

#### **21.26 Custodians and nominees**

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

#### **21.27 Delegation by the Security Agent**

- (a) Each of the Security Agent, any Receiver and any Delegate may, at any time, delegate by power of attorney or otherwise to any person for any period, all or any right, power, authority or discretion vested in it in its capacity as such.
- (b) That delegation may be made upon any terms and conditions (including the power to sub-delegate) and subject to any restrictions that the Security Agent, that Receiver or that Delegate (as the case may be) may, in its discretion, think fit in the interests of the Secured Parties (and in respect of the Shared Transaction Security, in the interests of the Secured Parties and the Senior Notes Creditors).

- (c) No Security Agent, Receiver or Delegate shall be bound to supervise, or be in any way responsible for any damages, costs or losses incurred by reason of any misconduct, omission or default on the part of, any such delegate or sub-delegate.

#### **21.28 Additional Security Agents**

- (a) The Security Agent may at any time appoint (and subsequently remove) any person to act as a separate trustee or agent or as a co-trustee or co-agent jointly with it:
  - (i) if it considers that appointment to be in the interests of the Secured Parties (and in respect of the Shared Transaction Security, in the interests of the Secured Parties and the Senior Notes Creditors);
  - (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 Primary Creditors of that appointment.
- (b) Any person so appointed shall have the rights, powers, authorities and discretions (not exceeding those given to the Security Agent under or in connection with the Debt Documents) and the duties, obligations and responsibilities that are given or imposed by the instrument of appointment.
- (c) The remuneration that the Security Agent may pay to that person, and any costs and expenses (together with any applicable VAT) incurred by that person in performing its functions pursuant to that appointment shall, for the purposes of this Agreement, be treated as costs and expenses incurred by the Security Agent.

#### **21.29 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.

#### **21.30 Winding up of trust**

If the Security Agent, with the approval of each Creditor Representative 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 (and in respect of the Shared Transaction Security, no Secured Party or Senior Notes Creditor) 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; and

- (ii) any Security Agent which has resigned pursuant to Clause 21.18 (*Resignation of the Security Agent*) shall release, without recourse or warranty, all of its rights under each Transaction Security Document.

#### **21.31 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.

#### **21.32 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.

#### **21.33 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 and has been requested to do (on reasonable notice) but has failed to do (and the Security Agent may delegate that power on such terms as it sees fit).

#### **21.34 Binding Security Enforcement Principles**

The Security Enforcement Principles shall bind each Secured Party (and in respect of the Shared Transaction Security each Secured Party and Senior Notes Creditor) provided that the Security Agent shall not be considered to be in breach of any term of this Agreement by reason of following instructions that were inconsistent with the Security Enforcement Principles (but without prejudice to any rights any Party may have against any other Party (other than the Security Agent) in respect of such instructions).

### **22. CHANGES TO THE PARTIES**

#### **22.1 Assignments and transfers**

No Party may assign any of its rights and benefits or transfer any of its rights, benefits and obligations in respect of any Debt Documents or the Liabilities except as permitted by this Clause 22.

#### **22.2 RCF Lenders**

- (a) A RCF Lender may assign any of its rights and benefits or transfer by novation any of its rights, benefits and obligations in respect of any RCF Finance Documents or the RCF Liabilities if:
  - (i) that assignment or transfer is in accordance with the terms of the RCF Agreement and any assignee or transferee has (if not already Party to this Agreement as a RCF Lender) acceded to this Agreement as a RCF Lender pursuant to Clause 22.12 (*Creditor/Creditor Representative Accession Undertaking*); or



- (ii) that assignment or transfer is pursuant to Clause 5.2 (*Option to purchase: Senior Secured Noteholders and Pari Passu Creditors*).
- (b) Subject to paragraph (c) below, no creditor shall be entitled to share in any of the Transaction Security or in the benefit of any provisions of this Agreement as a RCF Lender unless such creditor is an original Party to this Agreement or has acceded to this Agreement as a RCF Lender in accordance with paragraph (b) of Clause 22.3 (*Credit Facility Lenders*).
- (c) Paragraph (b) above shall not apply in respect of:
  - (i) any Debt Purchase Transaction (as defined in the Initial Revolving Facility Agreement) permitted by clause 30.1 (Prohibition on Debt Purchase Transactions by the Group) of the RCF Agreement or any Equivalent Provision of any other Credit Facility Document; and
  - (ii) any Liabilities Acquisition of the Credit Facility Liabilities by a member of the Group permitted under the relevant Credit Facility Document and pursuant to which the relevant Liabilities are discharged,

effected in accordance with the terms of the Debt Documents.

### 22.3 Credit Facility Lenders

- (a) At any time on or following the RCF Discharge Date, in order for any credit facility (other than any RCF) to be a Credit Facility for the purposes of this Agreement:
  - (i) the Parent shall designate that credit facility as a Credit Facility and confirm in writing to the Security Agent that such Credit Facility complies with the definition of "Credit Facility".
  - (ii) each Credit Facility Lender in respect of that credit facility shall accede to this Agreement as a Credit Facility Lender;
  - (iii) each arranger in respect of that credit facility shall accede to this Agreement as an Arranger; and
  - (iv) the facility agent in respect of that credit facility shall accede to this Agreement as the Creditor Representative in relation to that credit facility,

pursuant to Clause 22.12 (*Creditor/Creditor Representative Accession Undertaking*).
- (b) A Credit Facility Lender may assign any of its rights and benefits or transfer by novation any of its rights, benefits and obligations in respect of any Credit Facility Documents or the Credit Facility Liabilities if:
  - (i) that assignment or transfer is in accordance with the terms of the relevant Credit Facility Documents and any assignee or transferee has (if not already Party to this Agreement as a Credit Facility Lender) acceded to this Agreement as a Credit Facility Lender pursuant to Clause 22.12 (*Creditor/Creditor Representative Accession Undertaking*); or
  - (ii) that assignment or transfer is pursuant to Clause 5.2 (*Option to purchase: Senior Secured Noteholders and Pari Passu Creditors*).
- (c) No creditor shall be entitled to share in any of the Transaction Security or in the benefit of any provisions of this Agreement as a Credit Facility Lender unless such

creditor is an original Party to this Agreement or has acceded to this Agreement as a Credit Facility Lender in accordance with paragraphs (a) or (b) above.

#### **22.4 Pari Passu Creditors and Creditor Representatives**

- (a) In order for indebtedness in respect of any issuance of debt securities to constitute "Pari Passu Debt" for the purposes of this Agreement, (i) the trustee or representative in respect of those debt securities shall accede to this Agreement as the Creditor Representative in relation to that Pari Passu Debt pursuant to Clause 22.12 (*Creditor/Creditor Representative Accession Undertaking*) and (ii) the instrument constituting or evidencing such Pari Passu Debt must state that the Pari Passu Debt constituted or evidenced thereby is subject to the terms of this Agreement.
- (b) In order for indebtedness under any loan or credit or debt facility to constitute "Pari Passu Debt" for the purposes of this Agreement:
  - (i) each creditor (or its Creditor Representative on its behalf) in respect of that loan or credit or debt facility shall accede to this Agreement as a Pari Passu Creditor; and
  - (ii) the facility agent in respect of that loan or credit or debt facility shall accede to this Agreement as the Creditor Representative in relation to that loan or credit or debt facility,pursuant to Clause 22.12 (*Creditor/Creditor Representative Accession Undertaking*).
- (c) A Pari Passu Creditor may assign any of its rights and benefits or transfer by novation any of its rights, benefits and obligations in respect of any Pari Passu Debt Documents or the Pari Passu Debt Liabilities if:
  - (i) that assignment or transfer is in accordance with the terms of the relevant Pari Passu Debt Documents or made pursuant to Clause 8.13 (*Option to purchase: Senior Notes Creditors*); and
  - (ii) any assignee or transferee has (if not already Party to this Agreement as a Pari Passu Creditor and unless the relevant Creditor Representative has acceded on its behalf) acceded to this Agreement as a Pari Passu Creditor pursuant to Clause 22.12 (*Creditor/Creditor Representative Accession Undertaking*).
- (d) No creditor shall be entitled to share in any of the Transaction Security or in the benefit of any provisions of this Agreement as a Pari Passu Creditor unless such creditor (or, as the case may be, the trustee or representative in relation to the debt securities held by such creditor) is a Party as a Pari Passu Creditor (or, as the case may be, Pari Passu Debt Representative) or has acceded to this Agreement in accordance with paragraphs (a), (b) or (c) above.

#### **22.5 Hedge Counterparties**

- (a) A Hedge Counterparty may transfer any of its rights and benefits or obligations in respect of the Hedging Agreements to which it is a party if that transfer is in accordance with the terms of the relevant Hedging Agreement (and subject to any consent required under that Hedging Agreement) and 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 22.12 (*Creditor/Creditor Representative Accession Undertaking*).

- (b) No creditor shall be entitled to share in any of the Transaction Security or in the benefit of any provisions of this Agreement as a Hedge Counterparty unless such creditor is an original Party to this Agreement or has acceded to this Agreement as a Hedge Counterparty in accordance with paragraph (a) above or Clause 22.12 (*Creditor/Creditor Representative Accession Undertaking*).

#### **22.6 Creditor Representatives**

No person shall become a Creditor Representative (save for any person that is an original Party to this Agreement in that capacity) unless at the same time it accedes to this Agreement as a Creditor Representative pursuant to Clause 22.12 (*Creditor/Creditor Representative Accession Undertaking*).

#### **22.7 New Intra-Group Lender**

- (a) Subject to paragraph (c) below, if any member of the Group makes a loan to or grants any credit to or makes any other financial arrangement having similar effect with any Debtor, in an aggregate amount of €5,000,000 or more at any time outstanding, the Parent will procure that the person giving that loan or making available that Financial Indebtedness (if not already Party to this Agreement as an Intra-Group Lender) accedes to this Agreement as an Intra-Group Lender pursuant to Clause 22.12 (*Creditor/Creditor Representative Accession Undertaking*).
- (b) A member of the Group may refrain from acceding to this Agreement as an Intra-Group Lender if acceding to this Agreement would conflict with the fiduciary duties of its directors or contravene any legal prohibition or corporate benefit restriction or result in a risk of personal or criminal liability on the part of any of its officers provided that such member of Group shall use reasonable endeavours to overcome any such obstacle.
- (c) The Parent shall ensure that each member of the Group that would be required on the date of this Agreement to accede to this Agreement as an Intra-Group Lender shall do so within 90 days of the date of this Agreement.

#### **22.8 Change of Intra-Group Lender**

Subject to Clause 9.4 (*Acquisition of Intra-Group Liabilities*) and to the terms of the other Debt Documents, any Intra-Group Lender may assign any of its rights and benefits or transfer any of its rights, benefits and obligations in respect of the Intra-Group Liabilities to another member of the Group if that member of the Group has (if not already Party to this Agreement as an Intra Group Lender) acceded to this Agreement as an Intra-Group Lender, pursuant to Clause 22.12 (*Creditor/Creditor Representative Accession Undertaking*).

#### **22.9 New Shareholder Creditor**

- (a) If any direct or indirect shareholder in the Parent makes a loan to or grants any credit to or makes any other financial arrangement having a similar effect with the Parent, the Parent will not enter into any such transaction with such person unless on or prior to doing so such person (if not already Party to this Agreement as a Shareholder Creditor) accedes to this Agreement as a Shareholder Creditor pursuant to Clause 22.12 (*Creditor/Creditor Representative Accession Undertaking*) and, subject to paragraph (b) below, grants Transaction Security over such loans.
- (b) No Transaction Security will be required to be granted pursuant to paragraph (a) above or Clause 22.10 (*Change of Shareholder Creditor*) to the extent that the relevant loan or other financial arrangement constitutes a Loan under the RCF Agreement (or any Equivalent Provision in any other Credit Facility Document).

#### **22.10 Change of Shareholder Creditor**

Subject to Clause 10.4 (*Acquisition of Shareholder Liabilities*) and to the terms of the other Debt Documents, any Shareholder Creditor may assign any of its rights and benefits or transfer any of its rights, benefits and obligations in respect of the Shareholder Liabilities if the assignee or transferee has (if not already Party to this Agreement as a Shareholder Creditor) acceded to this Agreement as a Shareholder Creditor, pursuant to Clause 22.12 (*Creditor/Creditor Representative Accession Undertaking*) and, subject to paragraph (b) of Clause 22.9 (*New Shareholder Creditor*), granted Transaction Security over such loans.

#### **22.11 New Ancillary Lender**

If any Affiliate of a Credit Facility Lender or Pari Passu Creditor becomes an Ancillary Lender in accordance with clause 9.8 (*Affiliates of Lenders as Ancillary Lenders*) of the RCF Agreement (or, following the RCF Discharge Date, the Equivalent Provision of any other Credit Facility Document or any Pari Passu Debt Document), it shall not be entitled to share in any of the Transaction Security or in the benefit of any guarantee or indemnity in respect of any of the liabilities arising in relation to its Ancillary Facilities unless it has (if not already Party to this Agreement as a Credit Facility Lender or Pari Passu Creditor, as relevant) acceded to this Agreement as a Credit Facility Lender or Pari Passu Creditor, as relevant and to the RCF Agreement (or, following the RCF Discharge Date, the facility agreement relating to the relevant Credit Facility or Pari Passu Facility Agreement) as an Ancillary Lender pursuant to Clause 22.12 (*Creditor/Creditor Representative Accession Undertaking*).

#### **22.12 Creditor/Creditor Representative Accession Undertaking**

With effect from the date of acceptance by the Security Agent and, in the case of an Affiliate of a Credit Facility Lender or Pari Passu Creditor, as applicable, the Creditor Representative in relation to the relevant Credit Facility or Pari Passu Facility Agreement, as applicable, of a Creditor/Creditor Representative Accession Undertaking duly executed and delivered to the Security Agent by the relevant acceding party or, if later, the date specified in that Creditor/Creditor Representative Accession Undertaking:

- (a) any Party ceasing entirely to be a Creditor or a Creditor Representative 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 Creditor Representative shall assume the same obligations, and become entitled to the same rights, as if it had been an original Party to this Agreement in that capacity; and
- (c) any new Ancillary Lender (which is an Affiliate of a Credit Facility Lender or Pari Passu Creditor, as applicable) shall also become party to the RCF Agreement (or, following the RCF Discharge Date, the facility agreement relating to the relevant Credit Facility or Pari Passu Facility Agreement, as applicable) as an Ancillary Lender and shall assume the same obligations and become entitled to the same rights as if it had been an original party to the RCF Agreement (or, following the RCF Discharge Date, the facility agreement relating to the relevant Credit Facility or Pari Passu Facility Agreement, as applicable) as an Ancillary Lender.

#### **22.13 New Debtor**

- (a) If any member of the Group:
  - (i) incurs any Liabilities under any Primary Finance Documents; or

- (ii) gives any security, guarantee, indemnity or other assurance against loss in respect of any Liabilities under any Primary Finance Documents,

the Debtors will procure that the person incurring those Liabilities or giving that assurance (if not already Party to this Agreement as a Debtor) accedes to this Agreement as a Debtor, in accordance with paragraph (b) below, no later than contemporaneously with the incurrence of those Liabilities or the giving of that assurance.

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

#### **22.14 New Hedge Guarantor**

Any member of the Group may accede to this Agreement as a Hedge Guarantor by delivering a duly executed Debtor Accession Deed to the Security Agent. 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 a member of the Group or, if later, the date specified in the Debtor Accession Deed, that member of the Group 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 Hedge Guarantor.

#### **22.15 Additional parties**

- (a) Each of the Parties appoints the Security Agent to receive on its behalf each Debtor Accession Deed and Creditor/Creditor Representative Accession Undertaking delivered to the Security Agent and the Security Agent shall, subject to paragraph (c) below, promptly after receipt by it, sign and accept the same if it appears on its face to have been completed, executed and, where applicable, delivered in the form contemplated by this Agreement or, where applicable, by the relevant Debt Document.
- (b) In the case of a Creditor/Creditor Representative Accession Undertaking delivered to the Security Agent by any new Ancillary Lender (which is an Affiliate of a Credit Facility Lender or Pari Passu Creditor, as relevant):
  - (i) the Security Agent shall, as soon as practicable after signing and accepting that Creditor/Creditor Representative Accession Undertaking in accordance with paragraph (a) above, deliver that Creditor/Creditor Representative Accession Undertaking to the relevant Creditor Representative; and
  - (ii) the relevant Creditor Representative shall, as soon as practicable after receipt by it, sign and accept that Creditor/Creditor Representative Accession Undertaking if it appears on its face to have been completed, executed and delivered in the form contemplated by this Agreement.
- (c) The relevant Creditor Representative shall be obliged to sign and accept a Debtor Accession Deed or Creditor/Creditor Representative Accession Undertaking received by it promptly after receipt by it provided that it is satisfied that it has complied with all necessary "know your customer" or similar other 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) from time to time in order for the Security Agent to carry out and be satisfied with the results of all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Debt Documents.
- (e) The Parent shall provide the Security Agent with copies (certified by a director of the Parent to be true and complete) of each Debt Document as soon as reasonably practicable upon execution.

#### 22.16 Resignation of a Debtor

- (a) The Parent may request that a Debtor ceases to be a Debtor by delivering to the Security Agent a Debtor Resignation Request.
- (b) The Security Agent shall accept a Debtor Resignation Request and notify the Parent and each other Party of its acceptance if:
  - (i) the Parent has confirmed that no Default is continuing or would result from the acceptance of the Debtor Resignation Request;
  - (ii) to the extent that the Super Senior Discharge Date has not occurred, the Creditor Representative in relation to each Credit Facility notifies the Security Agent that that Debtor is not, or has ceased to be, (in the case of a Debtor which is both a Credit Facility Borrower and a Credit Facility Guarantor) a Credit Facility Borrower and a Credit Facility Guarantor or (in the case of a Debtor which is only a Credit Facility Guarantor) a Credit Facility Guarantor;
  - (iii) to the extent that either the Super Senior Discharge Date or the Non-Super Senior Hedging Discharge Date has not occurred, each Hedge Counterparty notifies the Security Agent that (A) that Debtor is not a counterparty to any Hedging Agreement with such Hedge Counterparty under which there are any outstanding hedging transactions and (B) no payment is due from that Debtor to such Hedge Counterparty in respect of any Hedging Liabilities under Clause 11 (*Guarantee and indemnity*) or under any such Hedging Agreement, provided that if such Hedge Counterparty has not responded within ten Business Days of a request from the Security Agent for such notification such Hedge Counterparty shall be deemed to have given such notification;
  - (iv) to the extent that the Senior Secured Notes Discharge Date has not occurred, the Senior Secured Notes Trustee notifies the Security Agent that the Debtor is not, or has ceased to be, a Senior Secured Notes Issuer or a guarantor of the Senior Secured Notes;
  - (v) to the extent that the Pari Passu Debt Discharge Date has not occurred, the Creditor Representative in relation to any Pari Passu Debt notifies the Security Agent that the Debtor is not, or has ceased to be, a borrower, issuer and/or guarantor of the Pari Passu Debt;
  - (vi) to the extent that the Senior Notes Discharge Date has not occurred, the Senior Notes Trustee notifies the Security Agent that the Debtor is not, or has ceased to be, a borrower, issuer and/or guarantor of the Senior Notes; and

- (vii) the Parent confirms that that Debtor is under no actual or contingent obligations in respect of any Shareholder Liabilities.
- (c) 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.

#### **22.17 Notification by Security Agent**

The Security Agent shall notify the other Parties as soon as practicable following the receipt and execution by it on their behalf of any Debtor Accession Deed.

#### **22.18 Termination**

- (a) Any matter expressed to require the consent or approval of the RCF Lenders (or any specified majority or sub-set thereof) or of the RCF Agent shall only require such consent or approval prior to the RCF Discharge Date and shall be deemed not to require the consent of any RCF Lender which has been repaid, prepaid or replaced in accordance with the RCF Agreement.
- (b) Any matter expressed to require the consent or approval of the Credit Facility Lenders (other than the RCF Lenders) (or any specified majority or sub-set thereof) shall only require such consent or approval prior to the Credit Facility Discharge Date and shall be deemed not to require the consent of any Credit Facility Lender which has been repaid, prepaid or replaced in accordance with the Credit Facility Documents.
- (c) Any matter expressed to require the consent or approval of the Senior Secured Notes Creditors (or any specified majority or sub-set thereof) shall only require such consent or approval prior to the Senior Secured Notes Discharge Date and shall be deemed not to require the consent of any Senior Secured Notes Creditor which has been repaid, prepaid or replaced in accordance with the Senior Secured Notes Documents.
- (d) Any matter expressed to require the consent or approval of the Pari Passu Creditors (or any specified majority or sub-set thereof) shall only require such consent or approval prior to the Pari Passu Debt Discharge Date and shall be deemed not to require the consent of any Pari Passu Creditor which has been repaid, prepaid or replaced in accordance with the Pari Passu Debt Documents.
- (e) Any matter expressed to require the consent or approval of the Senior Notes Creditors (or any specified majority or sub-set thereof) shall only require such consent or approval prior to the Senior Notes Discharge Date and shall be deemed not to require the consent of any Senior Notes Creditor which has been repaid, prepaid or replaced in accordance with the Senior Notes Documents.

### **23. SENIOR SECURED NOTES TRUSTEE PROTECTIONS**

#### **23.1 Application**

In the event that any Pari Passu Notes or Senior Notes are issued, the Creditor Representative who acts as notes trustee in respect of such Pari Passu Notes or Senior Notes shall have the same rights, powers, protections, discretions, duties and obligations that are conferred or imposed by this Clause 23 in respect of the Senior Secured Notes Trustee or such rights, powers, protections and discretions (not exceeding those conferred on the Senior Secured Notes Trustee in this Agreement) and the duties and obligations that are conferred or imposed on it by the instrument of its appointment in respect of such Pari Passu Notes or

Senior Notes and references in this Clause 23 to "Senior Secured Notes Documents", "Senior Secured Noteholders", "Senior Secure Notes", "Senior Secured Notes Indenture", "Senior Secured Notes Issuer", "Senior Secured Notes Trustee" and "Senior Secured Notes Trustee Amounts" shall be construed accordingly.

### **23.2 Limitation of Senior Secured Notes Trustee Liability**

- (a) It is expressly understood and agreed by the Parties that this Agreement is executed and delivered by the Senior Secured Notes Trustee not individually or personally but solely in its capacity as the Senior Secured Notes Trustee in the exercise of the powers and authority conferred and vested in it under the Senior Secured Notes Documents. It is further understood by the Parties that in no case shall the Senior Secured Notes Trustee be (i) responsible or accountable in damages or otherwise to any other Party for any liability, expense, cost, loss, damage or claim incurred by reason of any act or omission performed or omitted by the Senior Secured Notes Trustee in good faith in accordance with this Agreement and the Senior Secured Notes Documents in a manner that the Senior Secured Notes Trustee believed to be within the scope of the authority conferred on the Senior Secured Notes Trustee by this Agreement and the Senior Secured Notes Documents or by law, or (ii) personally liable for or on account of any of the statements, representations, warranties, covenants or obligations stated to be those of any other Party, all such liability, if any, being expressly waived by the Parties and any person claiming by, through or under such Party, provided however, that the Senior Secured Notes Trustee (or any such successor noteholder trustee) shall be personally liable under this Agreement only for acts and omissions involving its own gross negligence or wilful misconduct. It is also acknowledged that the Senior Secured Notes Trustee shall not have any responsibility for the actions of any individual holder of the Senior Secured Notes or any group of such holders.
- (b) Any liability of the Senior Secured Notes Trustee arising under this Agreement or the Senior Secured Notes Documents shall be limited to the amount of actual loss suffered (such loss shall be determined as at the date of default of the Senior Secured Notes Trustee 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 Senior Secured Notes Trustee at the time of entering into this Agreement or the Senior Secured Notes Documents, or at the time of accepting any relevant instructions, which increase the amount of the loss. In no event shall the Senior Secured Notes Trustee be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive or consequential damages, whether or not the Senior Secured Notes Trustee has been advised of the possibility of such loss or damages.

### **23.3 Senior Secured Notes Trustee not fiduciary for other Creditors**

The Senior Secured Notes Trustee shall not be deemed to owe any fiduciary duty to any of the Creditors (other than the Senior Secured Noteholders to the extent set forth in the Senior Secured Notes Indenture) or any member of the Group and shall not be liable to any Creditor (other than the Senior Secured Noteholders, subject to the terms of the Senior Secured Notes Indenture) or any member of the Group if the Senior Secured Notes Trustee shall in good faith mistakenly pay over or distribute to Senior Secured Noteholders or to any other person cash, property or securities to which any Creditor (other than a Senior Secured Noteholder to the extent set forth in the Senior Secured Notes Indenture) shall be entitled by virtue of this Agreement or otherwise. With respect to the Creditors (other than the Senior Secured Noteholders), the Senior Secured Notes Trustee undertakes to perform or to observe only such of its covenants or obligations as are specifically set forth in the Senior Secured Notes Documents to which it is a party and this Agreement and no implied covenants or obligations



with respect to Creditors (other than the Senior Secured Noteholders to the extent set forth in the Senior Secured Notes Indenture) shall be read into this Agreement or any Senior Secured Notes Documents against the Senior Secured Notes Trustee.

#### **23.4 Reliance on certificates**

The Senior Secured Notes Trustee may rely without enquiry on any notice, consent or certificate of the Security Agent or any other Creditor Representative as to the matters certified therein provided that the Security Agent shall not incur any liability or be considered to be guilty of gross negligence, wilful misconduct or otherwise in breach of this Agreement if the notice, consent or certificate has been provided by the Security Agent in circumstances where it was itself relying on the accuracy of information provided by another person.

#### **23.5 Senior Secured Notes Trustee**

- (a) In acting under and in accordance with this Agreement the Senior Secured Notes Trustee shall act in accordance with the Senior Secured Notes Indenture and shall seek any necessary instruction from the relevant Senior Secured Noteholders to the extent provided for, and in accordance with, the Senior Secured Notes Indenture, and where it so acts on the instructions of the Senior Secured Noteholders, the Senior Secured Notes Trustee shall not incur any liability to any person for so acting other than in accordance with the Senior Secured Notes Indenture. Furthermore, prior to taking any action under this Agreement or any other relevant Debt Document, the Senior Secured Notes Trustee may request and rely upon an opinion of counsel or opinion of another qualified expert, at the Parent's expense, as applicable; provided, however, that any such opinions shall be at the expense of the Senior Secured Noteholders if such actions are on the instructions of the Senior Secured Noteholders.
- (b) Notwithstanding anything to the contrary in this Agreement, the Senior Secured Notes Trustee shall not be required to perform any of its obligations under this Agreement "reasonably".

#### **23.6 Turnover obligations**

Notwithstanding any provision in the Agreement to the contrary, the Senior Secured Notes Trustee shall only have an obligation to turn over or repay amounts received or recovered under this Agreement by it (i) if it had actual knowledge that the receipt or recovery is an amount received in breach of a provision of this Agreement (a "**Turnover Receipt**") and (ii) to the extent that, prior to receiving that knowledge, it has not distributed the amount of the Turnover Receipt to the Senior Secured Noteholders in accordance with the provisions of the Senior Secured Notes Indenture. For the purpose of this Clause 23.6, (i) "actual knowledge" of the Senior Secured Notes Trustee shall be construed to mean the Senior Secured Notes Trustee shall not be charged with knowledge (actual or otherwise) of the existence of facts that would impose an obligation on it to make any payment or prohibit it from making any payment unless a responsible officer of such Senior Secured Notes Trustee has received, not less than two Business Days' prior to the date of such payment, a written notice that such payments are required or prohibited by this Agreement; and (ii) "responsible officer" when used in relation to the Senior Secured Notes Trustee means any transaction manager within the Corporate Loan Agency Department and having direct responsibility for the administration of this Agreement.

#### **23.7 Creditors and the Senior Secured Notes Trustee**

In acting pursuant to this Agreement and the Senior Secured Notes Indenture, the Senior Secured Notes Trustee is not required to have any regard to the interests of the Creditors

(other than the Senior Secured Noteholders to the extent set forth in the Senior Secured Notes Indenture).

**23.8 Senior Secured Notes Trustee; reliance and information**

- (a) The Senior Secured Notes Trustee may rely and shall be fully protected in acting or refraining from acting upon any notice or other document believed by it in good faith to be genuine and correct and to have been signed by, or with the authority of, the proper person.
- (b) Without affecting the responsibility of any Debtor for information supplied by it or on its behalf in connection with any Primary Finance Document, each Primary Creditor (other than the Senior Secured Noteholders) confirms that it has not relied exclusively on any information provided to it by the Senior Secured Notes Trustee in connection with any Primary Finance Document. The Senior Secured Notes Trustee is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another party.
- (c) The Senior Secured Notes Trustee is entitled to assume that:
  - (i) any payment or other distribution made in respect of the Liabilities, respectively, has been made in accordance with the provisions of this Agreement;
  - (ii) any Security granted in respect of the relevant Liabilities is in accordance with this Agreement;
  - (iii) no Default or Event of Default has occurred; and
  - (iv) the Super Senior Discharge Date has not occurred,

unless it has actual written notice to the contrary. The Senior Secured Notes Trustee is not obliged to monitor or enquire whether any such event has occurred and shall incur no liability to any persons for not so monitoring or enquiring.

**23.9 No action**

The Senior Secured Notes Trustee shall not have any obligation to take any action under this Agreement unless it is indemnified and/or secured, and/or prefunded to its satisfaction (whether by way of payment in advance or otherwise) by the Debtors or the Senior Secured Noteholders, as applicable in accordance with the terms of the Senior Secured Notes Indenture. The Senior Secured Notes Trustee is not required to expend its own funds or to indemnify any other person, whether or not a Party in respect of the transactions contemplated by this Agreement.

**23.10 Departmentalisation**

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

**23.11 Other parties not affected**

This Clause 23 is intended to afford protection to the Senior Secured Notes Trustee only and no provision of this Clause 23 shall alter or change the rights and obligations as between the other parties in respect of each other.

**23.12 Security Agent and the Senior Secured Notes Trustee**

- (a) The Senior Secured Notes Trustee is not responsible for the appointment or for monitoring the performance of the Security Agent.
- (b) The Security Agent agrees and acknowledges that it shall have no claim against the Senior Secured Notes Trustee in respect of any fees, costs, expenses and liabilities due and payable to, or incurred by, the Security Agent.
- (c) The Senior Secured Notes Trustee shall be under no obligation to instruct or direct the Security Agent to take any Enforcement Action unless it shall have been instructed to do so by the Senior Secured Noteholders and indemnified and/or secured, and/or prefunded to its satisfaction.

**23.13 Provision of information**

The Senior Secured Notes Trustee is not obliged to review or check the adequacy, accuracy or completeness of any document it forwards to another Party. The Senior Secured Notes Trustee is not responsible for:

- (a) providing any Super Senior Creditor or Senior Secured Noteholder with any credit or other information concerning the risks arising under or in connection with the Primary Finance Documents (including any information relating to the financial condition or affairs of the Senior Secured Notes Issuer, any other Debtor or their related entities or the nature or extent of recourse against any Party or its assets) whether coming into its possession before, on or after the date of this Agreement; or
- (b) obtaining any certificate or other document from the Senior Secured Notes Issuer or any other Debtor.

**23.14 Disclosure of information**

The Senior Secured Notes Issuer and each other Debtor irrevocably authorises the Senior Secured Notes Trustee to disclose to any Super Senior Creditor and any Pari Passu Creditor any information that is received by the Senior Secured Notes Trustee in its capacity as the Senior Secured Notes Trustee.

**23.15 Illegality**

The Senior Secured Notes Trustee may refrain from doing anything (including disclosing any information) which might, in its opinion, constitute a breach of any law or regulation and may do anything which, in its opinion, is necessary or desirable to comply with any law or regulation.

**23.16 Resignation of Senior Secured Notes Trustee**

The Senior Secured Notes Trustee may resign or be removed in accordance with the terms of the Senior Secured Notes Indenture, provided that a replacement Senior Secured Notes Trustee agrees with the Parties to become the replacement trustee under this Agreement by the execution of a Creditor/Creditor Representative Accession Undertaking.

### 23.17 Agents

A Notes Trustee may act through its attorneys and agents and shall not be responsible for the misconduct, default or negligence of any attorney or agent appointed with reasonable care by it hereunder.

### 23.18 No Requirement for bond or Security

A 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.

### 23.19 Provisions survive termination

The provisions of this Clause 23 shall survive any termination or discharge of this Agreement and the resignation or termination of the appointment of the Senior Secured Notes Trustee.

## 24. ADDITIONAL INDEBTEDNESS

### 24.1 Incurrence of Additional Indebtedness

- (a) If a Debtor gives written notice to the Security Agent and the Creditor Representatives that it intends to enter into one or more loans and/or credit or debt facilities and/or issue any debt securities under which it will (i) incur additional or incremental Borrowing Liabilities and/or Guarantee Liabilities or (ii) refinance Borrowing Liabilities and/or incur Guarantee Liabilities in respect of such refinancing of Borrowing Liabilities (“**Additional Indebtedness**”) which is in any case, under the terms of the Credit Facility Documents, Senior Secured Notes Documents, the *Pari Passu* Debt Documents and the Senior Notes Documents permitted to rank *pari passu* or behind any existing Liabilities and/or share in the Transaction Security on a *pari passu* or lower-ranking basis, then the Parties will (at the cost of the Parent) enter into such documentation as may be reasonably necessary to ensure that any obligations and liabilities incurred by the Debtors in respect of such Additional Indebtedness will have the ranking (and that the creditors under such Additional Indebtedness will have the rights and obligations) permitted to be conferred upon it, and that such Additional Indebtedness will share in the Transaction Security, in each case in accordance with the Credit Facility Documents, Senior Secured Notes Documents, the *Pari Passu* Debt Documents and the Senior Notes Documents (including, without limitation, the entry into a new intercreditor agreement on substantially the same terms as this Agreement (or on terms more favourable to the Secured Parties and Senior Notes Creditors) or the making of one or more amendments to this Agreement) provided that such documentation does not otherwise adversely affect the interests of any of the Secured Parties or Senior Notes Creditor in any material respect.
- (b) Notwithstanding anything to the contrary in any Primary Finance Document, no Transaction Security Document may be amended, extended, renewed, restated, supplemented or otherwise modified, replaced or released (followed by an immediate retaking of Security of at least equivalent ranking over the same assets) unless contemporaneously with such amendment, extension, replacement, restatement, supplement, modification, renewal or release (followed by an immediate retaking of Security of at least equivalent ranking over the same assets), the Parent delivers to the Security Agent one of the following:
  - (i) a solvency opinion from an internationally recognised investment bank or accounting firm, in form and substance reasonably satisfactory to the Security Agent, confirming the solvency of the Parent and its Restricted

Subsidiaries, taken as a whole, after giving effect to any transactions related to such amendment, extension, renewal, restatement, supplement, modification or replacement or release and retaking;

- (ii) a certificate from the board of directors or chief financial officer of the relevant person, which certificate confirms the solvency of the person granting such Transaction Security after giving effect to any transactions related to such amendment, extension, renewal, restatement, supplement, modification or replacement or release and retaking; or
  - (iii) an opinion of counsel, in form and substance reasonably satisfactory to the Security Agent (subject to customary exceptions and qualifications), confirming that, after giving effect to any transactions related to such amendment, extension, renewal, restatement, supplement, modification, replacement or release and retaking, the Transaction Security created under the Transaction Security Documents so amended, extended, renewed, restated, supplemented, modified, replaced or released and retaken is valid and perfected Transaction Security not otherwise subject to any limitation imperfection or new hardening period, in equity or at law, that such Transaction Security was not otherwise subject to immediately prior to such amendment, extension, renewal, restatement, supplement, modification, replacement or release and retaking.
- (c) At the direction of the Parent and without the consent of any Secured Party or Senior Notes Creditor, the Security Agent may from time to time enter into one or more amendments to the Transaction Security Documents or enter into any additional or supplemental transaction security documents to: (i) cure any ambiguity, omission, defect or inconsistency therein; (ii) provide for Security permitted under the terms of the Debt Documents (subject to compliance with paragraph (b) above); (iii) add to the Transaction Security or guarantees of the Liabilities (subject to compliance with paragraph (b) above); (iv) ensure that any Additional Indebtedness can be secured with the ranking contemplated under paragraph (a) above (subject to compliance with paragraph (b) above); and (v) make any other change thereto that does not adversely affect the rights of any of the Secured Parties or any Senior Notes Creditor in any material respect provided that any amendment to a Transaction Security Document that prejudices the validity, enforceability or priority of any Security created or purported to be created thereunder shall be an amendment that adversely affects the Secured Parties or Senior Notes Creditors in a material respect.
- (d) In the event that the Parent complies with paragraph (b) above, each Creditor Representative and the Security Agent shall (subject to customary protections and indemnifications) consent to such amendment, extension, renewal, restatement, supplement, modification, replacement or release with no need for instructions from any other Secured Party.

#### **24.2 Authorisation of Creditor Representatives**

- (a) The Senior Secured Notes Trustee is authorised to and shall enter into the documentation described in Clause 24.1 (*Incurrence of Additional Indebtedness*), acting on the instruction of the Senior Secured Noteholders given in accordance with the terms of the Senior Secured Notes Indenture on behalf of itself and the Senior Secured Noteholders and the same shall be binding for all purposes on the Senior Secured Noteholders.
- (b) The Pari Passu Debt Representative in relation to any Pari Passu Debt that constitutes an issuance of debt securities is authorised to and shall enter into the

documentation described in Clause 24.1 (*Incurrence of Additional Indebtedness*) above on behalf of itself and the relevant Pari Passu Creditors and the same shall be binding for all purposes on those Pari Passu Creditors.

- (c) The Senior Notes Trustee in relation to any Senior Notes that constitutes an issuance of debt securities is authorised to and shall enter into the documentation described in Clause 24.1 (*Incurrence of Additional Indebtedness*) above on behalf of itself and the relevant Pari Passu Creditors and the same shall be binding for all purposes on those Pari Passu Creditors.
- (d) Each Hedge Counterparty shall enter into the documentation described in Clause 24.1 (*Incurrence of Additional Indebtedness*) above and the same shall be binding for all purposes on such Hedge Counterparty.
- (e) If any Credit Facility Lender fails to enter into the documentation described in Clause 24.1 (*Incurrence of Additional Indebtedness*) above within 15 Business Days of being requested to do so by the Security Agent or a Debtor, that Credit Facility Lender's Creditor Representative is authorised to and shall (provided that the relevant Credit Facility Lender has not notified the relevant Creditor Representative prior to such date that the entry into such documentation would be illegal for or contrary to any regulation with which the relevant Credit Facility Lender is required to comply or customarily complies) enter into such documentation on such Credit Facility Lender's behalf and the same shall be binding for all purposes on such Credit Facility Lender.
- (f) If any Pari Passu Creditor in respect of any Pari Passu Debt that constitutes a loan, credit or guarantee facility fails to enter into the documentation described in Clause 24.1 (*Incurrence of Additional Indebtedness*) above within 15 Business Days of being requested to do so by the Security Agent or a Debtor, that Pari Passu Creditor's Pari Passu Debt Representative is authorised to and shall (provided that the relevant Pari Passu Creditor has not notified the relevant Pari Passu Debt Representative prior to such date that the entry into such documentation would be illegal for or contrary to any regulation with which the relevant Pari Passu Creditor is required to comply or customarily complies) enter into such documentation on such Pari Passu Creditor's behalf and the same shall be binding for all purposes on such Pari Passu Creditor.
- (g) If any Senior Notes Creditor in respect of any Senior Notes that constitutes a loan, credit or guarantee facility fails to enter into the documentation described in Clause 24.1 (*Incurrence of Additional Indebtedness*) above within 15 Business Days of being requested to do so by the Security Agent or a Debtor, that Senior Notes Creditor's Senior Notes Trustee is authorised to and shall (provided that the relevant Senior Notes Creditor has not notified the relevant Senior Notes Trustee prior to such date that the entry into such documentation would be illegal for or contrary to any regulation with which the relevant Senior Notes Creditor is required to comply or customarily complies) enter into such documentation on such Senior Notes Creditor's behalf and the same shall be binding for all purposes on such Senior Notes Creditor.
- (h) For the avoidance of doubt, no consent or approval from a Creditor is required to enable a Creditor Representative to act pursuant to this Clause 24.2.

## **25. COSTS AND EXPENSES**

### **25.1 Security Agent's ongoing costs**

- (a) In the event of (i) a Default or (ii) the Security Agent considering it necessary or expedient or (iii) the Security Agent being requested by a Debtor or the Instructing Group (or any Creditor class that constituted the Instructing Group at the time of the request) to undertake duties which the Security Agent and the Parent agree to be of an exceptional nature and/or outside the scope of the normal duties of the Security Agent under the Debt Documents, the Parent shall pay to the Security Agent any additional remuneration that may be agreed between them.
- (b) If the Security Agent and the Parent fail to agree upon the nature of those duties or upon any additional remuneration, that dispute shall be determined by an investment bank (acting as an expert and not as an arbitrator) selected by the Security Agent and approved by the Parent or, failing approval, nominated (on the application of the Security Agent) by the President for the time being of the Law Society of England and Wales (the costs of the nomination and of the investment bank being payable by the Parent) and the determination of any investment bank shall be final and binding upon the parties to this Agreement, provided that such investment bank shall not be an Affiliate of the Security Agent.

### **25.2 Transaction expenses**

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

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

### **25.3 Amendment costs**

If a Debtor requests an amendment, waiver or consent, the Parent shall, within three Business Days of demand, reimburse the Security Agent for the amount of all out of pocket costs and expenses (including legal fees subject to a cap, if any, agreed between the Parent and the Security Agent in writing) (together with any applicable VAT) reasonably incurred by the Security Agent (and by any Receiver or Delegate) in responding to, evaluating, negotiating or complying with that request or requirement.

### **25.4 Stamp taxes**

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

### **25.5 Interest on demand**

If any Creditor or Debtor fails to pay any amount payable by it under this Agreement on its due date, interest shall, without double-counting, 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 under any other Debt Document) at the rate which is one per cent. per annum over the

rate at which the Security Agent would be able to obtain by placing on deposit with a leading bank in the London interbank market an amount comparable to the unpaid amounts in the currencies of those amounts for any period(s) that the Security Agent may from time to time select provided that if such rate is below zero, that rate will be deemed to be zero.

#### **25.6 Enforcement and preservation costs**

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

#### **26. OTHER INDEMNITIES**

A reference in this Clause 26 to a Debtor shall not include any person that is a Debtor solely because it has granted any Transaction Security.

##### **26.1 Indemnity to the Security Agent**

- (a) Each Debtor jointly and severally shall, promptly on demand, indemnify the Security Agent and every Receiver and Delegate against any cost, loss or liability (together with any applicable VAT) incurred by any of them as a result of:
  - (i) any failure by the Parent to comply with its obligations under Clause 25 (*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 (other than as a result of gross negligence or wilful misconduct of the respective Security Agent, Receiver or Delegate provided that actions taken pursuant to and in accordance with instructions received by the Security Agent, Receiver or Delegate from the Secured Parties (or any Creditor Representative acting on their behalf), or after the Super Senior Discharge Date and Senior Secured Discharge Date each Senior Notes Trustee, shall be deemed not to constitute gross negligence or wilful misconduct of the Security Agent, Receiver or Delegate);
  - (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 (other than as a result of gross negligence or wilful misconduct of the respective Security Agent, Receiver or Delegate provided that actions taken pursuant to and in accordance with instructions received by the Security Agent, Receiver or Delegate from the Secured Parties, or after the Super Senior Discharge Date and Senior Secured Discharge Date any and each Senior Notes Trustee, (or any Creditor Representative acting on their behalf) shall be deemed not to constitute gross negligence or wilful misconduct of the Security Agent, Receiver or Delegate);
  - (v) any default by any Debtor in the performance of any of the obligations expressed to be assumed by it in the Debt Documents;



- (vi) instructing lawyers, accountants, tax advisers, surveyors, a Financial Adviser or other professional advisers or experts as permitted under this Agreement; or
  - (vii) acting as Security Agent, Receiver or Delegate under the Debt Documents or which otherwise relates to any of the Security Property (otherwise, in each case, than by reason of the relevant Security Agent's, Receiver's or Delegate's gross negligence or wilful misconduct provided that actions taken pursuant to and in accordance with instructions received by the Security Agent Receiver or Delegate from the Secured Parties, or after the Super Senior Discharge Date and Senior Secured Discharge Date any and each Senior Notes Trustee, (or any Creditor Representative on their behalf) shall be deemed not to constitute gross negligence or wilful misconduct of the Security Agent, Receiver or Delegate).
- (b) Each Debtor expressly acknowledges and agrees that the continuation of its indemnity obligations under this Clause 26.1 will not be prejudiced by any release or disposal under Clause 17 (*Distressed Disposals*) taking into account the operation of that Clause 17 (*Distressed Disposals*).
  - (c) The Security Agent and every Receiver and Delegate may, in priority to any payment to the Secured Parties or Senior Notes Creditors, indemnify itself out of the Charged Property in respect of, and pay and retain, all sums necessary to give effect to the indemnity in this Clause 26.1 and shall have a lien on the Transaction Security and the proceeds of the enforcement of the Transaction Security for all moneys payable to it.
  - (d) This indemnity does not apply to any liability to the extent that it would result in this indemnity constituting unlawful financial assistance or if its payment would result in a breach of capital maintenance law in each case within the meaning of applicable provisions under the laws of the Original Jurisdiction of the relevant Debtor or otherwise being illegal and, with respect to any Debtor that is not an Original Debtor, is subject to any limitations set out in the Debtor Accession Deed applicable to such Debtor.

## 26.2 Parent's indemnity to Primary Creditors

The Parent shall promptly and as principal obligor indemnify each Primary Creditor against any cost, loss or liability (together with any applicable VAT), whether or not reasonably foreseeable, incurred by any of them in relation to or arising out of the operation of Clause 17 (*Distressed Disposals*).

## 27. INFORMATION

### 27.1 Information and dealing

- (a) The Creditors shall provide to the Security Agent from time to time (through their relevant Creditor Representative as applicable) 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 or trustee.
- (b) Subject to clause 37.5 (*Communication when Agent is Impaired Agent*) of the RCF Agreement (or, following the RCF Discharge Date, any Equivalent Provision of any facility agreement in relation to a Credit Facility) each Credit Facility Lender shall deal with the Security Agent exclusively through their Creditor Representative in relation to each Credit Facility and the Hedge Counterparties shall deal directly with the Security Agent and shall not deal through any agent.

- (c) No Creditor Representative 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.
- (d) Each Super Senior Creditor other than the Super Senior Hedge Counterparties shall deal with the Security Agent exclusively through the relevant Creditor Representative, each Senior Secured Noteholder shall deal with the Security Agent exclusively through the Senior Secured Notes Trustee, each Pari Passu Creditor shall deal with the Security Agent exclusively through the relevant Pari Passu Debt Representative and each Senior Noteholder shall deal with the Security Agent exclusively through the relevant Senior Notes Trustee.

## **27.2 Disclosure**

Provided that they are otherwise in compliance with the confidentiality provisions under the Primary Finance Documents (as applicable) and subject to applicable law, each of the Debtors and the Subordinated Creditors consents, until the Final Discharge Date, to the disclosure by any of the Primary Creditors, the Creditor Representatives, the Arrangers and the Security Agent to each other (whether or not through the Creditor Representatives or the Security Agent) of such information concerning the Debtors as any Primary Creditor, any Arranger, any Creditor Representative or the Security Agent shall see fit, including details of its outstandings.

## **27.3 Notification of prescribed events**

- (a) If an Event of Default or a Default under a Credit Facility Document either occurs or ceases to be continuing the relevant Creditor Representative 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 Creditor Representative and each Hedge Counterparty.
- (b) If an Event of Default or a Default under the Senior Secured Notes Indenture either occurs or ceases to be continuing the Senior Secured Notes Trustee 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 Creditor Representative and each Hedge Counterparty.
- (c) If an Event of Default or a Default under a Pari Passu Debt Document either occurs or ceases to be continuing the relevant Pari Passu Debt Representative 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 Creditor Representative and each Hedge Counterparty.
- (d) If an Event of Default or a Default under the Senior Notes Indenture either occurs or ceases to be continuing the Senior Notes Trustee 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 Creditor Representative and each Hedge Counterparty.
- (e) If an Acceleration Event occurs, the relevant Creditor Representative shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each other Party.
- (f) If the Security Agent enforces, or takes formal steps to enforce, any of the Transaction Security it shall notify each Creditor Representative of that action.

- (g) If any Primary Creditor exercises any right it may have to enforce, or to take formal steps to enforce, any of the Transaction Security it shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each Party of that action.
- (h) If a Debtor fails to make any Payment due under a Hedging Agreement, the Hedge Counterparty which is party to that Hedging Agreement shall, upon becoming aware of that failure, notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each Creditor Representative and each other Hedge Counterparty.
- (i) If a Hedge Counterparty terminates or closes-out, in whole or in part, any transaction under any Hedging Agreement under Clause 7.9 (*Permitted Enforcement: Hedge Counterparty*) it shall notify the Security Agent and the Security Agent shall, upon receiving that notification, notify each Creditor Representative and each other Hedge Counterparty.
- (j) The RCF Agent shall promptly notify the Security Agent of the RCF Discharge Date.
- (k) The Credit Facility Agent (under paragraph (b) of that definition) in respect of any Credit Facility Liabilities shall promptly notify the Security Agent of the Credit Facility Discharge Date in respect of those Credit Facility Liabilities.
- (l) The Senior Secured Notes Trustee shall promptly notify the Security Agent of the Senior Secured Notes Discharge Date (if it has received notification of such date in writing).
- (m) The Pari Passu Creditor Representative in respect of any tranche of Pari Passu Debt shall promptly notify the Security Agent of the Pari Passu Debt Discharge Date in respect of that tranche.
- (n) Each Hedge Counterparty shall promptly notify the Security Agent of the date on which all Hedging Liabilities owed to it have been fully and finally discharged to its satisfaction and it is under no further obligation to provide financial accommodation to any of the Debtors under any Hedging Agreement.
- (o) The Senior Notes Trustee shall without undue delay notify the Security Agent of the occurrence of the Senior Notes Discharge Date.

#### **27.4 Hedge Counterparty**

- (a) Each Hedge Counterparty shall on request from either Creditor Representative or the Security Agent from time to time notify each Creditor Representative and the Security Agent of the Notional Amount (as defined in the relevant Hedging Agreement) of each Hedging Agreement to which it is a party and the residual maturity of each such Hedging Agreement.
- (b) If any Hedge Counterparty does not promptly on request notify each of the Creditor Representatives and the Security Agent of any matter pursuant to paragraph (a) above, the Creditor Representatives and the Security Agent may assume that the Notional Amount (as defined in the relevant Hedging Agreement) of each relevant Hedging Agreement is that set out in that Hedging Agreement and may calculate the residual maturity of each relevant Hedging Agreement by reference to that Hedging Agreement.

## **28. NOTICES**

### **28.1 Communications in writing**

Any communication to be made under or in connection with this Agreement shall be made in writing and, unless otherwise stated, may be made by fax or letter or any electronic method of communication approved by the Security Agent.

### **28.2 Security Agent's communications with Primary Creditors**

The Security Agent shall be entitled to carry out all dealings with the Primary Creditors (other than the Hedge Counterparties) and the Arrangers through the relevant Creditor Representative and may give to the relevant Creditor Representative any notice or other communication required to be given by the Security Agent to a Primary Creditor and with each Hedge Counterparty directly with that Hedge Counterparty.

### **28.3 Addresses**

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

- (a) in the case of the Parent, that identified with its name below;
- (b) in the case of the Security Agent, that identified with its name below; and
- (c) in the case of each other Party, that identified with its name on the signature pages in this Agreement and 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.

### **28.4 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 28.3 (*Addresses*), if addressed to that department or officer.

- (b) Any communication or document to be made or delivered to the Security Agent or a Notes Trustee will be effective only when actually received by the Security Agent or that Notes Trustee and then only if it is expressly marked for the attention of the department or officer identified with the Security Agent's (or that Notes Trustee's) signature below or in the applicable Creditor/Creditor Representative Accession Undertaking (or any substitute department or officer as the Security Agent or that Notes Trustee shall specify for this purpose).

- (c) All notices to and from a Debtor shall be sent through the relevant Creditor Representative. The Parent may make and/or deliver as agent of each Debtor notices and/or requests on behalf of each Debtor.
- (d) Any communication or document made or delivered to the Parent or the Senior Secured Notes Issuer or a Senior Notes Issuer in accordance with this Clause 28.4 will be deemed to have been made or delivered to each of the Debtors.
- (e) Any communication or document which becomes effective, in accordance with paragraphs (a) to (d) above, after 5:00 p.m. in the place of receipt shall be deemed only to become effective on the following date.

#### **28.5 Notification of address, email address and fax number**

Promptly upon receipt of notification of an address, email address and fax number or change of address, email address or fax number pursuant to Clause 28.3 (*Addresses*) or changing its own address, email address or fax number, the Security Agent shall notify the other Parties.

#### **28.6 Electronic communication**

- (a) Any communication to be made by one person to another person under or in connection with this Agreement may be made by electronic mail or other electronic means provided such persons:
  - (i) agree that, unless and until notified to the contrary, this is to be an accepted form of communication;
  - (ii) notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and
  - (iii) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.
- (b) Any electronic communication will be effective only when actually received in readable form and in the case of any electronic communication made by such person to the Security Agent only if it is addressed in such a manner as the Security Agent shall specify for this purpose.
- (c) Any electronic communication which becomes effective, in accordance with paragraph (b) above, after 5:00 p.m. in the place of receipt shall be deemed only to become effective on the following date.
- (d) Any reference in this Agreement to a communication being sent or received shall be construed to include that communication being made available in accordance with this Clause 28.6.

#### **28.7 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 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.

## **28.8 Hedging Agreements**

For the avoidance of doubt, this Clause 28 (*Notices*) shall not apply to any communication between a Hedge Counterparty and a Debtor under or in connection with a Hedging Agreement.

## **29. PRESERVATION**

### **29.1 Partial invalidity**

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

### **29.2 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.

### **29.3 Remedies and waivers**

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

### **29.4 Waiver of defences**

The provisions of this Agreement or any Transaction Security will not be affected by an act, omission, matter or thing which, but for this Clause 29.4, 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 including any change in the purpose of, any extension of or any increase in any facility or the addition of any new facility under any Debt 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 Primary Creditors in whole or in part; or
- (h) any insolvency or similar proceedings.

#### **29.5 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 Secured Parties or in respect of the Shared Transaction Security, the Secured Parties and the Senior Notes Creditor 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, recorded, registered or notice of them is given to any person or they are intimated to any person; and
- (c) secure the Liabilities owing to the Secured Parties or in respect of the Shared Transaction Security, the Secured Parties and the Senior Notes 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.

### **30. CONSENTS, AMENDMENTS AND OVERRIDE**

#### **30.1 Required consents**

- (a) Subject to paragraph (b) below, to Clause 24.1 (*Incurrence of Additional Indebtedness*), to Clause 21.18(d) (*Resignation of the Security Agent*), Clause 30.4 (*Exceptions*) and Clause 30.6 (*Disenfranchisement of Sponsor Affiliates*), this Agreement may be amended or waived or any consent may be given under it with the written agreement of the Majority Super Senior Creditors, the Majority Senior Secured Creditors, the Senior Notes Required Holders (or in each case, the relevant Creditor Representative on their behalf), the Parent and the Security Agent provided that amendments of a minor, technical or administrative nature or which are intended to cure any ambiguity, defect or inconsistency may be effected by the Security Agent and the Parent) and provided further that to the extent an amendment, waiver or consent only affects one class of Secured Party or one class of Senior Notes Creditor, and such amendment, waiver or consent could not reasonably be expected to materially and adversely affect the interests of the other classes of Secured Party or

(as applicable) class of Senior Notes Creditor, only written agreement from the affected class shall be required.

(b) An amendment or waiver of this Agreement that has the effect of changing or which relates to:

(i) Clause 2 (*Ranking and Priority*), Clause 13 (*Turnover of receipts*), Clause 14 (*Redistribution*), Clause 15 (*Enforcement of Transaction Security*), Clause 17 (*Distressed Disposals*), Clause 19 (*Application of Proceeds*) or this Clause 30 (*Consents, amendments and override*);

(ii) paragraphs (d)(iii), (e) or (f) of Clause 21.7 (*Instructions*); or

(iii) the order of priority or subordination under this Agreement,

shall not be made without the written consent of all of:

(A) the RCF Lenders;

(B) (following the RCF Discharge Date) the required percentage of Credit Facility Lenders required under the relevant Credit Facility Document to vote on such matters in accordance with the terms thereof;

(C) the Senior Secured Notes Trustee (acting on the instruction of Senior Secured Notes Required Holders);

(D) in the case of any tranche of Pari Passu Notes, the respective Pari Passu Debt Representative (acting on the instruction of the Pari Passu Debt Required Holders);

(E) in the case of any Senior Notes, the Senior Notes Required Holders;

(F) in the case of any Pari Passu Debt (other than Pari Passu Notes), the required percentage of Pari Passu Creditors in respect of that Pari Passu Debt required under the relevant Pari Passu Debt Documents to vote on such matters in accordance with the terms thereof;

(G) each Hedge Counterparty (to the extent that the amendment or waiver would adversely affect that Hedge Counterparty);

(H) the Parent; and

(I) the Security Agent.

(c) An amendment to or waiver of Clause 11 (*Guarantee and indemnity*) in any manner which would adversely affect the Hedge Counterparties shall not be made without the written consent of each Hedge Counterparty.

(d) An amendment to or waiver of Schedule 5 (*Security Enforcement Principles*) shall not be made without the written consent of the Majority Super Senior Creditors, the Majority Senior Secured Creditors and the Security Agent. The consent of any Shareholder Creditor, the Parent or any other Debtor shall not be required in respect of any such amendment or waiver to the extent that it does not impose obligations on such Parties.



### 30.2 Amendments and waivers: Transaction Security Documents

- (a) Subject to Clause 16 (*Non-Distressed Disposals*), Clause 17 (*Distressed Disposals*), Clause 24.1 (*Incurrence of Additional Indebtedness*), paragraph (b) below and to Clause 30.4 (*Exceptions*) and unless the provisions of any Debt Document expressly provide otherwise, the Security Agent may, if authorised by the Instructing Group (or if after the Super Senior Discharge Date and the Senior Secured Discharge Date, any and each Senior Notes Trustee), 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 30.4 (*Exceptions*), the prior consent of the Creditor Representatives of the Credit Facility Lenders (acting on the instruction and on behalf of the Credit Facility Lenders required to consent or vote in connection with provisions dealing with consents, amendments and waivers in the relevant Credit Facility Document), each Hedge Counterparty, the Senior Secured Notes Trustee (acting on the instructions and on behalf of the Senior Secured Notes Required Holders in accordance with the terms of Senior Secured Notes Indenture), the Pari Passu Debt Required Holders in respect of each tranche of Pari Passu Debt (or the Pari Passu Debt Representatives acting on the instructions of the Pari Passu Debt Required Holders of each tranche of Pari Passu Debt in accordance with the terms of the relevant Pari Passu Debt Documents), the Parent and the Security Agent are required to authorise any amendment or waiver of, or consent under, any Transaction Security Document which would affect the nature or scope of the Charged Property or the manner in which the proceeds of enforcement of the Transaction Security are distributed.

### 30.3 Effectiveness

Any amendment, waiver or consent given in accordance with this Clause 30 (*Consents, amendments and override*) will be binding on all Parties and the Security Agent may effect, on behalf of any Creditor Representative, Arranger or Creditor, any amendment, waiver or consent permitted by this Clause 30 (*Consents, amendments and override*).

### 30.4 Exceptions

- (a) Subject to paragraphs (c) and (d) below, if the amendment, waiver or consent imposes new or additional obligations on or withdraws or reduces the rights of any Party other than:
  - (i) in the case of a Creditor, in a way which affects or would affect Creditors of that Party's class generally (and for the avoidance of doubt, the Credit Facility Lenders are a different class of Creditor from the Senior Secured Notes Creditors and the Pari Passu Creditors); or
  - (ii) in the case of a Debtor, to the extent consented to by the Parent under paragraph (a) of Clause 30.2 (*Amendments and waivers: Transaction Security Documents*),

the consent of that Party (or (A) in the case of the Senior Secured Noteholders, the consent of the Senior Secured Notes Trustee; and (B) in the case of any Pari Passu Creditor in respect of any Pari Passu Notes, the consent of the Creditor Representative in relation to such Pari Passu Debt) is required.

- (b) Subject to paragraphs (c) and (d) below, an amendment, waiver or consent which relates to the rights or obligations of a Creditor Representative, an Arranger, the Security Agent (including, without limitation, any ability of the Security Agent to act

in its discretion under this Agreement) or a Hedge Counterparty may not be effected without the consent of that Creditor Representative or, as the case may be, Arranger, the Security Agent or that Hedge Counterparty.

- (c) Neither paragraph (a) nor (b) above, nor paragraph (b) of Clause 30.2 (*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 17 (*Distressed Disposals*).
- (d) Paragraphs (a) and (b) above shall apply to an Arranger only to the extent that Arranger Liabilities are then owed to that Arranger.
- (e) An amendment that has the effect of changing or which relates to the requirements of any person proposing to act as a Creditor Representative (other than a Hedge Counterparty) (including, without limitation, on behalf of the creditors of Additional Indebtedness (as defined in Clause 24.1 (*Incurrence of Additional Indebtedness*)) which are customary for persons acting in such capacity and which would not have a material adverse effect on the other Parties, may be made by the Security Agent and the Parent on or prior to the date on which such person accedes to this Agreement as a Creditor Representative.

### 30.5 Excluded Super Senior Credit Participations

- (a) Subject to paragraph (b) below if in relation to:
  - (i) a request for a consent, approval, release or waiver of agreement to any amendment in relation to any of the terms of this Agreement;
  - (ii) a request to participate in any other vote of Super Senior Creditors under the terms of this Agreement;
  - (iii) a request to approve any other action under this Agreement; or
  - (iv) a request to provide any confirmation or notification under this Agreement, any Super Senior Creditor:
    - (A) fails to respond to that request within ten Business Days of that request being made; or
    - (B) (in the case of paragraphs (i) to (iii) above), fails to provide details of its Super Senior Credit Participation to the Security Agent within the timescale specified by the Security Agent,then:
  - (v) in the case of sub-paragraphs (i) to (iii) above, that Super Senior Creditor's Super Senior Credit Participation (as the case may be) shall be deemed to be zero for the purpose of calculating the Super Senior Credit Participations when ascertaining whether any relevant percentage (including, for the avoidance of doubt, unanimity) of Super Senior Credit Participations has been obtained to give that consent, approval, release or waiver of agreement to any amendment, carry that vote or approve that action;

- (vi) in the case of sub-paragraphs (i) to (iii) above, that Super Senior Creditor's status as a Super Senior Creditor shall be disregarded for the purposes of ascertaining whether the agreement of any specified group of Super Senior Creditors has been obtained to give that consent, approval, release or waiver of agreement to any amendment, carry that vote or approve that action; and
  - (vii) in the case of paragraph (iv) above, that confirmation or notification shall be deemed to have been given.
- (b) Paragraph (a)(A) above shall not apply to an amendment or waiver referred to in paragraphs (b)(i), (b)(ii), (b)(iii) of Clause 30.1 (*Required consents*).

### 30.6 Disenfranchisement of Sponsor Affiliates

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

- (i) the Majority Super Senior Creditors; or
- (ii) whether:
  - (A) any relevant percentage (including, for the avoidance of doubt, unanimity) of Super Senior Credit Participations; or
  - (B) the agreement of any specified group of Primary 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 Credit Facility Commitment shall be deemed to be zero and that Sponsor Affiliate (or the person with whom it has entered into that sub-participation, other agreement or arrangement (a "**Counterparty**")) shall be deemed not to be a Credit Facility Lender (except to the extent that a Counterparty is a Credit Facility Lender by virtue otherwise than by beneficially owning the relevant Credit Facility Commitment) provided that in each case the commitments and/or participations held by any Sponsor Affiliate are not treated less favourably than the commitments and/or participations held by the other Credit Facility Lenders.

- (b) Each Sponsor Affiliate that is a Credit Facility Lender agrees that:
- (i) in relation to any meeting or conference call to which all the Super Senior Creditors, all the Primary Creditors, all the Credit Facility Lenders or any combination of those groups of Primary 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) in its capacity as a Credit Facility Lender 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 Primary Creditors.

### 30.7 Disenfranchisement of Defaulting Lenders

- (a) For so long as a Defaulting Lender has any Available Commitment (under and as defined in the relevant Credit Facility Documents), in ascertaining:
  - (i) the Majority Super Senior Creditors; or
  - (ii) whether:
    - (A) any relevant percentage (including, for the avoidance of doubt, unanimity) of Super Senior Credit Participations; or
    - (B) the agreement of any specified group of Primary 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 (under and as defined in the relevant Credit Facility Documents) and, to the extent that that reduction results in that Defaulting Lender's Commitments being zero, that Defaulting Lender shall be deemed not to be a Credit Facility Lender.

- (b) For so long as a Defaulting Lender has any Available Commitment (under and as defined in the relevant Pari Passu Debt Document in the form of a loan, credit or guarantee facility), in ascertaining:
  - (i) the Majority Senior Secured Creditors;
  - (ii) the relevant percentage (including for the avoidance of doubt, unanimity) of Senior Secured Credit Participations; or
  - (iii) whether the agreement of any specified group of Primary 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 (under and as defined in the relevant Pari Passu Debt Documents) and, to the extent that that reduction results in that Defaulting Lender's Commitments being zero, that Defaulting Lender shall be deemed not to be a Pari Passu Creditor.

- (c) For the purposes of this Clause 30.7, the Security Agent may assume that the following Creditors are Defaulting Lenders:
  - (i) any Credit Facility Lender or Pari Passu Creditor which has notified the Security Agent that it has become a Defaulting Lender;
  - (ii) any Credit Facility Lender or Pari Passu Creditor to the extent that the relevant Creditor Representative has notified the Security Agent that that Credit Facility Lender or Pari Passu Creditor is a Defaulting Lender; and
  - (iii) any Credit Facility Lender or Pari Passu Creditor in relation to which it is aware that any of the events or circumstances referred to in paragraphs (a), (b) or (c) of the definition of "Defaulting Lender" in the RCF Agreement (or, in respect of a Credit Facility Lender, the Equivalent Provisions of any other Credit Facility Documents or, in respect of a Pari Passu Creditor, the Equivalent Provisions of any Pari Passu Debt Documents) has occurred,

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

### **30.8 Calculation of Credit Participations**

For the purpose of ascertaining whether any relevant percentage of Super Senior Credit Participations, Senior Secured Credit Participations or principal amount of Senior Notes has been obtained under this Agreement, the Security Agent may notionally convert the Super Senior Credit Participations, Senior Secured Credit Participations or principal amount of Senior Notes into its Base Currency Amount.

### **30.9 Deemed consent**

If, at any time prior to the Final Discharge Date, the Primary Creditors give a consent, approval, release or waiver or agreement to any amendment (a "**Consent**") in respect of this Agreement or the Primary Finance Documents then, if that action was permitted by the terms of this Agreement, the Subordinated Creditors and the Parent 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 Primary Creditors may reasonably require to give effect to paragraph (a) of this Clause 30.9.

### **30.10 Excluded consents**

Clause 30.9 (*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 Transaction Security Document.

### **30.11 No liability**

None of the Primary Creditors or Creditor Representatives will be liable to any other Creditor or Debtor for any Consent given or deemed to be given under this Clause 30.

### **30.12 Agreement to override**

- (a) Subject to paragraph (b) below, the other Debt Documents are subject to this Agreement and unless expressly stated otherwise in this Agreement, in the event of a conflict between the terms of a Debt Document and this Agreement the terms of this Agreement shall prevail.
- (b) Notwithstanding anything to the contrary in this Agreement, the preceding paragraph (a) as between any Creditor and any Debtor or any member of the Group will not cure, postpone, waive or negate in any manner any default or event of default (howsoever described) under any Debt Document as provided in the relevant Debt Document.

31. **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.

32. **GOVERNING LAW**

This Agreement and any non-contractual obligation arising out of or in connection with this Agreement is governed by English law.

33. **ENFORCEMENT**

33.1 **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 33.1 is for the benefit of the Secured Parties and the Senior Notes Creditors only. As a result, no Secured Party or Senior Notes Creditor 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 or Senior Notes Creditors may take concurrent proceedings in any number of jurisdictions.

33.2 **Service of process**

- (a) Without prejudice to any other mode of service allowed under any relevant law each Debtor (unless incorporated in England and Wales):
  - (i) irrevocably appoints Interoute Communications Holdings Limited as its agent for service of process in relation to any proceedings before the English courts in connection with this Agreement; and
  - (ii) agrees that failure by a process agent to notify the relevant Debtor 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 must immediately (and in any event within ten days of such event taking place) appoint another agent on terms acceptable to each Creditor Representative and Hedge Counterparty, failing which the Security Agent may appoint another agent for this purpose.
- (c) Interoute Communications Holdings Limited confirms its acceptance of its appointment as agent for service of process by execution of this Agreement.
- (d) Each Debtor expressly agrees and consents to the provisions of this Clause 33 and Clause 32 (*Governing law*).

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

## SCHEDULE 1

### THE PARTIES

#### Part 1

##### Original Shareholder Creditors

<u>Company Name</u>	<u>Jurisdiction of incorporation</u>	<u>Company number (if any)</u>
Interoute Holdings S.à r.l., a Luxembourg private limited liability company (société à responsabilité limitée), having its registered office at 2-8, avenue Charles De Gaulle, L-1653 Luxembourg, Grand Duchy of Luxembourg, registered with the Luxembourg Register of Commerce and Companies under number B 112.820 and having a share capital on the date hereof amounting to EUR 250,000,000.	Luxembourg	B 112.820

#### Part 2

##### Original Intra-Group Lenders

<u>Company Name</u>	<u>Jurisdiction of incorporation</u>	<u>Company number (if any)</u>
Interoute Communications Holdings Limited	England and Wales	04927540
Interoute Communications Limited	England and Wales	04472687
Interoute Finco plc	England and Wales	09727400
Interoute Networks Limited	England and Wales	03773255
Interoute Media Services Limited	England and Wales	03617043
Interoute Application Management Limited	England and Wales	03639598
Interoute Vtesse Limited	England and Wales	03900836
Interoute Cirrus Limited	England and Wales	07473177

### Part 3

#### Original Debtors

<u>Company Name</u>	<u>Jurisdiction of incorporation</u>	<u>Company number (if any)</u>
Interoute Communications Holdings Limited	England and Wales	04927540
Interoute Communications Limited	England and Wales	04472687
Interoute Finco plc	England and Wales	09727400
Interoute Networks Limited	England and Wales	03773255
Interoute Media Services Limited	England and Wales	03617043
Interoute Application Management Limited	England and Wales	03639598
Interoute Vtesse Limited	England and Wales	03900836
Interoute Cirrus Limited	England and Wales	07473177



**Part 4**

**Original Hedge Guarantors**

<u>Company Name</u>	<u>Jurisdiction of incorporation</u>	<u>Company number (if any)</u>
Interoute Communications Holdings Limited	England and Wales	04927540
Interoute Communications Limited	England and Wales	04472687
Interoute Finco plc	England and Wales	09727400
Interoute Networks Limited	England and Wales	03773255
Interoute Media Services Limited	England and Wales	03617043
Interoute Application Management Limited	England and Wales	03639598
Interoute Vtesse Limited	England and Wales	03900836
Interoute Cirrus Limited	England and Wales	07473177

## SCHEDULE 2

### 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 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 [ ] between, amongst others, [ ] as Parent, [ ] as Security Agent, [ ] as RCF Agent, the Creditors and the 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]<sup>1</sup>
  - (c) all obligations expressed to be undertaken by the Acceding Debtor to pay amounts in respect of the Liabilities to the Security Agent as agent or trustee, as the case may be, for the Secured Parties or in respect of the Shared Transaction Security, the Secured Parties and the Senior Notes Creditors (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 agent or trustee, as the case may be, for the Secured Parties, or in respect of the Shared Transaction Security, the Secured Parties and the Senior Notes Creditorsas agent or trustee, as the case may be, for the Secured Parties or in respect of the Shared Transaction Security, the Secured Parties and the Senior Notes Creditors 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.

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<sup>1</sup> Include if the security is being granted to the Security Agent as trustee for the Secured Parties.

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].<sup>2</sup>*

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

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

The Acceding Debtor )

EXECUTED AS A DEED )

By: *[Full Name of Acceding Debtor]* )

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Address for notices:

Address:

Fax:

The Security Agent

*[Full Name of Security Agent]*

By:

Date:

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<sup>2</sup> Include if the member of the Group is acceding as an Intra-Group Lender.

### SCHEDULE 3

#### FORM OF CREDITOR / CREDITOR REPRESENTATIVE ACCESSION UNDERTAKING

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

From: *[Acceding Creditor/Creditor Representative]*

THIS UNDERTAKING is made on *[date]* by *[insert full name of new Arranger / Credit Facility Lender / Creditor Representative / Hedge Counterparty / Intra-Group Lender / Pari Passu Creditor / RCF Lender / Senior Secured Notes Trustee / Senior Notes Issuer / Senior Notes Trustee / Shareholder Creditor]* (the "**Acceding [Arranger / Credit Facility Lender / Creditor Representative / Hedge Counterparty / Intra-Group Lender / Pari Passu Creditor / RCF Lender / Senior Secured Notes Trustee / Senior Notes Issuer / Senior Notes Trustee / Shareholder Creditor]**") in relation to the intercreditor agreement (the "**Intercreditor Agreement**") dated *[ ]* between, among others, *[ ]* as Parent, *[ ]* as Security Agent, *[ ]* as RCF Agent, the Creditors and the Debtors (each as defined in the Intercreditor Agreement). Terms defined in the Intercreditor Agreement shall, unless otherwise defined in this Undertaking, bear the same meanings when used in this Undertaking.

In consideration of the Acceding *[Arranger / Credit Facility Lender / Creditor Representative / Hedge Counterparty / Intra-Group Lender / Pari Passu Creditor / RCF Lender / Senior Secured Notes Trustee / Senior Notes Issuer / Senior Notes Trustee / Shareholder Creditor]* being accepted as a *[Credit Facility Lender / Creditor Representative / Hedge Counterparty / Intra-Group Lender / Pari Passu Creditor / RCF Lender / Senior Secured Notes Trustee / Senior Notes Issuer / Senior Notes Trustee / Shareholder Creditor]* for the purposes of the Intercreditor Agreement, the Acceding *[Arranger / Credit Facility Lender / Creditor Representative / Hedge Counterparty / Intra-Group Lender / Pari Passu Creditor / RCF Lender / Senior Secured Notes Trustee / Senior Notes Issuer / Senior Notes Trustee / Shareholder Creditor]* confirms that, as from *[date]*, it intends to be Party to the Intercreditor Agreement as a *[Arranger / Credit Facility Lender / Creditor Representative / Hedge Counterparty / Intra-Group Lender / Pari Passu Creditor / RCF Lender / Senior Secured Notes Trustee / Senior Notes Issuer / Senior Notes Trustee / Shareholder Creditor]* and undertakes to perform all the obligations expressed in the Intercreditor Agreement to be assumed by a *[Arranger / Credit Facility Lender / Creditor Representative / Hedge Counterparty / Intra-Group Lender / Pari Passu Creditor / RCF Lender / Senior Secured Notes Trustee / Senior Notes Issuer / Senior Notes Trustee / Shareholder Creditor]* and agrees that it shall be bound by all the provisions of the Intercreditor Agreement, as if it had been an original Party to the Intercreditor Agreement.

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

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

Acceding *[Creditor/Creditor Representative]*

*[EXECUTED as a DEED]*  
*[insert full name of Acceding Creditor/Creditor Representative]*

By:

Address:

Fax:

Accepted by the Security Agent

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for        and        on        behalf        of  
[Insert full name of current Security Agent]

Date:

## SCHEDULE 4

### FORM OF DEBTOR RESIGNATION REQUEST

To: [ ] as Security Agent

From: [resigning Debtor] and [Parent]

Dated:

Dear Sirs

**Interoute Communications Holdings Limited – Intercreditor Agreement dated [ ] (the “Intercreditor Agreement”)**

1. We refer to the Intercreditor Agreement. This is a Debtor Resignation Request. Terms defined in the Intercreditor Agreement have the same meaning in this Debtor Resignation Request unless given a different meaning in this Debtor Resignation Request.
2. Pursuant to Clause 22.16 (*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 Subordinated Liabilities.
4. This letter and any non-contractual obligations arising out of or in connection with it are governed by and shall be construed in accordance with English law.

[Parent]

[resigning Debtor]

By:

By:

## SCHEDULE 5

### SECURITY ENFORCEMENT PRINCIPLES

1. It shall be the primary and over-riding aim of any enforcement of the Transaction Security to achieve the Security Enforcement Objective.
2. The Security Enforcement Principles may be amended, varied or waived with the prior written consent of the Majority Super Senior Creditors, the Majority Senior Secured Creditors and the Security Agent.
3. The Transaction Security will be enforced and other action as to Enforcement will be taken such that either:
  - (a) all proceeds of Enforcement are received by the Security Agent in cash for distribution in accordance with Clause 19 (*Application of Proceeds*); or
  - (b) if the Enforcement is on the instructions of the Majority Senior Secured Creditors, sufficient proceeds from Enforcement will be received by the Security Agent in cash to ensure that when the proceeds are applied in accordance with Clause 19 (*Application of Proceeds*), the Super Senior Liabilities are repaid and discharged in full (unless the Majority Super Senior Creditors agree otherwise).
4. On:
  - (a) a proposed Enforcement of any of the Transaction Security over assets (other than shares in a member of the Group), where the aggregate book value of such assets exceeds €5,000,000 (or its equivalent); or
  - (b) a proposed Enforcement of any of the Transaction Security over some or all of the shares in a member of the Group over which Transaction Security exists,

the Security Agent shall appoint, if requested by the Majority Super Senior Creditors and/or the Majority Senior Secured Creditors and to the extent that Financial Advisers have not adopted a general policy of not providing a Financial Adviser's Opinion, a Financial Adviser (whose liability in giving such opinion may be limited to the amount of its fees in respect of such appointment) to opine as expert that the consideration from any such Enforcement is fair from a financial point of view for a prompt and expeditious sale taking into account all relevant circumstances (the "**Financial Adviser's Opinion**") provided that no Financial Adviser's Opinion shall be required in relation to such Enforcement Action if the Enforcement Action is conducted by way of Public Auction or if the proposed Enforcement:

- (i) would result in the receipt of sufficient Enforcement Proceeds in cash by the Security Agent to ensure that, after application in accordance with Clause 19 (*Application of Proceeds*):
  - (A) in the case of an Enforcement requested by the Majority Super Senior Creditors, the Senior Secured Discharge Date would occur; or
  - (B) in the case of an Enforcement requested by the Majority Pari Passu Creditors, the Super Senior Discharge Date would occur;
- (ii) is in accordance with any applicable law; and
- (iii) complies with Clause 17 (*Distressed Disposals*).

5. The Security Agent shall be under no obligation to appoint a Financial Adviser or to seek the advice of a Financial Adviser, unless expressly required to do so by this Schedule or any other provision of this Agreement.
6. The Financial Adviser's Opinion (or any equivalent opinion obtained by the Security Agent in relation to any other Enforcement of the Transaction Security that such action is fair from a financial point of view after taking into account all relevant circumstances) will be conclusive evidence that the Security Enforcement Principles have been met.
7. This Schedule 5 is for the benefit of the Super Senior Creditors, the Pari Passu Creditors and the Security Agent only.



## SCHEDULE 6

### FORM OF PRIORITY LONG TERM OPERATIONAL FX HEDGING NOTICE

[Designated Priority Long Term Operational FX Hedging Notice]/[Designated Priority Long Term Operational FX Hedging Adjustment Notice]/[Priority Long Term Operational Hedging Reduction and Resignation Notice]<sup>1</sup>

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

From: [Insert full name of Parent], as Parent

[Hedge Counterparty]<sup>2</sup>

Dated:

Dear Sirs

**Interoute Communications Holdings Limited – Intercreditor Agreement dated [ ] (the “Intercreditor Agreement”)**

1. We refer to the Intercreditor Agreement. This is a [Designated Priority Long Term Operational FX Hedging Notice]/[Designated Priority Long Term Operational FX Hedging Adjustment Notice]/[Priority Long Term Operational Hedging Reduction and Resignation Notice].<sup>3</sup> Terms defined in the Intercreditor Agreement shall have the same meaning in this [Designated Priority Long Term Operational FX Hedging Notice]/[Designated Priority Long Term Operational FX Hedging Adjustment Notice]/[Priority Long Term Operational Hedging Reduction and Resignation Notice]<sup>4</sup> unless given a different meaning in this notice.
2. [Debtor] and [Hedge Counterparty] [intend to][have entered into]<sup>5</sup> enter into a Hedging Agreement with respect to Long Term Operational FX Hedging Transactions.<sup>6</sup>
3. [We require the amount of [●] to be [allocated to][released in respect of] [Hedge Counterparty] as a Designated Priority Long Term Operational FX Hedging Amount under the relevant Hedging Agreement in respect of Priority Long Term Operational FX Hedging Liabilities with effect from and including [ ].]/[We hereby resign as a Priority Long Term Operational FX Hedge Counterparty and confirm that the Designated Priority Long Term FX Hedging Amount of [●] attributable to us in respect of our Long Term Operational FX Hedging Transactions shall be reduced to zero with effect from and including [●].]<sup>7</sup>
4. We request that you in your capacity as Security Agent confirm [if this amount has been [allocated to [Hedge Counterparty]][released] as a Designated Priority Long Term Operational FX Hedging Amount][our resignation is effective and this amount has been reduced to zero]<sup>8</sup> by signing and returning the acknowledgment attached hereto.

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

[Parent]

By:

[Hedge Counterparty]

By:

**We acknowledge receipt of the above notice and confirm that:**

*[the proposed Designated Priority Long Term Operational FX Hedging Amount would cause the Priority Long Term Operational FX Hedging Liabilities Recoveries Amount to be exceeded. The proposed Designated Priority Long Term Operational FX Hedging Amount results in an excess over the Priority Long Term Operational FX Hedging Liabilities Recoveries Amount by [amount].] [the [Designated Priority Long Term Operational FX Hedging Notice]/[Designated Priority Long Term Operational FX Hedging Adjustment Notice]/[Priority Long Term Operational Hedging Reduction and Resignation Notice] has been accepted.]<sup>9</sup>*

For and on behalf of

*[Insert full name of current Security Agent]*

Date:

---

<sup>1</sup> Delete text in square brackets as applicable.

<sup>2</sup> Include any Hedge Counterparty that is the subject to the allocation/release.

<sup>3</sup> Delete text in square brackets as applicable.

<sup>4</sup> Delete text in square brackets as applicable.

<sup>5</sup> Delete text in square brackets as applicable.

<sup>6</sup> Include details of the Hedging Agreements to the extent available.

<sup>7</sup> Delete text in square brackets as applicable.

<sup>8</sup> Delete text in square brackets as applicable.

<sup>4</sup> Delete text in square brackets as applicable.

## SCHEDULE 7

### FORM OF HEDGE GUARANTOR RESIGNATION REQUEST

To: [ ] as Hedge Counterparty

From: [resigning Hedge Guarantor] and [Parent], as Parent

Copy to: [ ] as Security Agent

Dated:

Dear Sirs

**Interoute Communications Holdings Limited – Intercreditor Agreement dated [ ] (the “Intercreditor Agreement”)**

1. We refer to the Intercreditor Agreement. This is a Hedge Guarantor Resignation Request. Terms defined in the Intercreditor Agreement have the same meaning in this Hedge Guarantor Resignation Request unless given a different meaning in this Hedge Guarantor Resignation Request.
2. Pursuant to Clause 11.17 (*Resignation of Hedge Guarantor*) of the Intercreditor Agreement we request that [resigning Hedge Guarantor] be released from its obligations as a Hedge Guarantor under the Intercreditor Agreement.
3. We confirm that:
  - (a) no Default is continuing or would result from the acceptance of this request; and
  - (b) [the [Hedge Counterparty] has consented to the resignation.]  
  
[that Hedge Guarantor, or its Holding Company, is being disposed of to a person which is not a member of the Group where that disposal is permitted under the Credit Facility Documents, the Senior Secured Notes Documents, the Pari Passu Debt Documents and the Senior Notes Documents.]  
  
[that Hedge Guarantor has been designated an Unrestricted Subsidiary and this designation has become effective in accordance with the requirements for such designation in the Credit Facility Documents, the Senior Secured Notes Documents, the Pari Passu Debt Documents and the Senior Notes Documents.]  
  
[the guarantee of other Financial Indebtedness by the Hedge Guarantor is being released or discharged and the Hedge Guarantor does not guarantee any other Financial Indebtedness of any Debtor (save for [ ] which is being released at the same time as the Hedge Guarantee Resignation Letter becomes effective).]
4. This letter and any non-contractual obligations arising out of or in connection with it are governed by and shall be construed in accordance with English law.

[Parent]

[resigning Hedge Guarantor]

By:

By:

## **SIGNATURES**

**THE PARENT**

**EXECUTED** as a **DEED** by

**INTERROUTE COMMUNICATIONS HOLDINGS LIMITED**

### **Notice details**

Address: 31<sup>st</sup> Floor, 25 Canada Square, Canary Wharf, London, E14 5LQ

Telephone number: +44 (0) 207 025 9855

Email: maurice.woolf@interoute.com

Attention: Maurice Woolf

**THE SENIOR SECURED NOTES ISSUER**

**EXECUTED** as a **DEED** by

**INTERROUTE FINCO PLC**

**Notice details**

Address: 31<sup>st</sup> Floor, 25 Canada Square, Canary Wharf, London, E14 5LQ

Telephone number: +44 (0) 207 025 9855

Email: maurice.woolf@interoute.com

Attention: Maurice Woolf

**THE ORIGINAL RCF AGENT**

**EXECUTED** as a **DEED** by

**BARCLAYS BANK PLC**

**Notice details**

Address: Barclays, Level 1, 10 The South Colonnade, Canary Wharf, London E14 4PU

Telephone number: +44 20 7773 4052

Fax number: +44 20 7773 4893

Email: emma.sharma@barclays.com

Attention: Emma Sharma, Assistant Vice President, European Loans Agency

**THE ORIGINAL ARRANGERS**

**EXECUTED** as a **DEED** by

**BARCLAYS BANK PLC**

**Notice details**

Address: Barclays, Level 27, 1 Churchill Place, London E14 5HP

Email: andrew.skinner@barclays.com

Attention: Andrew Skinner

**EXECUTED** as a **DEED** by

**CREDIT SUISSE AG, LONDON BRANCH**

**Notice details**

Address: One Cabot Square, London E14 4QJ  
Telephone number: +44 20 7883 0016  
Fax number: +44 20 7888 8398 / 20 7888 8125  
Email: list.csfb-loans-grp@credit-suisse.com  
Attention: Loans Servicing



**EXECUTED** as a **DEED** by

**DEUTSCHE BANK AG, LONDON BRANCH**

**Notice details**

Address: Winchester House, 1 Great Winchester Street, London EC2N 2DB

Telephone number: +35 24 2122 6830

Fax number: +35 24 2122 95770

Email: faxeingang.admin@db.com

Attention: Alena Kaspiarovich

**EXECUTED** as a **DEED** by

**DNB (UK) LIMITED**

**Notice details**

Address: 8th Floor, The Walbrook Building, 25 Walbrook, London EC4N 8AF

Telephone number: +44 20 7621 1111

Fax number: +44 20 7283 5935

Email: cmoalondon@dnb.no

Attention: Credit Middle Office & Agency

**EXECUTED** as a **DEED** by

**MORGAN STANLEY BANK INTERNATIONAL LIMITED**

**Notice details**

Address: 20 Bank Street, Canary Wharf, London E14 4AD

Telephone number: +44 14 1245 0138 / 245 0135

Fax number: +44 20 7056 1947

Email: [loanservicing@morganstanley.com](mailto:loanservicing@morganstanley.com)

Attention: Angela Mullaney/Claire Roberts

**THE OTHER ORIGINAL RCF FINANCE PARTIES**

**EXECUTED** as a **DEED** by

**BARCLAYS BANK PLC**

**Notice details**

Address: Barclays, Level 27, 1 Churchill Place, London E14 5HP

Email: andrew.skinner@barclays.com

Attention: Andrew Skinner

**EXECUTED as a DEED by**

**CREDIT SUISSE AG, LONDON BRANCH**

**Notice details**

Address: One Cabot Square, London E14 4QJ  
Telephone number: +44 20 7883 0016  
Fax number: +44 20 7888 8398 / 20 7888 8125  
Email: list.csfb-loans-grp@credit-suisse.com  
Attention: Loans Servicing

**EXECUTED** as a **DEED** by

**DEUTSCHE BANK AG, LONDON BRANCH**

**Notice details**

Address: Winchester House, 1 Great Winchester Street, London EC2N 2DB

Telephone number: +35 24 2122 6830

Fax number: +35 24 2122 95770

Email: faxeingang.admin@db.com

Attention: Alena Kaspiarovich

**EXECUTED as a DEED by**

**DNB (UK) LIMITED**

**Notice details**

Address: 8th Floor, The Walbrook Building, 25 Walbrook, London EC4N 8AF

Telephone number: +44 20 7621 1111

Fax number: +44 20 7283 5935

Email: cmoalondon@dnb.no

Attention: Credit Middle Office & Agency

**EXECUTED** as a **DEED** by

**MORGAN STANLEY SENIOR FUNDING, INC.**

**Notice details**

Address: 20 Bank Street, Canary Wharf, London E14 4AD

Telephone number: +44 14 1245 0138 / 245 0135

Fax number: +44 20 7056 1947

Email: [loanservicing@morganstanley.com](mailto:loanservicing@morganstanley.com)

Attention: Angela Mullaney/Claire Roberts



**THE SENIOR SECURED NOTES TRUSTEE**

**EXECUTED** as a **DEED** by

**HSBC CORPORATE TRUSTEE COMPANY (UK) LIMITED**

**Notice details**

Address: 8 Canada Square, London E14 5HQ

Fax number: +44 20 7991 4350

Email: [ctla.trustee.admin@hsbc.com](mailto:ctla.trustee.admin@hsbc.com)

Attention: CTLA Trustee Administration Services

**THE ORIGINAL SHAREHOLDER CREDITOR**

**EXECUTED** as a **DEED** by

**INTERROUTE HOLDINGS S.À R.L.**

**Notice details**

Address: 31<sup>st</sup> Floor, 25 Canada Square, Canary Wharf, London, E14 5LQ

Telephone number: +44 (0) 207 025 9855

Email: [maurice.woolf@interoute.com](mailto:maurice.woolf@interoute.com)

Attention: Maurice Woolf

**THE ORIGINAL INTRA-GROUP LENDERS**

**EXECUTED** as a **DEED** by

**INTERROUTE COMMUNICATIONS HOLDINGS LIMITED**

**Notice details**

Address: 31<sup>st</sup> Floor, 25 Canada Square, Canary Wharf, London, E14 5LQ

Telephone number: +44 (0) 207 025 9855

Email: maurice.woolf@interoute.com

Attention: Maurice Woolf

**EXECUTED** as a **DEED** by

**INTERROUTE COMMUNICATIONS LIMITED**

**Notice details**

Address: 31<sup>st</sup> Floor, 25 Canada Square, Canary Wharf, London, E14 5LQ

Telephone number: +44 (0) 207 025 9855

Email: maurice.woolf@interoute.com

Attention: Maurice Woolf

**EXECUTED** as a **DEED** by  
**INTERROUTE FINCO PLC**

**Notice details**

Address: 31<sup>st</sup> Floor, 25 Canada Square, Canary Wharf, London, E14 5LQ  
Telephone number: +44 (0) 207 025 9855  
Email: maurice.woolf@interoute.com  
Attention: Maurice Woolf

**EXECUTED** as a **DEED** by

**INTERROUTE NETWORKS LIMITED**

**Notice details**

Address: 31<sup>st</sup> Floor, 25 Canada Square, Canary Wharf, London, E14 5LQ

Telephone number: +44 (0) 207 025 9855

Email: maurice.woolf@interoute.com

Attention: Maurice Woolf

**EXECUTED** as a **DEED** by

**INTERROUTE MEDIA SERVICES LIMITED**

**Notice details**

Address: 31<sup>st</sup> Floor, 25 Canada Square, Canary Wharf, London, E14 5LQ

Telephone number: +44 (0) 207 025 9855

Email: maurice.woolf@interoute.com

Attention: Maurice Woolf

**EXECUTED as a DEED by**

**INTERROUTE APPLICATION MANAGEMENT LIMITED**

**Notice details**

Address: 31<sup>st</sup> Floor, 25 Canada Square, Canary Wharf, London, E14 5LQ

Telephone number: +44 (0) 207 025 9855

Email: maurice.woolf@interoute.com

Attention: Maurice Woolf



**EXECUTED** as a **DEED** by

**INTERROUTE VTESSE LIMITED**

**Notice details**

Address: 31<sup>st</sup> Floor, 25 Canada Square, Canary Wharf, London, E14 5LQ

Telephone number: +44 (0) 207 025 9855

Email: maurice.woolf@interoute.com

Attention: Maurice Woolf

**EXECUTED** as a **DEED** by

**INTERROUTE CIRRUS LIMITED**

**Notice details**

Address: 31<sup>st</sup> Floor, 25 Canada Square, Canary Wharf, London, E14 5LQ

Telephone number: +44 (0) 207 025 9855

Email: maurice.woolf@interroute.com

Attention: Maurice Woolf

**THE ORIGINAL DEBTORS**

**EXECUTED** as a **DEED** by

**INTERROUTE COMMUNICATIONS HOLDINGS LIMITED**

**Notice details**

Address: 31<sup>st</sup> Floor, 25 Canada Square, Canary Wharf, London, E14 5LQ

Telephone number: +44 (0) 207 025 9855

Email: maurice.woolf@interroute.com

Attention: Maurice Woolf

**EXECUTED as a DEED by**

**INTERROUTE COMMUNICATIONS LIMITED**

**Notice details**

Address: 31<sup>st</sup> Floor, 25 Canada Square, Canary Wharf, London, E14 5LQ

Telephone number: +44 (0) 207 025 9855

Email: maurice.woolf@interoute.com

Attention: Maurice Woolf

**EXECUTED** as a **DEED** by  
**INTERROUTE FINCO PLC**

**Notice details**

Address: 31<sup>st</sup> Floor, 25 Canada Square, Canary Wharf, London, E14 5LQ  
Telephone number: +44 (0) 207 025 9855  
Email: maurice.woolf@interoute.com  
Attention: Maurice Woolf

**EXECUTED** as a **DEED** by

**INTERROUTE NETWORKS LIMITED**

**Notice details**

Address: 31<sup>st</sup> Floor, 25 Canada Square, Canary Wharf, London, E14 5LQ

Telephone number: +44 (0) 207 025 9855

Email: maurice.woolf@interoute.com

Attention: Maurice Woolf

**EXECUTED** as a **DEED** by

**INTERROUTE MEDIA SERVICES LIMITED**

**Notice details**

Address: 31<sup>st</sup> Floor, 25 Canada Square, Canary Wharf, London, E14 5LQ

Telephone number: +44 (0) 207 025 9855

Email: maurice.woolf@interoute.com

Attention: Maurice Woolf

**EXECUTED as a DEED by**

**INTERROUTE APPLICATION MANAGEMENT LIMITED**

**Notice details**

Address: 31<sup>st</sup> Floor, 25 Canada Square, Canary Wharf, London, E14 5LQ

Telephone number: +44 (0) 207 025 9855

Email: maurice.woolf@interoute.com

Attention: Maurice Woolf



**EXECUTED as a DEED by**

**INTERROUTE VTESSE LIMITED**

**Notice details**

Address: 31<sup>st</sup> Floor, 25 Canada Square, Canary Wharf, London, E14 5LQ

Telephone number: +44 (0) 207 025 9855

Email: maurice.woolf@interoute.com

Attention: Maurice Woolf

**EXECUTED** as a **DEED** by

**INTERROUTE CIRRUS LIMITED**

**Notice details**

Address: 31<sup>st</sup> Floor, 25 Canada Square, Canary Wharf, London, E14 5LQ

Telephone number: +44 (0) 207 025 9855

Email: maurice.woolf@interoute.com

Attention: Maurice Woolf

**THE ORIGINAL HEDGE GUARANTORS**

**EXECUTED** as a **DEED** by

**INTERROUTE COMMUNICATIONS HOLDINGS LIMITED**

**Notice details**

Address: 31<sup>st</sup> Floor, 25 Canada Square, Canary Wharf, London, E14 5LQ

Telephone number: +44 (0) 207 025 9855

Email: maurice.woolf@interoute.com

Attention: Maurice Woolf

**EXECUTED** as a **DEED** by

**INTERROUTE COMMUNICATIONS LIMITED**

**Notice details**

Address: 31<sup>st</sup> Floor, 25 Canada Square, Canary Wharf, London, E14 5LQ

Telephone number: +44 (0) 207 025 9855

Email: maurice.woolf@interoute.com

Attention: Maurice Woolf

**EXECUTED** as a **DEED** by  
**INTERROUTE FINCO PLC**

**Notice details**

Address: 31<sup>st</sup> Floor, 25 Canada Square, Canary Wharf, London, E14 5LQ  
Telephone number: +44 (0) 207 025 9855  
Email: maurice.woolf@interoute.com  
Attention: Maurice Woolf

**EXECUTED** as a **DEED** by

**INTERROUTE NETWORKS LIMITED**

**Notice details**

Address: 31<sup>st</sup> Floor, 25 Canada Square, Canary Wharf, London, E14 5LQ

Telephone number: +44 (0) 207 025 9855

Email: maurice.woolf@interoute.com

Attention: Maurice Woolf

**EXECUTED as a DEED by**

**INTERROUTE MEDIA SERVICES LIMITED**

**Notice details**

Address: 31<sup>st</sup> Floor, 25 Canada Square, Canary Wharf, London, E14 5LQ

Telephone number: +44 (0) 207 025 9855

Email: maurice.woolf@interoute.com

Attention: Maurice Woolf

**EXECUTED as a DEED by**

**INTERROUTE APPLICATION MANAGEMENT LIMITED**

**Notice details**

Address: 31<sup>st</sup> Floor, 25 Canada Square, Canary Wharf, London, E14 5LQ

Telephone number: +44 (0) 207 025 9855

Email: maurice.woolf@interoute.com

Attention: Maurice Woolf



**EXECUTED as a DEED by**

**INTERROUTE VTESSE LIMITED**

**Notice details**

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Telephone number: +44 (0) 207 025 9855

Email: maurice.woolf@interoute.com

Attention: Maurice Woolf

**EXECUTED** as a **DEED** by

**INTERROUTE CIRRUS LIMITED**

**Notice details**

Address: 31<sup>st</sup> Floor, 25 Canada Square, Canary Wharf, London, E14 5LQ

Telephone number: +44 (0) 207 025 9855

Email: maurice.woolf@interoute.com

Attention: Maurice Woolf

**THE SECURITY AGENT**

**EXECUTED** as a **DEED** by

**BARCLAYS BANK PLC**

**Notice details**

Address: Barclays, Level 1, 10 The South Colonnade, Canary Wharf, London E14 4PU

Telephone number: +44 20 7773 4052

Fax number: +44 20 7773 4893

Email: emma.sharma@barclays.com

Attention: Emma Sharma, Assistant Vice President, European Loans Agency

I certify that, save for material redacted pursuant to section 859G of the Companies Act 2006, the enclosed copy of the security instrument, delivered as part of this application for registration under section 859A of the Companies Act 2006, is a correct copy of the original security instrument.

Signature: 

Date: 15 Jan 2016

## ACCESSION DEED OF EASYNET MANAGED SERVICES LIMITED

To: Barclays Bank PLC as Facility Agent and Barclays Bank PLC as Security Agent for itself and each of the other parties to the Intercreditor Agreement referred to below

From: Easynet Managed Services Limited and Interoute Communications Holdings Limited

Dated: 13 January 2016

Dear Sirs

### Interoute Communications Holdings Limited – Super Senior Multicurrency Revolving Facility Agreement dated 15 October 2015 (the "Facility Agreement") – Intercreditor Agreement dated 15 October 2015 (the "Intercreditor Agreement")

1. We refer to the Facility Agreement and to the Intercreditor Agreement. This deed (the "Accession Deed") shall take effect as an Accession Deed for the purposes of the Facility Agreement and as a Debtor Accession Deed for the purposes of the Intercreditor Agreement (and as defined in the Intercreditor Agreement). Terms defined in the Facility Agreement have the same meaning in paragraphs 1-3 of this Accession Deed unless given a different meaning in this Accession Deed.
2. Easynet Managed Services Limited agrees to become an Additional Guarantor and to be bound by the terms of the Facility Agreement and the other Finance Documents (other than the Intercreditor Agreement) as an Additional Guarantor pursuant to Clause 31.4 (*Additional Guarantors*) of the Facility Agreement. Easynet Managed Services Limited is a company duly incorporated under the laws of Scotland and is a limited liability company and registered under number SC298935.
3. The obligations of the Additional Guarantor shall be subject to the limitations set out in Clause 23 (*Guarantee and Indemnity*) of the Facility Agreement.
4. Easynet Managed Services Limited's administrative details for the purposes of the Facility Agreement and the Intercreditor Agreement are as follows:

Address: 272 Bath Street, Glasgow, G2 4JK

Fax No.: 144 20 7025 9855

Attention: Maurice Woolf

5. Easynet Managed Services Limited (for the purposes of this paragraph 5, the "Acceding Debtor") intends to give a guarantee, indemnity or other assurance against loss in respect of Liabilities under the following documents:
  - the Facility Agreement
  - the Intercreditor Agreement,
  - the Senior Notes Indenture,
  - a security accession deed dated the date of this Accession Deed relating to the debenture dated 15 October 2015 between, amongst others, Interoute Communications Holdings Limited and Interoute Communications Limited as chargors and Barclays Bank PLC in its capacity as security agent, and
  - a bond and floating charge dated the date of this Accession Deed between Easynet Managed Services Limited and Barclays Bank PLC in its capacity as security agent,


the "Relevant Documents".

FRDOCS01/341835 2

Live: 33411740 v 2

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Certified to be a True Copy

  
For and on behalf of:  
CMS Cameron McKenna LLP,  
Saltire Court, 20 Castle Terrace,  
Edinburgh EH1 2EN

**IT IS AGREED** as follows:

- (a) Terms defined in the Intercreditor Agreement shall, unless otherwise defined in this Accession Deed, bear the same meaning when used in this paragraph 5.
- (b) The Acceding Debtor and the Security Agent agree that the Security Agent shall hold:
  - (i) any Security in respect of Liabilities created or expressed to be created pursuant to the Relevant Documents;
  - (ii) all proceeds of that Security; and
  - (iii) all obligations expressed to be undertaken by the Acceding Debtor to pay amounts in respect of the Liabilities to the Security Agent as agent or trustee, as the case may be, for the Secured Parties or in respect of the Shared Transaction Security, the Secured Parties and the Senior Notes Creditors (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 agent or trustee, as the case may be, for the Secured Parties, or in respect of the Shared Transaction Security, the Secured Parties and the Senior Notes Creditorsas agent or trustee, as the case may be, for the Secured Parties and the Senior Notes Creditors on the terms and conditions contained in the Intercreditor Agreement.
- (c) 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.
- (d) 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.

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

**THIS ACCESSION DEED** has been signed on behalf of the Security Agent (for the purposes of paragraph 5 above only), signed on behalf of the Parent and executed as a deed by Easynet Managed Services Limited and is delivered on the date stated above.

EASYNET MANAGED SERVICES LIMITED

EXECUTED AS A DEED

By: Easynet Managed Services Limited

REDACTED

Signature of Managing Director

Gareth Williams

Name of Managing Director

in the presence of

REDACTED

Signature of witness

Andrew F. Davis

Name of witness

REDACTED

Address of witness

REDACTED

Accountant

Occupation of witness

The Parent

INTERROUTE COMMUNICATIONS  
HOLDING LIMITED

REDACTED

By:

Gareth Williams

Name:

GARETH WILLIAMS

Title:

DIRECTOR

THE SECURITY AGENT

EXECUTED as a DEED by

BARCLAYS BANK PLC

REDACTED

acting by

its duly authorised attorney

in the presence of:

) Duly authorised attorney

)

Witness:

REDACTED

Signature

Name

NORMAN CHAN Barclays Bank PLC

5 The North Colonnade  
Canary Wharf  
London

Address

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Occupation

BANK EMPLOYEE

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